DATED: DD/MM/YYY

FRAMEWORK AGREEMENT FOR THE PROVISION OF INDEPENDENT DOMICILIARY CARE SERVICES

Framework Reference: RCT/PSS/S198/16

between

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

and

[FRAMEWORK PROVIDER]

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THIS AGREEMENT is dated [DATE]

BETWEEN

(1) Rhondda Cynon Taf County Borough Council whose principal place of business is at The Pavilions, Clydach Vale, Tonypandy, CF40 2XX (**Council**).

(2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Framework Provider**).

(each a "**Party**" and together, the "**Parties**")

BACKGROUND

A. The Council placed a contract notice JAN117334 on 07/01/2016 in the Official Journal of the European Union seeking expressions of interest from potential service Framework Providers for the provision of Services to itself and Merthyr Tydfil County Borough Council (together known as the Contracting Authorities)[under a framework agreement.

B. Following receipt of expressions of interest, the Council invited potential service Framework Providers (including the Framework Provider) to tender for the provision of services

C. On the basis of the Framework Provider's Tender, the Council selected the Framework Provider to enter a framework agreement to provide services to the Contracting Authorities in accordance with this Framework Agreement.

D. This Framework Agreement sets out the procedure for ordering Services, the terms and conditions for the provision of the Services and the obligations of the Framework Provider under this Framework Agreement.

E. In the event of merger, abolition or change of any of the Contracting Authorities, the successors to those Contracting Authorities (provided that they exercise the same or similar functions) will also be able to enter into specific contracts under this framework during its duration.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

Affected Party	means the party seeking to claim relief in respect of a Force Majeure Event;
Approval	means the prior written approval of the Council;
Audit	means an audit carried out pursuant to clause 10;
Auditor	means the National Audit Office, Wales Audit Office or an auditor appointed by the Audit Commission as the context requires;
Authorised	means the persons respectively designated as such by

Representative	the Council and the Framework Provider, the first such persons being set out in clause 37 of this Framework Agreement;
Award Criteria	means the Standard Services Award Criteria and/or the Competed Services Award Criteria as the context requires;
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
Call-off Terms and Conditions	means the terms and conditions in Schedule 5;
Change of Control	means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;
Commencement Date	means 01 October 2016
Commercially Sensitive Information	means information listed in the FOI Schedule, or designated as such by the Council, which is considered by the Framework Provider or the Council to be confidential under Section 41 of the FOIA and the disclosure of which would be considered by the Framework Provider or the Council to constitute an actionable breach of confidence (without prejudice to the Council's obligations under the FOIA);
Competed Services	means the competed services set out in Part 1 of Schedule 1;
Complaint	means any formal complaint raised in relation to the Framework Provider's (or any members of the Framework Provider Staff's) performance under the Framework Agreement or any Contract in accordance with clause 21;
Confidential Information	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including [information which would or would be likely to prejudice the commercial interests of any person,] trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA;
Confidentiality Undertaking	means an undertaking not to use or disclose any Confidential Information received save as strictly required to fulfil the purposes of this Framework

	Agreement (including, without limitation, its re-tender);
Contract	means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Contracting Authority and the Framework Provider comprising an Order Form, its appendices and the Call-off Terms and Conditions
Contracting Authorities	means Rhondda Cynon Taff County Borough Council and Merthyr Tydfil County Borough Council. In the event of merger, abolition or change of any of the Contracting Authorities, the successors to those Authorities (provided that they exercise the same or similar functions) will also be able to enter into specific contracts under this framework during its duration
Default	means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Framework Provider Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other;
Data Processor	shall have the same meaning as set out in the DPA;
DPA	means the Data Protection Act 1998;
Data Protection Legislation	means the DPA, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner as amended from time to time;
Employment Liabilities	mean all claims, demands, penalties, actions, proceedings, damages, compensation, protective awards, court of tribunal orders or awards, fines, costs, expenses, notice pay, pension liabilities and all other losses and liabilities (including legal and other

	professional expenses on an indemnity basis);
Employee Representatives	means appropriate representatives of the Framework Provider Staff under regulation 13 of TUPE;
Environmental Information Regulations	means the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Key Personnel	Shall have the meaning of the Providers key Personnel in carrying out the services such as Registered Manager and Responsible Individual
FOI Schedule	means the schedule of information submitted by the Framework Provider with the Framework Provider's Tender setting out the information which the Framework Provider considers to be Commercially Sensitive Information or Confidential Information;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Force Majeure Event	means an event occurring after the date of this Framework Agreement of war, armed conflict, acts of terrorism, riots, fire, flood, storm, earthquake, disaster or such other similar events which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Framework Agreement but excluding any industrial dispute relating to the Framework Provider, the Framework Provider Staff or any other failure in the Framework Provider or any Subcontractor's supply chain;
Framework Agreement	means this agreement and all Schedules to this agreement;
Framework Agreement Variation Procedure	means the procedure for varying the framework or contracts set out in Schedule 8;
Framework Providers	means the Framework Provider and other Framework Providers appointed as framework providers under this Framework Agreement;
Framework Year	means a period of 12 months, commencing on the Commencement Date;
Gateway Review	means a series of short, focused, independent peer

	reviews at key stages of a programme or project;
Good Industry Practice	means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading provider within the relevant industry or business sector of services of a similar type to the Services to be supplied under the Framework Agreement;
Guidance	means any guidance issued or updated by the UK or Welsh government from time to time in relation to the Regulations;
Indemnified Loss	means all liabilities, fines, penalties, damages, demands, proceedings, claims, costs expenses whatsoever and howsoever arising, incurred including without limitation all legal expenses (on an indemnity basis) and other professional fees (together with any VAT thereon);
Information	has the meaning given under section 84 of the FOIA;
Intellectual Property Rights	means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off;
Law	means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
Lots	means the Services divided into lots as referred to in the OJEU Notice and set out in Schedule 1, Part 2;]
Management Information	means the management information requested by the Council in accordance with the services including but not limited to Workforce Information.
Month	means a calendar month;
Necessary Consents	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

OJEU Notice	means the contract notice JAN117334 07/01/2016 published in the Official Journal of the European Union;
Order	means an order for Services sent by Contracting Authorities to the Framework Providers in accordance with the award procedures in clause **Error! Reference source not found.**;
Order Form	means a document setting out details of an Order in the form set out in Schedule 4 or as otherwise agreed; typically called a Commissioning Form
Other Contracting Bodies	means all Contracting Authorities except the Council and "Other Contracting Body" shall be construed accordingly;
Parent Company	means any company which is the ultimate Holding Company of the Framework Provider and which is either responsible directly or indirectly for the business activities of the Framework Provider or which is engaged in the same or similar business to the Framework Provider. "**Holding Company"** shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;
Party	means the Council and/or the Framework Provider;
Personal Data	means personal data as defined at section 1 of the DPA processed by the Framework Provider or its contractors on behalf of the Council;
PQQ Response	means the response to the pre-qualification questionnaire submitted by the Framework Provider to the Council
Previous Provider	means any third party Provider who provides the Services prior to the Initial Service Transfer Date;
Pricing Matrices	means the pricing matrices set out in Schedule 3;
Prohibited Act	the following constitute Prohibited Acts (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or

	activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement; (c) committing any offence (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Council; or (d) defrauding, attempting to defraud or conspiring to defraud the Council;
Provisional Employee List	means a list of persons (including without limitation the Framework Provider Staff) who are assigned to the provision of the Services and whose employment may therefore transfer to the Council or a Replacement Framework Provider pursuant to TUPE as at the date of such list;
Regulations	means the Public Contracts Regulations 2015
Regulatory Bodies	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Council;
Relevant Council	means any court with relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Welsh Ministers, the government of the United Kingdom or of the European Union;
Relevant Transfer	shall have the meaning set out in TUPE;
Replacement Services	any services which are substantially similar or equivalent to any of the Services (or part thereof) and which the Council receives in substitution for any of the Services (or part thereof) following the expiry or termination of this Framework Agreement or following the cessation of the Services (or any part thereof);

Replacement Provider	means the Council or any third party Provider of the Services/Replacement Services appointed by the Council from time to time;
Requests for Information	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations;
Framework Provider's Lots	means the lots to which the Framework Provider has been appointed under this Framework Agreement as set out in Schedule 1;
Service Transfer	means the transfer of the Services in whole or in part to the Council or a Replacement Provider on the Termination Date;
Services	means the services detailed in Schedule 1;
Subcontract	means any contract between the Framework Provider and a third party pursuant to which the Framework Provider agrees to source the provision of any of the Services from that third party;
Subcontractor	means the contractors or service providers that enter into a Subcontract with the Framework Provider;
Supplemental Tender	means the documents submitted to a Customer in response to the Customer's invitation to Framework Providers for formal offers to supply it with Competed Services;
Framework Provider Staff	means all servants, Framework Providers, officers, partners, employees, workers, agents, consultants and contractors of whatever nature of the Framework Provider and/or of any Subcontractor;
Framework Provider Staff Terms and Conditions	means the terms and conditions under which the Framework Provider Staff are employed or engaged by the Framework Provider or Subcontractor;
Tender	means the tender submitted by the Framework Provider to the Council;
Term	means the period commencing on the Commencement Date and ending on 30/09/2022 or on earlier termination of this Framework Agreement. The Term may be extended for further periods of 2 + 2 years.
Termination Date	means the date of expiry or termination of this Framework Agreement;

Transferring Employees	means those of the Framework Provider's Staff who are assigned to the relevant part of the Services (or services equivalent to the Services including, without limitation, Replacement Services) being transferred to the Council or the Replacement Provider upon a Service Transfer and whose employment will therefore transfer to the Council or the Replacement Provider pursuant to a Relevant Transfer;
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;
VAT	means value added tax chargeable under the Value Added Tax Act 1994;
Welsh Language Obligations	means the obligations of the Council in respect of the use of the Welsh language, whether under any Law, under any Welsh language scheme made under the Welsh Language Act 1993, under any Welsh language standards which apply to the Council under the Welsh Language (Wales) Measure 2011 (whether or not a compliance notice has been given to the Council) or any specific obligations in respect of the use of the Welsh language in connection with the delivery of Services which are notified to the Framework Provider from time to time by the Council;
Workforce Information	in respect of an individual means such information as the Council may reasonably request but including (without limitation) in an anonymised format: • their ages, dates of commencement of employment or engagement and gender; • details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise; • the identity of their employer or relevant contracting party; • their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual or non-contractual redundancy or termination payment schemes; • the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them; • details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option

	schemes and customer car schemes applicable to them;
	• any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
	• details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
	• copies of all relevant documents and materials relating to all such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals) and any collective agreements;
	• a breakdown of each person's working time by reference to:
	  • details of the work they perform;
	  • the amount of time they spend carrying out the Services;
	  • details of any other duties they carry out; and
	  • the locations of such work;
	• all other information required by regulation 11 (or otherwise) of TUPE;

Business Working Days	means Monday to Friday 9:00 am to 4:30 pm excluding any statutory public holidays in Wales;
Year	means a calendar year.

1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

(d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment,

modification, order, regulation or instrument as subsequently amended or re-enacted;

(f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

(g) the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;

(h) references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;

(i) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and

(j) reference to a clause is a reference to the whole of that clause unless stated otherwise.

2. TERM OF FRAMEWORK AGREEMENT

2.1 The Framework Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of this Framework Agreement or is otherwise lawfully terminated) or extended pursuant to clauses 2.2 and 2.3, shall terminate 30/09/2022.

2.2 The council may extend the duration of the Framework Agreement for further periods of 2 x 2 years (4 years in total), subject to satisfactory performance by the Framework Provider and the Council's discretion. The Council shall give written notice to the Framework Provider within 3 months of the end of the current term if it wishes to extend the Agreement and the Framework Provider shall agree to and raise no objection to such extension.

2.3 During the extension the terms and conditions of this Framework Agreement shall continue to apply.

3. SCOPE OF FRAMEWORK AGREEMENT

3.1 This Framework Agreement governs the relationship between the Council and the Framework Provider in respect of the provision of the Services by the Framework Provider to the Contracting Authorities.

3.2 The Council appoints the Framework Provider as a Framework Provider of the Services and the Framework Provider shall be eligible to receive Orders for such Services from Contracting Authorities during the Term.

3.3 The Contracting Authorities may, at their absolute discretion and from time to time, order Services from the Framework Provider in accordance with the ordering procedure set out in clause **Error! Reference source not found.** during the Term.

3.4 If and to the extent that any Services under this Framework Agreement are required the Contracting Authorities shall:

(a) enter into a contract with the Framework Provider for these Services in accordance with the terms of the Contract; and

3.5 The Framework Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Contracting Authorities for the Services and that the Contracting Authorities are at all times entitled to enter into other contracts and arrangements with other Framework Providers for the provision of any or all services which are the same as or similar to the Services.

3.6 The Council shall not in any circumstances be liable to the Framework Provider for payment or otherwise in respect of any Services provided by the Framework Provider to any Other Contracting Body.

4. COMMISSIONING PROCESS

EXISTING CONTRACTS

4.1 **General Principals for Awards under the Framework Agreement**

4.2 Framework Providers recognise that there are packages of care being delivered prior to the commencement date possibly by a Previous Provider that will transfer to the Framework on commencement date, and that TUPE shall apply to these contracts.

4.3 In respect of this Framework being covered by the "Light Touch Regime" of the Public Contract Regulations 2015 and the Contracting Authorities general duty of care principals to its service users, the Contracting Authorities shall award these contracts to Framework Providers based upon continuity of care and best fit. Contracting Authorities shall endeavour to award an equal share of contracts between Framework Providers within the identified Lot.

4.4 Subject to clause 4.3 the Contracting Authorities and Framework providers shall enter into negotiations and act with the service users best interest.

NEW CONTRACTS

4.5 Where it has been identified that a domiciliary care service is required to support a person, then the appropriate provider will be commissioned in line with the following commissioning process (Providers are asked to note that the Contracting Authorities are in the process of implementing an electronic call monitoring system and that the commissioning process may alter during the term of this contract to reflect these changes):

4.6 The Contracting Authorities ordering Services under the Framework Agreement for new packages shall:

(a) identify the relevant Lot which its requirements fall into;

(b) Contracting Authority Care Manager shall identify most suitable Framework Provider (based on continuity of service, best fit and service users needs) and verbally confirm if services can be met. Contracting Authorities shall endeavour to award and maintain an equal share of commissioned hours to Framework Providers.

(c) if the Framework Provider is not able to provide the Services, then the Care Managers shall contact next best suitable Framework Provider, and so on.

(d) in cases where the above process has not been able to identify a suitable Framework Provider, the Contracting Authorities may commission via the other Lot.

(e) Contracting Authority Care Manager shall send an Order, to the Framework Provider once the Care has been confirmed by commissioning panel

(f) Framework Provider completes and returns Order to Contracting Authority via designated email address within 24 hours.

(g) Contracting Authority to Authorise completed Order and return via email to Provider.

(h) Contracting Authority to create Service on ECM and email Provider unique Order Number

4.7 In no circumstances shall providers accept Care Packages without an Order Form.

Responsibility for awards

4.8 The Framework Provider acknowledges that each Contracting Authority is independently responsible for the conduct of its award of Contracts under the Framework Agreement and that the Council is not responsible or accountable for and shall have no liability whatsoever in relation to:

(a) the conduct of Other Contracting Bodies in relation to the Framework Agreement; or

(b) the performance or non-performance of any Contracts between the Framework Provider and Other Contracting Bodies entered into pursuant to the Framework Agreement.

Accepting and declining Orders

4.9 Following receipt of an Order, the Framework Provider shall promptly and in any event within 24 hours of receipt of Order either:

(a) notify the Contracting Authority in writing and with detailed reasons that it is unable to fulfil the Order; or

(b) notify the Contracting Authority that it is able to fulfil the Order by completing and returning the Order Form.

4.10 If the Supplier:

(a) notifies the Contracting Authority that it is unable to fulfil an Order; or

(b) the time limit referred to in clause 4.9 has expired;

then the Order shall lapse and the Contracting Authority may then send that Order to another Framework Provider in accordance with the procedure set out in clause 4.6(f).

4.11 If the Supplier modifies or imposes conditions on the fulfilment of an Order, then the Contracting Authority may either:

(a) reissue the Order incorporating the modifications or conditions; or

(b) treat the Provider 's response as notification of its inability to fulfil the Order and the provisions of clause 4.10 shall apply.

4.12 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Contracting Authority. Accordingly, the Provider shall sign and return

the Order Form which shall constitute its offer to the Contracting Authority. The Contracting Authority shall signal its acceptance of the Provider's offer and the formation of a Contract by counter-signing the Order Form.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

5.1 The Framework Provider shall perform all Contracts entered into with Contracting Authorities in accordance with:

(a) the requirements of this Framework Agreement; and

(b) the terms and conditions of the respective Contracts.

5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

(a) the clauses of the Contract;

(b) the Order Form;

(c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form any other document referred to in the clauses of the Contract; and

(d) the Supplier's Tender,

6. PRICES FOR SERVICES

6.1 The prices offered by the Framework Provider for Contracts to the Contracting Authorities for Services shall be the prices listed in the Pricing Matrix for the relevant Lot and such prices shall be adjusted annually in accordance with the provisions of Schedule 3 and clause 24 of the Call off Terms and Conditions.

6.2 The prices offered by the Framework Provider for Contracts to the Contracting Authorities for Services shall be no higher than the prices set out in the Pricing Matrices. Warranties and representations

The Provider warrants and represents to the Council [and to each of the Other Contracting Bodies] that:

(a) it has full capacity and authority and all Necessary Consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;

(b) this Framework Agreement is executed by a duly authorised representative of the Framework Provider;

(c) in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;

(d) as at the Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council before the execution of this Framework Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;

(e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief,

pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Council [or Other Contracting Bodies];

(f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract;

(g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Framework Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Framework Provider'sassets or revenue;

(h) the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel in accordance with Good Industry Practice; and

(i) the Framework Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this clause) in accordance with its own established internal procedures.

7. SERVICE PRE-REQUISITES

7.1 The Framework Provider shall be responsible for obtaining all licences, authorisations, Necessary Consents and/or permits required in relation to the performance of this Framework Agreement and any Contract.

7.2 During the Term the Framework Provider shall establish and keep established an operating base within the Cwm Taf Region, or within a 5 mile radius of its boundaries

7.3 Providers are asked to note that the Contracting Authorities are in the process of implementing an electronic call monitoring system to facilitate the commissioning and payment process. Providers must have an electronic call monitoring system that is able to interface into the Contracting Authorities ECM to enable this process. In the event of a system failure a mutually agreed alternatives will be introduced as a temporary measure

PERSONNEL

8. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")

The Parties agree that the provisions of Schedule 9 (Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") shall apply.

SUPPLIER'S INFORMATION OBLIGATIONS

9. REPORTING AND MEETINGS

9.1 The Framework Provider shall submit Management Information to the Council throughout the Term on reasonable request in respect of any or all Contracts entered into with the Contracting Authorities.

9.2 The Framework Providers shall attend 6 monthly monitoring review meetings at the Framework Providers' premises or other such location to be agreed between the parties.

9.3 The Framework Providers shall attend quarterly Provider forum meetings at the Councils premises or other such location to be agreed between the parties

9.4 The Council may share the Management Information supplied by the Framework Provider with any Other Contracting Body.

9.5 The Council may make changes to the nature of the Management Information that the Supplier is required to supply and shall give the Framework Provider at least one Month's written notice of any changes.

10. RECORDS AND AUDIT ACCESS

10.1 The Framework Provider shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with the Contracting Authorities and the amounts paid by the Contracting Authorities.

10.2 The Framework Provider shall keep the records and accounts referred to in clause 10.1 above in accordance with good accountancy practice.

10.3 The Framework Provider shall afford the Council or the Auditor (or both) such access to such records and accounts as may be required from time to time.

10.4 The Framework Provider shall provide such records and accounts (together with copies of the Framework Provider's published accounts) during the Term and for a period of six years after expiry of the Term to the Council and the Auditor.

10.5 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Framework Provider or delay the provision of the Services pursuant to the Contracts, save insofar as the Framework Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.

10.6 Subject to the Council's rights of confidentiality, the Framework Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:

(a) all information requested by the Auditor within the scope of the Audit;

(b) reasonable access to sites controlled by the Framework Provider and to equipment used in the provision of the Services; and

(c) access to the Framework Provider Staff.

10.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 10, unless the Audit reveals a material Default by the Framework Provider in which case the Supplier shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

11. CONFIDENTIALITY

11.1 Except to the extent set out in this clause 11 or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

(a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other Party's Confidential Information to any other person without that other Party's prior written consent.

11.2 Clause 11.1 shall not apply to any disclosure of information:

(a) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;

(b) by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the information;

(c) where such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 14;

(d) where such information was already in the public domain at the time of the disclosure otherwise than by a breach of this Framework Agreement;

(e) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement provided that any such person is required to comply with obligations of confidentiality that are equivalent to the obligations imposed on the Parties under this Framework Agreement;

(f) [that is reasonably required by Other Contracting Bodies];

(g) by the Council pursuant to clause 11.7; or

(h) to enable a determination to be made under clause 22.

11.3 The Framework Provider may only disclose the Council's Confidential Information to the Framework Provider Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such members of the Framework Provider Staff are aware of and shall comply with these obligations as to confidentiality.

11.4 The Framework Provider shall not, and shall procure that the Framework Provider Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Framework Agreement.

11.5 The Framework Provider undertakes (except as may be required by Law) not to:

(a) disclose or permit disclosure of any details of this Framework Agreement to the news media or any third party other than Framework Provider Staff; or

(b) use the Council's name and or brand in any promotion of marketing or announcement of orders, without the prior written consent of the Council.

11.6 At the written request of the Council, the Framework Provider shall procure that those members of the Framework Provider Staff identified by the Council signs a Confidentiality Undertaking prior to commencement of any work in accordance with this Framework Agreement.

11.7 Nothing in this Framework Agreement shall prevent the Council from disclosing the Framework Provider's Confidential Information:

(a) to any government department [or any Other Contracting Bodies]. All government departments [or Other Contracting Bodies] receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments [or Other Contracting Bodies] on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department [or any Other Contracting Bodies];

(b) to any consultant, contractor or other person engaged by the Council or any person conducting a Gateway Review;

(c) for the purpose of the examination and certification of the Council's accounts; or

(d) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

11.8 The Council shall use all reasonable endeavours to ensure that any government department, [Other Contracting Bodies,] employee, third party or Subcontractor to whom the Framework Provider's Confidential Information is disclosed pursuant to this Clause 11 is made aware of the Council's obligations of confidentiality.

11.9 Nothing in this Clause 11 shall prevent either Party from using techniques, ideas or know-how gained during the performance of this Framework Agreement in the course of its normal business to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

11.10 In the event that the Framework Provider fails to comply with this Clause 11, the Council reserves the right to terminate this Framework Agreement by notice in writing with immediate effect.

12. DATA PROTECTION

12.1 The Framework Provider shall (and shall procure that any of the its Staff involved in the provision of the Framework Agreement shall) comply with any notification requirements under the DPA and the Parties shall duly observe all their respective obligations under the DPA, which arise in connection with the Framework Agreement.

12.2 Notwithstanding the general obligation in clause 12.1, where the Framework Provider is processing the Personal Data as a Data Processor for the Council, the Framework Provider shall:

(a) ensure that it has in place appropriate organisational and technical and measures to ensure the security of the Personal Data and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data);

(b) take reasonable steps to ensure the reliability of employees who have responsibility for the Personal Data;

(c) act only in accordance with instructions given by the Council;

(d) provide the Council with such information as the Council may reasonably require to satisfy itself that the Framework Provider is complying with its obligations under the DPA;

(e) promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause 12.2;

(f) inform the Council promptly and in any event within 48 hours of its receipt of any statutory request made by any data subject pursuant to Part II of the DPA and offer the Council such assistance as is necessary for the Council to respond to any such request;

(g) not transfer any of the Personal Data to a country outside the European Economic Area with the Council's express consent;

(h) not engage any subcontractor to process the Personal Data without the written consent of the Council;

(i) ensure that any subcontractor that is engaged to process the Personal Data is subject to obligations in respect of the Personal Data that are equivalent to those imposed on the Framework Provider under this clause 13.2; and

(j) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

13. SECURITY OF CONFIDENTIAL INFORMATION

13.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained or created in the performance of this Framework Agreement, the Framework Provider undertakes to maintain appropriate security systems, which may be subject to review and approval by the Council. This obligation is in addition to the Framework Provider's obligations under Clauses 11 and 12 of this Framework Agreement.

13.2 The Framework Provider will immediately notify the Council of any breach of security in relation to Confidential Information and any other data obtained in the performance of the Framework Agreement and will keep a record of such breaches. The Framework Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Framework Provider's obligations under Clauses 11 and 12 of this Framework Agreement.

13.3 The Framework Provider shall at its own expense co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data. This obligation is in addition to the Framework Provider's obligations under Clauses 11 and 12 of this Framework Agreement

13.4 The Council may require the Framework Provider to alter or update any security systems at any time during the Term.

14. FREEDOM OF INFORMATION

14.1 The Framework Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Framework Provider's expense) to enable the Council to comply with these information disclosure requirements.

14.2 The Framework Provider shall and shall procure that its Subcontractors shall:

(a) transfer any Request for Information to the Council as soon as practicable after receipt and, in any event, within two (2) Business Working Days of receiving a Request for Information;

(b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Business Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

(c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

14.3 The Council shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or Confidential Information and/or any other Information:

(a) is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

(b) is to be disclosed in response to a Request for information.

14.4 In no event shall the Framework Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

14.5 The Framework Provider acknowledges that the Council may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (**Code**)) be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

(a) without consulting with the Framework Provider; or

(b) following consultation with the Framework Provider and having taken its views into account,

provided always that where clause 14.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Framework Provider advance notice, or failing that, to draw the disclosure to the Framework Provider's attention after any such disclosure.

14.6 The Framework Provider shall ensure that all Information produced in the course of the Framework Agreement or relating to the Framework Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

14.7 The Framework Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 14.3.

15. PUBLICITY

15.1 Unless otherwise directed by the Council, the Framework Provider shall not make any press announcements or publicise this Framework Agreement in any way without the Council's prior written consent.

15.2 The Framework Provider shall take all reasonable steps to ensure the observance of the provisions of clause 15.1 by all Framework Provider Staff.

15.3 The Framework Provider shall not use business logos or publicise the logos of the Contracting Authoritieseither in print or electronically without the prior written consent of the Contracting Authorities (as the case may be).

15.4 The Council shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Council, including any examination of this Framework Agreement by the Auditors and the provisions of the FOIA or otherwise.

15.5 The Parties acknowledge that the Auditor has the right to publish details of this Framework Agreement (including Confidential Information) in its relevant reports to Parliament (or similar) to the extent permitted by Law.

15.6 The Framework Provider shall not do anything or cause anything to be done, that may damage the reputation of the Council or bring the Council into disrepute.

16. COMMUNITY BENEFITS

16.1 Framework Providers shall meet the obligations of the Government of Wales Act 2006 with regards to sustainable development.

16.2 Sustainable Development means ensuring that our actions contribute in the round to social, economic and environmental well-being now and in the future; improving the environment, building stronger communities, reducing social exclusion and poverty and encouraging the development of the economy. The Welsh Ministers' commitment to deliver 'community benefit' outcomes from our procurement activity is designed to ensure that wider social and economic issues are taken into account when spending public money. The intention is to achieve the very best value for money in the widest sense.

16.3 At award of the framework, the successful Provider will be expected to work with the Contract manager to maximise the community benefits delivered through the framework.

16.4 The Provider shall consider the opportunities to recruit and train economically inactive persons as part of the workforce delivering this contract. The Customer is keen that the Supplier considers the opportunity to offer training during the life of the Agreement.

16.5 If so required by a Customer, the Supplier may also be required to forward details of any employment opportunities and externally advertised vacancies to Job Centre Plus.

16.6 The Supplier will be encouraged to secure other positive outcomes that would benefit the community they operate within

16.7 Clause 16 shall not contradict any applicable EU obligations relating to equality, non-discrimination, transparency and proportionality.

16.8 Framework Providers must record and report on sustaining their existing workforce, employment opportunities and any other initiatives to support the Government of Wales Act 2006. The format of the recording and reporting shall be made available to Framework Providers and Framework Providers shall submit this information back to the Council, or other party to be agreed, on the anniversary of the Framework commencement and annually thereafter.

17. POLICIES ETC.

The Framework Provider shall comply with all the of the Council's and Contracting Authorities published policies and with any further rules, codes of practice, procedures and standards which the Council or Contracting Authorities notifies to the Framework Provider. The Council and Contracting Authorities shall throughout the Term ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Framework Provider.

FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

18. TERMINATION

Termination on Default

18.1 The Council may terminate the Framework Agreement by serving written notice on the Framework Provider with effect from the date specified in such notice:

(a) where the Framework Provider commits a material breach and:

(i) the Framework Provider has not remedied the material breach to the satisfaction of the Council within [20 **OR** [NUMBER]] Business Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied; or

(ii) the material breach is not, in the reasonable opinion of the Council, capable of remedy; or

(b) where a Contracting Authority terminates a Contract awarded to the Framework Provider under this Framework Agreement as a consequence of Default or material breach by the Framework Provider.

18.2 For the purposes of clause 18.1(a) and 18.1 (b) **material breach** means a breach (including an anticipatory breach) that is not minimal or trivial in its consequences in the opinion of the Council. In deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

18.3 The Council may terminate this Framework Agreement on thirty (30) days written notice to the Framework Provider in any of the following circumstances:

(a) The Framework Agreement has been subject to substantial modification as to its scope and value such that a new procurement exercise would be required to be conducted in accordance with the provisions of Regulation 72(9) of PCR 2015;

(b) The Framework Provider, at the time that the Tender was awarded to the Framework Provider, had been convicted of any one or more of the mandatory grounds for exclusion from participation in the Tender as those grounds are set out in Regulation 57 of PCR 2015; and

(c) The Tender should not have been awarded to the Framework Provider in view of a serious infringement of the obligations under the Treaty on European Union and the Treaty on the Functioning of the European Union (**the TFEU**) and the Public Contracts Directive 2014/24/EU that has been

declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

Termination on insolvency and Change of Control

18.4 Without affecting any other right or remedy available to it, the Council may terminate this Framework Agreement with immediate effect by giving written notice to the Framework Provider if:

(a) the Framework Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;

(b) the Framework Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Framework Provider (being a company);

(d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Framework Provider (being a company);

(e) the holder of a qualifying floating charge over the assets of the Framework Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the assets of the Framework Provider or a receiver is appointed over the assets of the Framework Provider;

(g) the Framework Provider (being an individual) is the subject of a bankruptcy petition or order;

(h) a creditor or encumbrancer of the Framework Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Framework Provider's assets and such attachment or process is not discharged within [14] days;

(i) any event occurs, or proceeding is taken, with respect to the Framework Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.4(a) to clause 18.4(h) (inclusive);

(j) the Framework Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(k) any warranty given by the other party in clause 6.2 of this Framework Agreement is found to be untrue or misleading.

18.5 The Framework Provider shall notify the Council immediately if the Framework Provider undergoes a Change of Control. The Council may terminate the Framework Agreement by giving notice in writing to the Framework Provider with immediate effect within six (6) Months of:

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

Termination for convenience

18.6 Either Party may terminate the Framework Agreement on no less than 6 month written notice.

19. SUSPENSION OF FRAMEWORK PROVIDER'S APPOINTMENT

Without prejudice to the Council's rights to terminate the Framework Agreement in clause 18 above, if a right to terminate this Framework Agreement arises in accordance with clause 18, the Council may suspend the Framework Provider's right to receive Orders from the Contracting Authorities [in any or all Framework Provider's Lots] by giving notice in writing to the Framework Provider. If the Council provides notice to the Framework Provider in accordance with this clause 19, the Framework Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Framework Provider by the Council in writing from time to time.

20. CONSEQUENCES OF TERMINATION AND EXPIRY

20.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Framework Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 20.

20.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

20.3 Within [30 **OR** [thirty]] Business Working Days of the date of termination or expiry of the Framework Agreement, the Framework Provider shall return or destroy at the request of the Council any data, personal information relating to the Council or its personnel and Service Users or Confidential Information belonging to the Council in the Framework Provider's possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Framework Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council.

20.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.

20.5 The provisions of clause 6.2, clause 10, clause 11, clause 12, clause 12.1, clause 14.7, clause 20, clause 23, and clause 38 shall survive the termination or expiry of the

Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

21. COMPLAINTS HANDLING AND RESOLUTION

21.1 The Framework Provider shall notify the Council of any Complaint made within two Business Working Days of becoming aware of that Complaint and such notice shall contain full details of the Framework Provider's plans to resolve such Complaint.

21.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the Framework Provider to take remedial action under the provisions of the Framework Agreement or a Contract, the Framework Provider shall use its best endeavours to resolve each Complaint within ten Business Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

22. DISPUTE RESOLUTION

22.1 If a dispute arises out of or in connection with this Framework Agreement or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this Framework Agreement, the Parties shall follow the procedure set out in this clause:

(a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the designated senior representative of the Council and the designated senior representative of the Framework Provider shall attempt in good faith to resolve the Dispute;

(b) if the designated senior representative of the Council and the designated senior representative of the Framework Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("**ADR Notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR Notice.

22.2 The commencement of mediation shall not prevent the Parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 38 which clause shall apply at all times.

22.3 Unless agreed otherwise, each Party shall bear its own costs of any mediation.

22.4 If the Dispute is not resolved within [10] days after service of the ADR Notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of [10] days, or the mediation terminates before the expiration of the said period of [10] days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 38 in this Framework Agreement.

22.5 Each Party's respective obligations to be carried out under this Framework Agreement shall not cease or be delayed by the invocation of this dispute resolution procedure.

GENERAL PROVISIONS

23. BEST VALUE

23.1 The Council is an improvement authority (as that term is defined in the Local Government (Wales) Measure 2009) and is accordingly subject to a duty to make arrangements to secure continuous improvements in the exercise of its functions having regard inter alia to service quality, effectiveness, service availability, efficiency and innovation. The Framework Provider undertakes:

(a) to co-operate with the Council to assist it in demonstrating how it has achieved year on year improvements; and

(b) to meet annually or as otherwise agreed with the Council to suggest and discuss in good faith improvements that can be made to the Services.

23.2 Any variations to this Framework Agreement proposed pursuant to clause 23.1 of this Framework Agreement shall be made in accordance with the Framework Agreement Variation Procedure.

24. LEGISLATIVE CHANGE

24.1 Subject to clause 24.2, the Supplier shall bear the cost of complying with all Law and any amendments thereto.

24.2 In the event that a change in Law necessitates a change to this Framework Agreement and, provided that such change could not have reasonably been foreseen by the Supplier at the Commencement Date, the Parties shall enter into in negotiations in accordance with the Framework Agreement Variation Procedure if any consequent variations to this Framework Agreement are required.

25. EMERGENCY AND DISASTERS

25.1 If the Council notifies the Framework Provider of a situation, which in the opinion of the Council amounts to a possible, potential or actual emergency or disaster, the Framework Provider shall immediately undertake such tasks and for such purposes provide such assistance including labour, vehicles, equipment and materials as are reasonably available to it and used in connection with the Framework Agreement as the Council may reasonably require. The Council shall reimburse the actual demonstrable and reasonable costs incurred by the Framework Provider in connection with the services provided to the Council in an emergency or disaster situation.

25.2 During the continuation of such emergency or disaster the Framework Provider shall keep such records in the form of a log of all key decisions, activities and services provided by the Framework Provider during the emergency or disaster. The Framework Provider shall on request afford the Council such access to those records as may be required by the Council. The records shall be submitted to the Council with the Framework Provider's invoices for payment for the services provided during the emergency or disaster.

25.3 The Supplier shall if requested by the Council, prior to or after the Commencement Date, provide the Council with the names, address and telephone numbers of up to three (3) of its Framework Provider Staff who may be contacted at any time and who will be able to initiate an immediate response to the tasks identified by the Council in the event of an emergency or disaster. The Framework Provider shall further notify the Council of any changes in the information provided as soon as reasonably practicable.

25.4 The Framework Provider shall have no liability for any failure to perform the Services or provide supplies as a result of the Council exercising its rights under this clause, subject to the Framework Provider using all reasonable endeavours to

continue to perform its obligations under this Framework Agreement during such emergency or disaster situations.

25.5 In the event that the Framework Provider's performance is affected by an emergency or disaster the Council shall not be liable to pay for any element of the Services which it does not receive or to the extent that any aspect of the Framework Provider's performance is adversely affected by the situation.

26. PREVENTION OF BRIBERY, CORRUPT GIFTS AND PAYMENTS OF COMMISSION

26.1 The Framework Provider:

(a) shall not, and shall procure that the Framework Provider Staff and all Subcontractor personnel shall not, in connection with this Framework Agreement and any Contract made under it:

(i) commit a Prohibited Act; or

(ii) commit an offence under Sections 117(2) and (3) of the Local Government Act 1972;

(b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Framework Agreement.

26.2 The Framework Provider shall:

(a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

(b) if requested and within 5 Business Working Days of the request , certify to the Council in writing (such certification to be signed by an officer of the Framework Provider) compliance with this clause 26 by the Framework Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Framework Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

26.3 The Framework Provider shall have an anti-bribery policy (which shall be disclosed to the Council on request) to prevent any members of the Framework Provider's Staff or Subcontractors from committing a Prohibited Act and shall enforce it where appropriate.

26.4 If any breach of Clause 26.1 is suspected or known, the Framework Provider must notify the Council immediately.

26.5 If the Framework Provider notifies the Council that it suspects or knows that there may be a breach of Clause 26, the Framework Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Framework Agreement.

26.6 The Council may terminate this Framework Agreement by written notice with immediate effect if the Framework Provider, the Framework Provider Staff, or

Subcontractors (in all cases whether or not acting with the Framework Provider's knowledge) breaches clause 26.1.

26.7 Any notice of termination under clause 26.6 must specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Council believes has committed the Prohibited Act; and

(c) the date on which this Framework Agreement will terminate.

26.8 Despite Clause 22, any dispute relating to:

(a) the interpretation of this clause 26; or

(b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

26.9 Any termination under this clause 26 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council [and the Parties agree that the Council may recover from the Framework Provider the amount or value of any gift, consideration or commission given in contravention of this clause 26, together with all costs to the Council of terminating and entering into an alternative with another Framework Provider including associated costs of any re-tendering or re-advertising].

27. FRAUD

The Framework Provider must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Council. Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Council the Framework Provider shall immediately inform the Council.

28. SUBCONTRACTING AND ASSIGNMENT

28.1 This Framework Agreement is personal to the Framework Provider.

28.2 The Framework Provider shall not subcontract, assign, novate, or otherwise dispose of this Framework Agreement or any part of it without the previous consent in writing of the Council acting in its absolute discretion. The Framework Provider shall supply the Council with all relevant documentation and evidence to any subcontracting, assignment or novation to allow the Council to determine whether to accept the request.

28.3 The Council shall be entitled to:

(a) novate or otherwise dispose of this Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council; or

(b) assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part of it to any Other Contracting Body.

28.4 This Framework Agreement is binding on the Council and its successors and assignees and the Framework Provider and the Framework Provider’s successors and permitted assignees.

28.5 Any change in the legal status of the Council such that it ceases to be a contracting authority (as defined in Regulation 3 of the Regulations) shall not affect the validity

of this Framework Agreement. In such circumstances, this Framework Agreement shall be binding on any successor body to the Council.

29. VARIATIONS TO THIS FRAMEWORK AGREEMENT

Any variations to this Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 8

30. DESIGNATED REPRESENTATIVES

30.1 The Council's Authorised Representative has the authority to act on behalf of the Council for all purposes connected with this Framework Agreement.

30.2 The Council shall also appoint a deputy authorised representative to act should the Council's Authorised Representative not be available.

30.3 The Framework Provider shall nominate a Framework Provider's Authorised Representative at the commencement of this Framework Agreement who shall be empowered to act on behalf of the Framework Provider for all purposes connected with this Framework Agreement which will include but not be limited to:

(a) managing the provision of the Services;

(b) attending meetings with the Council's Authorised Representative to review the provision of the Services;

(c) providing all information and documentation reasonably required by the Council in respect of the Services for the performance of its duties.

30.4 The Council reserves the right to reject the appointment of any person as the Framework Provider's Authorised Representative who does not in the opinion of the Council have appropriate experience in the management of services similar to the Services or who is otherwise unsuitable for such appointment.

31. THIRD PARTY RIGHTS

Except as expressly provided elsewhere in this Framework Agreement, only a person who is a party to this Framework Agreement, or a Replacement Supplier, shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

32. NO AGENCY OR PARTNERSHIP

32.1 The Framework Provider is not and shall not in any circumstances hold itself out as being the servant or agent of the Contracting Authorities.The Framework Provider shall not hold itself out as being authorised to enter in to any contract on behalf of the Contracting Authorities or in any way bind the Contracting Authorities to the performance, variation, release or discharge of any obligation to a third party. The Framework Provider Staff shall not hold themselves out to be and shall not be held out by the Framework Provider as being servants or agents of the Contracting Authorities.

32.2 Nothing in this Framework Agreement shall be construed as constituting a partnership between the Parties.

33. SEVERANCE

33.1 If any provision or part-provision of this Framework Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to

or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Framework Agreement.

33.2 If any provision or part-provision of this Framework Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

34. RIGHTS AND REMEDIES

Except as expressly provided in this Framework Agreement, the rights and remedies provided under this Framework Agreement are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law.

35. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Framework Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

36. ENTIRE AGREEMENT

36.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, promises, assurances, warranties, representations, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 36 shall operate to exclude any liability for fraud.

36.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Framework Agreement.

37. NOTICES

37.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

37.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by fax or e-mail (confirmed in either case). Such notice shall be addressed to the other Party in the manner referred to in clause 37.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Business Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or fax received on a Working Day or sooner where the other Party acknowledges receipt of such letters, or fax or e-mail.

37.3 For the purposes of clause 37.2, the address of each Party shall be:

(a) For the Council:

For the attention of: [NAME OF AUTHORITY'S Authorised REPRESENTATIVE AND POSITION]

Address:

Tel:

Fax:

E-mail:

(b) For the Framework Provider:

For the attention of: [NAME OF SERVICE FRAMEWORK PROVIDER'S AUTHORISED REPRESENTATIVE AND POSITION]

Address:

Tel:

Fax:

E-mail:

37.4 Either Party may change its address for service by serving a notice in accordance with this clause.

38. COSTS

Except as provided expressly in this Framework Agreement, each Party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Framework Agreement and any documents or registrations referred to in it.

39. WELSH LANGUAGE OBLIGATIONS

The Framework Provider warrants that it will not supply the Services in breach of the Welsh Language Obligations, nor in such a way as to render the Council in breach of its Welsh Language Obligations.

40. COUNTERPARTS

This Framework Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Framework Agreement, but all the counterparts shall together constitute the same Framework Agreement. No counterpart shall be effective until each Party has signed at least one counterpart.

41. GOVERNING LAW AND JURISDICTION

41.1 This Framework Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, as it applies in Wales.

41.2 Each Party irrevocably agrees that the courts of England and Wales, sitting in the locality of the Council or at Cardiff, shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).

42. SIGNATURES

IN WITNESS thereof this Framework Agreement has been executed as a Deed on the date stated at the beginning of it

Authorised Signatory

Signed by: [INSERT NAME]

[POSITION]

Date:

For and on behalf of **Rhondda Cynon Taf County Borough Council**

In Witness of

Signed by: [INSERT NAME]

[POSITION]

Date:

For and on behalf of **Rhondda Cynon Taf County Borough Council**

Authorised Signatory

Signed by: [INSERT NAME]

[POSITION]

Date:

For and on behalf of **[FRAMEWORK PROVIDER]**

In Witness of

Signed by: [INSERT NAME]

[POSITION]

Date:

For and on behalf of **[FRAMEWORK PROVIDER]**

Schedule 1 Services and Lots

Part 1. Services

Service Specification to be inserted here

Part 2. [Supplier's Lots]

NOTE TO PROCURING OFFICER: The Council should identify the Lots to which the Service Provider has been appointed, if Lots are being used. If Lots are not being used, this may be deleted. Ensure that any other references to Lots are also removed if this is done. The Council should also attach the Supplier's tender (regardless of whether Lots are used). In the event of conflict or inconsistency in the contract documents, the Council's specification in Part 1 takes precedence over the Tender.

LOT	Area	Area Description
1	Rhondda Taf	Rhondda, Taf West and Taf South
2	Cynon Taf and Merthyr	Cynon, Taf North, Merthyr

Schedule 2 Lots

The Lots have been awarded as follows:

LOT	Area	Area Description	Framework Providers
1	Rhondda Taf	Rhondda, Taf West and Taf South	
2	Cynon Taf and Merthyr	Cynon, Taf North, Merthyr	

Contract Title:	**Framework Agreement for the Provision of Domiciliary Care**
Contract Ref:	**RCT/PSS/S198/15**
Tenderer:	

PRICING SCHEDULE

Note: Tenderers must enter a cost breakdown for their hourly rate in column E. Tenderers Total Hourly Cost will be presented in Cell E32. This rate must be entered into the Commercial envelope/section of etenderwales, Question 2.1.1.
This Schedule must be completed and uploaded into question 2.2.1

Care Worker Costs	**Care Worker Costs**	**Direct Pay**	£
		Hourly Pay Rate / Care Delivery	
		Paid Travel Time	
		Annual Leave & BH	
		Training	
		Sick pay/ other non productive time	
		Direct Hourly Pay	**£0.00**
		On Costs	£
		Employers' National Insurance	
		Pension	
		Total Care Worker Costs	**£0.00**
		Travel Allowance/Expenses	
		Subtotal of Direct Care Costs	**£0.00**
Contributions and Profit	**Other Staff Costs**	**Other Staff**	£
		Management / Supervisory	
		Admin / Planning	
		Other Staff	
		Total Other Staff Costs	**£0.00**
	Overheads (all non staffing costs)	**Overheads**	£
		Office/ Accommodation Costs	
		Telecommunications / ICT Costs	
		Registration Fees inc CSSIW	

		Staff Training	
		Recruitment and advertising (inc DBS checks)	
		Other	
		Total Non-staffing Costs	**£0.00**
			Total Hourly Rate: £0.00

The prices contained in the Pricing Matrix are fixed for the first 2 years of the agreement subject to:
If during the Term there shall be any material variation in the cost of wages to the Supplier of supplying the Services, such as a variation to the National Minimum or Living Wage rates, an application may be made by either Party for a net increase to or deduction from the prices as the case may be, provided that no addition to or deduction from the price shall alter the amount of profit of the Supplier included in the price. Any other wage increases shall be capped by the percentage salary increase awarded to the Contracting Authority's Social Services staff in the previous April.
Any other such requests for increases shall only be permitted after the 2nd anniversary of the commencement date and on each anniversary thereafter.
The proposals for any revision of prices must be submitted in writing to the Council at least sixty (60) days prior to the proposed effective date of the variation. The Supplier must furnish such evidence as may be reasonably required to satisfy the Council that the amount of any increase in cost is justified and proportionate to the Pricing Matrix and Workforce Information. The revised prices will only be paid if the Supplier receives written confirmation of the new prices from the Council.

Schedule 4 Order Form

Rhondda Cynon Taff County Borough Council - Community and Children's Service Group
Commissioning Record

Framework Commissioning Order Form

FROM

Contracting Authority:	
Invoice address:	
Authorised Representative:	Name: Phone: E-mail:
Order number:	
Order date:	

TO

Provider:	
Authorised Representative::	

BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES to enter a legally binding contract with the Contracting Authority to provide to the Services specified in this Order Form incorporating the rights and obligations in the Call-off Terms and Conditions set out in the Framework Agreement Reference RCT/PSS/S198/15 entered into by the Provider and the Council on [DATE].

For and on behalf of the Provider:

Name and title	
Signature	
Date	
Supplier's Authorised Representative for the Contract (if different)	[NAME]

For and on behalf of the Contracting Authority:

Name and title	
Signature	
Date	

Section 1 – Service User Information (To be completed by the Care co-ordinator)

Date of Panel:	*(Insert date of panel*	**Care Co-ordinator**	*(Name of Care Co-ordinator)*
Team	*(Insert Team i.e. short Term Intervention, Rh, CV, TE Locality team)*		

New care Package	Yes / No		**Carers respite**	Yes / No	
Hospital discharge	Yes / No	**Transfer from IC**	Yes / No	**Transfer from Re-ablement**	Yes / No
Variation to existing package	(Yes/No - Indicate increase or decrease)				

Service User Name:		**SWIFT No:**	
Address: **(incl. Post Code)**			

Provider	(insert name of Provider e.g. in-house/name of external provider)
Agreed Start Date	(insert date)

Section 2 - Care Package information

Double Handling	(Yes/No)	*Insert specific Double Handling requirements e.g. Morning and evening calls only (DO WE NEED THIS)*	
Medication	(Yes/No)		
Identify Equipment in Place			
Specialist Moving and Handling report available	Yes/No	**Key Safe in situ**	Yes / no
Identified Risk	*Please indicate if any identified risk e.g. remote area reg. 2 staff, access to property, pets etc…*		
Required Start Date for service: _____			

Call	am		Lunch		pm		Eve		Night mobile	
	Time	Duration	Time	Duration	Time	Duration	Time	Duration	Time	Duration
Monday										
Tuesday										
Wednesday										
Thursday										
Friday										
Saturday										
Sunday										

Total Weekly Hours: _____

Section 3 - Authorisation by Team Manager

I authorize the purchase of home care services for the above service user as required in the care plan	
Team Manager	
Date:	

Section 4 – Confirmation of Service by Provider

Name of Provider	
I confirm receipt of the Care Plan and supporting documents for the service user identified above and agree to undertake the service required.	
Start date of the service confirmed as:	
Weekly cost of the service confirmed as:	(complete if external provider)

Section 5 – De-Commission Services

I authorize the Termination of home care services for the above service user			
Team Manager		**Date of notice**	(?Business working days notice required)

e-mail addresses:

Finance - Cerys.Lewis@rctcbc.gov.uk P&C – Helen.A.Parry@rctcbc.gov.uk

Schedule 5 Call-off Terms and Conditions

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PARTIES

(1) Rhondda-Cynon-Taff CBC / Merthyr Tydfil CBC whose principal place of business is at [ADDRESS] (The Contracting Authority)

(2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Provider**).

(each a "**Party**" and together, the "**Parties**")

BACKGROUND

The Contracting Authorities are responsible for carrying out assessments of an individual who appear to them to be in need of a Community Care service in accordance with the Social Services and Wellbeing (Wales) Act 2014 and will determine a persons eligibility for a care and support plan.

The Provider is an organisation, partnership or individual established inter alia for the provision of Community Care Services and registered to do so with the Care and Social Services Inspectorate Wales (CSSIW)

From time to time the Contracting Authorities will require the Provider to render services as set out in this Contract to a service user(s) who it has assessed as being for a care and support plan and the Provider has agreed to provide those services in accordance with the Terms and Conditions set out in this Contract.

The Provider acknowledges that all Orders placed under this Framework Agreement shall be carried out in accordance with these Terms and Conditions.

GENERAL PROVISIONS

1. DEFINITIONS PARTICULAR TO THE CALL OFF

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

Authorised Representative	the persons respectively designated as such by the Customer and the Provider in the Order Form;
Care Manager	the officer designated as Care Manager to a service user, and/or the officer designated to undertake monitoring of the Provider's performance
Care & Support Plan	the document which underpins the service to be provided to service users as detailed in the Service Specification, that outlines the Wellbeing Outcomes of the person and how they will be met**.**
Council	Rhondda Cynon Taf County Borough Council [being the contracting authority that established the Framework Agreement];

Confidential Information	any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including [information which would or would be likely to prejudice the commercial interests of any person,] trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA;
Contract	the written agreement between the Contracting Authority and the Provider consisting of the Order Form and these clauses (except that, for the purposes of clause 65.3 only, reference to "Contract" shall not include the Order Form);
Contract Period	the period from the Service Commencement Date to expiry as set out in the Order Form or until such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract;
Contract Price	the price (exclusive of any applicable VAT), payable to the Provider by the Contracting Authority under the Contract, as set out in the Order Form, for the full and proper performance by the Provider of its obligations under the Contract;
Contract Year	a period of 12 months, commencing on the Service Commencement Date;
Contract Officer	who is to have responsibility for all matters relating to this Contract and who will be available for consultation with the Provider at all reasonable times.
Contracting Authority	The Contracting Body as set out at the beginning of these conditions
Contracting Body	a Contracting Council identified in the contract notice as a potential purchaser of Services under the Framework Agreement;
Crown	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
DPA	means the Data Protection Act 1998;
Data Processor	shall have the same meaning as set out in DPA;
Data Protection	means the DPA, the EU Data Protection Directive

Legislation	95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
Default	any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Provider Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other;
Deliverables	those deliverables listed in the Order Form;
Dispute Resolution Procedure	the dispute resolution procedure in clause 62;
ECM	The Contracting Authority's electronic call monitoring system; currently Webroster.net
Key Personnel	Shall have the meaning of the Providers key Personnel in carrying out the services such as Registered Manager and Responsible Individual
Employment Liabilities	mean all claims, demands, penalties, actions, proceedings, damages, compensation, protective awards, court of tribunal orders or awards, fines, costs, expenses, notice pay, pension liabilities and all other losses and liabilities (including legal and other professional expenses on an indemnity basis);
Environmental Information Regulations	the Environmental Information Regulations 2004 (*SI 2004/3391*), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Equipment	the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract;
Fees Regulations	the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (*SI 2004/3244*);
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time

	to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Force Majeure Event	any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding: (b) any industrial action occurring within the Provider's or any Subcontractor's organisation; or (c) the failure by any Subcontractor to perform its obligations under any Subcontract;
Framework Agreement	the framework agreement for the provision of Independent Domiciliary Care Services between the Contracting Authorities l and the Provider dated [DATE]];
Good Industry Practice	standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
Health and Safety Regime	means the Factories Act 1961, the Offices, Shops and Railway Premises Act 1963, the Health & Safety at Work etc Act 1974, the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Food Safety Act 1990 the Environment Act 1995, the Water Industry Act 1991, and the Water Resources Act 1991 (including in each case any associated regulations, guidance or approved codes of practice), and any similar or analogous health, safety or environmental Law which has as its aim the protection of persons or the environment or the prevention or reduction of risk of harm or injury to persons or the environment, or relating to the health and safety of the Services or their provision, as is in force from time to time;
Indemnified Loss	means all liabilities, fines, penalties, damages, demands, proceedings, claims, costs expenses whatsoever and howsoever arising, incurred including without limitation all legal expenses (on an indemnity basis) and other professional fees (together with any VAT thereon);

Information	has the meaning given under section 84 of the FOIA;
Initial Contract Period	the period set out in clause 3;
Intellectual Property Rights	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials;
Invitation to Tender	[means: (a) in respect of any procurement conducted under the open or restricted procedure, the invitation to tender; (b) in the case of any procurement conducted under the negotiated procedure or competitive dialogue procedures, respectively the invitation to submit final tenders, in each case issued by the Council for the provision of the Services;]
Implementation Date	means the date by which the Services must be implemented;
Law	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply;
Management Information	means the management information requested by the Council in accordance with the services including but not limited to Workforce Information.
Month	calendar month;
Necessary Consents	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary

	from time to time for the performance of the Service
Order	the order placed by the Contracting Authority to the Provider in accordance with the Framework Agreement, which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, Service User location, the timeframe, the Deliverables and the Quality Standards;
Order Form	the document used to place an Order;
Order Numbers	means the official number allocated by Contracting Authority to an Order;
Parent Company	any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term **Holding Company** shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;
Party	the Provider or the Contracting Authority and "**Parties"** shall mean both the Provider and the Contracting Authority;
Payment Schedule	The schedule of delivered care produced by the ECM for verification and payment
Personal Data	has the meaning given in the Data Protection Act 1998;
PQQ Response	the response to the pre-qualification questionnaire issued by the Council and submitted by the Provider
Premises	the location where the Services are to be supplied, as set out in the Order Form;
Previous Provider	means any third party Provider who provides the Services prior to the Service Commencement Date;
Programme of Work	means any programme, timetable or key milestone which regulates or specifies the period or periods for the completion of the Services or any part thereon;
Prohibited Act	the following constitute Prohibited Acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority a financial or other advantage to: (i) induce that person to perform improperly a relevant function or

	activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; (c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Contracting Authority; or (iv) defrauding, attempting to defraud or conspiring to defraud the Contracting Authority;
Property	the property issued or made available to the Provider by the Contracting Authority in connection with the Contract;
Provisional Employee List	means a list of persons (including without limitation the Provider Staff) who are assigned to the provision of the Services and whose employment may therefore transfer to the Contracting Authority or a Replacement Provider pursuant to TUPE as at the date of such list;
Quality Standards	the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form;
Regulatory Bodies	those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Contracting Authority;
Relevant Transfer	shall have the meaning set out in TUPE;

Replacement Services	means any services which are substantially similar or equivalent to any of the Services (or part thereof) and which the Contracting Authority receives in substitution for any of the Services (or part thereof) following the expiry or termination of this Contract or following the cessation of the Services (or any part thereof);
Replacement Provider	means the Contracting Authority or any third party Provider of the Services/Replacement Services appointed by the Council from time to time;
Replacement Provider	any third party service provider appointed by the Contracting Authority to supply any services that are substantially the same as or similar to any of the Services and which the Contracting Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract;
Request for Information	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);
Service Commencement Date	the service commencement date set out in the Order Form;
Service Transfer	means the transfer of the Services in whole or in part to the Contracting Authority or a Replacement Provider on the Termination Date;
Services	the services to be supplied as specified in the Order Form;
Service User	the individual or individuals who will receive the service and subsequent variations and referrals thereof
Specification	means the specification for the Services;
Provider Staff	all persons employed by the Provider to perform its obligations under the Contract together with the Provider's agents, Providers and Sub-Contractors used in the performance of its obligations under the Contract;
Provider Staff Terms and Conditions	means the terms and conditions under which the Provider Staff are employed or engaged by the Provider or Subcontractor;
Staff Vetting Procedures	the Contracting Authority's procedures and departmental policies for the vetting of personnel for: (a) [eligibility to work in the UK;]

	(b) [the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure;] (c) [the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006;]
Subcontract	any contract between the Provider and a third party under which the Provider agrees to source the provision of any of the Services from that third party;
Subcontractor	the contractors or service providers that enter into a Subcontract with the Provider;
Tender	the document(s) submitted by the Provider to the Council [for admission onto the Framework Agreement]
Transferring Employees	means those of the Provider's Staff who are assigned to the relevant part of the Services (or services equivalent to the Services including, without limitation, Replacement Services) being transferred to the Contracting Authority or the Replacement Provider upon a Service Transfer and whose employment will therefore transfer to the Contracting Authority or the Replacement Provider pursuant to a Relevant Transfer;
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;
Variation	has the meaning given to it in clause 48;
VAT	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
Welsh Language Obligations	means the obligations of the Contracting Authority in respect of the use of the Welsh language, whether under any Law, under any Welsh language scheme made under the Welsh Language Act 1993, under any Welsh language standards which apply to Contracting Authority under the Welsh Language (Wales) Measure 2011 (whether or not a compliance notice has been given to the Contracting Authority) or any specific obligations in respect of the use of the Welsh language in connection with the delivery of Services which are notified to the Provider from time to time by the Contracting Authority.
Workforce Information	in respect of an individual means such information as the Contracting Authority may reasonably request but including (without limitation) in an anonymised format:

	• their ages, dates of commencement of employment or engagement and gender;
	• details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
	• the identity of their employer or relevant contracting party;
	• their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual or non-contractual redundancy or termination payment schemes;
	• the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
	• details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
	• any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
	• details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
	• copies of all relevant documents and materials relating to all such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals) and any collective agreements;
	• a breakdown of each person's working time by reference to:
	  • details of the work they perform;
	  • the amount of time they spend carrying out the Services;
	  • details of any other duties they carry out; and
	  • the locations of such work;
	all other information required by regulation 11 (or otherwise) of TUPE;

Business Working Day	any day other than a Saturday or Sunday or public holiday in England and Wales.

2. INTERPRETATION

The interpretation and construction of the Contract shall be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) reference to a clause is a reference to the whole of that clause unless stated otherwise;

(d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

(g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;

(h) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;

(i) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and

(j) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.

3. INITIAL CONTRACT PERIOD

The Contract shall take effect on the Service Commencement Date as set out in the Order Form and shall continue, unless it is otherwise terminated in accordance with the provisions of the Contract.

4. NA

5. PROVIDER'S STATUS

At all times during the Contract Period the Provider shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties or between the Customer and the Staff and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

6. CONTRACTING AUTHORITY'S OBLIGATIONS

Except as otherwise expressly provided, the obligations of the Contracting Authority under the Contract are obligations of the Contracting Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on,

or in any other way fetter or constrain, the Contracting Authority Contracting Authority] in any other capacity, nor shall the exercise by the Contracting Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Contracting Authority to the Provider.

7. MISTAKES IN INFORMATION

7.1 NA

7.2 Whilst the Contracting Authority shall endeavour to ensure the accuracy of all drawings, documentation and information in any form whatsoever **("material")** provided by it to the Provider, the Contracting Authority shall be under no liability whatsoever for the content of such material, and the Provider acknowledges that it is solely responsible for making its own enquiries and conducting all due diligence to verify the accuracy of such material, and further that the Provider shall have no remedy against the Contracting Authority for any mistake, error or omission in such material, whether in breach of contract, negligence or in any other way whatsoever.

8. COMMISSIONING PROCESS

8.1 Where it has been identified that a domiciliary care service is required to support a person, then the appropriate provider will be commissioned in line with the commissioning process as outlined in the Framework Agreement. (Providers are asked to note that the Contracting Authorities are in the process of implementing an electronic call monitoring system and that the commissioning process may alter during the term of this contract to reflect these changes):

9. OPERATION OF THE CONTRACT

9.1 The Contracting Authority may at any time order Services from the Provider and the Provider shall supply the Services during the Contract Period in accordance with the Contracting Authority's requirements as set out in the Contract in consideration for the payment of the Contract Price.

9.2 The Provider shall deliver the services detailed in the Service Specification and to the standards outlined in National Minimum Standards of The Care Standards Act 2000 and Domiciliary Care Agencies Regulations (Wales 2004)

9.3 The Provider shall provide the services from the date specified in the Order Form, unless otherwise agreed between the Provider and the Contracting Authority and in accordance with the service specification.

9.4 The Provider will provide a Service that is delivered 24 hours a day, 365 days a year to include Bank Holidays and Weekends, between the hours of 6:30am and 11:00pm and a night sitting service between the hours of 11:00pm and 6:30am.

9.5 During the lifetime of this contract, the Provider will work with the Contracting Authorities in the remodelling of its night time service which may include but not be restricted to the introduction of a night mobile service or the use of assisted technology

9.6 Outside normal working hours, the Provider must ensure that Staff have appropriate access to advice and support from a sufficiently qualified and experienced Staff member should they need to have such support at any time of day, 7 days a week.

9.7 The Provider should request a review of the Care and Support offered to an Individual if there is a change in the Individuals circumstances that, reasonably, the

Providers feels would warrant a need to change either the Domiciliary Care Individual Service Agreement or Individual Care and Support Plan. Such a review shall be carried out by a Nominated Officer of the Council, usually a member of the appropriate care management team.

9.8 If a Package of Care is required by the Contracting Authority that has not been previously agreed between the Parties, and that the Provider does not agree to, then the Provider shall within five (5) Business Working Days of entering into the Order, submit reasons along with a proposed Package of Care to the Contracting Authority's Authorised Representative for approval. It is solely the decision of the Contracting Authority as to whether to accept the Providers proposal or not.

9.9 The Contracting Authority may inspect and examine the manner in which the Provider supplies the Services at the Premises.

10. SERVICE PRE-REQUISITES

10.1 During the Term the Provider shall establish and keep established an operating base within the Cwm Taf Region, or within a 5 mile radius of its boundaries..

10.2 The Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Contracting Authority before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

10.3 Providers are asked to note that the Contracting Authorities are in the process of implementing an electronic call monitoring system to facilitate the commissioning and payment process. Providers must have an electronic call monitoring system that is able to interface into the Contracting Authorities ECM to enable this process. In the event of a system failure a mutually agreed alternatives will be introduced as a temporary measure

10.4 Without prejudice to any higher standard required by this Contract, the Provider shall ensure that the Services supplied to the Contracting Authority pursuant to this Contract must:

(a) be compliant with the Specification;

(b) be provided in accordance with the terms set out in this Contract;

(c) at all times be compliant with any policies, rules, codes of practice, procedures and standards with which the Provider is required to comply;

(d) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;

(e) to the extent that the standard of Services has not been specified in the Contract, agree the relevant standard of the Services with the Contracting Authority before the supply of the Services;

(f) at all times perform its obligations under the Contract in accordance with the Social Services and Wellbeing (Wales) Act 2014, Law, reasonable care and skill and Good Industry Practice; and

(g) ensure that all Necessary Consents are in place to provide the Services and the Contracting Authority shall not, unless otherwise agreed, incur any additional costs associated with obtaining, maintaining or complying with the same.

10.5 In addition to those standards set out in clause 10.4 above, where the Services include the provision and/or use of goods, materials or plant, these must also:

(a) be compliant with any policies, rules, codes of practice, procedures and standards with which such goods, materials or plant are required to comply; and

(b) be of satisfactory quality and fit for any purpose for which such goods, material or plant are commonly used or which is made known to the Provider in writing by the Contracting Authority.

10.6 The Provider shall:

(a) ensure that all Provider Staff supplying the Services shall do so with all due skill, care and diligence as is necessary for the proper supply of the Services;

(b) provide to the satisfaction of the Contracting Authority such suitably qualified, adequately trained, capable and experienced Staff as shall be necessary for the proper execution of the Services and shall not remove or replace such persons without the prior written approval of the Contracting Authority ;

(c) ensure that all Provider Staff involved in delivering the Services are sufficiently instructed with regard to the Services and on all relevant provisions of this Contract;

(d) ensure that there are sufficient Provider Staff to provide the Services properly;

(e) ensure that only those Provider Staff who are authorised by the Provider (under the authorisation procedure to be agreed between the Parties) are involved in providing the Services;

(f) co-operate with such others as the Contracting Authority may reasonably require;

(g) work diligently to protect and promote the Contracting Authority interests; and

(h) satisfy itself that the information, including the documentation provided by the Contracting Authority is adequate and will not prejudice the performance of any of the Provider's obligations under the Contract. The Provider shall inform the Customer immediately of any inadequacy of which it becomes aware and the Parties shall discuss in good faith how to resolve the matter

10.7 The Provider shall (and shall ensure that its Provider Staff shall) take all reasonable care at all times to ensure that in its execution of the Services it does not disrupt the operations of the Contracting Authority , its employees or any other contractor employed by the Contracting Authority .

10.8 The Provider shall co-ordinate its activities in the provision of the Services with the Provider Staff and other suppliers that may be engaged by the Contracting Authority from time to time.

10.9 Subject to the Contracting Authority providing Approval in accordance with clause 11, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

11. USE OF EQUIPMENT

11.1 The Provider shall not use any Equipment as part of the services that has not been commissioned and approved by the Contracting Authority.

11.2 The Provider shall ensure that its staff are trained in the use of Equipment and shall follow the correct procedures for use at all times.

11.3 The Provider must notify the Contracting Authority immediately if Equipment is deemed faulty.

STAFFING

12. KEY PERSONNEL

12.1 The Parties have agreed to the appointment of the Key Personnel. The Provider shall obtain the prior Approval of the Contracting Authority before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least 1 Months' written notice must be provided by the Provider of its intention to replace Key Personnel.

12.2 The Contracting Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Provider.

12.3 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Contracting Authority. The Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten Business Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

12.4 The Contracting Authority may also require the Provider to remove any Key Personnel that the Contracting Authority considers in any respect unsatisfactory. The Contracting Authority shall not be liable for the cost of replacing any Key Personnel.

13. PROVIDER'S STAFF

13.1 The Contracting Authority may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:

(a) any member of the Provider Staff; or

(b) any person employed or engaged by any member of the Provider Staff,

whose admission or continued presence would, in the reasonable opinion of the Contracting Authority , be undesirable.

13.2 At the Contracting Authority’s written request, the Provider shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Contracting Authority may reasonably request.

13.3 If the Provider fails to comply with clause 13.2 within 1 Month of the date of the request then the Contracting Authority may exclude Provider Staff from entry to the Premises. Exercise of the Contracting Authority rights under this clause shall not excuse the Provider from any attributable failure to perform the Services.

13.4 The Provider and Provider Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Provider from time to time for the conduct of personnel when at or within the boundaries of those Premises.

13.5 The Contracting Authority decision as to whether any person is to be refused admission to any premises occupied by or on behalf of the Contracting Authority and as to whether the Provider has failed to comply with clause 13.4 shall be final and conclusive.

13.6 If the Provider shall fail to comply with clause 13.4 or fails to do so within a reasonable time of written notice so to do, then the Contracting Authority may terminate this Contract in accordance with clause 56 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall afterwards accrue to the Contracting Authority .

13.7 The Provider acknowledges that each member of the Provider Staff engaged in the performance of the Services shall have full authority to act on behalf of the Provider for all purposes in connection with the Contract provided always that if the Contracting Authority shall at any time be dissatisfied for any reason with the performance of any person engaged in carrying out the Services, the Provider shall, if the Contracting Authority so requires, provide a competent substitute to carry out the Services at no additional cost to the Contracting Authority .

13.8 The Provider shall replace any of the Provider Staff who the Contracting Authority reasonably decides have failed to carry out their duties with reasonable care and skill. Following the removal of any of the Provider Staff for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

13.9 The Provider shall maintain up to date personnel records on the Provider Staff engaged in the provision of the Services and, on request, provide reasonable information, including without limitation Workforce Information to the Contracting Authority on the Provider Staff. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

13.10 The Provider warrants that it has complied with the Staff Vetting Procedures in respect of all Provider Staff employed or engaged by the Provider at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

13.11 The Provider must adopt fair employment and labour practices, recruiting and retaining staff in a fair and ethical manner, and provide a safe and competent workforce employed in accordance with industry best practice. Where requested Providers must provide to the Contracting Authority transparency of employment practices being deployed across the workforce delivering the services.

13.12 The Provider will at all times deploy sufficient staff that is competent to perform the tasks outlined in the Service Specification to this contract and will ensure adequate staffing levels are available to respond to calls particularly during peak times of the day and year eg. winter period.

13.13 The Provider shall recruit, employ and manage Staff on a basis that encourages high levels of retention of the workforce. The Provider will be encouraged to employ specific workforce terms and conditions that encourage Staff retention and helps maintain low rates of Staff turnover and shall, wherever beneficial, ensure continuity of particular Staff provision to Individuals

13.14 The Provider shall solely bear all costs in relation to mandatory training and qualifications so that Staff may properly exercise their duties under this Agreement.

13.15 The Provider shall inform Staff of their lawful pension rights.

13.16 The Provider shall ensure that appropriate travel time is allowed in the Staff rota so that Care and Support Staff are able to go about their business in a manner which reasonably gives Staff adequate time to travel between calls.

13.17 The Provider shall ensure compliance with all applicable employment legislation, including any relevant regulations, directions or guidance in force during the term of the Agreement. In particular the Provider shall comply with the provisions of the National Minimum Wage Act 1998 (and National Living Wage) and shall ensure all relevant working time as referred to in said Act is included in calculations for compliance with the National Minimum Wage and Working Time Regulations 1998.

13.18 The Contracting Authorities reserves the right to request evidence necessary to assure itself that the Provider meets the requirements of this Condition 13, including the particulars of Staff terms and conditions and specific evidence related to costs. For the avoidance of doubt, the Provider must allow access to records and documentation that can allow the Council to demonstrate compliance with the particulars of this Condition.

13.19 The Provider will provide training and performance monitoring to ensure and improve the skills, experience and competence of staff.

13.20 Staff employed by the Provider will, at all times when carrying out their duties under this Contract, have on their persons adequate means of identification which can be shown on demand to any service user, family member, carer or officer.

13.21 The Provider shall ensure that all persons employed in the performance of this contract have been requested to disclose their previous convictions (including any spent convictions) to the Provider and the Provider shall not employ persons in the performance of the Contract who hold any relevant previous convictions (including any relevant spent convictions). Where the Provider is unsure as to what constitutes relevant previous convictions and / or relevant spent convictions, the Provider shall notify and give anonymous details of such convictions to the Contracting Authorities who shall advise the Provider accordingly.

14. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")

The Parties agree that the provisions of Schedule [9] (Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") shall apply.

15. POLICIES, ETC.

The Provider shall comply with and shall ensure the Provider Staff comply with all the of the Contracting Authority's published policies and with any further rules, codes of practice, procedures and standards which the Contracting Authority notifies to the Provider. The Contracting Authority shall throughout the Term ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Provider.

16. NON-SOLICITATION

For the duration of the Contract and for a period of 12 Months thereafter neither the Contracting Authority nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

17. INDUSTRIAL ACTION

17.1 The Provider shall immediately inform the Contracting Authority of any actual or potential industrial action by Provider Staff, whether such action be by its own Provider Staff or others, which affects or might affect its ability at any time to deliver the Services in accordance with the requirements of the Contract.

17.2 In the event of industrial action by the Provider Staff, the Provider shall seek the Contracting Authority's Approval to any revised proposals to deliver the Services.

17.3 If the Provider's proposals referred to in clause 17.2 are considered insufficient or unacceptable by the Contracting Authority , then the Contracting Authority may terminate this Contract in whole or in part in accordance with clause 56.

PREMISES

18. LICENCE TO OCCUPY PREMISES

18.1 Any Premises made available from time to time to the Provider by the Contracting Authority in connection with the Contract shall be made available to the Provider solely for the purpose of performing its obligations under the Contract

18.2 The Provider shall limit access to the Premises to such Provider Staff as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that the Provider's Staff co-operate) with such other persons working concurrently on such Premises as the Contracting Authority may reasonably request.

18.3 NA

18.4 Without prejudice to clause 13.4, the Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Premises notified to it by the Contracting Authority , and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff . For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

18.5 NA

19. SECURITY OF PREMISES

19.1 The Provider shall comply with all reasonable security requirements of the Contracting Authority while on the Premises and shall ensure that all Provider Staff comply with such requirements.

19.2 On request, the Contracting Authority shall provide the Provider copies of its written security procedures and afford the Provider an opportunity to inspect its physical security arrangements.

19.3 The Provider shall at its own cost, provide its Provider Staff with a form of identification that is acceptable to the Contracting Authority . The Provider Staff shall display such identification on their clothing at all times when they are on the Contracting Authority's premises.

19.4 The Provider shall ensure that all of its Provider Staff have been instructed on fire risks and that they are expressly forbidden to smoke while on any premises Contracting Authority .

19.5 The Provider shall ensure that all requests and instructions of the Contracting Authority whilst on Contracting Authority owned premises are adhered to.

20. BUSINESS CONTINUITY

20.1 The Provider shall have robust Business Continuity plans in place, agreed with the Contracting Authorities, to ensure that the service will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems, inclement weather, loss of staff etc.) to the Providers operations, however caused

20.2 Such Business Continuity plans shall be available for the Contracting Authorities to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the currency of the contract.

20.3 If requested and at no cost to the Contracting Authorities the Provider shall provide copies of the Business Continuity plans to the Contracting Authorities and update such plans to the Contracting Authorities reasonable satisfaction.

21. ENVIRONMENTAL REQUIREMENTS

The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Contracting Authority's environmental policy (as provided to the Provider from time to time), which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

22. HEALTH AND SAFETY

22.1 The Provider shall promptly notify the Contracting Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Contracting Authority shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Contract. The Provider shall draw these hazards to the attention of its Provider Staff.

22.2 The Provider shall inform all persons engaged in the performance of the Contract at the premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

22.3 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Contracting Authority in respect of Provider Staff and other persons working there.

22.4 The Provider shall notify the Contracting Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

22.5 The Provider shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

22.6 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Contracting Authority on request.

22.7 The Provider and the Provider Staff shall:

(a) comply with all relevant parts of the Health and Safety Regime and with the Contracting Authority's own policies and procedures;

(b) in relation to all persons likely to be affected by the Services take all such steps as may be reasonably practicable to ensure their health and safety;

(c) promptly notify the Contracting Authority of any health and safety hazards, which may arise in connection with the performance of the Contract;

(d) not treat, keep or dispose of any waste produced and/or carried by the Provider as a result of executing the Contract in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every statutory duty which is relevant;

(e) notify the Contracting Authority immediately of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise in connection with the performance of the Contract;

(f) notify the Contracting Authority immediately in the event of any incident occurring in performance of the Contract on the Contracting Authority's premises where that incident causes any personal injury or damage to property that could give rise to personal injury;

(g) during the continuance of the Contract, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment;

(h) ensure that in performing the Services it adopts safe methods of work in order to protect the health and safety of:

(i) the employees of the Provider;

(ii) the employees of the Contracting Authority ;

(iii) the employees of the Provider Staff; and

(iv) any other persons including but without limitation, members of the public.

(i) produce to the Contracting Authority if requested its detailed safe working system for carrying out duties under the Contract and its health and policy statement (as required by the Health and Safety at Work etc Act 1974).

22.8 Nothing in this Clause 22 shall relieve the obligations of the Provider to comply with its statutory duties.

PAYMENT AND CONTRACT PRICE

23. CONTRACT PRICE

23.1 In consideration of the Provider's performance of its obligations under the Contract, the Contracting Authority shall pay the fees as set out in the Pricing Matrices (Schedule 3) in accordance with clauses 24 and 66.5.

23.2 The fees shall be specified in the Order and shall be the full and exclusive remuneration of the Provider in respect of the performance of the Services.

23.3 The Authority reserves the right to delay, suspend or withhold and/or deduct all of any or the payments due to the Provider if the Provider does not properly and fully carry out their obligations under this Contract or breach the Terms and Conditions of this Contract including but not limited to deterioration in the quality of service or material concerns that emerge from the Authority Monitoring of the service.

23.4 At any time during the Agreement Period, the Contracting Authorities may ask the Provider to submit to the Council a fully completed Cost Analysis Tool so that the Council may better understand the cost of the Services. In such an eventuality, the Provider will agree to complete and return the completed tool to the Contracting Authorities with an accurate record of the costs of the Service for the appropriate period(s).

24. PAYMENT AND VAT

ECM - (Providers are asked to note that the Contracting Authorities are in the process of implementing an electronic call monitoring system and that the payment process may alter during the term of this contract to reflect these changes. Providers must have an electronic call monitoring system that is able to interface into the Contracting authorities ecm to enable this process. In the event of a system failure a mutually agreed alternative payment process will be introduced as a temporary measure

24.1 In order to pay Providers efficiently and in line with this Contract the Contracting Authorities have introduced an electronic call monitoring system (ECM). The Provider will be required to provide electronic evidence of the care visit provided to individual service users in a specified electronic format on a weekly basis. This must be provided to the Contracting Authority within 5 Business working days of the preceding week. Failure to provide the information in the specified format may result in payment being withheld.

24.2 Following the receipt of the required data from the Provider and within 5 business working days, the Contracting Authorities will provide a Payment Schedule for that week generated from the electronic monitoring system. This will be sent to the Provider for confirmation.

24.3 On receipt of the payment schedule and no later than 3 Business working days the provider shall:

(a) Confirm the payment schedule as accurate

(b) Raise a dispute

24.4 If the Provider disputes the payment schedule or other statement of monies due, the Provider shall promptly notify the Contracting Authority in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Provider shall provide all such evidence as may be reasonably necessary to verify the disputed payment schedule. If the Parties have not resolved the dispute within thirty (30) days of the Provider giving notice of the dispute, the dispute shall be resolved in accordance with clause 62. Where only part of a payment schedule is disputed, the undisputed amount shall be paid in accordance with the terms of the Contract. The Provider's obligations to supply the Services shall not be affected by any payment schedule dispute.

24.5 The Contracting Authority shall pay all undisputed sums due to the Provider within ten (10) days of receipt of a valid and agreed invoice.

24.6 Payment of invoices payable by the Contracting Authority for Services supplied shall be made by way of the BACS system, unless alternative methods have been specified within the Contract. For the avoidance of doubt such alternatives may involve electronic payment methods including (but not limited to) Visa and Mastercard payments.

(a) Providers have submitted a variation percentage for Contracting Authorities to make payment by Visa and Mastercard as indicated in Schedule 3. This percentage variation shall be the maximum variation allowed for the duration of the Framework.

(b) Should Contracting Authorities wish to make payments by P Card then they shall enter into negotiations with Providers to agree a suitable timescale to commence.

24.7 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under clause 56 for failure to pay undisputed sums of money.

24.8 If the Contracting Authority disputes any invoice or other statement of monies due, the Contracting Authority shall promptly notify the Provider in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Provider shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within thirty (30) days of the Contracting Authority giving notice to the Provider, the dispute shall be resolved in accordance with clause 62. Where only part of an invoice is disputed, the undisputed amount shall be paid in accordance with the terms of the Contract. The Provider's obligations to supply the Services shall not be affected by any payment dispute.

24.9 The prices offered by the Framework Provider for Contracts to the Contracting Authorities for Services shall be the prices listed in the Pricing Matrix for the relevant Lot and such prices shall only be adjusted in accordance with the provisions below:

24.10 The prices contained in the Pricing Matrix are fixed for the first 2 years of the agreement subject to:

24.11 If during the Term there shall be any material variation in the cost of wages to the Supplier of supplying the Services, such as a variation to the National Minimum or Living Wage rates, an application may be made by either Party for a net increase to or deduction from the prices as the case may be, provided that no addition to or deduction from the price shall alter the amount of profit of the Supplier included in the price. Any other wage increases shall be capped by the percentage salary increase awarded to the Contracting Authority's Social Services staff in the previous April.

24.12 Any other such requests for increases shall only be permitted after the 2nd anniversary of the commencement date and on each anniversary thereafter.

24.13 The proposals for any revision of prices must be submitted in writing to the Council at least sixty (60) days prior to the proposed effective date of the variation. The Supplier must furnish such evidence as may be reasonably required to satisfy the

Council that the amount of any increase in cost is justified and proportionate to the Pricing Matrix and Workforce Information.

24.14 The revised prices will only be paid if the Supplier receives written confirmation of the new prices from the Council.

24.15 In the event of failure to reach an agreement on the revision of prices, either Party shall be at liberty to give the other 6 months' notice in writing to terminate this Framework Agreement, with the price or prices in dispute remaining unaltered.

25. RECOVERY OF SUMS DUE

25.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Contracting Authority in respect of any breach of the Contract), the Contracting Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract[or under any other agreement or contract with the Contracting Authority].

25.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

25.3 The Provider shall make any payments due to the Contracting Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Authority to the Provider.

25.4 All payments due shall be made within 14 workings days of notification unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

26. SOCIAL CARE WORKFORCE DEVELOPMENT

26.1 In the delivery of this contract, Providers will be required to provide information to the Contracting Authorities nominated training co-ordinator which will be used to contribute to an annual training programme for the Care Sector as a whole. This information will include a comprehensive training needs analysis for all staff employed by the provider.

26.2 The information required shall be provided to the nominated training co-ordinator in the determined format by the end of December each year in order to be included within the Contracting Authority's Training Strategy for the following financial year as required by the Welsh Assembly Government.

26.3 In addition, Providers will be required provide information to the Contracting Authorities nominated training co-ordinator which will be used to contribute to the profile of the social care workforce in Wales. This information will include workforce information on pre-determined data sets for all staff employed by or volunteering for the provider

26.4 The information required shall be provided to the nominated training co-ordinator in the determined format by the end of February each year in order to be included within the Contracting Authority's annual returns as required by the Welsh Government.

27. NA

STATUTORY OBLIGATIONS AND REGULATIONS

28. CONFLICTS OF INTEREST

28.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Contracting Authority), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Provider Staff and the duties owed to the Contracting Authority under the provisions of the Contract.

28.2 The Provider shall promptly notify the Contracting Authority (and provide full particulars to the Contracting Authority) if any conflict referred to in clause 28.1 above arises or is reasonably foreseeable.

28.3 The Contracting Authority reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Authority , there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Contracting Authority under the provisions of the Contract. The actions of the Contracting Authority under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Authority .

29. PREVENTION OF BRIBERY, CORRUPT GIFTS AND PAYMENTS OF COMMISSION

29.1 The Provider:

(a) shall not, and shall procure that the Provider Staff and all Subcontractor personnel shall not, in connection with this Contract:

(i) commit a Prohibited Act; or

(ii) commit an offence under Sections 117(2) and (3) of the Local Government Act 1972;

(b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Contracting Authority , or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Contracting Authority before execution of this Contract.

29.2 The Provider shall:

(a) if requested, provide the Contracting Authority with any reasonable assistance, at the Contracting Authority's reasonable cost, to enable the Contracting Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

(b) within 5 Business Working Days of the Service Commencement Date, and annually thereafter, certify to the Contracting Authority in writing (such certification to be signed by an officer of the Provider) compliance with this clause 29 by the Provider and all persons associated with it or other persons

who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Contracting Authority may reasonably request.

29.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Contracting Authority) to prevent any members of the Provider Staff or Subcontractors from committing a Prohibited Act and shall enforce it where appropriate.

29.4 If any breach of Clause 29.1 is suspected or known, the Provider must notify the Contracting Authority immediately.

29.5 If the Provider notifies the Contracting Authority that it suspects or knows that there may be a breach of clause 29, the Provider must respond promptly to the Contracting Authority enquiries, co-operate with any investigation, and allow the Contracting Authority to audit books, records and any other relevant documents. This obligation shall continue for 6years following the expiry or termination of this Contract.

29.6 The Contracting Authority may terminate this Contract by written notice with immediate effect if the Provider, the Provider Staff, or Subcontractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 29.1.

29.7 Any notice of termination under clause 29.6 must specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Contracting Authority believes has committed the Prohibited Act; and

(c) the date on which this Contract will terminate.

29.8 Despite Clause 62, any dispute relating to:

(a) the interpretation of this clause 29, or

(b) the amount or value of any gift, consideration or commission,

shall be determined by the Contracting Authority and its decision shall be final and conclusive.

29.9 Any termination under this clause 29 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Authority [and the Parties agree that the Contracting Authority may recover from the Provider the amount or value of any gift, consideration or commission given in contravention of this clause 29, together with all costs to the Contracting Authority of terminating and entering into an alternative with another Provider including associated costs of any re-tendering or re-advertising].

30. DISCRIMINATION

30.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

30.2 The Provider shall take all reasonable steps to secure the observance of clause 30 by of the Provider Staff and all Providers and Subcontractors employed in the execution of the Contract.

INFORMATION

31. CONFIDENTIALITY

31.1 Except to the extent set out in this clause 31 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

(a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other Party's Confidential Information to any other person without that other Party's prior written consent.

31.2 Clause 31.1 shall not apply to any disclosure of information:

(a) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;

(b) by the Contracting Authority to any other department, office or agency of the government, provided that the Contracting Authority informs the recipient of any duty of confidence owed in respect of the information;

(c) where such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 34;

(d) where such information was already in the public domain at the time of the disclosure otherwise than by a breach of this Contract;

(e) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Contract provided that any such person is required to comply with obligations of confidentiality that are equivalent to the obligations imposed on the Parties under this Contract;

(f) by the Council pursuant to clause 31.8; or

(g) to enable a determination to be made under clause 62.

31.3 The Provider may only disclose the Contracting Authority's Confidential Information to the Provider Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such members of the Provider Staff are aware of and shall comply with these obligations as to confidentiality.

31.4 The Provider shall not, and shall procure that the Provider Staff do not, use any of the Contracting Authority's Confidential Information received otherwise than for the purposes of this Contract.

31.5 The Provider undertakes (except as may be required by Law) not to:

(a) disclose or permit disclosure of any details of this Contract to the news media or any third party other than Provider Staff; or

(b) use the Contracting Authority's name and or brand in any promotion of marketing or announcement of orders, without the prior written consent of the Contracting Authority .

31.6 NA

31.7 Nothing in this Contract shall prevent the Contracting Authority from disclosing the Provider's Confidential Information:

(a) to any government department [or any Other Contracting Bodies]. All government departments [or Other Contracting Bodies] receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments [or Other Contracting Bodies] on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department [or any Other Contracting Bodies];

(b) to any consultant, contractor or other person engaged by the Contracting Authority or any person conducting a Gateway Review;

(c) for the purpose of the examination and certification of the Contracting Authority's accounts; or

(d) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources.

31.8 The Contracting Authority shall use all reasonable endeavours to ensure that any government department, [Other Contracting Bodies,] employee, third party or Subcontractor to whom the Provider's Confidential Information is disclosed pursuant to this Clause 31 is made aware of the Contracting Authority's obligations of confidentiality.

31.9 Nothing in this clause 31 shall prevent either Party from using techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

31.10 In the event that the Provider fails to comply with this clause 29, the Contracting Authority reserves the right to terminate this Contract by notice in writing with immediate effect.

32. DATA PROTECTION ACT

32.1 The Provider shall (and shall procure that any of the Provider Staff involved in the provision of the Contract shall) comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their respective obligations under the Data Protection Legislation, which arise in connection with the Contract.

32.2 Notwithstanding the general obligation in clause 12.1, where the Provider is processing the Personal Data as a Data Processor for the Contracting Authority, the Provider shall:

(a) ensure that it has in place appropriate organisational and technical and measures to ensure the security of the Personal Data and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data);

(b) take reasonable steps to ensure the reliability of employees who have responsibility for the Personal Data;

(c) act only in accordance with instructions given by the Contracting Authority;

(d) provide the Contracting Authority with such information as the Contracting Authority may reasonably require to satisfy itself that the Provider is complying with its obligations under the Data Protection Legislation;

(e) promptly notify the Contracting Authority of any breach of the security measures required to be put in place pursuant to this clause 12.2;

(f) inform the Contracting Authority promptly and in any event within 48 hours of its receipt of any statutory request made by any data subject pursuant to Part II of the DPA and offer the Contracting Authority such assistance as is necessary for the Contracting Authority to respond to any such request;

(g) not transfer any of the Personal Data to a country outside the European Economic Area with the Contracting Authority's express consent;

(h) not engage any Subcontractor to process the Personal Data without the written consent of the Contracting Authority;

(i) ensure that any Subcontractor that is engaged to process the Personal Data is subject to obligations in respect of the Personal Data that are equivalent to those imposed on the Provider under this clause 13.2; and

(j) ensure it does not knowingly or negligently do or omit to do anything which places the Contracting Authority in breach of the Contracting Authority's obligations under the Data Protection Legislation.

33. SECURITY OF CONFIDENTIAL INFORMATION

33.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained or created in the performance of this Contract, the Provider undertakes to maintain appropriate security systems, which may be subject to review and approval by the Contracting Authority. This obligation is in addition to the Provider's obligations under clauses 31 and 32 of this Contract.

33.2 The Provider will immediately notify the Contracting Authority of any breach of security in relation to Confidential Information and any other data obtained in the performance of the Contract and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Provider's obligations under clauses 31 and 32 of this Contract.

33.3 The Provider shall at its own expense co-operate with the Contracting Authority in any investigation that the Contracting Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data. This obligation is in addition to the Provider's obligations under clauses 31 and 32 of this Contract.

33.4 The Contracting Authority may require the Provider to alter or update any security systems at any time during the Term.

34. FREEDOM OF INFORMATION

34.1 The Provider acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Contracting Authority (at the Provider's expense) to enable the Contracting Authority to comply with these information disclosure requirements.

34.2 The Provider shall and shall procure that its Subcontractors shall:

(a) transfer the Request for Information to the Customer as soon as practicable after receipt and in any event within [two] Business Working Days of receiving a Request for Information;

(b) provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within [five] Business Working Days (or such other period as the Customer may specify) of the Customer requesting that Information; and

(c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

34.3 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Customer.

34.4 The Provider acknowledges that the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (**Code**), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

(a) without consulting with the Provider; or

(b) following consultation with the Provider and having taken its views into account,

provided always that where clause 34.4(b) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

34.5 The Provider shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

34.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with clause 34.4.

35. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

35.1 Unless otherwise directed by the Contracting Authority , the Provider shall not make any press announcements or publicise this Contract in any way without the Contracting Authority's Approval.

35.2 The Provider shall take all reasonable steps to ensure the observance of the provisions of clause 35.6 by all the Provider Staff.

35.3 The Provider shall not use business logos or publicise the logos of the Contracting Authority either in print or electronically without the prior written consent of the Contracting Authority .

35.4 The Council shall be entitled to publicise this Contract in accordance with any legal obligation on the Contracting Authority , including any examination of this Contract by the Auditors and the provisions of the FOIA or otherwise.

35.5 The Parties acknowledge that the Auditor has the right to publish details of this Contract (including Confidential Information) in its relevant reports to Parliament (or similar) to the extent permitted by Law.

35.6 The Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Contracting Authority or bring the Contracting Authority into disrepute.

36. ADULTS AT RISK

36.1 The Provider is required to ensure that their Service Users are protected from abuse. All agencies and bodies, both statutory and independent caring for adults at risk, are responsible for making sure the requirements of Part 7 of the Social Services & Wellbeing Act 2014 are met, ensuring that all their staff are aware of the definition of adults at risk and what constitutes abuse. The Provider will ensure that their staff know that they have a legal and professional duty to report any concern, suspicion or information about abuse, or if they have reason to believe someone is being abused or at risk of abuse.

36.2 The Provider must have a policy, which states how it will meet all its legal obligations to protect adults at risk from abuse and which acknowledges the duty to report a reasonable cause to suspect that any service user is being, has been or is at risk of abuse to the Local Authority Safeguarding Team. The Provider must include protecting adults at risk from verbal, physical, psychological, financial and sexual abuse and state the Provider's commitment to preventing such incidents, and that any allegations will be treated very seriously. The policy must have a statement that the Provider will comply with the Social Services & Wellbeing Act and any related guidance and should describe to staff, in each service setting of their agency, how they will ensure that their legal obligations are met.

36.3 The Provider is responsible for ensuring their recruitment and selection procedures for paid staff and volunteers are robust and safeguard adults at risk from those who may exploit, harm or abuse them.

36.4 Providers must ensure that all staff have adult safeguarding training which must be evidenced and their staff are able to demonstrate their understanding on what constitutes abuse, who is a vulnerable adult, what types of abuse are considered, what are the indicators and know how to report concerns appropriately

37. RECORDS AND AUDIT ACCESS

37.1 The Provider shall keep and maintain until six (6) years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Contracting Authority and the amounts paid by the Contracting Authority .

37.2 The Provider shall keep the records and accounts referred to in clause 37.1 above in accordance with good accountancy practice and shall include:

(a) a full and accurate record of all monies expended by the Provider in observing and fulfilling the Providers obligations under the Contract including but not limited to:

the actual out-turn expenditure incurred; and

the expenditure has been incurred in accordance with the conditions of this Contract

37.3 The Provider shall on request afford the Contracting Authority , the Contracting Authority's Authorised Representative and/or the Auditor such access to such records and accounts as may be required by the Contracting Authority from time to time.

37.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of 6 years after the expiry of the Contract Period to the Contracting Authority and the Auditor.

37.5 The Contracting Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services, except insofar as the Provider accepts and acknowledges

that control over the conduct of audits carried out by the Auditor is outside of the control of the Contracting Authority .

37.6 Subject to the Contracting Authority's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:

(a) all information requested by the Contracting Authority within the scope of the audit;

(b) reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Services; and

(c) access to Provider Staff.

37.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 37, unless the audit reveals a material Default by the Provider in which case the Provider shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the audit.

38. NA

39. NA

40. NA

41. REPLACEMENT OF CORRUPTED DATA

If, through any Default of the Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Contracting Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

CONTROL OF THE CONTRACT

42. PROVISION OF INFORMATION AND MEETINGS

42.1 The Provider shall submit Management Information to the Council throughout the Term on reasonable request in respect of any or all Contracts entered into with the Contracting Authorities.

42.2 The Provider shall attend 6 monthly monitoring review meetings at the Providers' premises or other such location to be agreed between the parties.

42.3 The Provider shall attend quarterly Provider forum meetings at the Contracting Authority's premises or other such location to be agreed between the parties

42.4 The Contracting Authority may share the Management Information supplied by the Framework Provider with any Other Contracting Body.

42.5 The Council may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least one Month's written notice of any changes.

43. MONITORING OF CONTRACT PERFORMANCE

43.1 The Provider shall comply with the monitoring arrangements set out in the Contract including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

43.2 The Contracting Authority may monitor, inspect and examine the work or Services being carried out on by the Provider without notice at any time.

43.3 The Provider shall give all such assistance as the Contracting Authority may reasonably require for such inspection and monitoring.

43.4 The Contract Officer shall be entitled to ascertain, by whatever lawful means considered appropriate, whether the Provider has performed the services to be provided under this Contract in accordance with the Contract and the Provider shall provide access to all information required by the Authority relating to the provisions of Service under this Contract

43.5 Without prejudice to Clause 43.4, the Provider may be required to rectify any deficiencies in service and bring it up to the required standard in a time specified by the Officer in writing.

43.6 The Contract Officer and such persons as may be nominated by the Contracting Authorities will require access to all information required relating to the provision of the Services under this Contract at all times, with or without prior notice, to enable monitoring and evaluation of the service to be carried out and to review the performance of this Contract. The Provider shall make available all information required by the Contracting Authorities relating to the provision of the Services under this Contract.

43.7 The services provided under this Contract will be subject to continuous review and monitoring and the Contracting Authorities may carry out any reviews required of the services being provided.

43.8 The Contracting Authorities are in the process of implementing an Electronic Call Monitoring (ECM) system and the Provider will be expected to have in place an ECM at the commencement of this contract, which is able to interface with this system to enable the Contracting Authorities to monitor the contract as detailed in the service specification. This interface will also allow for payment to be made for services commissioned under this contract.

43.9 The Provider shall conduct annual Individuals satisfaction questionnaires (administered in accessible formats) to ensure that an individual who is accessing the service is afforded opportunities to exercise their formal right to comment on the manner in which the Service are provided. These should be completed and made available to the Contracting Authorities upon request.

43.10 The Provider shall provide any information required by the Contracting Authority from time to time to inform workforce planning on a local, regional or national basis.

43.11 The Contracting Authorities reserves the right to arrange additional meetings at its discretion to discuss the performance of the Service. These meetings may include, but may not be limited to some or all of the key criteria in this Agreement and the supporting information.

43.12 The Contracting Authorities may undertake unannounced visits to the Provider in order to evidence any aspect of compliance of the Providers performance against this Agreement, and when so doing, the Provider shall afford every co-operation and assistance to the Contracting Authorities, where practicable, so that they may be able to discharge their duties of establishing compliance of the Provider under this Agreement.

- For the avoidance of doubt, the Council may also monitor the Service through:
- Individual feedback;
- Inspection of the Individual Care and Support Plans and other care planning documentation;
- CSSIW inspection reports;
- Contract reviews;
- Annual Monitoring Questionnaires;
- If appropriate, other Local Authorities Officers reports, for example, Wellbeing monitoring Officer's reports;
- Care Coordinator's reviews;
- The Providers electronic call monitoring systems

44. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

44.1 Where in the reasonable opinion of the Contracting Authority :

(a) the standard of Services is not in accordance with the terms of the Contract;

(b) the manner in which any Services has been performed is not in accordance with the terms of the Contract;

(c) the procedures used by the Provider in the delivery of the Services is not in accordance with the terms of the Contract; or

(d) it has concerns about any other matter connected with the performance of the Provider's obligations under the contract,

the provisions of clause 44.2 shall apply.

44.2 The Contracting Authority may, without prejudice to its rights under clause 62, if it is of the reasonable opinion that there has been a breach of the Contract by the Provider pursuant to the provisions of clause 44.1 above, do any of the following:

(a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Contracting Authority that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;

(b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in

the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

(c) charge the Provider for and the Provider shall pay any costs reasonably incurred by the Contracting Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Contracting Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Contracting Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

44.3 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Contracting Authority shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within [ten] Business Working Days of the Contracting Authority instructions or such other period of time as the Contracting Authority may direct.

44.4 If the Provider:

(a) fails to comply with clause 44.3 above and the failure is materially adverse to the interests of the Contracting Authority or prevents the Contracting Authority from discharging a statutory duty; or

(b) persistently fails to comply with clause 44.3 above,

the Contracting Authority may terminate the Contract with immediate effect by giving the Provider notice in writing.

45. RIGHTS AND REMEDIES

Except as expressly provided in this Contract, rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law

46. TRANSFER AND SUB-CONTRACTING

46.1 This Contract is personal to the Provider.

46.2 The Provider shall not subcontract, assign, novate, or otherwise dispose of this Contract or any part of it without Approval of the Contracting Authority acting in its absolute discretion. Subcontracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract

46.3 The Contracting Authority shall be entitled to novate or otherwise dispose of this Contract to any other body which substantially performs any of the functions that previously had been performed by the Contracting Authority .

46.4 This Contract is binding on the Contracting Authority and its successors and assignees and the Provider and the Provider's successors and permitted assignees.

46.5 Any change in the legal status of the Contracting Authority such that it ceases to be a contracting authority (as defined in Regulation 3 of the Regulations) shall not affect the validity of this Contract. In such circumstances, this Contract shall be binding on any successor body to the Contracting Authority .

47. WAIVER

47.1 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

47.2 A failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

47.3 A Party that waives a right or remedy provided under this Contract or by law in relation to one Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.

48. VARIATION

48.1 Subject to the provisions of this clause 48, the Contracting Authority may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "**Variation"**.

48.2 The Contracting Authority may request a Variation by advising the Provider in writing by completing and sending an amended version of the Order Form, or other such form to be agreed to the Provider, giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation Form and comply with any reasonable requested imposed by the Contracting Authority. Such time limits shall be reasonable having regard to the nature of the Order.

48.3 If the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Contracting Authority may:

(a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or

(b) terminate the Contract within a mutually agreed timeframe..

48.4 If the Parties agree the Variation and any variation in the Contract Price, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

48.5 The Provider will not vary the service to be provided without the written consent of the Contracting Authorities, following full consultation and agreement with them.

Without limitation to the Providers rights the Contracting Authorities may at a future date, unilaterally amend, alter or enhance the Specification, if such changes are, in the Authority's opinion required because of changes directed by or arising from actions of the Welsh Government or National Government or because of changes in law

49. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

49.1 Except as expressly provided elsewhere in this Contract, only a person who is a Party to this Contract or a Replacement Provider shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

49.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to this Contract.

50. SEVERANCE

50.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

50.2 If [one Party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

LIABILITIES

51. LIABILITY AND INDEMNITY

51.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

(a) death or personal injury caused by its negligence;

(b) fraud or fraudulent misrepresentation;

(c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

(d) any claim under clause **Error! Reference source not found.**; or

(e) any claim under clause 53.

51.2 Subject always to clause 51.1 and clause 51.4, the total liability of the Provider (whether under contract, tort or statutory provision) for Defaults arising out of or in connection with the Contract shall in no circumstances exceed [five million pounds (£5,000,000)] in respect of any one incident or a series of related incidents and [ten million pounds (£10,000,000)] in the aggregate for any or all incidents (whether related or not) arising during the period of the Contract.

51.3 Without prejudice to the Contracting Authority's obligation to pay the charges as they fall due, the Contracting Authority's total liability arising out of or in connection with the Contract (whether under contract, tort or statutory provision) shall in no circumstances exceed [fifty percent (50%)] of the total Contract Price payable for the Services pursuant to the Contract.

51.4 Subject to clause 51.1, in no event shall either Party be liable to the other for any:

(a) loss of profits;

(b) loss of business;

(c) loss of revenue;

(d) loss of or damage to goodwill; or

(e) any indirect or consequential loss or damage

save as expressly provided for under the terms of the Contract.

51.5 The Contracting Authority may, among other things, recover as a direct loss:

(a) any additional operational and/or administrative expenses arising from the Provider's Default;

(b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Contracting Authority arising from the Provider's Default; and

(c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Provider.

51.6 The Parties expressly agree that should any limitation or provision contained in this clause 51 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this clause 51.

51.7 Nothing in the Contract shall impose any liability on the Contracting Authority in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Contracting Authority to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Contracting Authority , or the Contracting Authority's employees, servants or agents.

52. INSURANCES

52.1 The Provider shall hold and maintain throughout the Contract duration the following insurance cover with a reputable insurance company:

(a) Professional Indemnity;

(b) Medical Malpractice

(c) Public Liability including Products Liability; and

(d) Employer's Liability;

in each case with the minimum level of indemnity set out in this Contract, with a minimum level of indemnity set at [five million pounds (£5,000,000)] or such higher level as is consistent with Good Industry Practice and any applicable Law, unless specified otherwise in the Tender Documents.

52.2 Such insurance to be held by the Provider or by any Subcontractor may be limited (with the exception employer's liability insurance) in respect of any one claim (but shall not be limited in any other respect) PROVIDED THAT any such limit shall in any event be at least [two million pounds (£2,000,000)]. This Clause shall not be construed as imposing any limit of liability on the Provider.

52.3 Such insurance shall be maintained for a minimum of six (6) years following expiration or earlier termination of this Contract.

52.4 The Provider shall from time to time and upon being given not less than two Business Working Days' notice when so required by the Contracting Authority produce the relevant policy of insurance and receipts for premiums or other satisfactory evidence of insurance cover.

52.5 If the Provider or any Subcontractor fails or is unable to maintain insurance in accordance with this clause 52 or fails to provide evidence in accordance with clause 52.4, the Contracting Authority may (so far as it is able) purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Provider.

52.6 The Provider's liabilities under this Contract shall not be deemed to be released or limited by the Provider taking out the insurance policies referred to in this clause 52.

52.7 The Provider shall ensure that the Contracting Authority's interest is noted on each insurance policy, or that a generic interest clause has been included.

53. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Contracting Authority and keep the Contracting Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Contracting Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the Provider Staff (or any of them) as an employer of the Provider Staff and/or any liability or responsibility to HM Revenue and Customs as an employer of the Provider Staff whether during the Contract Period or arising from termination or expiry of the Contract.

54. WARRANTIES AND REPRESENTATIONS

The Provider warrants and represents that:

(a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

(b) the Contract is executed by a duly authorised representative of the Provider;

(c) in entering the Contract it has not committed any Prohibited Act;

(d) as at the Service Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Contracting Authority before execution of the Contract and it will promptly advise the Contracting Authority of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;

(e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;

(f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under the Contract;

(g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

(h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

(i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Provider Staff in accordance with Good Industry Practice; and

(j) the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this clause) in accordance with its own established internal procedures.

DEFAULT, DISRUPTION AND TERMINATION

55. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

55.1 Without affecting any other right or remedy available to it, the Contracting Authority may terminate this Contract with immediate effect by giving written notice to the Provider if:

(a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;

(b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider;

(d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);

(e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;

(g) the Provider (being an individual) is the subject of a bankruptcy petition or order;

(h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within [14] days;

(i) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 55.1(a) to clause 55.1(h) (inclusive); or

(j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(k) any warranty given by the other party in clause 54 of this Contract is found to be untrue or misleading.

55.2 The Provider shall notify the Contracting Authority immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Contracting Authority may terminate the Contract by notice in writing with immediate effect within six Months of:

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Contracting Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

56. TERMINATION ON DEFAULT

56.1 The Contracting Authority may terminate the Contract by giving written notice to the Provider with immediate effect if the Provider commits a material breach and if:

(a) the Provider has not remedied the material breach to the satisfaction of the Contracting Authority within [20 OR [NUMBER]] Business Working Days, or such other period as may be specified by the Contracting Authority , after issue of a written notice specifying the material breach and requesting it to be remedied; or

(b) the material breach is not, in the opinion of the Contracting Authority , capable of remedy.

56.2 For the purposes of clause 56.1, **material breach** means a breach (including an anticipatory breach) that is not minimal or trivial in its consequences to the Contracting Authority . In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

56.3 The Contracting Authority may terminate the Contract by giving written notice to the Provider with immediate effect if the Provider repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract.

56.4 If the Contracting Authority fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Contracting Authority in writing of such failure to pay. If the Contracting Authority fails to pay such undisputed sums within [90] Business Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Contracting Authority exercising its rights under clause 25.

56.5 The Council may terminate this Contract on thirty (30) days written notice to the Provider in any of the following circumstances:

(a) The Contract has been subject to substantial modification as to its scope and value such that a new procurement exercise would be required to be conducted in accordance with the provisions of Regulation 72(9) of PCR 2015;

(b) The Provider, at the time that the Tender was awarded to the Provider, had been convicted of any one or more of the mandatory grounds for exclusion from participation in the Tender as those grounds are set out in Regulation 57 of PCR 2015; and

(c) The Tender should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaty on European Union and the Treaty on the Functioning of the European Union (**the TFEU**) and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

56.6 The contracting Authority may terminate this contract without notice and recover any resulting financial loss from the provider in the following circumstances:

(a) if the Provider or a member of staff engages in any conduct which, in the opinion of the Officer, is prejudicial whether by positive action or neglect or to the detriment of the welfare of the Service User/s. Such action will include fraud and theft from the Service User/s, neglect or inappropriate care, cruelty and assault including verbal abuse

(b) if the Authority is satisfied that the Provider has committed a breach of the Contract or has consistently failed to perform the terms, conditions and obligations imposed by this Contract;

(c) if the Provider persistently fails to take corrective action following a default in the provision of this Contract following a reasonable period of notice given by the Authority;

(d) if the Provider or a person on the Provider's behalf takes unreasonable financial advantage of the relationship with a Service User/s

57. TERMINATION AND SUSPENSION FOR GENERAL NEEDS

57.1 The Contracting Authority may terminate or suspend this Contract at any time by giving 3 Months' written notice to the Provider. Where the Contract is suspended the term of the suspension shall be for such periods as the Contracting Authority's instruction.

57.2 The Contract shall automatically terminate on the death of a Service User or any such events as per clause 66.5.

57.3 In exceptional circumstances the Provider may request in writing to remove the Care and Support to an Individual giving a sufficiently valid reason and, if, agreed by the Council at its absolute discretion, a notice period of not less than 15 Business working days shall apply. During this time the Provider must continue to deliver Care and Support fully in accordance with the particulars of this Agreement.

57.4 Further to clause 57.3 should a provider request to remove the Care and Support for multiple Service Users simultaneously then a further period of 90 Business working days notice is required. In such cases the Provider shall work with the Contracting Authority and other Framework Providers to ensure Care and Support of Service Users are maintained and shall only withdraw services at an agreed date with the Contracting Authority.

58. CONSEQUENCES OF TERMINATION OR EXPIRY

58.1 Where the Contracting Authority terminates the Contract under clause 56 and then makes other arrangements for the supply of Services, the Contracting Authority may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period. The Contracting Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 56, no further payments shall be payable by the

Contracting Authority to the Provider until the Contracting Authority has established the final cost of making those other arrangements.

58.2 Subject to clause 51, where the Contracting Authority terminates the Contract under clause 57, the Contracting Authority shall indemnify the Provider against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under clause 57.

58.3 The Contracting Authority shall not be liable under clause 58.2 to pay any sum that:

(a) was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

(b) when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated before the expiry of the Contract Period.

58.4 Except as otherwise expressly provided in the Contract:

(a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Contracting Authority or the Provider under clause 23, clause 24, clause 25, clause 28, clause 31, clause, clause 32, clause 33.1, clause 35.6, clause 37, clause 45, clause 51, clause 52, clause 53, clause 58, clause 61, and clause 71.

58.5 In the event of termination pursuant to Clause 57, the Provider shall cease to provide services to any individual user from the day following the expiry of the notice period and no payment shall be made by the Authority for any services provided from that date.

58.6 In the event of termination pursuant to Clause 56.6, the Provider shall cease to provide services to the individual user in question, from the day following the expiry of the notice and no payment shall be made by the Authority for any services provided from that date.

58.7 In the event of a notice of suspension pursuant to Clause 57.2, no services shall be provided pursuant to a user during the period specified in the notice and no payment shall be made by the Authority for any services provided during such period.

58.8 In the event of a notice of termination being given by the Provider to the Contracting Authority pursuant to Clause 57.3 and 57.4, no payment shall be made by the Authority for services provided after the expiry of the period of notice but the Provider shall continue to provide all services required to be provided to the users identified in until Midnight on the day on which the period of notice ends.

58.9 In the event of the Provider giving notice of termination pursuant to Clause 57.3 no payment shall be made by the Authority for services provided after the expiry of the period of notice but the Provider shall continue to provide all services to be provided to all or any of the users until Midnight on the day on which the period of notice ends.

59. COMPLAINTS

59.1 The Provider will operate a procedure for investigating any complaint made by or on behalf of the service user. The Provider will make service users, their families and carers aware of how to access this procedure at the commencement of the provision of service. Service users and their families shall be informed in writing by the Provider of the means of registering a complaint, how the complaint will be dealt with and of the outcome, as soon as is reasonably possible, or in any event within 7 days of the start of the placement.

59.2 Where a complaint is registered and in line with good practice a discussion and/or meeting should take place with the service user and/or their family to try and resolve the issues and agree a way forward. Consideration should be given as to whether the service user would benefit from the assistance of an advocate and if this is the case then advice on the Authorities commissioned advocacy service should be provided.

59.3 All complaints made to the Provider by or on behalf of the service user to the Provider will be recorded and a copy of any such complaints shall be forwarded to the Authority within 2 Business working days. The Provider shall set out his response to the complaint in writing to the Authority within 15 Business working days. Any extension to this timescale must be negotiated and agreed with the service user and/or their family and the Authority should be notified of the agreed timescale.

59.4 Where the Provider's complaints procedure is a two stage process and the service user remains dissatisfied then an investigation of the issues should be undertaken and a response provided with 25 Business working days. A copy of the Investigation and response should be forwarded to the Local Authority no later than 2 Business working days following completion.

59.5 All complaints received and dealt with by the Provider will be monitored by the Local Authority's Commissioning Team and any identified service improvements or lessons learned will be reviewed to ensure the Provider's performance meets the expectations of this Contract.

59.6 The Provider will advise service users, their families and carers of their rights to access the Authority's complaints procedures in the event that they are not satisfied with the way in which the Provider has dealt with their complaint

60. DISRUPTION

60.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Contracting Authority , its employees or any other Provider employed by the Contracting Authority .

60.2 The Provider shall immediately inform the Contracting Authority of any actual or potential industrial action, whether such action be by its own Provider Staff or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

60.3 In the event of industrial action by the Staff, the Provider shall seek the Contracting Authority's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.

60.4 If the Provider's proposals referred to in clause 60.3 are considered insufficient or unacceptable by the Contracting Authority acting reasonably then the Contracting Authority may:

(a) require the Provider to provide alternative proposals; or

(b) undertake the services itself and recover from the Provider the additional costs incurred in the process.

Subject to clause 60.5, nothing in this clause shall release the Provider from the proper performance of its obligations under the Contract.

60.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Contracting Authority , an appropriate allowance by way of extension of time will be approved by the Contracting Authority . In addition, the Contracting Authority will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

61. RECOVERY ON TERMINATION

61.1 On the termination of the Contract for any reason, the Provider shall:

(a) immediately return to the Contracting Authority all Confidential Information, Personal Data and Contracting Authority's Intellectual Property in its possession or in the possession or under the control of any permitted Providers or Subcontractors, which was obtained or produced in the course of providing the Services;

(b) immediately deliver to the Contracting Authority all Property (including materials, documents, information and access keys) provided to the Provider under clause 11. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

(c) assist and co-operate with the Contracting Authority to ensure an orderly transition of the provision of the Services to any Replacement Provider and/or the completion of any work in progress; and

(d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Contracting Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Contracting Authority or the Replacement Provider to conduct due diligence.

61.2 If the Provider fails to comply with clause 61.1(a) and clause 61.1(b), the Contracting Authority may recover possession thereof and the Provider grants a licence to the Contracting Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or Subcontractors where any such items may be held.

61.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under clause 61.1(c) and clause 61.1(d) free of charge. Otherwise, the Contracting Authority shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

62. DISPUTE RESOLUTION

62.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this Contract, the Parties shall follow the procedure set out in this clause:

(a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the designated senior representative of the Contracting Authority and the designated senior representative of the Provider shall attempt in good faith to resolve the Dispute;

(b) if the designated senior representative of the Contracting Authority and the designated senior representative of the Provider are for any reason unable to resolve the Dispute within [NUMBER] days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("**ADR Notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 30days after the date of the ADR Notice.

62.2 The commencement of mediation shall not prevent the Parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 69 which clause shall apply at all times.

62.3 Unless agreed otherwise, each Party shall bear its own costs of the mediation.

62.4 If the Dispute is not resolved within 10days after service of the ADR Notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 10 days, or the mediation terminates before the expiration of the said period of 10 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 69 in this Contract.

62.5 Each Party's respective obligations to be carried out under this Contract shall not cease or be delayed by the invocation of this dispute resolution procedure.

63. FORCE MAJEURE

63.1 Subject to the remaining provisions of this clause 63 either Party to the Contract may claim relief from liability for non-performance of its obligations to the extent any non-performance is due to a Force Majeure Event.

63.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

63.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under an agreement with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).

63.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.

63.5 As soon as practicable following after the Affected Party's notification, the Parties shall discuss in good faith and endeavour to agree a means of performing the Agreement so far as reasonably possible for the duration of the Force Majeure Event. In the event that the Parties fail to agree a means of performing the Contract within two (2) months from the date of the Affected Party's notification, the Contracting Authority may in its absolute discretion elect to terminate the Contract in whole or in part.

63.6 The Affected Party shall use all reasonable endeavours to continue to perform, or resume performance of this Agreement for the duration of such Force Majeure Event and if the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

63.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract. Following such notification, the Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

63.8 In the event that the Force Majeure Event continues for a period of two (2) months from the date of the Affected Party's notification, the Contracting Authority may in its absolute discretion elect to terminate the Contract in whole or in part.

64. WELSH LANGUAGE OBLIGATIONS

The Provider warrants that it will not supply the Services in breach of the Welsh Language Obligations, nor in such a way as to render the Contracting Authority in breach of its Welsh Language Obligations.

65. ENTIRE AGREEMENT AND PRECEDENCE

65.1 This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

65.2 Each Party agrees that, in entering into this Contract it has not relied on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract, provided that nothing in this clause 64 shall operate to exclude any liability for fraud.

65.3 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

(a) the clauses of the Contract;

(b) the Order Form;

(c) the terms of the Framework Agreement and the Schedules to the Framework Agreement);]

(d) any other document referred to in the clauses of the Contract;

(e) the providers PQQ and Tender Response

65.4 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

66. NOTICES

66.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

66.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by fax or e-mail. Such letters shall be addressed to the other Party in the manner referred to in clause 66.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Business Working Days after the day on which the letter was posted, or four (4) hours in the case of fax or e-mail received on a Working Day, or sooner where the other Party acknowledges receipt of such letters, fax or e-mail.

66.3 For the purposes of clause 66.2 the address of each Party shall be:

(a) for the Contracting Authority : the address set out in the Order Form.

(b) for the Provider: the address set out in the Order Form.

66.4 Either Party may change its address for service by serving a notice in accordance with this clause.

66.5 The Provider shall notify the Contracting Authority's authorised persons in accordance with the schedule outlined below in writing via e-mail if any of the following events occur:

Event	**Notification period**	**Payment due**
Death	Within 1 working day	Last call attended up to date of death
Emergency hospital admission	Within 1 working day	Last call attended prior to hospital admission
Planned hospital appointment	As soon as notified by service user	Calls will not be paid for during hospital appointment times
Planned break (holiday / respite etc)	As soon as notified by service user	Calls will not be paid for during respite period
Refusal by service user to accept service	As soon as notified by service user	To be discussed with the care manager and agreed on an individual basis
Cancellation by service user	As soon as notified by service user	No payment made
Inclement weather	Immediately	To be discussed with the care manager and agreed on an individual basis

call not delivered by Provider		No payment made

67. INTEREST

67.1 If the Contracting Authority fails to pay any amount properly due and payable by it under the Contract, the Provider shall have the right to charge interest on the overdue amount at the rate of 2 per cent (%) per annum above the base rate for the time being of [The Co-Operative Bank Plc] base rate accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. The Parties agree that the rate is a substantial remedy in accordance with section 9 of the Late Payments of Commercial Debts (Interest) Act 1998. This clause shall not apply to payments that the Contracting Authority disputes in good faith.

68. SET OFF

68.1 The Contracting Authority may at any time set off any liability of the Provider to Contracting Authority against any liability of the Provider to the Contracting Authority , whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

68.2 Any exercise by the Contracting Authority of its rights under this Clause 68 shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

69. COSTS

Except as provided expressly in this Contract, each Party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Contract and any documents referred to in it.

70. COMPLIANCE WITH VALUE ADDED TAX AND OTHER TAX REQUIREMENTS

70.1 The Provider shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

70.2 Failure to comply will constitute a material breach of the Contract and the Contracting Authority may exercise the rights and provisions conferred by Clause 18.

70.3 The Provider shall furnish to the Contracting Authority the name, and if applicable, the VAT registration number of any Provider Staff prior to the commencement of any work under the Contract by such Provider Staff.

70.4 Upon a request by the Contracting Authority , the Provider shall not employ or will cease to employ any Provider Staff which the Contracting Authority believes is not complying with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

70.5 The Provider shall indemnify the Contracting Authority against any liability (including any interest, penalties or costs incurred) which is levied demanded, or assessed on the Contracting Authority at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under the Contract

71. GOVERNING LAW AND JURISDICTION

71.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

71.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

72. OBSERVANCE OF STATUTORY REQUIREMENTS

72.1 The Provider shall maintain a valid registration of the Organisation pursuant to the Domiciliary Care Agencies Regulations (Wales 2004) or any statutory modification or re-enactment thereof, and to inform the Authority as soon as possible and in any event within 24 hours if any notice under the Regulations has been issued in connection with the Organisation by the Registration Authority.

72.2 The Provider shall provide the Authority with a copy of any inspection report received from the Registration Authority. The Authority may at any time approach the Registration Authority's Inspection Unit for any information relating to the Organisation or the Service to be provided hereunder and this contract shall constitute an authority to the Registration Authority to divulge to the Authority any such information as the Authority may require.

72.3 The Provider shall ensure that all persons employed in the performance of this Contract have been requested to disclose their previous convictions (including any spent convictions) to the Provider and the Provider shall not employ persons in the performance of this Contract who hold any relevant previous convictions (including any relevant spent convictions). Where the Provider is unsure as to what constitutes relevant previous convictions and/or relevant spent convictions, the Provider shall notify and give anonymous details of such convictions to the Authority who shall advise the Provider accordingly.

72.4 This Agreement should be read in conjunction with and the Provider shall comply with all statutory legislation (including amendments thereof) where appropriate, including but being not limited to: -

- Social Services and Wellbeing (Wales) Act 2014;
- The Regulation and Inspection of Social Care (Wales) Act 2016
- Housing Wales Act 2014;
- Children Act 2004;
- Data Protection Act 1998;
- Mental Capacity Act 2005;
- National Health Service and Community Care Act 1990;
- Equality Act 2010;
- National Minimum Wage (Act) 1998;
- Disabled Persons Act 1986;
- Equal Opportunities Legislation and Policies;
- Health and Safety At Work Act 1974;
- Protection of Freedoms Act 2012;
- Human Rights Act 1998;
- Welsh Language Act 1993;

- Any other statutory acts or laws required of the Service in accordance with legislation.

Schedule 6 NA

Schedule 7 Confidential Information

Schedule 8 Framework Agreement Variation Procedure

1. INTRODUCTION

1.1 This Schedule 8 details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Framework Agreement.

1.2 The Council may propose a variation to the Framework Agreement under Schedule 8 only where the variation does not amount to a material change in the Framework Agreement or the Services.

2. PROCEDURE FOR PROPOSING A VARIATION

2.1 Except where paragraph 5 applies, the Council may propose a variation using the procedure contained in this paragraph 2.

2.2 In order to propose a variation, the Council shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**Notice of Variation**).

2.3 The Notice of Variation shall:

(a) contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and

(b) require each Framework Provider to notify the Council within 20 days of any proposed changes to the prices set out in its Pricing Matrices.

2.4 On receipt of the Notice of Variation, each Framework Provider has 20 days to respond in writing with:

(a) the impact of the proposed variation on the provision of the Services;

(b) any amendment required to the Framework Agreement to accommodate the proposed variation;

(c) the overall (having regard to the Provider's general duty of cost efficiency under this Framework Agreement) part year and/or full year cost of, or savings from, implementing the proposed variation;

(d) any other information reasonably requested by the Council or appearing to the Provider to be relevant; and

(e) objections to the variation, if any.

2.5 The Council may require the Framework Provider to meet and discuss any proposed changes to the Services that would result from a variation.

2.6 Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within 7 days of receipt.

2.7 On receipt of a signed agreement from each Framework Provider, the Council shall notify all Framework Providers in writing of the commencement date of the variation.

3. OBJECTIONS TO A VARIATION

In the event that the Council receives one or more written objections to a variation, the Council may:

(a) withdraw the proposed variation; or

(b) propose an amendment to the variation.

4. CHANGES TO THE PRICING MATRICES

4.1 Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Council may require further evidence from the Framework Provider that any additional costs to the Framework Provider will be kept to a minimum.

4.2 The Council may require the Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.

4.3 Where a change to a Framework Provider's Pricing Matrices is agreed by the Council, the Council shall notify its acceptance of the change to the Framework Provider in writing.

4.4 In the event that the Council and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Council may:

(a) withdraw the variation; or

(b) propose an amendment to the variation.

5. VARIATIONS THAT ARE NOT PERMITTED

In addition to the provisions contained in paragraph 1.2, the Council may not propose any variation that:

(a) may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or

(b) is in contravention of any Act or Law.

Schedule 9 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")

1. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE") as amended

Application of TUPE On The Service Commencement Date

1.1 The Contracting Authorities and the Provider believe that, pursuant to TUPE on the Service Commencement Date the employment of those persons employed or engaged by the Previous Provider and who, on and/or immediately prior to the Service Commencement Date, are assigned to carrying out the Services for or on behalf of the Contracting Authorities ("the Acquired Staff"),will transfer to the Provider as at the Service Commencement Date. In those circumstances, the Provider shall engage all the Acquired Staff with effect from the Service Commencement Date on the same terms and conditions (including as to previous periods of continuous employment) whether or not they are legally enforceable, as those on which they were previously employed immediately prior to the Service Commencement Date and shall comply in all respects with the obligations imposed on a transferee by TUPE in respect of the Acquired Staff.

1.2 The Provider shall indemnify the Contracting Authorities and the Previous Provider in full for and against all Indemnified Loss in relation to or in connection with:

1.2.1 any failure by the Provider to comply with its obligations pursuant to TUPE in respect of the Acquired Staff; and

1.2.2 anything done or omitted to be done by the Provider in respect of any of the Acquired Staff whether before, on or after the Service Commencement Date including but not limited to:

1.2.3 any action by any Acquired Staff in relation to the termination, by the Provider after the Service Commencement Date, of their employment;

1.2.4 any action by any Acquired Staff relating to the identity of their employer changing by the virtue of TUPE and/or this Contract; and

1.2.5 any action by any Acquired Staff in relation to a change or proposed change to the terms of his or her employment or working conditions as a result of any act or omission of the Provider whether such claims arise before on or after the Service Commencement Date

Application of TUPE on Expiry, Termination or Partial Termination of this Contract

2.1 The Parties agree that on the Termination Date the identity of the provider of the Services may change resulting in a Service Transfer and that such Service Transfer may be a Relevant Transfer, for the purposes of TUPE.

2.2 The obligations of the Contracting Authorities and the Provider under clause [2] shall apply to a partial termination of this Contract which shall include the Contracting Authorities arranging for the performance of a part or significant part of the Services by a third party and in such circumstances any reference in this clause 2 to the

Termination Date shall refer to the date of partial termination and references to the Provider Staff or Transferring Employees shall refer to those of the Provider Staff and Transferring Employees as are assigned to the part of the Services or Replacement Services which is the subject of the partial termination.

2.3 The Provider agrees that within 20 days of the earliest of:

2.3.1 the date which is 12 months before the Termination Date;

2.3.2 receipt of a notification from the Contracting Authorities of a Service Transfer or an intended Service Transfer;

2.3.3 the date which is 12 months before the expiry of the Contract Period;

2.3.4 receipt of a written request of the Contracting Authorities at any time,

it must provide to the Contracting Authorities on request the Provisional Employee List in an anonymised form (but with employees being identified by reference to job title and date of commencement of service) together with the Workforce Information and the Provider Staff Terms and Conditions (together, the "Employee Termination Information") in relation to each employee listed on the Provisional Employee List.

2.4 The Provider undertakes to both the Contracting Authorities and the Replacement Provider that:

2.4.1 the Employee Termination Information shall be true, complete and accurate in all material respects;

2.4.2 it shall supply the Employee Termination Information in excel format or other format approved by the Contracting Authorities, and

2.4.3 the Provider shall indemnify in full and keep indemnified the [Contracting Authorities and/or any Replacement Provider against any Indemnified Loss arising from any deficiency or inaccuracy in the Employee Termination Information.

2.5 During the six (6) months preceding either the Termination Date or the expiry of the Contract Period (or at any other time after the Contracting Authorities shall have given notice to terminate this Contract) the Provider undertakes to both the Contracting Authorities and the Replacement Provider that, save where required by law or a pre-existing contractual obligation, it shall not and shall procure that any Sub-contractor shall not:

2.5.1 materially amend or promise so to amend the rates of remuneration of or hours to be worked by or otherwise materially vary the Provider Staff Terms and Conditions (including such terms and conditions which apply to entitlement of membership of, contributions to, or pension accrual under, any statutory, occupational or personal pension scheme) of any of the Provider Staff who are on the Provisional Employee List;

2.5.2 materially increase the number of the Provider Staff performing the Services or the proportion of working time spent on the Services (or the relevant part) by the Provider Staff;

2.5.3 deploy any other person to perform the Services (or the relevant part);

2.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Provider Staff on the Provisional Employee List;

2.5.5 terminate (or give notice to terminate) the employment of any of the Provider Staff on the Provisional Employee List (save in the event of gross

misconduct) or assign any member of the Provider Staff on the Provisional Employee List away from the provision of the Services;

2.5.6 change the number of the Provider Staff on the Provisional Employee List or replace any member of the Provider Staff on the Provisional Employee List or redeploy or reassign any of the Provider Staff on the Provisional Employee List; or

2.5.7 recruit any of the Provider Staff for employment in connection with, or assign any additional employee to, the provision of the Services under this [Framework Agreement/Contract],

in each case, without the prior written agreement of the Contracting Authorities , not to be unreasonably withheld or delayed, (provided that the Provider and/or such Sub-contractor will be entitled (without requirement of consent) to give effect to any pre-existing contractual obligations to any such member of the Provider Staff).

2.6 During the period of six (6) months preceding either the Termination Date or the expiry of the Contract Period, or after the Contracting Authorities has given notice to terminate this Contract, the Provider (in the case of the Provider Staff employed by the Provider) must and (in the case of the Provider Staff employed by a Sub-contractor) must procure that a Sub-contractor shall enable and assist the Contracting Authorities ,the Replacement Provider and such other persons as the Contracting Authorities and the Provider may agree, to communicate with and meet the Provider Staff who are on the Provisional Employee List and their Employee Representatives. Such assistance shall include (without limitation):

2.6.1 access to the Provider's and the Sub-contractor's key employees to assist the [Contracting Authorities, Replacement Provider or such other person identified by the [Council **OR** Customer], in undertaking due diligence and submitting bids, and accessing the Provider's and the Sub-contractor's workforce for the purpose of making presentations; and

2.6.2 access to the Provider Staff on an individual basis to facilitate effective consultation (whether under TUPE or otherwise).

2.7 At least twenty eight (28) days prior to the Service Transfer Date the Provider must provide to the Contracting Authorities and/or (at the Contracting Authority's request) any Replacement Provider a final list of all Transferring Employees (Final List) which shall contain any updated Employee Termination Information in relation to each Transferring Employee and shall be complete, accurate and up to date. The Provider must immediately notify the Contracting Authorities of:

2.7.1 any changes to the Final List prior to the Service Transfer Date;

2.7.2 any Transferring Employee who has objected to a transfer pursuant to regulation 4(7) TUPE; and

2.7.3 any Transferring Employee who has given or been given notice of termination of their employment.

2.8 The Provider shall indemnify in full and keep indemnified the Contracting Authority and/or any Replacement Provider against any Indemnified Loss which arises from any deficiency or inaccuracy in the Final List provided under clause 2.7.

2.9 The Contracting Authority shall be entitled to use the information provided in paragraphs 2.3 and 2.7 for the following purposes:

2.9.1 to facilitate the provision of information to bidders or prospective bidders who have expressed an interest in tendering for the provision of the Services or Replacement Services following the Termination Date;

2.9.2 to enable the Contracting Authority to administer any new contract which the Contracting Authority may enter into following the Termination Date;

2.9.3 to inform a prospective Replacement Provider, subject to any Replacement Provider entering into an appropriate confidentiality undertaking with the Contracting Authority ;and

2.9.4 to enable the Contracting Authority to deal effectively with claims by third parties including Transferring Employees.

2.10 In the event of there being any employee, worker or any other party engaged in or in connection with the provision of the Services prior to the Termination Date (save for any employee who is a Transferring Employee and who was listed on the Final List) whose employment or claims arising out of their employment or its termination transfers to the Contracting Authority or any Replacement Provider on the Termination Date or who successfully claims that their employment or such claims so transfer:

2.10.1 the Contracting Authority or the Replacement Provider shall, within 28 business days of becoming aware of that fact, give notice in writing to the Provider;

2.10.2 the Provider may offer employment to such person within 28 business days of the notification by the Contracting Authority or the Replacement Provider;

2.10.3 if such offer of employment is accepted, the Contracting Authority or the Replacement Provider shall immediately release the person from his/her employment or alleged employment;

2.10.4 if after the 28 business day period in clause 2.10.2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Contracting Authority or the Replacement Provider may (but shall not be obliged) at any time within the next 4 months give notice to terminate the employment of such person; and

2.10.5 subject to the Contracting Authority and/or the Replacement Provider acting in the way set out in paragraphs [2.10.1 – 2.10.4] above, the Provider shall indemnify the Contracting Authority and/or the Replacement Provider against:

2.10.5.1 all Employment Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Contracting Authority or the Replacement Provider; and

2.10.5.2 any and all employment costs associated with the employment of such person by the Contracting Authority or the Replacement Provider up to the date of termination of such person's employment or the date on which they commence employment with the Provider under paragraphs [2.10.2 and 2.10.3].

2.11 Where the Contracting Authority or the Replacement Provider decide not to terminate the employment of such person pursuant to paragraph 2.10.4, the Provider shall indemnify the Contracting Authority and/or the Replacement Provider against:

2.11.1 all employment costs (including but not limited to remuneration, pension costs and overheads) associated with the employment of such person by the Contracting Authority and/or the Replacement Provider for a maximum period of 9 months from the Service Transfer Date.

2.11.2 all Indemnified Loss (whether any such Indemnified Loss arises before, on or after the Service Transfer Date) incurred by the Contracting Authority or any Replacement Provider resulting from an act or omission by the Provider or Sub Contractor on or before the Service Transfer Date or any other matter, event or circumstances occurring on or before the Service Transfer Date including (but not limited to) any failure by the [Provider or Sub Contract] to comply with it or its obligations under TUPE..

2.12 The indemnities given by the Provider in paragraph 2.10.5 and 2.11 apply to any failure by the Contracting Authority or any Replacement Provider to comply with its obligations under TUPE in respect of the person who transferred (or is alleged to have transferred) to the Contracting Authority or the Replacement Provider (as appropriate) to the extent that such failure is as a result of the Provider's failure to comply with its obligations under Paragraphs 2.3-2.4 and 2.7.

2.13 Upon a Service Transfer, the provisions of Paragraph 2.13 shall apply:

2.13.1 the Provider must, or must procure that, all wages, salaries and other benefits of the Transferring Employees and other employees (including the Provider Staff) or former employees (including former Provider Staff) of the Provider (or any Sub-contractor) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Provider or Sub-contractor up to the Service Transfer Date are satisfied;

2.13.2 without prejudice to paragraph 2.10 and 2.13.1, the Provider must:

2.13.2.1 remain responsible for all of its employees (including the Provider Staff but excluding the Transferring Employees or the employees denoted in paragraph 2.10) on or after the Service Transfer Date and must indemnify and keep indemnified the Customer and any Replacement Provider against all Indemnified Loss incurred by the Customer or any Replacement Provider resulting from any claim whatsoever, whether arising before on or after the Service Transfer Date by or on behalf of any of the Provider's employees (including the Provider Staff) who are not Transferring Employees;

2.13.2.2 in respect of the Transferring Employees, at all times indemnify and keep indemnified the [Council **OR** Customer] and any Replacement Provider against all Indemnified Loss (whether any such Indemnified Loss arises before, on or after the Service Transfer Date) incurred by the [Council **OR** Customer] or any Replacement Provider resulting from any act or omission by the Provider or Sub-contractor on or before the Service Transfer Date or any other matter, event or circumstances occurring on or before the Service Transfer Date including (but not limited to) any failure by the Provider (or any Sub-contractor) to comply with its or their obligations under TUPE as if such legislation applied, even if it does not in fact apply, save to the extent that any such failure to comply arises as a result of an act or omission of the [Council **OR** Customer] or any Replacement Provider;

2.13.3 without prejudice to the generality of paragraph 2.13.2.2 at all times indemnify and keep indemnified the Contracting Authority and any Replacement Provider in relation to all Indemnified Loss suffered or incurred by the [Council **OR** Customer] and/or any Replacement Provider

in respect of any failure by the Provider or a Sub-contractor to comply with its/ their obligations under TUPE in particular (but without limitation) Regulation 13 of TUPE;

2.13.4 in the event that any person brings a claim against the [Council **OR** Customer] or any Replacement Provider arising out of or in connection with a Service Transfer or termination of their employment in connection with a Service Transfer to which TUPE applies or is alleged to apply on the termination or partial termination or expiry of this Contract, the Provider must provide the Contracting Authority and any Replacement Provider as soon as practicable after any request thereof, all information which may reasonably be relevant to such claim and shall render to each other such assistance and co-operation as either shall reasonably require in contesting, settling or dealing with any such claim; and

2.13.5 the Provider must permit the Contracting Authority to assign the benefit of the indemnities in this clause 2.13 (and in clause 2.10.5 and 2.11) to any Replacement Provider without further condition or requirement;

2.13.6 na

2.13.7 na

2.14 In the event that the Provider enters into any agreement with a Sub-contractor in connection with this [Framework Agreement/Contract], it must impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to this clause 2 and must procure that the Sub-contractor complies with such terms.

The provisions of this clause 2 shall be capable of being enforced directly by the Replacement Provider.