

**CALL OFF CONTRACT
TERMS AND CONDITIONS
FOR THE PROVISION OF
SUPPORTED LIVING SERVICES**

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1. **THE PARTIES**

1.1. **Insert name of Local Authority entering into the call off contract** (the "Commissioner")

And

1.2. [Betsi Cadwaladr University Health Board whose principal address is Headquarters, Ysbyty Gwynedd, Penrhosgarnedd, Bangor, Gwynedd, LL57 2PW]

(‘The Health Board’)

together and individually referred to as

(“The Commissioner(s)”)

and

1.3. **Name and address of registered branch/office of the registered Provider**

(the “ **Service Provider**” and the “**Provider**”)

BACKGROUND:

- i) The Commissioner(s) sought expressions of interest from potential Providers for the provision of Supported Living Services (the “**Service**”) further detailed in the Service Specification and tender documents as part of the mini tender;
- ii) The Commissioner(s), having carried out a competitive tender process has evaluated the Provider to be the successful bidder;
- iii) In reliance on the tender return submitted by the Provider, the Commissioner(s) seeks to appoint the Provider to deliver the Service; and
- iv) The Parties agreed terms between them for the delivery of the Service as set out under this Call Off Contract.

NOW IT IS HEREBY AGREED AS FOLLOWS

- i) The Council is responsible for carrying out an assessment of Person or their Carer(s) who may be in need of services in accordance with the Social Services and Well Being (Wales) Act 2014 and shall determine the Person’s eligibility for care and support. The Health Board is responsible for meeting the health needs in accordance with applicable legislation, guidance and policies and in so doing shall generate a combined care plan for the person in need of the care.
- ii) The Service Provider is an organisation, partnership or individual established for the provision of the Service and registered to do so with the Care and Social Service Inspectorate Wales (CIW) or such other legislative provisions as might or responsible organisations as appropriate.
- iii) In accordance with the requirements of their respective statutory responsibilities, the Council and the Health Board are required to arrange supported living services.
- iv) From time to time the Commissioner(s) will request the Service Provider to provide the Service as set out in this Contract for person(s) assessed as being eligible for care and

support and the Service Provider has agreed to provide the Service in accordance with the Terms and Conditions of this Contract and the Agreement .

- v) The Service Provider acknowledges that all Call-Off Contracts awarded under the Agreement shall be carried out in accordance with these Terms and Conditions and the Agreement .

2. DEFINITIONS

- 2.1. In this Contract and its Schedule the words and phrases shall have the meaning as set out in Schedule 1 to this Contract (Definitions).

3. INTERPRETATIONS

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

- i) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- ii) words importing the masculine include the feminine and the neuter;
- iii) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- iv) 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;
- v) 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;
- vi) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- vii) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- viii) 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;
- ix) 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
- x) 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.

4. KEY PERSONNEL

- 4.1. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible as follows:

- i. The Authorised Officer for the Council shall be the most senior Officer who has responsibility for Social Services or such other person as the respective Authorised Officer may nominate and for the Health Board shall be [the Head of Therapeutic Service] services or such other person as the respective Authorised Officer may nominate.
- ii. The Care Co-ordinator shall be the Officer identified as such in the Care and Support Plan or such other person as the Commissioner(s) may nominate.

- iii. Day to day matters relating to the Person's individual services should be addressed to the Care Co-ordinator or, in continuing NHS Healthcare cases, to the [Health Board's Continuing NHS Healthcare Manager], in the first instance.
 - iv. Procedural matters or matters relating to the provision of this Contract should be referred to the Council's [Contracts Officer] or the [Health Board's Continuing NHS Healthcare Strategy and Quality Assurance Manager] in the first instance.
 - v) The Service Provider shall nominate a Responsible Individual who will be registered under the Regulation & Inspection of Social Care (Wales) Act 2016 and a Registered Manager who will be registered with the Social Care Wales. The Service Provider shall notify the Commissioner(s) of any change in the appointment of the Responsible Individual and/or the Registered Manager.
- 4.2. The Parties have agreed to the appointment of the Key Personnel. The Service Provider shall, where possible, provide at least one months' written notice of its intention to replace Key Personnel.
- 4.3. The Service Provider acknowledges that the Key Personnel are essential to the proper provision of the Service to the Commissioner(s). Where a vacancy occurs, the Service Provider shall endeavour to replace the role of any Key Personnel as soon as practically possible and any such replacement shall have suitable qualifications, experience and be fully competent to carry out the tasks assigned to the Key Personnel.
- 4.4. The Commissioner(s) may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities. If the Service Provider replaces the Key Personnel as a consequence of this clause, the cost of effecting such replacement shall be borne by the Service Provider.

5. CONTRACT PERIOD

- 5.1. The Contract shall take effect on the Service Commencement Date as set out in the Contract and shall continue unless it is otherwise terminated in accordance with the provisions of the Contract or until the expiry date.
- 5.2. Notwithstanding the expiry of the Agreement, the Service commissioned by way of a Call-Off Contract shall continue until the end date specified in the Call-Off Contract unless it is otherwise terminated in accordance with the terms of this Contract or until the expiry date.

6. THE PROVIDER'S STATUS

- 6.1. At all times during the Contract Period the Service Provider shall be an independent organisation and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture and 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.

7. CO-OPERATION AND PARTNERSHIP WORKING

- 7.1. Subject to clause 6.1 above, each Party agrees to cooperate with the other Party in the fulfilment of the Contract. The Parties acknowledge and shall endeavour to work in collaboration and in the spirit of partnership in connection with the Service provided under this Contract.

8. CONTRACT REVIEW

- 8.1. The terms of this Contract shall be reviewed annually and any modification, amendment or variation shall be confirmed and agreed in writing with the Service Provider prior to its implementation.

9. LIMITS OF THE COMMISSIONERS' OBLIGATIONS

- 9.1. Except as otherwise expressly provided, the obligations of the Commissioner(s) under the Contract are obligations of the Commissioner(s) 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 Commissioner(s) in any other capacity, nor shall the exercise by the Commissioner(s) of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Commissioner(s) to the Service Provider.

10. MISTAKES IN INFORMATION

- 10.1. The Service Provider shall be responsible for the accuracy of the documentation and information provided to the Commissioner(s) in connection with the provision of the Service under this Contract.

11. COMMISSIONING PROCESS

- 11.1. Where it has been identified that a Supported Living Service is required to support a Person or Persons, then the Service Provider will be commissioned in line with the Commissioning and Call Off Procedures set out in the Agreement's Schedule 2.

12. PRE REQUISITES AND STANDARD OF SERVICE

12.1. The Service Provider's base

- 12.1.1. The Service shall be managed and provided from sound premises, which are suitable for the purpose, providing a safe working environment for Staff and shall include the provision of private space for confidential meetings. The Service Provider's premises shall be appropriately located for the management and provision of the Service and contain the equipment and resources necessary for the efficient and effective management of the Service

- 12.1.2. Adequate arrangements shall also be made by the Service Provider to respond to any emergencies that may arise during non-office hours including on call arrangements, support for Staff, responding to unplanned incidents or emergencies and shall be suitably authorised to lead any business continuity requirements; including appropriate notification to and liaison with the Commissioner's out of hours services.

12.2. Standards and manner of carrying out the Service

- 12.3. Without prejudice to any higher standards of the Service required by this Contract and in addition to provisions of clause 14.1, the Service Provider shall perform its obligations in accordance with:

- i. these contract terms and any expressed terms set out in the mini tender as and when applicable;
- ii. the Service Specification set out in Schedule 2 of the Agreement;
- iii. proposal as set out in the mini tender;
- iv. national guidance and local policies;
- v. reasonable skill and care;
- vi. the law and good industry practice;
- vii. good clinical practice (where health related services are provided);

- 12.3.1. Where the Service includes the provision and/or use of goods, materials or plant, these must also:

- i. be compliant with any policies, rules, codes of practice, procedures and standards with which such goods, materials or plant are required to comply; and
- ii. 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 Service Provider in writing by the Commissioner(s);

- 12.3.2. The Service Provider shall:

- i) ensure that its Staff providing the Service shall do so with all due skill, care and diligence as is necessary for the proper provision of the Service;

- ii) provide to the satisfaction of the Commissioner(s) such suitably qualified, adequately trained, capable and experienced Staff as shall be necessary for the proper execution of the Service and shall not remove or replace such Staff without the approval of the Commissioner(s);
- iii) ensure that Staff are aware of their responsibilities and those of the other members of Staff;
- iv) ensure that Staff operate within their scope, professional boundaries and competence;
- v) ensure that Staff involved in delivering the Service are sufficiently instructed with regard to the Service;
- vi) ensure that there are sufficient Staff to provide the Service properly and safely;
- vii) ensure that only those Staff who are authorised by the Service Provider are involved in providing the Service;
- viii) ensure Staff obtain and maintain their registration with the appropriate regulatory or occupational body;
- ix) co-operate with such others as the Commissioner(s) may require;
- x) work diligently to protect and promote the Commissioner(s) interests; and satisfy itself that the information, including the documentation provided by the Commissioner(s) is adequate and will not prejudice the performance of any of the Service Provider's obligations under the Contract;
- xi) ensure that Staff who are Care and Support Workers/Healthcare Workers adhere to the Code of Professional Practice for Social Care Workers and Social Care Managers; the Code of Conduct for Healthcare Support Workers in Wales and the Fundamentals of Care Guidance for Health and Social Care Staff published by Welsh Government;

12.3.3. The Health Board may agree with the Service Provider to delegate health related activities in accordance with the All Wales Guidelines for Delegation. Where health related activities are delegated to the Service Provider's Staff, the Person's Care and Support Plan must record the agreement of all parties including the Person and/or his/her representative. The Service Provider shall ensure that its Staff shall not undertake health related activities until Staff have received appropriate and necessary training and processes are in place for ensuring competency, supervision and update training.

12.3.4. The Service Provider shall take all reasonable care at all times to ensure that in execution of the Service it does not disrupt the operation of the Commissioner(s), its employees or any other Contractor employed by the Commissioner(s).

12.3.5. The Service Provider shall co-ordinate its activities in the provision of the Service with the Service Provider's Staff and other suppliers that may be engaged by the Commissioner(s) from time to time.

12.3.6. Time shall be of the essence for the purposes of any provision of this Contract, including the commencement of the Service within the time agreed or on a specified date.

13. OPERATION OF THE CONTRACT

- 13.1. The Commissioner(s) may at any time commission the Service from the Service Provider in accordance with the Commissioning and Call Off Procedures set out in the Agreement and the Service Provider shall supply the Service during the Contract Period in accordance with the Commissioner(s)' requirements as set out in the Contract and the Agreement.
- 13.2. The Service Provider shall provide a Service that can be delivered 24 hours a day, 365 days a year to include Bank Holidays and Weekends generally between the hours of 7am and 11pm and at night generally between the hours of 11pm and 7am (subject to the Person's individual preferences and lifestyle patterns).
- 13.3. Each Person's needs and outcomes shall be identified through the completion of the integrated care and support assessment process to determine the Person's eligibility for the Service.
- 13.4. When a Service is commissioned from the Service Provider, a Call-Off Contract shall be issued by the Commissioner(s) in respect of the provision of the Service for one or more Persons in one or more households. By signing and returning the Call-Off Contract, the Service Provider is deemed to accept and agree to enter into this Contract with the Commissioner(s) for the provision of the Service.
- 13.5. Prior to commencement of the Service the Commissioner(s) shall provide:
- i. The initial information as set out in clause 1, Schedule 2 to this Contract.
 - ii. Care and Support Plan/Pathway Plan/ Commissioned Care Plan, Risk Assessment, A Care and Treatment Plan (Part 2 Mental Health (Wales) Measure 2010) if applicable, and any other appropriate documentation
 - iii. any known factors which may result in disruptive or challenging behaviours or any other factors which may otherwise impact on the Service Provider's ability to provide the Service
- 13.6. The Service Provider shall provide the Service from the date specified in the Call-Off Contract unless otherwise agreed between the Service Provider and the Commissioner(s).
- 13.7. The Parties shall acknowledge that a change in the Person's social care and/or health needs may necessitate a variation due to an increase or decrease in services required either in the short or long term. Any variations to the Service shall be made in accordance with Schedule 6 to this Contract (Service Variation Procedures).
- 13.8. Where the Service Provider is considering or proposes to discontinue the provision of a Service, the Service Provider shall notify the Commissioner(s) as soon as possible and shall work with the Commissioner(s) to resolve the issues and minimise the impact for the Person receiving the Service.
- 13.9. Where the Service Provider and the Commissioner(s) cannot agree to continuing the Service to the Person, the Service Provider shall notify the Commissioner(s) and the Commissioner(s) shall use reasonable endeavours as soon as practically possible in accordance with provisions of clause 53.2 (Termination) or within an agreed timescale to procure alternative services.
- 13.10. The Service Provider shall request a review of Service if there is a change in the Person's circumstances that, reasonably, the Service Provider feels warrants a change in either the Call-Off Contract or the Person's Care and Support Plan. Such a review shall be carried out by the Care Co-ordinator or other Nominated Officer.

- 13.11. During the lifetime of this Contract and the Agreement, the Commissioner(s) may promote the use of electronic call monitoring systems. Where this is intended there will be full consultation with Service Providers. The Service Provider may at their own discretion implement the use of their own electronic call monitoring system as part of their own quality assurance and service delivery.

14. OBSERVANCE OF STATUTORY REQUIREMENTS

- 14.1. The parties to this Contract shall comply with all statutory and other provisions to be observed and performed in connection with the commissioning and provision of the Service and any relevant Codes of Practice, Codes of Conduct, Orders and Rules of Law, Regulations, Principles, Standards and Statutory Guidance or other requirements of relevant government agency relating to the Service.
- 14.2. The Service Provider shall maintain a valid registration of the Organisation pursuant to the Domiciliary Care Agencies Regulations (Wales 2004), Regulation and Inspection of Social Care (Wales) Act 2016 or any statutory modification or re-enactment thereof.
- 14.3. The Commissioner(s) may at any time approach the CIW/CQC for any information relating to the Organisation or the Service to be provided hereunder and this contract shall constitute an authority to the CIW/CQC to divulge to the Commissioner(s) any such information as the Commissioner(s) may require.
- 14.4. This Contract shall be read in conjunction with, and the Service Provider shall comply with the following legislation (and any subsequent amendments / replacements) in so far as it is relevant to the Service (the list is not exhaustive):
- i. The Social Service and Well Being (Wales) Act 2014, Codes of Practice and Statutory Guidance
 - ii. The Well Being of Future Generations (Wales) Act 2015
 - iii. The Regulation and Inspection of Social Care (Wales) Act 2016
 - iv. The Wales Interim Policy and Procedure for the Protection of Vulnerable Adults from Abuse 2013
 - v. All Wales Child Protection Procedures 2008
 - vi. Human Rights Act 1998
 - vii. The Mental Capacity Act 2005 including the DOLS
 - viii. Equality Act 2010
 - ix. Data Protection Act 1998 and the General Data Protection Regulations as and when implemented
 - x. Protection of Freedoms Act 2012
 - xi. Civil Contingencies Act 2004
 - xii. The Welsh Language (Wales) Measure 2011 including the Welsh Language Standards and the Welsh Language Commissioner's advice document "Contracting Out Public Services Contracts"
 - xiii. The Transfer of Undertakings (Protection of Employment) Regulation 2006
 - xiv. National Commissioning Board – New Guidance on commissioning supported living services.

In addition, in relation to children's services:

- i. The Children Act 1989 and 2004
- ii. The Framework for Assessment of Children in Need and their Families
- iii. Working Together to Safeguard Children (guide to interagency working) WAG 2000
- iv. The National Service Framework 2004 for children, young people and maternity service

15. EFFECT OF STATUTORY PROCEEDINGS

15.1. The Service Provider shall inform the Commissioner(s) as soon as possible and in any event within 24 hours, such notice to be confirmed in writing within 3 business working days, if any notice under the Regulation & Inspection of Social Care (Wales) Act 2016 has been issued in connection with the Service Provider by the CIW (or equivalent body) or there has been a decision by a Magistrates' Court to cancel registration.

16. PAYMENT

16.1. Service Price

16.1.1. The Service Price to be paid by the Commissioner(s) to the Provider will be the tender price which will be included in this Contract following completion of the mini tender (exclusive of VAT).

16.1.2. Any variances to the Service under this Contract will be made in accordance with the following rates:

- i. Hourly rate..
- ii. Waking Night rate.
- iii. Sleep in rate.

16.1.3. The Service Price shall include all Bank Holiday charges, handover, team meetings, management/Project Manager and all training, administration, supervision, cost of day and night service hours etc) in line with the requirements of this Contract.

16.1.4. The Service Price shall be reviewed annually in accordance with the Commissioner's budget setting process unless otherwise stated in the mini tender and the revised Service Price shall be confirmed in writing as and when applicable. The review of the Service Price shall have proper regard to government guidance.

16.1.5. Any changes to the Service Price shall take effect from the 1st Sunday following the 1st April of the new financial year unless agreed otherwise.

16.1.6. Where applicable and agreed in writing, the Commissioner(s) shall pay for travelling and mileage at the Rate set out in the Call-Off Contract in respect of the Person's care and support plan activity e.g. medical appointment or leisure activity.

16.2. Temporary suspension of the Service and retainer

16.2.1. For the purpose of this clause a temporary planned or unplanned suspension of the Service may occur due to:

- i. Hospitalisation
- ii. The Person's absence
- iii. A pre-planned absence i.e. respite, holiday
- iv. Death

16.2.2. In the event of a temporary suspension of the Service, the Provider and the Commissioner(s) shall follow the process as set out in Schedule 6.

16.3. Recovery of sums due

16.3.1. Whenever under the Contract any sum of money shall be recoverable from or payable by the Provider to the Commissioner(s) the same may be deducted from any sum due or which at any time thereafter may become due to the Service Provider under this Contract or any other Contract with the Commissioner(s). The Service Provider

and the Commissioner(s) shall use credit notes as the preferred method for recovery of sums due to the Commissioner(s)/Service Provider.

16.3.2. The Commissioner(s) shall be entitled to recover all or any of the Service Price paid to the Service Provider if:

- i) the Commissioner(s) establishes on the balance of probability that the Service Provider has not provided or is not providing the Service in accordance with this Contract or;
- ii) as a result of any audit or inspection carried out by Commissioner(s), an overpayment has been claimed by or made to the Service Provider.

16.4. **Interest**

16.4.1. If the Commissioner(s) fails to pay any amount properly due and payable by it under the Contract, the Service 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 Bank of England base rate accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

16.5. **Costs**

16.5.1. Except as provided within 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.

16.6. **VAT**

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

16.6.2. All sums payable under this Contract, unless otherwise stated, are exclusive to VAT and other duties or taxes.

17. THE PROVIDER'S STAFF

17.1. **Recruitment and employment of Staff**

17.1.1. In providing the Service the Service Provider shall:

- i. comply with legislation, regulations and guidance in force or applicable at the time including any local policies required by the Commissioner(s) relating to the recruitment, appointment and employment of sufficient, trained, competent and registered Staff including equality, diversity and equal opportunities;
- ii. ensure ethical employment and working practices are in place where Staff are treated with dignity and respect;
- iii. ensure Staff recruited by the Service Provider shall have no gaps in employment history in accordance with the Safer Employment Guidance;
- iv. keep records in relation to recruitment and employment processes for each member of Staff and, where the member of Staff consents or where the law requires, shall provide information to the Commissioner(s);
- v. fully implement the All Wales Induction Framework for Health and Social Care Workers 2018
- vi. ensure that policies are in place to guide and support Staff;
- vii. at all times deploy sufficient Staff that are competent to perform the Service and shall ensure adequate staffing levels are available including providing a

sufficient reserve of trained and competent Staff in order to deliver the Service during peak times e.g. winter period;

- viii. ensure Staff are accountable and responsible for carrying out their tasks and activities in accordance with the necessary training provided for ensuring competency;
- ix. not employ in the provision of the Service anyone previously dismissed fairly from employment with the Commissioner(s), except where previously declared as redundant. Whenever possible, the Person or their chosen advocate will participate fully in the recruitment process in a meaningful way;
- x. adopt fair employment practices, recruiting and retaining Staff in a fair and ethical manner, providing a safe and competent workforce in accordance with industry best practice;
- xi. recruit, employ and manage Staff on a basis that encourages high levels of retention. The Service 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 Staff;
- xii. 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 the Act is included in the calculations for compliance with the National Minimum Wage and Working Time Regulations;
- xiii. inform Staff of their lawful pension rights;
- xiv. ensure appropriate travel time is planned in the Staff rota so that Staff are able to go about their business in a manner which reasonably gives them adequate time for travel to deliver the Service effectively;
- xv. ensure Staff have the necessary registration with the relevant regulatory body such as the Social Care Wales as and when this becomes a statutory requirement during the term of the Contract;
- xvi. at all times operate in compliance with the Code of Professional Practice for Social Care Workers and Social Care Managers; the Code of Conduct for Healthcare Support Workers in Wales and the Fundamentals of Care, Guidance for Health and Social Care Staff published by Welsh Government;
- xvii. maintain up to date personnel records of the Service Provider's Staff engaged in the provision of the Service and, on request provide reasonable information including, without limitations, workforce information to the Commissioner(s) on the Service Provider's Staff. The Service Provider shall reserve at all times the right to provide these records in compliance with the Data Protection legislation;

17.1.2. In accordance with clause 12.3.3 above, where agreement has been reached between the parties for Staff to undertake delegated health related activities and training has been provided to Staff to ensure competency, the Service Provider's Staff shall then be accountable and responsible for carrying out the health related activities in accordance with the training provided.

17.1.3. The Service Provider acknowledges that Staff engaged in the performance of the Service shall have the full authority to act on behalf of the Service Provider for all purposes in connection with the Contract, provided that if the Commissioner(s) shall at any time be dissatisfied for any reason with the performance of any individual Staff engaged in carrying out the Service, the Service Provider shall if the Commissioner(s) so require, provide a competent substitute to carry out the Service at no additional cost to the Commissioner(s).

17.1.4. The Service Provider shall replace any Staff who the Commissioner(s) has reasonably determined have failed to carry out their duties with reasonable care and skill. Following removal of any of the Service Provider's Staff for any reason, the

Service Provider shall ensure such an individual is replaced with another Staff member with the necessary training and skills to meet the requirements of the Service.

- 17.1.5. Where the Service Provider recruits Staff who are related to other Staff members, it is the responsibility of the Service Provider to ensure that management systems are sufficiently robust to deliver a professional service that in no way compromises the quality and continuity of service provision and the Person's well-being.
- 17.1.6. The Service Provider shall maintain an organisational chart outlining the staffing structure, staffing levels, Staff duties and areas of responsibility which shall be reviewed annually and will be made available to the Commissioner(s) upon request.
- 17.1.7. Staff employed by the Service Provider shall at all times when carrying out their duties under this Contract, have in possession adequate means of identification which shall be shown on request to any Person receiving the Service, family member, Carer or Officer.

17.2. **Skills, competencies and workforce development**

- 17.2.1. Staff engaged to deliver the Service shall have the skills, experience and competencies to provide the Service and shall receive relevant ongoing training to ensure continued development.
- 17.2.2. The Service Provider shall provide an induction programme from the first day of employment and the programme shall comply with legislation, standards and guidance in force at the time.
- 17.2.3. The Service Provider shall provide appropriate training, development and supervision which will be no less than 3 monthly for all Staff involved in policy development or provision of the Service. This must include awareness of equalities including age discrimination, language awareness and specialist training appropriate in relation to the Service Provider's Statement of Purpose. Ongoing training must be provided, or made available, by the Service Provider for all Staff commensurate with the tasks and duties they are required to perform. The Social Care Passport (North Wales) has been designed to provide guidance on core training for the workforce in the social care sector in North Wales. The Commissioner(s) shall offer places (free of charge) on in-house training courses where applicable.
- 17.2.4. The Service Provider shall record details of the training and supervision provided to individual members of Staff in their personal file. At least each year the Commissioner(s) may request information relating to the training and supervision provided to Staff. The Commissioner(s) acknowledge that the information provided may be limited by the provisions of the DPA.
- 17.2.5. The Service Provider shall complete the required Workforce Development Survey on an annual basis which will be returned by the due date to the Commissioner(s). This survey is collated to ensure that accurate workforce data is available as part of future planning for training.
- 17.2.6. The Service Provider shall ensure that Staff are trained in manual handling to meet the standards set by the All Wales Manual Handling Passport. Training will include the safe use of equipment as prescribed in an individual's manual handling plan, which may include single handed moving & positioning where risk assessments and handling plan/s identify that this is safe and appropriate, having taken into account the task, individual, location and environment.
- 17.2.7. The Service Provider shall make Staff and support Staff aware of opportunities available locally to improve their Welsh language skills and encourage Staff to attend courses as a means to fulfil the need to plan, provide a bilingual Service and to ensure quality of care for those who need it in the medium of Welsh.

- 17.2.8. The Service Provider shall make Staff aware that English as a Second or Other Language (ESOL) courses are available and such courses are provided free of charge for Service Providers / Care/Support Workers. The Service Provider shall keep a copy of the ESOL Entry Level 3 assessment for those members of Staff whose first language is not English or Welsh.

18. NON SOLICITATION

- 18.1. For the duration of the Contract, neither the Commissioner(s) nor the Service 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 Service without that other Party's prior written consent.

19. POLICIES

- 19.1. The Service Provider shall comply with and shall ensure Staff comply with all of the Commissioner's published policies and with any further rules, codes of practice, procedures and standards which the Commissioner(s) notifies to the Service Provider. The Commissioner(s) shall throughout the Contract Period ensure that any changes to any policies, rules, code of practice, procedures and standards are brought promptly for the attention of the Service Provider.

20. INDUSTRIAL ACTION

- 20.1. The Service Provider shall immediately inform the Commissioner(s) of any actual or potential industrial action by Staff, whether such action be by its own Staff or others, which affects or might affect its ability at any time to deliver the Service in accordance with the requirements of the Contract.
- 20.2. In the event of industrial action, the Service Provider shall seek the Commissioner(s)' approval to any revised proposals to deliver the Service. If such proposals are considered insufficient or unacceptable by the Commissioner(s), then the Commissioner(s) may terminate the Service in whole or in part in accordance with provision of this Contract (Termination).

21. TUPE

- 21.1. The Parties shall acknowledge that the Transfer Of Undertakings (Protection Of Employment) Regulations 2006 ("TUPE") rules may apply as amended from time to time.
- 21.2. In the event that TUPE applies in connection with the Service provided under a Call-Off Contract, the Service Provider shall comply with the requirements as detailed below.
- 21.3. Where the Commissioner(s) has notified the Service Provider that it intends to tender or retender any of the Service, the Service Provider shall comply with its obligations in relation to informing and consulting with Staff engaged in the provision of the Service and then shall, on written request of the Commissioner(s) and in any event within 20 Business Working Days of that request (unless otherwise agreed in writing), provide the Commissioner(s) with all reasonably requested on the Staff engaged in the provision of the Service to be tendered or retendered that may be subject to TUPE Regulations to at least a level sufficient for a tenderer to determine the overall cost of employing such Staff.
- 21.4. The Service Provider warrants that the Provider's Staff List will be true and accurate in all material respects.
- 21.5. In the event that the Commissioner(s) suffers loss or becomes liable to pay additional sums which have arisen out of or in connection with TUPE Regulations as a result of the Service Provider's failure to cooperate and provide the information requested at the requested time under this clause the Commissioner(s) shall be entitled to recover such additional costs from the Service Provider.

- 21.6. During the 3 months immediately preceding the expiry of the Call-Off Contract or at any time following a notice of termination of the Call-Off Contract, the Service Provider shall not and shall procure that its Sub-Contractors do not, without the prior written consent of the Commissioner(s) (that consent not to be unreasonably withheld or delayed), in relation to any Staff engaged in the provision of the Service:
- i. terminate or give notice to terminate the employment of any Staff engaged in the provision of the Service (other than for gross misconduct);
 - ii. increase or reduce the total number of people employed or engaged in the provision of the Service by the Service Provider and any Sub-Contractor;
 - iii. propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the Staff engaged in the provision of the Service;
 - iv. replace or relocate any Staff engaged in the provision of the Service or reassign any of them to duties unconnected with the Service; and/or
 - v. assign or re-deploy to the Service or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Service;
- 21.7. The Commissioner(s) shall use all reasonable endeavours to procure that any new Service Provider who provides any services equivalent to the Service or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Service Provider and/or any Sub-Contractor against any Losses in respect of:
- i. any failure by the new Service Provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new Service Provider;
 - ii. any claim by any person that any proposed or actual substantial change by the new Service Provider to that person's working conditions or any proposed measures on the part of the new provider are to that Person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new Service Provider on expiry or termination of this Contract or of any Service; and/or
 - iii. any claim by any person in relation to any breach of contract arising from any proposed measures of the new Service Provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new Service Provider on expiry or termination of this Contract or of any Service.

22. **VETTING OF PROVIDER'S STAFF**

- 22.1. The Service Provider shall:
- a. ensure that Staff who provide or supervise the Service are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS); and
 - b. monitor the level and validity of the checks for each member of Staff and review the DBS check where appropriate;
 - c. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to the Person receiving the Service;
- 22.2. The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Service is barred from the activity in

accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

- 22.3. The Service Provider shall immediately notify the Commissioner(s) of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause have been met.
- 22.4. The Service Provider shall refer information about any person carrying out the Service to the DBS where it removes permission for such person to carry out the Service (or would have, if such person had not otherwise ceased to carry out the Service) because, in its opinion, such person has harmed or poses a risk of harm to children or vulnerable adults.
- 22.5. The Service Provider shall ensure that the Commissioner(s) is notified of any person who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Service Provider (or any employee of a sub-contract or involved in the supply of the Service).
- 22.6. The Service Provider acknowledges and agrees that any person who fails to co-operate with the vetting process shall not be employed or continue to be employed in the provision of the Service.
- 22.7. The Service Provider shall ensure that every DBS check is satisfactory in relation to an individual person's employment and shall carry out risk assessments in relation to any disclosure (whether as a result of a DBS check or from an employee or a potential employee) and shall confirm to the Commissioner(s), when asked to do so, that the DBS checks are satisfactory.
- 22.8. If an incident or concern is referred to the Commissioner(s) relating to a member of the Service Provider's Staff, the Commissioner(s) shall notify the Service Provider and the Commissioner(s)' Safeguarding Co-ordinator so that the incident or concern can be dealt with within that process or shall convene a Review of Service meeting.

23. SAFEGUARDING

- 23.1. The Service Provider is required to ensure that the Person to whom the Service is delivered under this Contract is protected from abuse. All agencies and bodies, both statutory and independent caring for children and adults at risk, are responsible for making sure the requirements of Part 7 of the Social Service & Wellbeing (Wales) Act 2014 are met, ensuring that all their Staff are aware of the definition of children and adults at risk and what constitutes abuse.
- 23.2. The Service 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 suspect someone is being abused or at risk of abuse.
- 23.3. The Service Provider must have a policy in compliance with the Commissioner(s)'s Safeguarding Policy which states how it will meet all its legal obligations to protect children and adults at risk from abuse and which acknowledges the duty to report a reasonable cause to suspect that any Person is being, has been or is at risk of abuse to the Safeguarding Team. The Service Provider must include protecting children and adults at risk from verbal, physical, psychological, financial and sexual abuse and state the Service Provider's commitment to preventing such incidents, and that any allegations will be treated very seriously. The policy must have a statement that the Service Provider will comply with the Social Service & Wellbeing (Wales) Act 2014 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.
- 23.4. The Service Provider shall ensure their recruitment and selection procedures for paid Staff and volunteers are robust and safeguard children and adults at risk from those who may exploit, harm or abuse them.

- 23.5. The Service Provider must ensure that all Staff (and volunteers):
- i. have safeguarding training which must be recorded in the Staff personal file
 - ii. their Staff are able to demonstrate their understanding on what constitutes abuse, what types of abuse are considered, what are the indicators and where to go for advice;
 - iii. know how to report concerns appropriately utilising the referral forms set out in (North Wales Adults Safeguarding Report) and Schedules 7 & 8 (Referral to Social Services Children and Family Services - Inter Agency Referral Form);
 - iv. have a clear understanding of the roles and responsibilities of the Relevant Partners to protect children and adults at risk;
- 23.6. The Commissioner(s) shall notify the Service Provider of any relevant referrals received wherever appropriate.
- 23.7. The Service Provider shall co-operate in any safeguarding investigation and shall assist in any reasonable requests for information that relates to the allegation and / or the investigation.
- 23.8. The Service Provider's policies, procedures in relation to safeguarding shall be compliant with the policies and procedures of the North Wales Safeguarding Board published through the web link at www.northwalessafeguardingboard.wales.

24. **CONFLICT OF INTEREST**

- 24.1. The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Commissioner(s)) there is or may be conflict or potential conflict between the personal interests of the Service Provider or Staff and the duties owed to the Commissioner(s).
- 24.2. The Commissioner(s) reserves the right to terminate the Call-Off Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where in the reasonable opinion of the Commissioner(s) there is or may be an actual conflict, or a potential conflict between the personal interests of the Service Provider and the duties owed to the Commissioner(s).

25. **PROHIBITIVE ACTS**

- 25.1. The Commissioner shall be entitled to terminate the Contract and to recover from the Provider the amount of Loss if:-
- 25.1.1 The Provider shall have offered given or agreed to give to any person any gift or consideration of any kind as inducement or reward for doing or having done or forbearing or having forborne to do any action in relation to the obtaining or performance of this Contract or any other Contract with the Commissioner(s), or
- 25.1.2 The Provider shall have offered given or agreed to give to any person any gift or consideration of any kind as inducement or reward for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any contract with the Commissioner(s), or
- 25.1.3 Any of the acts in this clause 25 shall have been done by any person employed by the Provider or acting on his behalf (whether with or without the knowledge of the Provider).

25.2 The Provider shall take all reasonable steps to prevent Fraud by the Provider or its Staff in connection with the receipt of monies from the Commissioner(s). If Fraud is established under this or any other Contract with the Commissioner(s), this will be a Material Breach and the Commissioner(s) may terminate this Contract by written notice to the Provider with immediate effect and may recover the costs reasonably incurred by the Commissioner(s) of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

25.3 The Provider shall put in place and maintain appropriate anti-fraud arrangements and must notify the Commissioner(s) immediately if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur.

25.4 The Provider shall not be a Party to a Cartel and if the Commissioner(s) determines (acting reasonably) that the Provider is Party to a Cartel the Commissioner(s) shall notify the incident to the Office of Fair Trading.

25.5 If the Provider is a Party to a Cartel this will be a Material Breach and the Commissioner(s) may terminate this Contract by written notice to the Provider with immediate effect and may recover the costs reasonably incurred by the Commissioner(s) The Commissioner shall be entitled to terminate the Contract and to recover from the Provider the amount of Loss if:-

25.6 The Provider warrants that in entering this Contract it is not Party to a Cartel.

25.7 The Provider shall take all reasonable steps to prevent bribery and corruption by the Provider or its Staff and failure to comply with this Clause 25.7 shall be a Material Breach of Contract and the Commissioner(s) may terminate this Contract by written notice to the Provider with immediate effect and may recover the costs reasonably incurred by the Commissioner(s) of making alternative arrangements for the Services for the remainder of the term of this Contract, if the Provider shall have committed a Prohibited Act.

25.8 The Provider shall put in place and maintain appropriate anti-bribery and anti-corruption arrangements.

25.9 The Provider shall notify the Commissioner(s) immediately if it has reason to suspect that any bribery or corruption has occurred, is occurring, or is likely to occur.

25.10 The Provider warrants that in entering this Contract, bribery or corruption within its business has not occurred.

25.11 Any notice of termination under this clause 25 shall specify:

- i) the nature of the Prohibited Act;
- ii) the identity of the Party whom the Commissioner(s) believes has committed the Prohibited Act; and
- iii) the date on which this Contract will terminate.

26. **DISCRIMINATION**

26.1. The Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).

26.2. The Service Provider shall take all reasonable steps to secure the observance of Clause 26 by all servants, employees or agents of the Service Provider and all suppliers and sub-contractors employed in the execution of the Contract.

27. **WHISTLEBLOWING**

27.1. Under the Public Interest Disclosure Act 1998, members of Staff who speak out against corruption and malpractice at work are protected by statute from victimisation and dismissal. The Service Provider's employees, volunteers and board members shall operate within the terms of the Public Interest Disclosure Act 1998 and the NHS (Wales) Whistle Blowing Policy and Procedures.

28. **BUSINESS CONTINUITY**

28.1. The Service Provider shall have a robust Business Continuity Plan in place to ensure that the Service will be maintained in the event of disruption (including but not limited to preventative and mitigating actions in respect of risks such as disruption to premises, information technology systems, adverse weather, unavailability of staff etc) to the Service Provider's operation, however caused.

28.2. Such Business Continuity Plan shall be available to the Commissioner(s) to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Contract Period.

28.3. If requested and at no cost to the Commissioner(s) the Service Provider shall provide copies of the Business Continuity Plan to the Commissioner(s) and update such plans to the Commissioner(s) reasonable satisfaction.

28.4. The Service Provider's Business Continuity Plan shall set out how the Service Provider would continue to provide Services in the event of an emergency, including:

- Defining and prioritising the critical functions of the business
- Analysing the emergency risks to the business e.g. financial crisis, adverse weather, epidemics, energy/fuel shortages, loss/damage of records due to fire/flood
- Detailing preventative measures and planned response to the emergency
- Identifying key contacts during an emergency.

29. **PREMISES**

29.1. Any premises made available from time to time by the Commissioner(s) to the Service Provider in connection with the Contract shall be made available to the Service Provider solely for the purpose of performing its obligations under the Contract.

29.2. The Service Provider shall limit access to the Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Service Provider shall co-operate (and ensure its Staff shall co-operate) with such other individuals working concurrently on such Premises as the Commissioner(s) may reasonably request.

29.3. The Service Provider and 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 Commissioner(s) and the Service Provider shall pay for the cost of making good any damage to the fabric of the buildings, plant, fixed equipment or fittings therein caused by the negligent act or omission of its Staff.

30. **ENVIRONMENTAL REQUIREMENTS**

30.1. The Service Provider shall perform its obligations under the Contract in accordance with the Commissioner(s)' environmental policy (as provided to the Service Provider

form time to time) which is to conserve energy, water, wood, paper and other resources, reduce waste and carbon emissions.

31. **SOCIAL VALUE/COMMUNITY BENEFITS**

31.1. The Provider shall co-operate with Commissioner(s) in relation to the economic, social and environmental well-being of their area and shall accordingly notify the Purchaser of any best practice ideas which may improve the same.

31.2. The Provider acknowledges that, under the Well-being of Future Generations (Wales) Act 2015 the Purchaser is required to consider improvement of the economic, social and environmental well-being of the area.

31.3. The Provider shall ensure that, in providing the Service, it supports the Commissioner(s) improving the economic, social and environmental well-being of the North Wales region.

32. **HEALTH AND SAFETY**

32.1. The Service Provider shall at all times comply with the requirements of the Health and Safety at Work, etc. Act 1974 and of any other Acts, Regulations or Order pertaining to the Health and Safety of employees.

32.2. The Service Provider shall have in place a general statement of safety policy where applicable and shall nominate a person to be responsible for Health and Safety matters.

32.3. The Service Provider shall promptly notify the Commissioner(s) of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

32.4. The Service Provider shall ensure that its health and Safety Policy Statement (as required by the Health and Safety at Work Act 1974) and any other such information in relation to the Service Provider's Health and Safety obligations as may be required by the Commissioner is made available to the Commissioner(s) on request.

32.5. The Service Provider shall comply with any relevant policies of the Commissioner(s) relating to this clause 32.

33. **CONFIDENTIALITY**

33.1. The Service Provider will at all times maintain the integrity and confidentiality of all information relating to the Person held or known and any other information that the Commissioner(s) may from time to time determine.

33.2. The Service Provider shall not use any Confidential Information it receives from the Commissioner(s) otherwise than for the purposes of this Contract.

33.3. The Service Provider shall immediately notify the Commissioner(s) of any breach of security in relation to Confidential Information and all data obtained in the performance of this Contract and will keep a record of such breaches. The Service Provider will co-operate with the Commissioner(s) in any investigation that the Commissioner(s) considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

33.4. In the event that the Service Provider fails to comply with this Clause 33, the Purchaser reserves the right to terminate this Contract by written notice with immediate effect.

34. **SECURITY OF CONFIDENTIAL INFORMATION**

- 34.1. In order to ensure that no unauthorised individuals gain access to any Confidential Information or any data obtained in the supply of the Service under the Contract, the Service Provider undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best industry practice.
- 34.2. The Service Provider shall immediately notify the Commissioner(s) of any breach of security in relation to Confidential Information and all data obtained in the performance of this Contract and will keep a record of such breaches. The Provider will co-operate with the Commissioner(s) in any investigation that the Commissioner(s) considers necessary to undertake as a result of any breach of security in relation to Confidential Information.
- 34.3. The Service Provider shall, at its own expense, alter any security systems at any time during the Contract Period at the Commissioner's request if the Commissioner(s) reasonably believes that the Service Provider has failed to comply with clause 33 (Confidentiality) and 35 (Data Protection).
- 34.4. The Commissioner(s) may require the Service Provider to alter or update any security systems at any time during the Contract Period.

35. **DATA PROTECTION**

- 35.1 For the purposes of this Contract the Provider shall be the Data Processor and the Commissioner(s) shall be the Data Controller.
- 35.2 The Provider shall (and shall ensure that any Sub-Contractor or third party shall) comply at all times with the DPA and their obligations as a Data Processor in respect of Personal Data belonging to the Data Controller and shall not perform its obligations under this Contract in any such way as to cause the Council to breach its obligations under the DPA. The Council shall be the Data Controller of the Personal Data and the Provider shall be the Processor of the Personal Data.
- 35.3 Each Party shall ensure that it and its representatives comply in all respects with the DPA and any other relevant Data Protection Legislation in relation to all information made available to it under this Contract by the other Party or arising through the delivery of the Service.
- 35.4 If Personal Data shall be shared between the Provider and any Sub-Contractor or third party under this Contract the Provider shall ensure the Sub-Contractor or third shall comply with this Clause 35.
- 35.5 Upon expiry or termination of this Contract the Provider shall at no cost to the Commissioner(s) ensure that Personal Data is transferred back to the Commissioner(s) or provided to a third party (as directed by the Commissioner(s)) unless the Provider shall be obliged by Law to retain the Personal Data.
- 35.6 Upon expiry or termination of this Contract any Personal Data that remains on the Provider's (or any Sub-Contractor's) computer systems shall be cleaned from the computer systems in accordance with industry practice relating to Certified Data Wiping.
- 35.7 Without prejudice to the generality of this Clause and for the avoidance of doubt it is hereby specifically provided that the Provider shall fully, promptly and effectively indemnify and keep so indemnified the Commissioner(s), its servants and agents from and against all and any actions, charges, claims, reasonable costs, damages, demands, reasonable expenses (including legal and administrative expenses), liabilities, direct Losses and proceedings whatsoever arising from its failure to comply this Clause.

- 35.8 If a notice is required to be given between the Data Controller or the Data Processor the notice shall be in writing and shall be delivered personally, or sent by pre-paid first class post, or by recorded delivery, or by commercial courier, to each Party required to receive a notice under the DPA at its address as set out above.
- 35.9 Any notice that complies with this Clause shall be deemed to have been received by the addressee:
- i) if delivered personally, when left at the address referred to above; or
 - ii) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
 - iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 35.10 For the avoidance of doubt no notice under this Clause 35 shall be accepted by fax or e-mail.
- 35.11 The Provider shall (and shall ensure that any Sub-Contractor shall):
- i) process Personal Data only to the extent, and in such manner as is necessary for the delivery of the Service, by Law, or by any Regulatory Body and the Provider shall inform the Commissioner(s) if it considers that any of the Commissioner(s) instructions infringe the Data Protection Legislation;
 - ii) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - iii) process the Personal Data only in accordance with Schedule 9 , unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Commissioner(s) before processing the Personal Data unless prohibited by Law
 - iv) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, damage, destruction, alteration or disclosure;
 - v) take reasonable steps to ensure the reliability of any of its Staff who have access to the Personal Data and that its Staff shall not process Personal Data except in accordance with this Agreement (and in particular Schedule 9);
 - vi) ensure that its Staff (unless they have appropriate authority) shall not have access to the Personal Data and enter into appropriate confidentiality undertakings with the Provider or Sub-Contractor ;
 - vii) obtain prior written consent from the Commissioner(s) to transfer Personal Data to any Sub-Contractor or affiliates for the delivery of the Service;
 - viii) ensure that Staff required to access the Personal Data shall be informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 35 and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Commissioner(s) or as otherwise permitted by this Contract; ;
 - ix) ensure that Staff shall receive an adequate level of training in data protection and in the use, care, protection and handling of Personal Data;
 - x) ensure that none of its Staff shall publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council;
 - xi) notify the Commissioner(s) within twenty-four [24] hours if it becomes aware of a breach or alleged breach of the DPA;
 - xii) provide the Commissioner(s) with full co-operation and assistance in relation to investigating breaches of the DPA, (to include inspection of premises and security arrangements if requested);
 - xiii) notify the Commissioner(s) within five [5] Working Days, if it receives:

- a) a request from a Data Subject or a third party to have access to a person's Personal Data; or
 - b) a complaint or a request relating to the Commissioner(s) obligations under the DPA.
- xiv) at the written direction of the Commissioner(s), delete or return Personal Data (and any copies of it) to the Commissioner(s) on termination of the Contract unless the Provider is required by Law to retain the Personal Data.

35.12 The Provider shall (and shall ensure that any Sub-Contractor shall) provide the Commissioner(s) with full co-operation and assistance in respect of any complaint or request made, including

- i) providing the Commissioner(s) with full details of the complaint or request;
- ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Commissioner(s) instructions;
- iii) providing the Commissioner(s) with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Commissioner(s)); and
- iv) providing the Commissioner(s) with any other information requested by the Commissioner(s) in respect of the complaint or request.

35.13 The Provider shall not transfer Personal Data outside of the EU unless the prior written consent of the Commissioner(s) has been obtained and the following conditions are fulfilled:

- (i) the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Commissioner(s);
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Commissioner(s) in meeting its obligations); and
- (iv) the Provider complies with any reasonable instructions notified to it in advance by the Commissioner(s) with respect to the processing of the Personal Data;

35.14 Subject to clause 35.16, the Provider shall notify the Commissioner(s) immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

35.15 The Provider shall (and shall ensure that any Sub-Contractor shall) permit the Commissioner(s) or al representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit its data processing activities and comply with all reasonable requests or directions by the Commissioner(s) to enable the Commissioner(s) to verify that the Provider (or Sub-Contractor) is in full compliance with its obligations under the DPA.

35.16 The Provider's obligation to notify under clause 35.14 shall include the provision of further information to the Commissioner(s) in phases, as details become available.

35.17 The Provider shall provide all reasonable assistance to the Commissioner(s) in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may include:

- (i) a systematic description of the envisaged processing operations and the purpose of the processing;
- (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (ii) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (iii) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

35.18 Taking into account the nature of the processing, the Provider shall provide the Commissioner(s) with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made by a Data Subject (and insofar as possible) within the timescales reasonably required by the Commissioner(s) including by promptly providing:

- (a) the Commissioner(s) with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Commissioner(s) to enable the Commissioner(s) to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Commissioner(s), at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Commissioner(s) following any Data Loss Event;
- (e) assistance as requested by the Commissioner(s) with respect to any request from the Information Commissioner's Office, or any consultation by the Commissioner(s) with the Information Commissioner's Office.

35.19 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 35 provided that this requirement does not apply where the Provider employs fewer than 250 staff, unless:

- (a) the Commissioner(s) determines that the processing is not occasional; or
- (b) the Commissioner(s) determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Commissioner(s) determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

35.20 The Provider shall designate a data protection officer if required by the Data Protection Legislation.

35.21 Before allowing any Sub-Contractor to process any Personal Data related to this Contract, the Provider shall:

- (a) notify the Commissioner(s) in writing of the intended Sub-Contractor and processing;
- (b) obtain the written consent of the Commissioner(s);
- (c) enter into a written agreement with the Sub-Contractor which shall give effect to the terms set out in this Clause 35 such that they apply to the Sub-Contractor; and
- (d) provide the Commissioner(s) with such information regarding the Sub-Contractor as the Commissioner(s) may reasonably require.

35.22 The Provider shall remain fully liable for all acts or omissions of any Sub-Contractor.

35.23 The Provider may, at any time on not less than 30 Working Days' notice, revise this Clause 35 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

35.24 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Commissioner(s) may on not less than 30 Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

35.35 Failure by the Provider to comply with its obligations under this Clause 35 may be regarded as a Material Breach of this Contract.

36. **INFORMATION SHARING**

36.1. The Service Provider agrees that the Commissioner(s) may in its absolute discretion, acting reasonably, disclose to other public authorities any proper and genuine concerns regarding any provision of the Service provided under this Contract, where it is necessary to do so, whilst at all times in making any disclosure, no commercially sensitive information of the Service Provider or Personal Data of any Person shall be communicated.

37. **FREEDOM OF INFORMATION (FOI)**

37.1. The Service Provider acknowledges that the Commissioner(s) is or may be subject to the Freedom of Information Act 2000 (FOIA) and may be required to disclose information about the contract to ensure the compliance of the Authority with the FOIA.

37.2. The Provider shall:

- i) provide all necessary assistance and cooperation as reasonably requested by the Commissioner(s) to enable the Commissioner(s) to comply with its obligations under the FOIA.
- ii) transfer to the Commissioner(s) all requests for information relating to this Agreement that it receives as soon as practicable and in any event within two (2) working days of receipt.
- iii) Provide the Commissioner(s) with a copy of all information belonging to the Commissioner(s) requested in the request for information which is in its possession or control in the form that the Commissioner(s) requires within five (5) working days (or such other period as the Commissioner(s) may reasonably specify) of the Commissioner(s)' request for such information; and
- iv) not respond directly to a request for information unless authorised in writing to so by the Commissioner(s).

37.3. The Provider notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to time.

The Provider will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Provider from time to time) to the extent that they apply to the Provider's performance under the contract.

37.4. The Provider acknowledges that the Commissioner(s) may be required under the FOIA to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Service Provider. The Commissioner(s) shall take reasonable steps to notify the Service Provider of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but the Commissioner(s) shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA.

37.5. The Service Provider acknowledges that the decision on whether any exemption applies as to a request for disclosure of recorded information is a decision solely for the Commissioner(s). Where the Commissioner(s) is managing a request as referred to in this clause, the Provider shall co-operate with the Commissioner(s) if it so

requests and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

- 37.6. The Service Provider shall ensure that it and any of its representatives notify the Commissioner(s) in writing of requests for information under the Information Laws relating to this Agreement, that it receives as soon as practicable.

38. **PUBLICITY, MEDIA, OFFICIAL ENQUIRIES AND THE OMBUDSMAN**

- 38.1. Without prejudice to the Commissioner(s)'s obligations under the FOIA, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the prior written consent of the other Party. Such consent shall not be unreasonably withheld or delayed.

- 38.2. The Service Provider shall not use business logos or publicise the logos of the Commissioner(s) either in print or electronically without the prior written consent of the Commissioner(s). Such consent not to be unreasonably withheld or delayed.

- 38.3. The Commissioner(s) shall be entitled to publicise this Contract in accordance with any legal obligation on the Commissioner(s), including any examination of this Contract by the Auditors and the provisions of the FOIA or otherwise.

- 38.4. The Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 38 by all their servants, employees, agents, professional advisors and consultants.

- 38.5. 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.

- 38.6. The Service Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Commissioner(s) or bring the Commissioner(s) into disrepute.

38.7. **OMBUDSMAN**

- 38.8. The Commissioner(s) is under a legal obligation by virtue of the Local Government Acts to observe the rights and powers of the Local Government Ombudsman who can require the provision of information and production of documents for the purpose of carrying out investigations into relevant matters that may have been referred to him for adjudication when maladministration has been alleged against the Service Provider.

- 38.9. The Service Provider shall make available any documentation or allow to be interviewed any of its Staff and at all times assist the Ombudsman or his Staff and shall co-operate with any enquiries that are requested by the Ombudsman or his Staff in investigating any complaint.

- 38.10. Upon determination of any case by the Ombudsman in which the Service Provider has been involved or been implicated the Commissioner(s) shall forward copies of those determinations to the Provider for the Service Provider's comments before reporting the details to the Commissioner(s)'s executive. Should the Ombudsman make recommendations in his report that compensation should be paid for maladministration and this either expressly or by implication has been due wholly or in part to the failure of the Service Provider in not complying with the provisions of this Contract, the Commissioner(s) may recover such compensation in full from the Service Provider.

- 38.11. The Provider shall comply with all recommendations made by the Ombudsman as they may affect or be relevant to the Service Provider.

39. **RECORDS AND AUDIT ACCESS**

- 39.1. The Service Provider shall keep and maintain until six 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 Service provided under it, the Contracts entered into with the Commissioner(s) and the amounts paid by the Commissioner(s).
- 39.2. The Service Provider shall keep the records and accounts referred to in clause 39.1 above in accordance with good accountancy practice and shall include a full and accurate record of all monies expended by the Service Provider in observing and fulfilling the Service Provider's obligations under the Contract.
- 39.3. The Service Provider shall on request afford the Commissioner(s) or the Commissioner's Authorised Representative and/or the Auditor such access to such records and accounts as may be required by the Commissioner(s) from time to time.
- 39.4. The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) during the Contract Period and for a period of six years after the expiry of the Contract Period to the Commissioner(s) and the Auditor.
- 39.5. Subject to the Commissioner's rights of confidentiality, the Service Provider shall on request provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- a) all information requested by the Commissioner(s) within the scope of the audit;
 - b) reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Service; and
 - c) access to the Service Provider's Staff.
- 39.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 39, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Commissioner(s) for the Commissioner's reasonable costs incurred in relation to the audit.

40. **MONITORING**

- 40.1. The Service provided under this Contract will be subject to continuous review and monitoring and the Commissioner(s) may carry out any reviews required of the Service provided under this Contract.
- 40.2. The Service Provider shall, at all times, co-operate with the Commissioner(s) processes for monitoring arrangements in whatever way as is reasonably requested by the Commissioner(s) including but not limited to, access to premises, Staff and records in line with Data Protection Legislation.
- 40.3. The Commissioner(s) may monitor, inspect and examine the work or Service being carried out by the Service Provider without notice at any time. The Service Provider shall give all such assistance as the Commissioner(s) may reasonably require for such monitoring.
- 40.4. Commissioner(s) or any individuals nominated by the Commissioner(s) shall be entitled to ascertain by whatever lawful means considered appropriate whether the Service Provider has performed the Service in accordance with the Contract and the Service Provider shall provide access to all information required by the Commissioner(s) relating to the provision of the Service under this Contract.

- 40.5. The Service Provider may be required to rectify any deficiencies in Service and bring it to the required standard in a time specified by the Commissioner's Nominated Officer.
- 40.6. The Commissioner(s) any individuals nominated by the Commissioner(s) will require access to all information relating to the provision of the Service 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 Service Provider shall make available the information required by the Commissioner(s) relating to the provision of the Service under this Contract.
- 40.7. The Service Provider shall conduct an annual individual satisfaction questionnaire (administered in accessible formats) to ensure that the Person accessing the service is afforded opportunities to exercise their formal right to comment on the manner in which the Service is provided. The Service Provider shall facilitate access to advocacy services where required. Comments and feedback on the Service provided should be made available to the Commissioner(s) upon request.
- 40.8. The Service Provider shall provide any information required by the Commissioner(s) from time to time to inform workforce planning on a local, regional or national basis.
- 40.9. The Commissioner(s) reserves the right to arrange meetings with the Service Provider at its discretion to discuss the performance of the Service under this Contract.
- 40.10. For avoidance of doubt, the Commissioner(s) shall also monitor the quality of the Service by various methods including:
- i. Feedback from Person receiving the Service, their relatives or advocate through satisfaction questionnaires, sampling etc.
 - ii. Feedback from Care Co-ordinators, Health Board Nurse Reviews and other relevant Staff on the standard of Service provided
 - iii. An examination of written records, reports or logs which the Service Provider is required to provide
 - iv. The review of the Integrated Care and Support Plan, Service Delivery Plan and progress against the individual Person's outcomes and relevant care planning documentation
 - v. Contract reviews
 - vi. Care Co-ordinator's reviews
 - vii. Inspection reports issued by the CIW/CQC
 - viii. Review of policies and procedures held by the Service Provider including dates when these were updated
 - ix. The Service Provider must be able to demonstrate evidence of business continuity planning
 - x. Review copies of procedures and forms e.g. specimen supervision form used by the Service Provider

41. **REMEDIES FOR INADEQUATE PERFORMANCE**

- 41.1. Where in the reasonable opinion of the Commissioner(s):
- i. the standard of Service is not in accordance with the terms of the Contract;
 - ii. the manner in which any Service has been performed is not in accordance with the terms of the Contract;
 - iii. the procedures used by the Service Provider in the delivery of the Service is not in accordance with the terms of the Contract; or
 - iv. it has concerns about any other matter connected with the performance of the Service Provider's obligations under the Contract, **or the Service Provider no longer has the required registration for the provision of the Service; or**

- vi the Service Provider no longer has the required insurance for the provision of the Service; or
 - vii. the Service Provider shall have or is likely to commit a Material Breach of the Contract; or
 - viii. there shall be any other circumstance(s) which appear to the Commissioner(s) to affect the Service Provider's ability to perform the Contract
- the provisions of clause 41.2 shall apply.

41.2. The Commissioner(s) may, without prejudice to its right under clause 58 (Resolution of Dispute) or under clause 52 (Termination for Default), pursuant to the provisions of clause 41.1 above, do any of the following:

- i. without terminating the Contract, itself supply or procure the supply of all or part of the Service until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Commissioner(s) that the Service Provider will once more be able to supply all or such part of the Service in accordance with the Contract;
- ii. without terminating the whole of the Contract, terminate the Contract in respect of part of the Service only (whereupon a corresponding reduction in the Service Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Service; or
- iii. charge the Service Provider (and the Service Provider shall pay any costs reasonably incurred by the Commissioner(s) including administration costs) in respect of the supply of any part of the Service by the Commissioner(s) or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Service and provided that the Commissioner(s) uses its reasonable endeavours to mitigate any additional expenditure in obtaining a replacement Service; or
- vi. instruct the Service Provider to remedy the failure and the Service 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 Commissioner(s) instructions or such other period of time as the Commissioner(s) may direct.

41.3. The Commissioner(s) may terminate the Contract if:

- i) the Service Provider fails to comply with clause 41.2 and the failure is materially adverse to the interests of the Commissioner(s) or prevents the Commissioner(s) from discharging a statutory duty; **the Service Provider shall be in Material Breach of Contract**

the Commissioner(s) may terminate the Service under this Contract with immediate effect by giving the Service Provider notice in writing.

41.4. In the event of inadequate performance, the Commissioner(s) may without terminating the Call-Off Contract, dependent on the circumstances, suspend the Service, for a specified reason for a specific period of time as agreed with the Service Provider in writing until the Service Provider demonstrates to the reasonable satisfaction of the Commissioner(s) that it is able to and will provide the suspended Service to the required standard.

41.4.1. During the period of suspension, the Parties shall use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to the Person as a result of the suspension of the Service and the Service Provider shall comply with any instructions given to it by the Commissioner(s) in this regard .

42. **RIGHTS AND REMEDIES**

42.1. 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.

43. **TRANSFER AND SUBCONTRACTING**

43.1. The Service Provider shall not subcontract, assign, novate, or otherwise dispose of this Contract or any part of it without prior consent of the Commissioner(s) acting in its absolute discretion. Neither may the Service Provider sub-contract the whole or any part of its obligations under this Contract except with the express prior written consent of the Commissioner(s). Subcontracting any part of the Contract shall not relieve the Service Provider of any of its obligations or duties under the Contract.

43.2. Where the Commissioner(s) consented for the Service Provider to sub-contract any part of the Service, the Service Provider shall submit to the Commissioner(s) the governance arrangement between the Service Provider and the Sub-contractor. Every act or omission of the sub-contractor shall, for the purposes of the Contract shall be deemed to be the act or omission of the Service Provider and the Service Provider shall be liable to the Commissioner(s) thereafter as if such act or omission had been committed or omitted by the Service Provider itself.

43.3. This Contract shall be binding on the Commissioner(s) including its successors and assignees and subject to clause 43.1 on the Service Provider and the Service Provider's successors and permitted assignees.

44. **WAIVER**

44.1. 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.

44.2. 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.

44.3. 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.

45. **VARIATION TO THE CALL-OFF CONTRACT**

45.1. In accordance with clause 13.7 above and the variation to the service procedures set out in Schedule 6 to this Contract, either the Commissioner(s) or the Service Provider may request a Review of the Contract which may result in a variation to the Contract. The request must be made in writing and the Review must be held as soon as practically possible.

46. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

46.1. Except as expressly provided elsewhere in this Contract, only a person who is a Party to this Contract 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.

47. **SEVERANCE**

47.1. 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.

47.2. 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.

48. **LIABILITY**

48.1. The Service Provider shall be liable for, and shall indemnify in full the Commissioner(s), its employees, servants or agents from and against all liability arising from:

- i. Death of, or personal injury, to any person;
- ii. Breach of a statutory duty performed on behalf of the Commissioner(s) or an obligation arising under this Contract;
- iii. Loss of, or damage to any property

in respect of any claim, action, proceedings, damages, costs, demands, expenses and charges (including all legal expenses) and any other liabilities whatsoever howsoever arising out of, or in connection with this Contract arising as a result of the negligent act or omission of the Service Provider.

48.2. The Commissioner(s) shall be liable for, and shall indemnify in full the Service Provider, its employees, servants or agents from and against all liability arising from:

- i. Death of, or personal injury, to any person;
- ii. Breach of a statutory duty or obligation arising under this Contract;
- iii. Loss of, or damage to any property;

in respect of any claim, action, proceedings, damages, costs, demands, expenses and charges (including all legal expenses) and any other liabilities whatsoever arising out of, or in connection with this Contract arising as a result of the negligent act or omission of the Commissioner(s).

49. **INSURANCE**

49.1. The Service Provider shall hold and maintain insurance policies (evidence of such policies to be provided to the Commissioner(s) to include:

- i. Employer's liability (a minimum of £10m in respect of any one claim);
- ii. Public liability (a minimum of £10m in respect of any one claim);
- iii. Medical malpractice cover or equivalent (a minimum of £10m in respect of any one claim)

49.2. The Service Provider shall ensure that all Staff maintain appropriate insurance policies in respect of motor vehicles used in the course of their employment. Evidence of such policies shall be provided to the Commissioner(s) upon request. All vehicles used in the provision of the Service either owned, leased or hired by the Service Provider, or an employee of the Service Provider, must include business use cover.

49.3. The Service Provider shall ensure, through annual inspection of insurance and MOT certificates, that any vehicles used by employees in the course of their employment are in a roadworthy condition. The Service Provider shall have processes in place to ensure Staff with driving duties and responsibilities maintain a current and updated driving licence as required.

- 49.4. Where the Service Provider's employees or agents use the vehicle of the Person supported under this Contract, the Service Provider shall ensure that its employees or agents are insured to drive such vehicles and shall request copies of the insurance documentation. In these circumstances it is expected that the Person has a fully comprehensive policy that covers any driver. In addition, such use shall be wholly and exclusively for the purposes of the Person receiving the Service, not to enable any employee or agent of the Service Provider to benefit from the availability of such vehicle. The Service Provider shall inform the Commissioner(s) of any such misuse, and the employee shall be disciplined appropriately.
- 49.5. In the event of any accident occurring whilst using the vehicle of the Person supported under this Contract, any excess payable on the Person's policy shall be payable by the Service Provider.
- 49.6. The Service Provider shall produce such evidence as the Commissioner(s) may reasonably require that all insurances referred to herein have been taken out and are in force at all times.

50. **WARRANTIES AND REPRESENTATION**

- 50.1. The Service Provider warrants and represents that:
- 50.2. The Service Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that is executed by a duly authorised representative of the Service Provider as further set out in the Agreement
- 50.3. The Service Provider shall discharge its obligations hereunder with all due skill, care and diligence and (without limiting the generality of this Clause 50) in accordance with its own established internal procedures;

51. **TERMINATION ON INSOLVENCY**

- 51.1. Without affecting any other right or remedy available to it, the Commissioner(s) may terminate this Contract with immediate effect by giving written notice to the Service Provider if:
- i. the Service 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;
 - ii. the Service 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;
 - iii. 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 Service Provider;
 - iv. 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 Service Provider (being a company);
 - v. the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;

- vi. a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- vii. the Service Provider (being an individual) is the subject of a bankruptcy petition or order;
- viii. a creditor or encumbrancer of the Service 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;
- ix. any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 51i to 51viii (inclusive); or
- x. the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- xi. any warranty given by the other party in clause 50 (Warranties and Representations) of this Contract is found to be untrue or misleading.

52. **TERMINATION ON DEFAULT**

52.1. Without prejudice to any other provision in the Contract the Commissioner(s) may terminate the Call –off Contract by giving written notice to the Service Provider with immediate effect if the Service Provider commits a Material Breach of the Contract and if:

- 52.2.
- i. the Service Provider has not remedied the Material Breach of the Contract to the satisfaction of the Commissioner(s) within 20 Business Working Days (excluding Saturday, Sunday and bank holidays), or such other period as may be specified by the Commissioner(s), 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 opinion of the Commissioner(s), capable of remedy.

52.3. For the purposes of clause 52, **Material Breach** means a breach (including an anticipatory breach) that is not minimal or trivial in its consequences to the Commissioner(s). In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

52.4. The Commissioner(s) may terminate the Call- Off Contract by giving written notice to the Service Provider with immediate effect if the Service Provider breaches any of the terms of this Contract in such a manner as to reasonably justify in the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract.

52.5 The Commissioner(s) may terminate this Contract without notice and recover any resulting financial loss from the Service Provider in the following circumstances:

- i. If the Service Provider or a member of Staff engages in any conduct which, in the opinion of the Commissioner(s), is prejudicial whether by positive action or neglect or to the detriment of the welfare of the Person receiving the Service. Such action will include fraud and theft from the Person, neglect or inappropriate care, cruelty and assault including verbal abuse; or
- ii. If the Commissioner(s) is satisfied that the Service Provider has committed a breach of the Contract or has consistently failed to perform the terms, conditions and obligations imposed by this Contract; or
- iii. If the Service 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 Commissioner(s); or

- iv. If the Service Provider or a person on the Service Provider's behalf takes unreasonable financial advantage of the relationship with a Person supported under this Contract; or
- v. Upon the Service Provider's Agency ceasing for whatever reason to be registered pursuant to the Care Standards Act 2000, Regulation and Inspection of Social Care (Wales) Act 2016 or any statutory modification or re-enactment thereof; or
- vi. If the Service Provider shall have given any financial inducement or reward to an elected Member or employee of the Commissioner(s) in order to gain unfair advantage under or in connection with this Contract and or has committed any offence under the Prevention of Corruption Acts or Section 117 of the Local Government Act 1972 or the Bribery Act 2010 or the Modern Slavery Act 2015; or
- vii. If the Service Provider has been convicted on an offence under the provisions of the Care Standards Act 2000 / Regulation & Inspection of Social Care (Wales) Act 2016 or other legislation and/or where the offence has caused harm or put at risk of harm the Person supported under this Contract;

53. **TERMINATION OF THE CALL-OFF CONTRACT**

53.1. **Termination following Death**

53.1.1. It is the responsibility of the Service Provider or Care Co-ordinator to inform the other Party in the event of the death of a Person receiving the Service. The following shall apply.

53.1.2. In the event of a termination of the Call off Contract, the notice period as set out in Schedule 6 shall apply.

53.2. **Termination following Notice**

53.2.1. Either Party may terminate a Call-Off Contract by giving a minimum of three months' notice (12 weeks). Notwithstanding the Parties may agree to a longer termination notice in the best interest of the Person receiving the Service.

53.2.2. During the period of notice the Parties shall co-operate to ensure the best interest of the Person receiving the Service is met under whatever new arrangements may be proposed.

53.3. **Fixed termination**

53.3.1. A Contract shall expire automatically where an end date has been indicated on the Contract.

54. **CONSEQUENCE OF TERMINATION**

54.1. Where the Commissioner(s) terminates the Contract under clause 52 (Default) and then makes other arrangements for the provision of Service, the Commissioner(s) may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Commissioner(s) throughout the remainder of the Contract Period.

The Commissioner(s) shall take all reasonable steps to mitigate such additional expenditure. Where the Call-Off Contract is terminated under clause 52 (Default), no further payments shall be payable by the Commissioner(s) to the Service Provider until the Commissioner(s) has established the final cost of making other arrangements.

- 54.2. Except as otherwise expressly provided in the Contract:
- i. 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
 - ii. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Commissioner(s) or the Service Provider.
- 54.3 In the event of termination pursuant to Clause 41 (Inadequate Performance), the Service Provider shall cease to provide the Service to any individual under this Contract from the day following the expiry of the notice period and no payment shall be made by the Commissioner(s) for any services provided from that date.
- 54.4 In the event of termination pursuant to Clause 53 (Termination of the Call-Off Contract), the Service Provider shall cease to provide the Service to any individual from the day following the expiry of the notice period and no payment shall be made by the Commissioner(s) for any services provided from that date.
- 54.5. In the event of termination pursuant to Clause 52 (Termination on Default), the Service Provider shall cease to provide the Service from the day following the expiry of the notice and no payment shall be made by the Commissioner(s) for any services provided from that date.
- 54.6. In the event of a notice of termination being given by the Service Provider to the Commissioner(s) the Service Provider shall continue to provide the Service until Midnight on the day on which the period of notice ends (unless otherwise agreed in writing).

55. **COMPLAINTS & CONCERNS**

- 55.1. The Service Provider will operate a procedure for investigating any complaint made by or on behalf of the Person receiving the Service. The Service Provider will make the Person/the Person's representative(s), family and/or carers aware of how to access this procedure at the commencement of the provision of the Service. The Person/Person's representative shall be informed in writing by the Service 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 Business Working Days of the start of the Service.
- 55.2. Where a complaint is registered and in line with good practice a discussion and/or meeting should take place with the Person/the Person's representative(s) to try and resolve the issues and agree a way forward. Consideration should be given as to whether the Person would benefit from the assistance of an advocate and if this is the case then advice on the advocacy service should be provided by the Service Provider.
- 55.3. All complaints made to the Service Provider by or on behalf of the Person/Person's representative(s) to the Service Provider will be recorded and a copy of any such complaints shall be forwarded to the Commissioner(s) as soon as practically possible. The Service Provider shall set out his response to the complaint in writing to the Commissioner(s) within agreed timescales. Any extension to this timescale must be negotiated and agreed with the Person and/or their family and the Commissioner(s) should be notified of the agreed timescale

- 55.4. All complaints received and dealt with by the Service Provider (including any identified service improvements or lessons learned) will be reviewed to ensure the Service Provider's performance meets the expectations of this Contract.
- 55.5. The Service Provider shall advise the Person/the Person's representative(s) of their rights to access the Commissioner's complaints procedures in the event that they are not satisfied with the way in which the Service Provider has dealt with their complaint.
- 55.6. The Service Provider is defined as a 'Responsible Body' under the 'Putting Things Right' Guidance developed in accordance with the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (<http://www.wales.nhs.uk/sites3/docopen.cfm?orgid=932&id=170588>)
As such, most of these regulations apply to Service Providers who delivery domiciliary care and support funded in full, or in part by an NHS body. This requires the Service Provider to cooperate fully with Health Board commissioners in respect of any complaint or concern received in such cases where the complainant is not satisfied with the local resolution offered by the Service Provider's own complaints or concerns procedures

56. **DISRUPTION**

- 56.1. The Service 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 Commissioner(s), its employees or any other Service Provider employed by the Commissioner(s).
- 56.2. The Service Provider shall immediately inform the Commissioner(s) of any actual or potential industrial action, whether such action be by its own Staff or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 56.3. In the event of industrial action by the Staff, the Service Provider shall seek the Commissioner(s)'s consent to its proposals for the continuance of the supply of the Service in accordance with its obligations under the Contract.
- 56.4. If the Service Provider's proposals referred to in clause 56.3 are considered insufficient or unacceptable by the Commissioner(s) acting reasonably then the Commissioner(s) may:
- i. require the Service Provider to provide alternative proposals; or
 - ii. undertake the Service itself and recover from the Service Provider the additional costs incurred in the process.

Nothing in this clause 56 shall release the Service Provider from the proper performance of its obligations under the Contract.

57. **RECOVERY UPON TERMINATION**

- 57.1. On the termination of the Contract for any reason the Service Provider shall upon request from the Commissioner(s):
- i. promptly provide all information concerning the provision of the Service which may reasonably be requested by the Commissioner(s) for the purposes of adequately understanding the manner in which the Service has been provided or for the purpose of allowing the Commissioner(s) or replacement service provider to conduct due diligence.
 - ii. assist and co-operate with the Commissioner(s) to ensure an orderly transition of the provision of the Service to any replacement service provider

- iii. deliver to the Commissioner(s) all property (including materials, documents, information, access keys etc) provided to the Service Provider.
- iv. provide to the Commissioner(s) all confidential information, personal data in its possessions or under the control of any permitted sub-contractors which was obtained for the provision of the Service.

58. **RESOLUTION OF DISPUTES**

58.1. If a Dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it then the parties shall use their best endeavours to resolve by agreement. Either party may request:

- i. a meeting between representatives within 14 working days of the dispute being raised, and if unresolved;
- ii. a further meeting of senior representatives of the Commissioner(s) and Service Provider within a further 28 Business Working Days. The parties may invite an independent representative.

58.2. Where the Dispute cannot be resolved, a formal mediation facilitated by an independent mediator will be arranged, the costs of which are to be shared equally between all parties, or otherwise by agreement. The mediation will be arranged by the Commissioner(s). The performance of the Contract shall not be suspended, ceased or delayed by the reference of the Dispute to mediation and the Service Provider (and its Staff) shall comply fully with the requirements of the Contract at all times.

58.3 Where a Dispute cannot be resolved under this Clause 58, the Contract may be terminated.

58.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

- i) a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or if the Parties shall be unable to agree upon a Mediator the Parties shall apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;
- ii) the Parties shall, within ten [10] Working Days of the appointment of the Mediator, agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- iii) unless otherwise agreed, all negotiations connected with the Dispute and any settlement or agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- iv) if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- v) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

58.5 if the Parties fail to reach agreement in the structured negotiations within forty [40] Working Days of the Mediator being appointed or such other period as may be

agreed by the Parties, the Dispute may be referred to the courts of England and Wales.

58.6 Nothing in the dispute resolution process shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act where in the opinion of that Party it is necessary to take such action without having followed the procedure in this clause 58.

59. **FORCE MAJEURE**

59.1. In this Contract 'Force Majeure' shall mean any cause preventing either Party from performing any or all of its obligations which arises from or is attributable to acts events omissions or accidents beyond the control of the Parties including, without limitation, act of God, war, riot, civil commotion, fire, flood, storm or other form of natural catastrophe or disaster.

59.2. If either party is prevented or delayed in the performance of any of its obligations under this Contract by reason of Force Majeure, that party shall forthwith or as soon as reasonably practicable thereafter serve notice in writing on the other Party specifying the extent and nature of the disruption caused setting out any mitigation strategy to overcome such event and delay and the period of time within which the Service will be resumed

59.3. The party affected by force majeure shall use all reasonable endeavours to bring the force majeure event to a close or to find a solution by which the Contract may be performed, despite the continuance of the force majeure event.

59.4. If either party is prevented from performance of its obligations for a continuous period in excess of three months the other party may terminate this Contract forthwith by written notice, whereupon all money due under this Contract shall be paid immediately .

59.5. The Commissioner(s) shall pay to the Service Providers all payments for the Services provided which have become due and payable and which are not otherwise disputed.

60. **HUMAN RIGHTS ACT 1998**

60.1. The Service Provider acknowledges that in relation to its obligations under this Contract, it will abide by the provisions of the European Convention of Human Rights and the Human Rights Act 1998 and at all times act in accordance with the said Convention and Act in relation to its obligations.

60.2. The Provider agrees that it will take such action as the Commissioner(s) may reasonably require for the purpose of ensuring compliance with the said Convention and Act.

61. **FRAUD**

61.1. The Service Provider shall safeguard the Commissioner's funding of this Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Provider's directors and suppliers and the Service Provider shall notify the Commissioner(s) immediately where it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

62. **GRATUITIES**

62.1 The Service Provider, his employees, servants or agents shall not solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge for any part of the Service other than charges properly approved by the Commissioner(s) in accordance with the provision of this Contract.

63. **ELECTRONIC BUSINESS SYSTEMS**

63.1. The Service Provider is required to provide secure information management and technology systems that underpin and support the services specified in this Contract, backed up by appropriate policy and procedures.

64. **PROPER LAW & JURISDICTION**

64.1. This Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales. Where there is a conflict between the laws of England and Wales, the laws of Wales shall prevail.

65. **CONTRACT IS TO PREVAIL**

65.1. In the event of any conflict between the provisions of this Contract and the provisions of any other document published or prepared in relation to the procurement of the Service by the Commissioner(s) and the responses of the Service Provider in any procurement exercise or scheme, the provisions of this Contract shall prevail.

66. **SURVIVAL OF TERMS**

66.1. No term shall survive expiry or termination of this Contract except the confidentiality clause.

67. **NOTICES (SERVICE OF NOTICES & DOCUMENTS)**

67.1. Any notice given pursuant to this Contract shall be in writing and shall be sufficiently given to any Party if sent in a letter by first class pre-paid post addressed to that Party at the address of that party set out at the head of this Contract (or any alternative address notified by that Party in accordance with this Clause) and any notice so given shall be deemed unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

68. **CUMULATIVE REMEDIES**

68.1. Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Call-Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

69. **DEFAULT**

69.1. If any Party is in default of their respective obligations under this Contract, the other party shall notify in writing the way in which the Party is in default and if appropriate the matter shall be considered at a meeting of the Parties.

69.2. Where, despite any action taken the Party is still in default, the aggrieved Party may issue a default notice specifying the default and the action to be taken to rectify it. The notice shall state a reasonable period of time within which the required action is to be taken. If the default is not remedied within this period to the reasonable satisfaction of the other party, the aggrieved party shall refer to clause 58 (Resolution of Dispute).

70. **ENTIRE CONTRACT**

70.1. This Contract, the Framework Agreement and the Schedules constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matters of this Contract.

70.2. Each of the parties acknowledges and agrees that in entering into this Contract it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (Whether negligently or innocently made) of any person (whether party to this Contract or not) other than as expressly set out in this Contract.

70.3. Nothing in this sub-clause shall operate or exclude any liability for fraud.

71. **WELSH LANGUAGE**

71.1. The Service Provider shall comply with the Welsh Language (Wales) Measure 2011 and Welsh Language Standards set within Section 4 of the Measure, Schedule 5 of the Welsh Language Commissioner's advice document "Contracting Out Public Services Contracts" and Welsh language policies held by the Commissioner(s) to the extent that the same relate to the provision of the Service.

The Service Provider shall also be expected to comply with the principles and obligations of the Welsh Government Strategic Framework, "More than Just Words", and shall as a minimum:

- i. Ensure the "active offer" is applied at all times in providing Services in order to ensure that linguistic needs are respected;
- ii. Ensure the Services are provided in the preferred language of the Person and his / her family;
- iii. Record the preferred language of the Person and his / her family;
- iv. Keep a record of Staff skills in relation to the Welsh language to ensure the Service Provider can plan the workforce (work rotas etc) to fulfil any need for Welsh language services by the Person;
- v. Commit to improving skills and awareness of Staff in relation to the Welsh language through regular training programmes;

71.2. The Service Provider shall have in place and operate an up to date Welsh Language Policy that will show their commitment to the above legislature and good practice requirements and ensure staff are provided with guidance on how to operate accordingly.

71.3. The Service Provider shall take all reasonable and practicable steps to deliver the Service to the Person in the language medium of the Person's choice. It is acknowledged that languages other than Welsh and English may be the preferred language in some parts of North Wales.

71.4. The Service Provider shall, upon request, provide details of the percentage of bilingual Staff employed and the number of Person who choose Welsh as their preferred language but whose preference could not be accommodated.

71.5. The Commissioner(s) is committed to offering support and guidance to the Service Provider on the planning and provision of bilingual services. They will be able to provide guidance and help to create a Welsh language policy and advice on the relevant standards.

71.6. For the avoidance of doubt, with regards to Welsh language the Service Provider shall comply with the requirements of the Social Services & Wellbeing (Wales) Act 2014 in respect of the provision of the "active offer" in all aspects of the Service. The Service Provider will be required to evidence how they are striving to meet the Welsh language requirements, including within recruitment and training activities, provision of information and service delivery.

CALL OFF CONTRACT TERMS AND CONDITIONS

SCHEDULE 1: DEFINITIONS AND INTERPRETATIONS

Abuse	Defined in Section 197(1) of the Social Services & Wellbeing (Wales); Act means physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place), and “financial abuse” includes— having money or other property stolen; being defrauded; being put under pressure in relation to money or other property; having money or other property misused;
Agreement	The Agreement entered into between the Commissioner(s) and the Service Providers including its Clauses, schedules, appendices and any other documents expressly incorporated.
Assessment	means a written assessment carried out by Commissioner(s) of a Person’s individual eligible care and support needs and the personal wellbeing outcomes set out in the Person’s Care and Support Plan
Assessment review	Process of monitoring the progress of the Care and Support Plan on a systematic basis throughout the Agreement period and in conjunction with the Provider and the Person(s) and their informal Carers or representatives.
Breach of contract	A failure of a party to this Agreement to perform his or her obligations as set out therein.
Business (office) Working Day	Every official working day of the week between and including Monday to Friday, excluding public holidays in Wales.
Call Off	Means the commissioning of Services that may be made by the Commissioner(s) from the Service Providers under the Commissioning and Call Off Procedures as set out in the Agreement .
Care Co-ordinator	The person assigned by the Commissioner(s) to coordinate the care and support and/or any other information, advice or support services provided to a Person(s).
Care and Support Plan	The document which underpins the Service to be provided following the Person’s assessment, outlining how his/her wellbeing outcomes will be met. A specimen copy of the Care and Support Plan is set out in Schedule 4 to the Call Off Contract Terms and Conditions.
Care / Support Worker	The registered Person employed by the Provider to be involved in directly providing the Service, registered with Social Care Wales as and when applicable.
Call	A visit scheduled by the Service Providers to deliver the Service the Service by the Care/Support Worker.
Carer	A person who provides or intends to provide care for an adult or disabled child (excluding paid carers).
Cartel	means any offence under the laws of the United Kingdom creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts or defrauding or attempting to defraud or conspiring to defraud the Commissioner(s);
Certified Data Wiping	means data destruction through a service that can certify that data held on information technology systems (including hard disk drives and/or other digital media) has been wiped.
Code of Practice/ Code of Professional Practice	The Code of Professional Practice for Social Care issued by Social Care Wales setting out the conduct and practice expected of the social care profession in Wales
Confidential Information	Any information which has been designated in writing by either Party as being confidential or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to all personal data and sensitive personal data within the meaning of the DPA and Section 124 of the Police Act 1997 in relation to the business, affairs, properties, assets, trading practices, Service Developments, trade secrets, personnel, Person(s) and suppliers of either Party, and the Commercially Sensitive Information.
Contract or Call-Off Contract	The Contract terms and conditions which becomes effective following authorisation of the Contract.

Contract Period	The period during which the Service shall be provided by the Service Provided and which shall be indicated in the purchase order.
CIW	Care Inspectorate for Wales or such other replacement body authorised in Wales to act in accordance with the Care Standards Act 2000 and Regulation and Inspection of Social Care (Wales) Act 2016
Data Protection Legislation	means the Data Protection Act 2018 (the “DPA”), the General Data Protection Regulation (GDPR) and the Law Enforcement Directive in so far as it relates to the processing of personal data 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.
Data Controller	has the meaning set out in the Data Protection Legislation and for the purpose of this Agreement will mean the Commissioner(s);
Data Loss Event	Means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any breach of the Data Protection Legislation;
Data Processor	has the meaning set out in the Data Protection Legislation and for the purpose of this Contract will mean the Provider and any Sub-Contractor or third party used by the Provider to deliver the Service and with whom they share Personal Data belonging to the Data Controller;
Data Protection Impact Assessment	an assessment by the Council of the impact of the envisaged processing of the protection of Personal Data.
Data Subject	has the meaning set out in the Data Protection Legislation;
Data Subject Access Request	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data.
Dispute	means a dispute, conflict or any other disagreement which exists between the Parties arising out of or in connection with this Contract;
Disclosure & Barring Service (DBS)	Means a Non-Departmental Public Body established under the Protection of Freedoms Act 2012 with the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA)
Equipment	The Provider’s equipment, and materials used in the performance of its obligations under this Agreement.
Fraud	Means any offence under the laws of the United Kingdom creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts or defrauding or attempting to defraud or conspiring to defraud the Commissioner(s);
Freedom of Information Act (FOIA)	The Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679);
Good Industry Standards	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 Board	The Betsi Cadwaladr University Health Board.
Key Personnel	As defined in Clause 3.
Law	Any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, Delegated or subordinate legislation or notice of any Regulatory Body.
Material Breach	A breach (including an anticipatory breach) that is not minimal or trivial in its consequences to the People supported by the service and or the Commissioner(s). In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or

	misunderstanding; however the outcome can lead, if not remedied, to termination of the Agreement.
Multi-Disciplinary Team	A group of health and/or social care workers who are members of different disciplines, each providing specific services to the Person(s).
Mini tender	Shall mean the tender exercise as set out in Schedule 2 [Call-off Award Criteria] to be used to award a Call-Off Contract
Outcomes	Means the impact or end results of the Service on a Person's life and wellbeing
Personal Data	means any data that could potentially identify a specific individual, or can be used to distinguish one person from another and can be used for de-anonymising anonymous data;
Prohibited Act	Means to directly or indirectly offer, promise or give any person working for or engaged by the Commissioner(s) a financial or other advantage to, induce that person to perform improperly a relevant function or activity, or reward that person for improper performance of a relevant function or activity; or, 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 Call-Off Contract; or committing any offence under the Bribery Act 2010, or under legislation creating offences concerning fraudulent acts; or at common law concerning fraudulent acts relating to this Call-Off Contract or any other contract with the Council; or defrauding, attempting to defraud or conspiring to defraud the Council; or where the Provider gives any fee or reward the receipt of which is an offence under Section 117[2] of the Local Government Act 1972; or failure to pay the national minimum wage pursuant to The National Minimum Wage Act 1998 and regulations made thereunder means to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to, induce that person to perform improperly a relevant function or activity, or reward that person for improper performance of a relevant function or activity; or, 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; or committing any offence under the Bribery Act 2010, or under legislation creating offences concerning fraudulent acts; or at common law concerning fraudulent acts relating to this Contract or any other Contract with the Council; or defrauding, attempting to defraud or conspiring to defraud the Council; or where the Provider gives any fee or reward the receipt of which is an offence under Section 117[2] of the Local Government Act 1972; or failure to pay the national minimum wage pursuant to The National Minimum Wage Act 1998 and regulations made thereunder.
Protective Measures	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
Registered Manager	The person registered with the Social Care Wales to manage the domiciliary care service provided by the Provider
Responsible Individual	means an individual who is eligible to be a responsible individual under subsection (2) of the Regulation & Inspection of Social Care (Wales) Act 2016, who the Welsh Ministers are satisfied is a fit and proper person to be a responsible individual (section 9) and designated by a service provider in respect of a place at from or in relation to which the provider provides a regulated service and specified as such in the service providers registration.
Relative	(a) spouse or civil partner, or a person who lives with them as their spouse or civil partner; (b) parent or parent in law; son or daughter; son in law or daughter in law; stepson or stepdaughter; brother or sister; aunt or uncle; grandparent; (c) the spouse or civil partner, or a person who lives with them as if their spouse or civil partner, or any person specified in sub-paragraph
Regulated Service	as defined in Part 1, section 2 of the Regulation & Inspection of Social Care (Wales) Act 2016

Risk Assessment	An assessment by an appropriately trained and qualified person of the potential risks to Person(s) and Staff associated with delivering the Person(s)'s package of care.
Safeguarding	Means protection from abuse harm and neglect, and promoting of children/adults' physical, emotional and mental health, education, training and leisure, contribution to society and social and economic well-being
Safeguarding Co-ordinator	The person assigned to oversee and co-ordinate the process that deals with allegations of abuse and neglect against children and adults at risk
Service Delivery Plan/Provider's Support Plan	A plan written by the Service Providers which specifies how the Person's outcomes are to be met in accordance the Person's Care and Support Plan
Service Providers	Means the Service Providers appointed under the Agreement to provide the Service who shall maintain a valid registration of the Domiciliary Support Agency pursuant to the Regulation & Inspection of Social Care (Wales) Act 2016 or Care Standards Act 2000 where applicable or any statutory modification or re-enactment thereof.
Service Commencement Date	Shall mean the date the Service Provider shall commence delivery of the Service as set out in the purchase order.
Staff	means all persons employed by the Provider (or a Sub-Contractor) used in the performance of the Contract whether employed or not;
Supported Living	Supported Living is defined in clause 2 of the Service Specification.
Social Care Wales (formerly Care Council for Wales & Social Services Improvement Agency)	Assembly sponsored public body implemented from April 2017 under the Regulation & Inspection of Social Care (Wales) Act 2016 who's responsibilities include registration and the regulation of social care workforce in Wales and leading improvements in social care in Wales
Social Services and Well Being (Wales) Act 2014	The legal framework for improving the well-being of people who need care and support, and carers who need support.
Person's Representative	The relative or friend or carer or other (for example solicitor) nominated from time to time by the Person to represent him / her and may include the Person's Attorney or Deputy where the Attorney or Deputy has the authority to make the decisions in question. Where the Person lacks the mental capacity to nominate a Representative, the Parties shall proceed in accordance with the principles of the Mental Capacity Act 2005.
Regulation & Inspection of Social Care (wales) Act 2016	establishes a regulatory regime for care and support services which is consistent with the changes which are being delivered by the Social Services and Well-being Act 2014; defines the meaning of regulated services and standards required of services
Relevant Partners	The partners defined by section 162(4) and section 130(5)(b) of the Social Services and Well Being (Wales) Act.
Service	The Service to be provided in accordance with the terms of the Contract, the Service Specification, Service Conditions and the Person's Care and Support Plan.
Service Location	The place where the Service or any part thereof is to be provided by the Service Provider as specified in the Call-Off Contract or relevant documentation such as the Person's Care and Support Plan.
Significant Carer/ Representative	The individual responsible for the Person(s) or acting on behalf of the Person(s)
Sleep-in	Arrangement between the Commissioner and the Service Providers for Staff to be present generally between 11pm and 7am to support a Person(s) should they need assistance. A sleep-in will normally be considered to include any assistance required with going to bed/rising. Sleep-in Staff are not expected to be awake or woken for long periods during the night. If the Care Worker is woken any time up to a maximum of 2 hours or more than twice during the night, this then becomes a waking night and should be reviewed by the Commissioner(s), unless otherwise specified and agreed.

Staff	All persons employed by the Provider to perform this Contract together with the Provider's employees, agents and sub-contractors used in the performance of this Agreement.
TUPE Regulations	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as may be amended or modified from time to time.
Waking Night	Where the Care/Support Worker is required to be awake during the night to attend to and provide regular / frequent care and support (which may include support to remain safe and/or personal care tasks) throughout the night.

SCHEDULE 2

Policy and Procedures / Relevant Document Assessment Guide

The following information is requested as it will be used to measure that the content of your Policies and procedures meet the minimum requirements required for Providers providing a service for resident in North Wales. Please note you may be required to implement other policies and procedures as legislation or good practice dictates.

To help reduce the length of the monitoring visit, please have the policies and procedures noted below available as a random selection will be made. You may use the checklist below to identify that your Organisation has the following:

POLICY/PROCEDURE	YES	NO	Review Date
Statement of Purpose (content adheres to the requirements as dictated by the Regulation and Inspection of Social Care (Wales) Act 2016)			
Service Delivery Plan			
Service User Guide			
Service User Records			
Business Continuity Plan			
Dignity and Respect Policy			
Infection Prevention & Control Policy			
Welsh Language (Active Offer) Policy			
Risk Assessment Procedures & Blank Risk Assessment form			
Equality and Diversity / Equal Opportunities Policy			
Staff Supervision and Appraisal Policy			
Disciplinary Procedures			
Out of Hours Policy / Procedure			
Lone Working Policy			
Training Plan / Matrix			
Confidentiality Policy			
Moving and Handling Policy			
Health and Safety Policy			
Food and Hygiene Policy			
Recruitment & Selection Policy			
Confidentiality and Data Protection Policy and Procedure			
Complaints Procedure for staff and service users			
Policy or procedure on service user keys and/or key safes			
Procedure for Handling Service User monies			
Whistle blowing policy and procedure			
Positive Approaches to Challenging Behaviour			
Safeguarding of Vulnerable Adults			
Policy on Administration of Medication / Storage of Medication			
Policy on the use of Social Media			
Policy on Receiving Gifts			
Blank Employment Contract			
Missed or late calls policy			
Working Time Regulations (1998) Policy / Opt out clause			
Staff Smoking and Alcohol Policy			
Quality Assurance and Internal Audit Plans / Policy			
Management of Work Related Stress Policy			
Electronic Communications Policy (Code of Practice)			
Staff Sickness , Absence and Time-Keeping Policies			
Staff Hand Book / Policy / Guidance			
Court of Protection Deprivation of Liberty Application (for Supported Living settings)			

SCHEDULE 3 : NOTIFICATION OF ABSENCE/CHANGE OF CIRCUMSTANCE FORM

SPECIMEN COPY

NOTIFICATION OF ABSENCE FORM

(This form is a sample only and may be subject to change by the Purchaser)

The purpose of this generic form (used by both parties) is to notify the Purchaser/Provider of the Service User's planned/unplanned absence from the service location in accordance with the terms and conditions of the North Wales Domiciliary Care Agreement.

Faxed to the: Customer Care Team: 01492 583890 or by email on cco@conwy.gov.uk in respect of Learning Disability, Older People, People with Physical Disability Service Users

Faxed to the: Case Management Team at Roslin (01492 535034), Nant y Glyn (01492 872 295) for mental health services

Basic Information:

Service User's Name:..... Reference Number

Name of Service Provider:.....

Name of Care Manager/Care Co-ordinator:.....

Unplanned Service User's absence from the service location:

Hospital admittance Date Admitted to:.....

Respite Date Details

Holiday Date Details

Other, please
Specify

.....

Expected length of stay or date of return

Comments and additional information:

.....

.....

Planned Service User's absence from the service location:

Reason for absence	Date of suspension of service	Date of re-commencement of service
<input type="checkbox"/> Hospital admittance	Planned date	Date
<input type="checkbox"/> Respite	Planned date	Date
<input type="checkbox"/> Holiday	Planned date	Date
<input type="checkbox"/> Other, please		
Specify		
.....		

Comments and additional information:

.....

.....

Completed by the: Provider Purchaser *(please tick accordingly)*

Notification of absence signed and dated:

Name:..... Position:..... Date:.....

SCHEDULE 4 – SERVICE SPECIFICATION & PEN PORTRAIT

SCHEDULE 5: PAYMENT AND INVOICING PROCEDURES

SCHEDULE 6: SERVICE VARIATION AND TERMINATION PROCEDURES

SCHEDULE 7: ADULT SAFEGUARDING



North Wales Adult Safeguarding Report

This form is to be used when there is reasonable cause to suspect that a person is an Adult at Risk. (Please ensure that you have the correct version of this report as it is subject to change: please see – <http://www.northwalessafeguardingboard.wales/new-north-wales-adults-safeguarding-report-form/>)

IF YOU THINK A CRIME HAS BEEN COMMITTED – CONTACT THE POLICE

Please send this form for the URGENT attention of **ONE** of the following: -

The Conwy Customer Access Team:	wellbeing@conwy.gov.uk
The Wrexham Initial Response Team:	AST@wrexham.gov.uk
The First Contact Team, Flintshire:	ssduty@flintshire.gov.uk
Gwynedd's Adult Advice and Assessment Team:	cynghoriasesuodolion@gwynedd.llyw.cymru
Denbighshire SPOA Group:	spoagroup@denbighshire.gov.uk
Anglesey - The Adult Services Duty Team:	asduty@ynysmon.gov.uk
Betsi Cadwaladr University Health Board:	BCU.AdultSafeguarding@wales.nhs.uk

**Making a referral to Social Services (Children and Family Services):
Inter-agency Referral Form**

(Please ensure that you have the correct version of this report as it is subject to change:
<https://www.denbighshire.gov.uk/en/resident/health-and-social-care/children-young-people-and-families/report-a-child-at-risk.aspx>

please also see – <http://www.northwalessafeguardingboard.wales/>)

SCHEDULE 9

Processing, Personal Data and Data Subjects

The Provider shall comply with any further written instructions given by the Commissioner(s) with respect to processing Personal Data.

Any such further instructions shall be incorporated into this Schedule.

Description Details

Subject matter of the processing

This should be a high level, short description of what the processing is about i.e. its subject matter

Duration of the processing

Clearly set out the duration of the processing including dates

Nature and purposes of the processing

Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.

Type of Personal Data

Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc

Categories of Data Subject

Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular

website etc

Retention of Personal Data

Describe for how long the personal data will be retained, how it be returned, or how it will be destroyed.