



**THE COUNCIL OF THE CITY &
COUNTY OF SWANSEA**

CONDITIONS OF CONTRACT

FOR THE SUPPLY OF

SOCIAL CARE SERVICES

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i. Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Bribery Laws	means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;
The Contract	means these conditions, special conditions (if applicable) specification, pricing schedule, Service Provider's tender (if applicable), acceptance letter and any relevant documents agreeing modifications exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing;
Contract Documents	means these conditions for the supply of Social Care Services which shall be deemed incorporated into each and every order placed by the Service Purchaser and for the avoidance of doubt any terms and conditions endorsed on the Service Provider's stationery, at any time, including but not limited to purchase orders and order acknowledgment documents, are specifically excluded from the terms of the contract between the parties and shall not be incorporated into or form part of the contract between the parties;
Contract Period	means the Term of the Contract as outlined in Clause 7;
Contract Price	means the price exclusive of VAT set out in the Contract for which the Service Provider has agreed to supply the Services as set out in the Pricing Schedule;
Contract Supervisor	means any duly authorised representative of the Service Purchaser notified in writing to the Service Provider for all purposes connected with the Contract. Any Notice or other written instruction given by or made to the Contract Supervisor, shall be taken as given by or made to the Service Purchaser;
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
Data Protection Legislation	the UK GDPR, the DPA 2018 to the extent that it relates to processing of personal data and privacy; all applicable Law about the processing of personal data and privacy;
Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Data Subject Access Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
DPA	Data Protection Act 2018;

UK GDPR	the United Kingdom General Data Protection Regulation ;
Force Majeure	means any event or sequence of events beyond a party's reasonable control such as an act of God including, but not limited to, fire, flood, drought, earthquake, windstorm or other natural disaster; act of any sovereign including war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation; acts of terrorism; nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction embargo or similar action; civil emergency (whether an emergency be declared or not); radioactive contamination; pressure waves caused by aircraft travelling at sonic or supersonic speeds; law, judgment, order, decree, embargo, blockade, labour dispute including strike, lockout or boycott; interruption or failure of utility service including to electric power, gas, water or telephone service; failure of the transportation of any personnel equipment, machinery supply or material required by the Service Provider for performance of the agreement; and breach of contract by any essential personnel;
Intellectual Property Rights	means all Intellectual Property Rights including without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for same, copyright know-how, rights in semi-conductor chip topography, and in each case whether protectable at law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights whether present or future, vested or contingent wherever protected;
Notice	means any written instruction or notice given to the Service Provider by the Contract Supervisor, delivered by: <ul style="list-style-type: none"> a) email or hand delivery to the Service Provider's registered office or other address notified for the purposes of the Contract and deemed to have been served at the date and time of delivery (except if after 4pm, when it's deemed to have been served the next working day); b) first class post to the Service Provider's registered office. Such Notices are deemed to have been served 48 hours after posting;
Permission	means express permission given in writing before the act being permitted;
Pricing Schedule	means the completed pricing schedule/schedule of rates contained within Schedule Error! Reference source not found. of this Contract and submitted by the Service Provider and agreed by the Service Purchaser;
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;

Services	means all the tasks to be undertaken by the Service Provider as described in this Contract and as contained in Schedule 2;
Service Provider	means the person, firm company or body who undertakes to supply the Services to the Service Purchaser as defined in the Contract;
Service Purchaser	means The Council of the City and County of Swansea;
Service Purchaser's Property	means all property issued or made available for use by the Service Purchaser to the Service Provider in connection with the Contract;
Specification	means the document/s attached to the invitation to tender detailing the Services to be provided (including any amendments agreed by the Service Purchaser) and as contained within Schedule 2.
Sub-processor	any third Party appointed to process Personal Data on behalf of the Service Provider related to this Agreement

Except as set out above, the Contract shall be interpreted in accordance with the Interpretation Act 1978.

- 1.2 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.
- 1.3 Any reference in these Conditions to a statutory provision will include all subsequent modifications.
- 1.4 All undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the shorter oxford English dictionary.
- 1.5 References to the singular include the plural and vice versa and references to one gender include the other gender. References to a person include any individual, firm, unincorporated association or body corporate.

2 Precedence

- 2.1 To the extent that the following documents form the Contract, in the case of conflict of content, they shall have the following order of precedence:
 - Conditions of contract;
 - Schedules;
 - Service Provider's Tender.

3 Contract Supervisor

The Service Provider shall strictly comply with any instruction given by the Contract Supervisor concerning or about, the Contract. All instructions shall be in writing.

4 The Services

- 4.1 The Service Provider shall provide the Services in accordance with the Schedules including the Specification and provide all staff, equipment, materials and any other

requirements necessary for the performance of the Contract using all skill, care and diligence, and to the satisfaction of the Contract Supervisor.

- 4.2 The Service Provider shall only employ in the execution and superintendence of the Services Contract persons who are suitable and appropriately skilled and experienced. The Contract Supervisor shall be at liberty to object to and require the Service Provider to remove any person employed in or about the Contract who is unsuitable, misconducts himself, is incompetent or negligent in the performance of his duties or persists in conduct which could endanger the health or safety of others. Such persons shall not be employed again on the Contract without the Permission of the Contract Supervisor.

5 Service Improvement Plan

- 5.1 Where a quality or performance concern has been identified during the delivery of Services or serious and/or persistent failure to meet with any aspect of the Service requirements, a Service Improvement Plan will be drawn up in partnership with the Service Provider. The Service Improvement Plan will set out clear actions for the identified area/s of concern, along with appropriate action for improvement.
- 5.2 The actions from the Service Improvement Plan must be implemented to the satisfaction of the Service Purchaser within (i) three (3) Months of the date of the Notice of a Service Improvement Plan, or (ii) such other period as the Service Purchaser requires.
- 5.3 The Service Purchaser will review the Service Provider's progress in meeting the actions at such intervals, as it considers necessary.
- 5.4 The Service Provider must, on request, provide a written report to the Service Purchaser detailing progress made in respect of the actions within the Service Improvement Plan in advance of any review meeting.
- 5.5 The Service Purchaser shall undertake an assessment of the actions within such period as the Service Purchaser may determine at its discretion, and will notify the Service Provider of the outcome of the assessment within fifteen (15) working Days from its conclusion.
- 5.6 If the Service Purchaser determines, at its discretion, that the actions have been satisfactorily implemented the Service Purchaser will notify the Service Provider in writing.
- 5.7 If within three (3) Months (or such other period as agreed to pursuant to paragraph 5.1 of the date of the Notice of a Service Improvement Plan the Service Purchaser determines, at its discretion, that the actions have not been satisfactorily implemented it may:
- 5.7.1 issue a further Service Improvement Plan; or
 - 5.7.2 issue a default notice pursuant to Clause 13; or
 - 5.7.3 terminate the Service Providers appointment pursuant to Clause 14.

6 Assignment

- 6.1 The Service Provider shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Contract Supervisor.
- 6.2 The Service Purchaser shall be entitled to assign, transfer or sub contract the Contract or any part of it subject to notifying the Service Provider.
- 6.3 In the event that the Service Provider assigns, transfers or sub-contracts the Contract or any part of it, it shall:

- 6.3.1 remain responsible to the Service Purchaser for the performance of its obligations under the Contract notwithstanding the appointment of any sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors;
 - 6.3.2 impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the sub-contractor complies with such terms;
 - 6.3.3 provide a copy, at no charge to the Service Purchaser, of any such sub-contract on receipt of a request for such by the Contract Supervisor; and
 - 6.3.4 ensure that a term is included in the sub-contract which requires the Service Provider to pay all sums due thereunder to the sub-contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid and agreed invoice as defined by the terms of the sub-contract (as appropriate).
- 6.4 Notwithstanding any sub-contracting permitted hereunder, the Service Provider shall remain primarily responsible for the acts and omissions of its Subcontractors as though they were its own.
- 6.5 Any assignment, transfer or sub-contract entered into, shall not relieve the Service Provider of any of his obligations or duties under the Contract.
- 6.6 Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract

7 **Term**

The Contract term shall be [*Please insert the Contract Term (start and end dates) including any option to extend if applicable*]

8 **Property**

- 8.1 All property issued by the Service Purchaser to the Service Provider in connection with the Contract shall remain the property of the Service Purchaser, and shall be used in the execution of the Contract, and for no other purpose whatsoever without the prior approval of the Contract Supervisor.
- 8.2 The Service Provider shall keep all Service Purchaser's Property in safe custody and good condition, set aside and clearly marked as the property of the Service Purchaser.
- 8.3 On expiry or earlier termination of the Contract the Service Provider shall, if so required, either surrender such property to the Service Purchaser or otherwise dispose of it as instructed by the Contract Supervisor.

9 **Materials**

- 9.1 The Service Provider shall be responsible for establishing his own sources of supply for goods and materials and will be responsible for ensuring the reasonable and proper conduct by his suppliers and staff whilst on the Service Purchaser's premises.
- 9.2 The Service Provider shall not place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of the Service Purchaser or any representative of the Service Purchaser.

10 **Security**

- 10.1 The Service Provider shall be responsible for the security of all goods and equipment belonging to the Service Purchaser and used by the Service Provider in the provision of the Services, together with all goods and equipment belonging to the Service

Provider, or Service Providers staff, or subcontractor whilst on Service Purchaser premises.

11 Variations

- 11.1 The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Services to be supplied, by written order to the Service Provider.
- 11.2 The value of any such variation, other than any variation arising out of Condition 11.3, shall be determined by reference to the rates contained in the pricing schedule. Where the Services so ordered are not covered in the pricing schedule, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Service Provider.
- 11.3 Where a variation is the result of some default or breach of the Contract by the Service Provider or some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Service Provider.
- 11.4 The Service Provider may also propose a variation to the Services but no such variation shall take effect unless agreed and confirmed in writing by the Contract Supervisor.
- 11.5 No variation shall have the effect of invalidating the Contract, or placing the Contract at large, if that variation is reasonably consistent with the nature, scope and value of the Contract.

12 Extensions of Time

- 12.1 Should the performance of the Contract be directly delayed by any cause beyond the reasonable control of the Service Provider, and provided that the Service Provider shall first have given the Contract Supervisor written notice within five working days after becoming aware that such delay was likely to occur, then the Contract Supervisor, if satisfied that this Condition applies:
 - 12.1.1 in the case of any delay of which the Service Purchaser is not the cause, may grant the Service Provider such extension of time, as in the Contract Supervisor's opinion is reasonable, having regard without limitation, to any other delays or extensions of time that may have occurred or been granted under the Contract. The Contract Price shall not increase as a result of such an extension of time.
 - 12.1.2 in the case of any delay of which the Service Purchaser is the cause, shall grant the Service Provider a reasonable extension of time to take account of the delay.
 - 12.2 No extension of time shall be granted where in the opinion of the Service Purchaser the Service Provider has failed to use best endeavours to avoid or reduce the cause and/or effects of the delay.
 - 12.3 Any extension of time granted under this Condition shall not affect the Service Purchaser's rights to terminate or determine the Contract under Conditions 14 and 15.
- ## **13 Default**
- 13.1 The Service Provider shall be in default if:
 - 13.1.1 there is a failure to perform the Contract to the satisfaction of the Service Purchaser
 - 13.1.2 there is a failure to perform the Contract with due skill, care, diligence and timeliness;

- 13.1.3 the Contract is performed negligently;
- 13.1.4 there is a refusal or failure to comply with any reasonable written instruction given by the Contract Supervisor;
- 13.1.5 there is a breach of the Contract.
- 13.2 The Service Provider must notify the Service Purchaser immediately if an event described in 13.1.4 and 13.1.55 has occurred or is likely to occur.
- 13.3 If the Service Purchaser determines that the Service Provider has failed to provide the Services or any part of them in accordance with this Agreement or the Service Provider is otherwise in breach of any of its obligations under this Agreement, then the Service Purchaser may give a Notice of a Default on the Service Provider.
- 13.4 If the Service Purchaser gives a Notice of a Default which relates to a breach which can be put right, then on receiving such a Notice of Default, the Service Provider will take the action specified in the Notice, within the timescale set out, at its own cost. The Service Purchaser reserves the right to recover from the Service Provider any losses incurred as a result of the default.
- 13.5 If the Service Provider fails to comply with such a Notice the Contract Supervisor may, without prejudice to any other rights or remedies under the Contract, take over for as such a period as is necessary the performance of the relevant part of the Contract and make other arrangements for its completion. Any extra costs arising from the breach and any subsequent action taken by the Service Purchaser, will be paid by the Service Provider or deducted from any monies owing to him.

14 Termination

- 14.1 The Service Purchaser may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in writing to the Service Provider, Receiver, Liquidator or to any other person in whom the Contract may become vested, if the Service Provider:
 - 14.1.1 fails in the opinion of the Contract Supervisor to comply with (or take reasonable steps to comply with) a Notice under Condition 13;
 - 14.1.2 if there is a change of control of the Service Provider;
 - 14.1.3 if the Service Provider has offered or given or agreed to give to the Service Purchaser or any other public body or any person employed by or on behalf of the Service Purchaser or any other public body, any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Service Purchaser or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Service Purchaser or any such contract, or in any way engages in any conduct prohibited by the Bribery Act 2010;
 - 14.1.4 acts in such a manner, or provides care in such a way, so as to give reasonable grounds to cause the Service Purchaser, Care Manager or other professional to suspect that a Service User has been subjected to abuse, physical, mental or otherwise, or neglected;
 - 14.1.5 commits a serious breach of its obligations under the Agreement including for example, the submission of a false claim for payment;
 - 14.1.6 if the Service Provider shall become bankrupt or a receiving order is made, or a petition in bankruptcy filed, or the Service Provider makes any composition or arrangement with its creditors, or agree to provide the service under a

committee of inspection of creditors, or is subject to an order or winding-up, whether compulsory, or voluntarily, or if a resolution to wind-up is passed by shareholders, or a receiver is appointed to the business of the Service Provider;

- 14.1.7 has an application been made under the Insolvency Act 1986 to the court for the appointment of an administrative receiver has a winding-up order made (except for the purposes of amalgamation or reconstruction), or a resolution of a voluntary winding-up passed;
 - 14.1.8 has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;
 - 14.1.9 is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the court to make a winding-up order;
 - 14.1.10 offers any improper inducements or exerts unreasonable pressure upon potential residents or their relatives, or others with an interest, to attempt to encourage the potential Service User to engage in the services of the Service Provider;
 - 14.1.11 takes financial advantage of the relationship with the Service User;
 - 14.1.12 has been convicted of an offence or an employee has been convicted of an offence under the provisions of the Care Standards Act 2000 and regulations thereto and any subsequent amendments;
 - 14.1.13 shall have given any undisclosed or illicit fee, reward or gift to any elected member or officer of the Service Purchaser in order to gain unfair advantage;
 - 14.1.14 does not comply with the provisions of the Health and Safety requirements;
 - 14.1.15 operates the Service without adequate insurance cover, as specified in clause 21 of this Agreement;
 - 14.1.16 acts improperly in relation to the Service Purchaser, its servants or agents in the offering, giving or agreement to give any gift or consideration which could reasonably be seen to be intended to have the effect of inducing or rewarding the Service Provider in the entering into, operation or termination of this Agreement, whether or not resulting in the commission of an offence under the Bribery Act 2010 or the Local Government Act 1979, Section 117;
 - 14.1.17 fails to maintain a valid registration with the appropriate Registration Authority;
 - 14.1.18 has been the subject of an adverse finding or judgement in respect of a claim for breach of the Human Rights Act;
 - 14.1.19 has been the subject of an adverse finding or judgement in respect of a formal investigation or claim in connection with its statutory obligations relating to employment rights, employment relations, working rights or does not comply with any of the requirements under the Equality Act 2010;
 - 14.1.20 has been the subject of an adverse finding or judgement or is the subject of prosecution for any offence under the Modern Slavery Act 2015;
 - 14.1.21 provided always that this list is not exhaustive and there may be other matters or breaches of a serious nature that might necessitate termination without notice the determination of which shall be at the sole discretion of the Service Purchaser and further provided that the said right of termination is without prejudice to any accrued rights and remedies under this Agreement.
- 14.2 The Service Provider must notify the Service Purchaser immediately if any of the events listed in 14.1 occurs or is likely to occur.

15 Consequences of Termination

- 15.1 In the event of termination of this Contract (in whole or in part) for any of the reasons specified in Clause 14 the Service Purchaser may exercise any or all of the following rights:
- 15.1.1 the Service Purchaser may require the Service Provider to perform any of its obligations existing at the date of termination;
 - 15.1.2 the Service Purchaser shall cease to be under any obligation to make any further payments under this Contract;
 - 15.1.3 the Service Purchaser shall be entitled to recover from the Service Provider any loss, damages, costs or expenses to the Service Purchaser resulting from or arising out of the termination of this Contract (in whole or in part) including the reasonable cost to the Service Purchaser of time spent by its officers in terminating this Contract (in whole or in part) and, without limitation, the costs of procuring suitable alternative Services in accordance with the procedures laid down by the Service Purchaser's Contract Procedure Rules and relevant legislation.
 - 15.1.4 The termination (in whole or in part) or expiration of this Contract shall be without prejudice to the rights and remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination or expiration.

16 **Determination**

- 16.1 Without prejudice to any other rights or remedies under the Contract, both parties shall have the right to terminate all or any part of the Contract by Notice in writing at any time by giving not less than three months' Notice.
- 16.2 The Authority shall pay the Provider such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.
- 16.3 The Authority will not pay for any costs or commitments that the Provider is able to mitigate and shall only pay those costs that the Authority has validated to its satisfaction. The Authority's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Services if the Contract had not been determined.

17 **Termination by Service Provider**

- 17.1 The Service Provider may terminate this Contract (in whole or in part) forthwith by written notice having immediate effect in the following circumstances:
- 17.1.1 if the Service Purchaser is in breach of any of its obligations under this Contract and if such breach is capable of remedy fails to remedy the breach within 15 working days of a written request by the Service Provider to remedy the same;
 - 17.1.2 if the Service Purchaser is unable or fails to repay its borrowing/s and/or an application is made by any party to a court for the appointment of a receiver and/or such a receiver is appointed, all pursuant to section 47 Local Government & Housing Act 1989 (and/or any amendment or replacement thereof from time to time.)

18 Dispute Resolution

- 18.1 All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Service Purchaser and the Service Provider.
- 18.2 If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisers).
- 18.3 If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.
- 18.4 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.
- 18.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.
- 18.6 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally (unless directed otherwise by the mediator).
- 18.7 Any of the time limits in Condition 18 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

19 Indemnity

- 19.1 Without prejudice to the Service Purchaser's remedies for breach of Contract, the Service Provider shall fully indemnify the Service Purchaser and its staff against any liability, loss, costs, expenses, claims or proceedings in respect of:
- 19.1.1 death or injury to any person;
 - 19.1.2 loss or damage to any property excluding indirect and consequential loss;
 - 19.1.3 infringement of third party Intellectual Property Rights;
 - 19.1.4 any other loss which might arise as a direct consequence of the actions or negligence of the Service Provider, his staff or agents in the execution of the Contract.
- 19.2 This Condition shall not apply where the damage, injury or death is a direct result of the actions, or negligence of the Service Purchaser or its staff.

20 Limit of Service Provider's Liability

- 20.1 The limit of the Service Provider's liability for each and every claim by the Service Purchaser, other than for death or personal injury, whether by way of indemnity or by reason of breach of contract, or statutory duty, or by reason of any tort shall be the Contract price or five million pounds whichever is the greater.

21 **Insurance**

- 21.1 The Service Provider shall insure and maintain insurance against liabilities under Condition 19 (Indemnity) in the following sums:-
- 21.2 Public liability insurance for a sum not less than ten million pounds per claim; and
- 21.3 Employers liability insurance for a sum not less than five million pounds per claim;
- 21.4 Professional indemnity insurance for a sum not less than five million pounds per claim; and
- 21.5 If specifically required by the Service Purchaser, nominated insurances shall be in the joint names of the Service Provider and the Service Purchaser.
- 21.6 The Service Provider shall, upon request, produce to the Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.

22 **Warranty**

- 22.1 The Service Provider warrants that the Services supplied by him are fit for the Service Purchaser's intended purpose so far as this has been communicated to him, or which he would reasonably be expected to know.

23 **Anti-Bribery**

- 23.1 For the purposes of this clause 29 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 23.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
 - 23.2.1 all of that party's personnel;
 - 23.2.2 all others associated with that party; and
 - 23.2.3 all of that party's subcontractors;
 - 23.2.4 involved in performing the Contract so comply.
- 23.3 Without limitation to clause 23.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 23.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 23.

24 **Anti-Slavery**

- 24.1 The Service Provider undertakes, warrants and represents that:
 - 24.1.1 Neither the Service Provider nor any of its officers, employees, agents or subcontractor has:
 - (a) committed an offence under the Modern Slavery Act 2015 (a MSA Offence); or
 - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the modern Slavery Act 2015; or

- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- (d) it shall comply with the Modern Slavery Act 2015;
- (e) it shall notify the Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Service Provider's obligations under clause 24.1. Such notice shall set out full details of the circumstances concerning the breach or potential breach of the Service Provider's obligations.

24.2 Any breach of clause 24.1 by the Service Provider shall be deemed a material breach of the Contract and shall entitle the Authority to terminate the Contract with immediate effect.

25 **Well-Being of Future Generations (Wales) Act 2015**

25.1 The Service Provider acknowledges that, under the Well-being of Future Generations (Wales) Act 2015 the Service Purchaser is required to consider how Services which the Service Purchaser procures, improves the economic, social and environmental well-being of the area of the Service Purchaser.

25.2 The Service Provider shall ensure that, in providing the Services, it improves the economic, social and environmental well-being of the area of the Service Purchaser in accordance with the requirements of the Contract.

26 **Monitoring and Audit**

26.1 The Contract Supervisor may inspect and examine the Services being carried out. The Service Provider shall give access to all such facilities as the Contract Supervisor may reasonably require for such inspection and examination.

26.2 The Service Provider recognises that the Service Purchaser is a public body and its decisions may be subject to scrutiny. The Service Provider therefore agrees, if requested by the Service Purchaser, to attend any meeting (including scrutiny meetings with Service Purchaser Members) to discuss the Services (including the costs and performance of such service being undertaken under the Contract). If the meeting where attendance is required is to discuss the performance of or actions resulting from the Services undertaken that the cost of attendance will be at the expense of the Service Provider.

26.3 Following completion of the contract, the Service Purchaser will be entitled to make public the total payments made to the Service Provider under the Contract.

26.4 The Service Provider shall be required to provide any information to the Service Purchaser to enable it to comply with any statutory duties.

27 **Contingency Planning**

27.1 The Service Provider shall have in place a written Business Continuity Plan that considers and details contingency plans for the following risks:

- Severe weather;
- Illness in the Community (including staff);
- Staff absence, shortage;
- Failure of IT, telecommunications;
- Building accommodation not available;
- Fuel disruption;

- Major emergency;
- Business Continuity;
- Other risks specific to the Service.

27.2 This list, while not exhaustive, gives an indication of what will be required the Service Purchaser may request this at any time.

28 **Staff Training and Development**

28.1 The Service Provider will be required to have a procedure for documenting and meeting the training needs of staff and this should be explained and where requested policy / procedures be attached.

28.2 The Service Provider must satisfy the Service Purchaser that they employ sufficient numbers of people of sufficient ability, skill, knowledge, training or experience so as to provide and supervise the provision of the support services.

29 **Staffing**

29.1 The Service Provider will ensure that all staff working on services provided under this Agreement know that they are exempt from the Rehabilitation of Offenders Act 1974, and each staff member will sign a declaration of all previous criminal convictions and be required to inform the Service Provider of any new convictions. Where there is a previous criminal record, there must be a robust risk assessment procedure in place to assess the appropriateness and safety of appointing the candidate, which must be made available to the Service Purchaser on request.

29.2 The Service Provider will ensure that two written references as to character, one of which should be from the immediate previous employer, are obtained for all personnel who provide Services to the Service User. Written references must be received prior to commencement of employment. Any gaps in the employment record should be explored and accounted for. All the above checks must also be carried on temporary staff. It is acceptable that these checks are carried out by an employment agency provided they meet the requirements of clauses above.

29.3 Staffing measures will be put in place to ensure that all staff including the manager are appropriately trained and supported in their role.

30 **Contract Price**

30.1 The Contract Price will be paid by the Service Purchaser to the Service Provider as amended by any Variations ordered under Condition 11 (Variations).

30.2 In addition to the Contract Price, the Service Purchaser will pay to the Service Provider such Value Added Tax (if any) as may properly be chargeable at rates applicable at the time of invoice.

30.3 The Contract Price shall remain fixed for the duration of the Contract unless agreed otherwise.

30.4 If during the Contract Period there is any material variation in the cost of wages to the Service Provider of supplying the Services, such as a variation to the National Minimum or Living Wage rates, an application may be made by either Party for a net increase to or deduction from the prices as the case may be.

30.5 The proposals for any revision of the Contract Price must be submitted in writing to the Service Purchaser at least sixty (60) days prior to the proposed effective date of the Variation.

30.6 The Service Provider must furnish such evidence as may be reasonably required to satisfy the Authority that the amount of any increase in cost is justified and

proportionate. The revised Contract Price will not be paid by the Authority until the Service Provider receives written confirmation from the Contract Supervisor.

30.7 The Service Purchaser reserves the right to show due regard to its own financial priorities when considering Contract Price Variations.

30.8 **Withdrawal of the United Kingdom from the European Union.**

30.8.1 In calculating the Contract Price, the Service Provide warrants that:

- ii. it has allowed for the withdrawal of the United Kingdom from the European Union ("Brexit") and any consequent effects of Brexit.
- iii. it was and is reasonable for the Contractor to have allowed for Brexit and any and all consequent effects of Brexit in the Contract Price.

30.8.2 The parties agree that any changes to any statutory requirements, consents or any other exercise of statutory powers resulting from, or connected with, Brexit shall be deemed to be reasonably foreseeable.

30.8.3 Neither Brexit nor any and all consequent effects of Brexit shall be treated as a variation (clause 12) or an extension of time (clause 13) and the Contractor shall not be entitled to make any claim for loss, expense or increase in the Contract Price as a consequence of Brexit

30.8.4 for the purpose of this clause [30.8] the consequent effects of Brexit may include a change in the law, any constraints on the supply or movement of goods, materials, plant, equipment, services or people and/or any other direct or indirect consequence of Brexit which may impact on the Contractor's obligations under this Contract.

31 **Invoicing and Payment**

31.1 The Service Provider is referred to Schedule **Error! Reference source not found.** for conditions relating to payment provisions.

32 **Intellectual Property Rights**

32.1 The Service Provider warrants to the Service Purchaser that the performance of the Services, shall not in any way infringe any Intellectual Property Rights belonging to any third party and shall fully indemnify the Service Purchaser against all actions, claims, costs, charges, expenses and liabilities of whatsoever nature arising from or incurred by reason of any infringement, or alleged infringement.

32.2 The Service Provider shall not be liable under this Condition if such infringement arises from the use of any design, technique or method of working provided by or specified by the Service Purchaser.

32.3 The Service Provider assigns to the Service Purchaser, with full Title Guarantee and free from all third party rights, all Intellectual Property Rights in the Services.

32.4 If the Service Provider is prevented from carrying out his obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Service Purchaser may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 14 and 16, Termination and Determination respectively.

33 **Confidentiality and Data Protection**

33.1 In this clause

"Confidential Information" means information, data and material of any nature which either party may receive or obtain in connection with the operation of the Contract and:

- which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 2018 and the General Data Protection Regulation 2016/679);
- the release of which is likely to prejudice the commercial interests of the Service Purchaser or the Service Provider respectively; or
- which is a trade secret.

“FOIA” means the Freedom of Information Act 2000. “EIR” means the Environmental Information Regulations.

33.2 In respect of any Confidential Information it may receive from the other party (the “Discloser”) and subject always to the remainder of this Condition, each party (the “Recipient”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser’s prior written consent provided that:

33.2.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the contract;

33.2.2 the provisions of this Condition shall not apply to any Confidential Information which:

- (a) is in or enters the public domain other than by breach of the contract or other act or omissions of the Recipient;
- (b) is obtained by a third party who is lawfully authorised to disclose it;
- (c) is authorised for release by the prior written consent of the Discloser; or
- (d) the disclosure of which is required to ensure the compliance of the Service Purchaser with the FOIA/EIR and/or any applicable guidance or codes of practice.

33.3 Nothing in this Condition shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Service Provider is the Recipient, to the Service Provider’s immediate or ultimate holding company provided that the Service Provider procures that such holding company complies with this Condition as if any reference to the Service Provider in this Condition were a reference to such holding company.

33.4 The Service Provider acknowledges that the Service Purchaser is subject to the FOIA/EIR. The Service Provider notes and acknowledges the FOIA/EIR and the respective Codes of Practice on the Discharge of Public Authorities’ Functions and on the Management of Records (which are issued under sections 45 and 46 of the FOIA respectively) together with any Code or Guidance on the application of the EIR issued by DEFRA as may be amended, updated or replaced from time to time. The Service Provider will act in accordance with the FOIA/EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Service Provider from time to time) to the extent that they apply to the Service Provider’s performance under the Contract.

33.5 The Service Provider agrees that:

33.5.1 without prejudice to the generality of Condition 33.3, the provisions of this Condition are subject to the respective obligations and commitments of the Service Purchaser under the FOIA/EIR and the Code of Practice;

- 33.5.2 the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Service Purchaser;
- 33.5.3 where the Service Purchaser is managing a request for disclosure as referred to in this Condition, the Service Provider shall co-operate with the Service Purchaser 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.
- 33.6 The Service Purchaser will consult the Service Provider in relation to any request for disclosure of the Service Provider's Confidential Information in accordance with all applicable guidance.
- 33.7 This Condition shall remain in force without limit in time in respect of Confidential Information, which comprises Personal Data. Save as aforesaid and unless otherwise expressly set out in this Contract, this Condition shall remain in force for a period of 3 years after the termination or expiry of this Agreement.
- 33.8 The Service Purchaser and the Service Provider agree that the information referred in any Schedule will not infringe nor prejudice the right of confidentiality enjoyed by Service Users.
- 33.9 The Service Provider will ensure that all information collated under the terms of this Agreement remains confidential. The Service Provider shall maintain the confidentiality of all such information and shall not, without the prior written consent of the Service Purchaser and the Service User utilise the same, directly or indirectly, for its own purposes or for any other purpose or disclose the same to any third party. This clause does not apply to any information in the public domain or which is required to be disclosed in respect of the provision of the Services by the Service Provider or pursuant to an order issued by a court of competent jurisdiction or applicable law or regulation.
- 33.10 The Service Provider specifically undertakes at all times to keep confidential any Service User confidential information including this document or specific Service User details and personal information or any information relating to this Agreement.
- 33.11 Notwithstanding the terms of this clause the Service Provider will allow the Service Purchaser to inspect any documents or information collated as a result of this Agreement on demand. In addition the Service Provider will allow the Service User access to their own records on demand.
- 33.12 The Service Provider must comply with the terms of the Data Protection Act 2018, the United Kingdom General Data Protection Regulation, Freedom of Information Act 2000 or other subsequent legislation. Both the Authority and Service Provider must use their best endeavours to ensure that information given is only used for the purposes for which it has been given and shall not be used for any other purpose without express consent, save where statute or the public interest otherwise allows.
- 33.13 The Parties acknowledge that for the purposes of the Data Protection Legislation, data shall only be processed in accordance with the Data Protection Schedule 6.
- 33.14 The Service Provider shall notify the Service Purchaser immediately if it considers that any of the Service Purchaser's instructions infringe the Data Protection Legislation.
- 33.15 The Service Provider shall provide all reasonable assistance to the Service Purchaser in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Service Purchaser, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;

- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

33.16 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with the instructions of the Service Purchaser unless the Service Provider is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Service Purchaser before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Service Purchaser 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;
- (c) ensure that :
 - (i) the Service Provider Personnel do not process Personal Data except in accordance with this Agreement;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Service Provider's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data 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 Service Purchaser or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (E) not transfer Personal Data outside of the EU unless the prior written consent of the Service Purchaser has been obtained and the following conditions are fulfilled:
 - (I) the Service Purchaser or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46) as determined by the Service Purchaser;
 - (II) the Data Subject has enforceable rights and effective legal remedies;
 - (III) the Service 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 Service Purchaser in meeting its obligations); and

- (IV) the Service Provider complies with any reasonable instructions notified to it in advance by the Service Purchaser with respect to the processing of the Personal Data;
- (F) at the written direction of the Service Purchaser, delete or return Personal Data (and any copies of it) to the Service Purchaser on termination of the Agreement unless the Service Provider is required by Law to retain the Personal Data.

33.17 Subject to clause 33.18, the Service Provider shall notify the Service Purchaser 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 Agreement;
- (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.

33.18 The Service Provider's obligation to notify under clause 33.17 shall include the provision of further information to the Service Purchaser in phases, as details become available.

33.19 Taking into account the nature of the processing, the Service Provider shall provide the Service Purchaser with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 33.17 (and insofar as possible within the timescales reasonably required by the Service Purchaser) including by promptly providing:

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

- 33.20 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
- (a) the Service Purchaser determines that the processing is not occasional;
 - (b) the Service Purchaser determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - (c) the Service Purchaser determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.21 The Service Provider shall allow for audits of its Data Processing activity by the Service Purchaser or the Service Purchaser's designated auditor.
- 33.22 The Service Provider shall designate a data protection officer, if required by the Data Protection Legislation.
- 33.23 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Service Provider must:
- (a) notify the Service Purchaser in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Service Purchaser;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 33 such that they apply to the Sub-processor; and
 - (d) provide the Service Purchaser with such information regarding the Sub-processor as the Service Purchaser may reasonably require.
- 33.24 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 33.25 The Service Provider may, at any time on not less than 30 Working Days' notice, revise this clause 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 Agreement).
- 33.26 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Service Purchaser may on not less than 30 Working Days' notice to the Service Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 33.27 A Party acting as a Controller, as defined under the Data Protection Legislation, shall have relevant procedures in place for dealing with a Data Loss Event, in accordance with the guidance from the Information Commissioner's Office. If a data Loss Event occurs, the Parties shall follow the Data Controller's procedures when dealing with the Data Loss Event.
- 33.28 Further to Clause 19, the Service Provider shall indemnify the Service Purchaser against legal claims, financial or other losses, and fines issued by any regulating body to the extent that it arises as a result of the actions or omissions of the Service Provider whilst processing Personal Data.

34 **Discrimination**

- 34.1 The Service Provider does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Disability Discrimination Acts 2005, the Employment Relations Act 1999 (Blacklists) Regulations 2010 or the Equality Act 2010 (the "Discrimination Acts").
- 34.2 The Contractor shall comply with all legislation relating to trade union membership and trade union activities, including, but not limited to the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996.
- 34.3 In undertaking the Services, the Service Provider agrees to co-operate with and assist the Service Purchaser to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.
- 34.4 Specifically with regard to blacklisting the Service Provider shall not compile, consult or use a blacklist of employees for the purposes of determining who will be engaged for the purposes of fulfilling this contract. A blacklist may include, but not be limited to, the names of people who are engaged in trade union activities, who are known whistle blowers or are otherwise deemed to create difficulties for employers in the workplace.
- 34.5 Where an employee or subcontractor employed by the Service Provider is required to carry out any activity alongside the Service Purchaser's employees in any premises, the Service Provider ensures that each such employee or subcontractor complies with the Service Purchaser's employment policies and codes of practice relating to discrimination and equal opportunities.
- 34.6 The Service Provider indemnifies the Service Purchaser against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Service Purchaser arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the Service Provider.
- 34.7 The Service Provider includes in the conditions of contract for each subcontractor obligations substantially similar to those set out above.

35 **TUPE**

- 35.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the award of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Service Provider on the commencement of the Contract.
- 35.2 During the period of six months preceding the expiry of the Contract or after notice has been given by either party to terminate the Contract or the Service Provider stops trading, and within 20 working days of being so requested by the Service Purchaser the Service Provider shall fully and accurately disclose to Service Purchaser (at no cost to the Service Purchaser) for the purposes of TUPE all information relating to its employees engaged in providing Services under the Contract, in particular, but not necessarily restricted to, the following:
- 35.2.1 the total number of Staff whose employment with the Service Provider is able to be terminated at the expiry of this Contract but for any operation of law; and
- 35.2.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been

agreed and their redundancy entitlements (the names of individual members of employed staff do not have to be given); and

- 35.2.3 full information about the other terms and conditions on which the affected staff are employed (including but not limited to their working arrangements), or about where that information can be found; and
 - 35.2.4 details of pensions entitlements, if any; and
 - 35.2.5 job titles of the members of staff affected and the qualifications required for each position.
- 35.3 The Service Provider shall permit the Service Purchaser to use the information for the purposes of TUPE and of re-tendering. The Service Provider will co-operate with the re-tendering of the Contract by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.
 - 35.4 The Service Provider agrees to indemnify the Service Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information, the failure to so provide or any inaccuracy in the information provided under Condition 35.2.
 - 35.5 During the period of six months preceding the expiry of the Contract or after notice has been given by either party to terminate the Contract or the Service Provider stops trading, the Service Provider shall be precluded from making any material increase or decrease in the numbers of employees employed in connection with the Services save with the Authority's prior written consent which shall not be unreasonably withheld or delayed or where this is necessary to meet the Service Providers obligations under this Agreement.
 - 35.6 During the period of six months preceding the expiry of the Contract or after notice has been given by either party to terminate the Contract or the Service Provider stops trading, the Service Provider shall be precluded from making any increase in the remuneration or other change in the terms and conditions of the employees employed in connection with the Services other than where such increase in remuneration or other change in terms and conditions is in the ordinary course of business and save with the Authority's prior written consent which shall not be unreasonably withheld or delayed; and
 - 35.7 During the period of six months preceding the expiry of the Contract or after notice has been given by either party to terminate the Contract or the Service Provider stops trading, the Service Provider shall be precluded from transferring any of the Service Provider's employees or employees of the subcontractors at that time to another part of its business or moving other employees from elsewhere in its business who have not previously been employed or engaged in providing the Services to provide the Services save with the Authority's prior written consent which shall not be unreasonably withheld or delayed.
 - 35.8 The Service Provider agrees to indemnify the Service Purchaser from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party arising out of their employment or its termination whether such claim or claims arise before or after the transfer date.
 - 35.9 In the event that the information provided by the Service Provider in accordance with Condition 35.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to

the original provision of such information or by reason of the Service Provider becoming aware that the information originally given was inaccurate, the Service Provider shall notify the Client of the inaccuracies and provide the amended information.

- 35.10 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

36 Welsh Language

- 36.1 The Service Provider shall at all times comply with the Welsh Language (Wales) Measure 2011 and the Welsh language standards with which the Service Purchaser is liable to comply, as if it were the Service Purchaser to the extent that the same relate to the provision of the Services. The Welsh Language standards may be found at:

<http://www.comisiynyddygyymraeg.cymru/English/Language%20duties/Pages/What-are-standards.aspx>

- 36.2 The Service Provider shall indemnify the Service Purchaser against any losses arising from failure to comply with the requirements of clause 36.1 (above)

- 36.3 The Service Provider shall deliver the Services (in accordance with the Specification) through the medium of English or Welsh (on an equal basis).

- 36.4 The Service Provider shall be responsible for promoting the delivery of the Services in Welsh or English to the Service Users and shall use all reasonable steps to achieve this.

37 Statutory Requirements

The Service Provider shall fully comply with all relevant statutory requirements in the performance of the Agreement, including, but not limited to those relating to health, safety and welfare, environment, modern slavery, employment rights and relations, working rights, human rights, data protection, equality and the giving of all necessary notices, and the paying of all fees and compliance.

38 Health and Safety

- 38.1 The Service Provider shall promptly notify the Service Purchaser of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract.

- 38.2 The Service Provider and all persons employed by the Service Provider throughout the Contract Period shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders and codes of practice relating to health and safety, which may apply to Staff in the performance of its obligations under the Individual Placement Contract.

- 38.3 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 Provider's health and safety obligations as may be required by the Service Purchaser is made available to the Service Purchaser on request.

39 Environment

The Service Provider shall in all his operations, including purchase of materials goods and services, adopt a sound proactive environmental approach, designed to minimise harm to the environment and be able to provide proof of so doing to the Contract Supervisor on demand.

40 **Publicity**

The Service Provider shall not advertise or publicly announce that he is supplying Services or undertaking work for the Service Purchaser without the Permission of the Contract Supervisor.

41 **Law**

This Contract shall be governed and construed in accordance with English and Welsh Legislation, and subject to the jurisdiction of the courts of England and Wales.

42 **Waiver**

42.1 No delay, neglect or forbearance by the Service Purchaser in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of the Service Purchaser under the Contract.

42.2 No waiver by the Service Purchaser shall be effective unless made in writing.

42.3 No waiver by the Service Purchaser of a breach of the Contract shall constitute a waiver of any subsequent breach.

43 **Enforceability**

If any part of the Contract is found by a court of competent jurisdiction or other competent Service Purchaser to be invalid or legally unenforceable, that part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

44 **General**

44.1 Neither party to the Contract will be liable to the other for any delay in performing or failing to perform its obligations (other than a payment obligation) under the Contract because of any cause outside its reasonable control. Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligation will be extended by a reasonable period.

44.2 The Contract contains the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that the Contract has not been entered into on the basis of any representations that are not expressly contained in the Contract.

44.3 Contracts (Rights of Third Parties) Act 1999. The parties to this Contract agree that the provisions of the said Act are hereby excluded.

45 **Coproduction**

45.1 The Service Provider shall have a positive commitment towards involving Service Users (and their carers and parents where appropriate) in the planning, development and monitoring of service provision.

In providing services they will have regard to the following documents as appropriate:

- Children's Services Statement of Intent on Participation and Children's Rights.
- Partnership Framework and minimum Participation Standards for Learning Disability Services.
- Join in Participation and Consultation Framework.

45.2 The Service Provider shall co-operate in any other consultation process, as agreed in discussion with the Service Purchaser.

46 **Volunteers**

Volunteers must be recruited and supported within a clear policy framework.

47 **Whistle Blowing**

- 47.1 The Service Provider will have in place their own policies and procedures concerning whistle blowing for people involved or supported within the organisation. They must be distributed via induction, supervision, staff/carers/children's/young person's/service users meetings and on going training and development. These must comply with the Service Purchasers Whistle Blowing Policy and procedures.

48 **Records and Information**

- 48.1 If requested, the Service Provider must compile and maintain such information as the Service Purchaser may require for the purpose of key performance indicators and any other information which may be required to fulfil our duties.
- 48.2 The Service Provider must make available all other information which the Service Purchaser may require for the purpose of assessing how the Service Provider is carrying out its obligations under this Agreement; the safety and welfare of the Service Users; and information on, and the names of, the Service Users; information in relation to recruitment and/or employment practices and procedures including (but not limited to) information relating to employee terms and conditions and working conditions. This includes copies of relevant documents on request.
- 48.3 Notwithstanding the above, the Service Provider must allow the Service Purchaser or any person authorised by the Service Purchaser, together with appropriate staff, at all reasonable times, to inspect or witness the provision of the support services.
- 48.4 In inspecting or witnessing the provision of the support services the Service Purchaser will have proper regard to the nature of the support service being provided, particularly where this involves Service Users who have experience of domestic violence or other sensitive services for vulnerable client groups.
- 48.5 The Service Provider must notify the Service Purchaser if there is a change in who controls the majority of the shares in, or the voting rights amongst shareholders or members of, the Service Provider's organisation. This may result in the termination of this Agreement.
- 48.6 The Service Provider must notify the Service Purchaser if it merges with another organisation. This may result in the termination of the Agreement.
- 48.7 The Service Provider must notify the Service Purchaser if as a result of any misconduct or mismanagement on the Service Provider's part a Regulatory Body directs an inquiry into, or makes an order of any kind in relation to the Service Provider's affairs.
- 48.8 The Service Provider must notify the Service Purchaser if any registration which it must maintain in order to provide any of the support services is withdrawn or cancelled or is threatened to be withdrawn or cancelled. This may result in the termination of the Agreement.

49 **Complaints Procedures**

- 49.1 The Service Provider will set out clear procedures for dealing with Service User's complaints. The Service Provider shall ensure its complaints procedure is known to all Service Users and is in line with the requirements of the Service Purchaser's complaints procedures. These procedures must include a written record of all Service User complaints and any action taken and these records must be made available for inspection by the Service Purchaser.

- 49.2 Service Users also have the right to complain using the Complaints Procedure of the Service Purchaser. The Service Provider will ensure that throughout the service term, Service Users are made aware of their right to complain within the Complaints Procedure of the Service Purchaser and Service Provider.
- 49.3 The Service Provider must provide all information requested by the Service Purchaser to assist the Service Purchaser in its investigations of complaints about the Service Provider.
- 49.4 None of the above effects the Service User's right to complain to the Care and Social Services Inspectorate Wales where appropriate and appropriate liaison will take place between the Service Provider and the Service Purchaser where complaints affect their respective responsibilities.

50 Care and Social Services Inspectorate Wales

- 50.1 Service Providers must if applicable be fully and appropriately registered under the Care Standards Act 2000 and must meet and continue to meet the conditions of the Act and any subsequent guidelines and regulations pertaining to the Act.
- 50.2 The Service Provider will make available, on request of the Service Purchaser any communication from the Care and Social Services Inspectorate Wales (CSSIW).
- 50.3 The Service Provider will where applicable follow codes of practice and other relevant documentation published by The Care Council for Wales.
- 50.4 The Service Provider will where appropriate register under Domiciliary Care Standards and continue to meet Regulations and Standards defined under Domiciliary Care.
- 50.5 The Service Purchaser must inform the CSSIW of any perceived breach of regulations or standards under the Care Standards Act that it becomes aware of in respect of this agreement.

51 Premises

- 51.1 The Service Provider must ensure that all properties where applicable are covered by the following:
- Housing Health and Safety Rating System
 - Housing of Multiple Occupation (HMO) Standards
 - Working towards 'The Welsh Housing Quality Standard'

52 Supply Chain

- 52.1 The Service Provider shall provide such information as the Service Purchaser may from time to time request on the Service Provider's supply chain for the goods/services provided.
- 52.2 The Service Provider shall provide such information as the Service Purchaser may from time to time request in respect of any recruitment/ employment agencies used by the Service Provider in order to provide the services including (without limitation) information on the recruitment/employment practices and procedures used by those agencies.
- 52.3 The Service Provider includes in the conditions of contract for each subcontractors obligations substantially similar to those set out in this Agreement.

53 Electronic Trading System and Forms

- 53.1 Unless the Service Purchaser confirms otherwise in writing, the Service Provider shall use the Service Purchaser's electronic trading system (and comply with its

requirements) throughout the Contract. The Service Provider shall be deemed to have satisfied itself prior to the commencement date that it is able to comply with this obligation.

53.2 Subject to Clause 53.1 the Service Purchaser shall use the electronic trading system to facilitate, amongst other things the following:

53.2.1 Order placement, the provision of sales information, invoicing, creation of credit notes and the exchange of such other information relating to this Contract as the Service Purchaser may reasonably require from time to time.

SCHEDULE 1 SAFEGUARDING CHILDREN AND ADULTS

1. Safeguarding Requirements

- 1.1. The City & County of Swansea is committed to safeguarding children, young people and adults and protecting them from harm. Safeguarding people is one of the Council's main corporate priorities.
- 1.2. The Service Provider will comply with the requirements of the statutory guidance in relation to Part 7 (Safeguarding) of the Social Services and Well-being (Wales) Act 2014, "Inter Agency Policy and Procedures for Responding to Alleged Abuse and Inappropriate Care of Vulnerable Adults in South Wales" the Wales Safeguarding Procedures and other subsequent relevant legislation.
- 1.3. The Service Provider will make arrangements for safeguarding and promoting children's welfare in accordance with the Service Purchaser's statutory responsibilities under Section 28 of the [Children Act 2004](#) and Part 7 (Safeguarding) of the [Social Services and Well-being \(Wales\) Act 2014](#).
- 1.4. The Service Provider will comply with the requirements of the statutory guidance of Part 7 (Safeguarding) of the Social Services and Well-being (Wales) Act 2014, the Welsh Assembly Government Guidance "In Safe Hands" update 2003 first issued in September 2000 as statutory guidance under section 7 of the Local Service Purchaser Social Services Act 1970.
- 1.5. The Service Provider must ensure that children and/or adults are safeguarded from any form of abuse neglect or harm by reporting their concerns using the safeguarding procedures in place.
- 1.6. The Service Provider must ensure that all employees have an awareness and understanding of safeguarding in relation to both adults and children and young people including up to date knowledge and understanding of current legislation and policies relating to these.
- 1.7. The Service Provider will ensure that all employees are aware that should they have any concerns or suspicions of abuse, harm to children and young people or adults that these concerns must be reported as soon as possible and always on the **same day** to:
 - 1.7.1. If you have concerns regarding the safety of an adult immediately contact the Common Access Point —
Tel: (01792) 636519
E-mail: CAP@swansea.gov.uk
 - 1.7.2. If you have concerns regarding the safety of a child or young person, then immediately contact Social Services Integrated Information, Advice and Assistance (IIAA) —
Tel: (01792) 635700
E-mail: access.information@swansea.gov.uk

- 1.7.3. The Social Services Out-of-Hours Team Emergency Duty Team (EDT) should be contacted if the issue arises after 5.00pm, Monday to Friday and on weekends and Bank Holidays.

(Out-of-Hours)

Tel: (01792) 775501

E-mail: EDT@swansea.gov.uk

- 1.8. **If a child or adult is at immediate risk of harm the Police must be contacted immediately on 999.**

- 1.9. Additional information may be found at the following sources:

- 1.9.1. Social Care wales: <https://www.safeguarding.wales/> and <https://socialcare.wales/hub/statutory-guidance>

2. Safeguarding Policy

- 2.1. Providers must have a Safeguarding Policy in place with detailed procedures, ensuring the protection / safeguarding of both children and adults, covering at a minimum:

- Safer recruitment (please refer to Section 3)
- Training, including induction
- Supervision and Safeguarding Procedure
- Management of allegations and the Role of Designated Safeguarding Lead
- Whistleblowing

- 2.2. The Provider must ensure that all Employees have read and understood the policies that are in place and know who to report concerns too.

- 2.3. The Provider shall keep a register of all Employees and against each Employee, the Provider must record the policies, which the Employee has been given copies of, and the date such policies were provided to the Employee. The Provider must also ensure the Employee signs and dates the register to confirm they have read and understood such policies.

3. Disclosure and Barring Service

- 3.1. The Service Provider must comply with the Police Act 1997. Disclosure and Barring Service vetting forms will be completed and submitted in accordance with Part V of the Serious Organised Crime and Police Act 2005.

- 3.2. Providers must ensure all the relevant safeguarding, recruitment and barring checks have been undertaken for all employees, unpaid voluntary workers and other persons providing the Service and keep appropriate training records.

- 3.3. For those Employees not engaged in Regulated Activity a proportionate selection of checks commensurate to the role is required.

- 3.4. For all positions that come within the definition of Regulated Activity the Provider is required to carry out an Enhanced Disclosure and Barring Service Checks. Checks need to be completed on all employees, unpaid voluntary workers and other persons providing the Service. These should be repeated on a three yearly cycle.

- 3.5. Employees, unpaid voluntary workers and other persons should not commence their duties until the necessary checks have been completed and clearance provided to the Service Provider.
- 3.6. The Council should be made aware of an employee with the Service Provider who has an unacceptable criminal conviction or other antecedents. Under such circumstances, the Council will discharge its duty of care to protect vulnerable people from harm.
- 3.7. The Service Provider shall ensure that it operates a recruitment and selection procedure which aligns with the Council's safer recruitment and disciplinary standards and which meets the requirements of legislation, equal opportunities and anti-discriminatory practice and ensures the protection of children and/or Adults at Risk.

4. Safeguarding Training

- 4.1. The Service Provider shall ensure that all personnel engaged in the delivery of the Services receive appropriate and relevant safeguarding training in relation to children and adults and receive refresher training on a three yearly basis as a minimum.
- 4.2. The Service Provider shall ensure delivery of the following training levels to the relevant staff and ensure the stated core aim's and objectives are conveyed within each training level:-
 - 4.2.1. **Level 1** – This level of training is the minimum required and that all staff must obtain. The learning must include the following areas:
 - Safeguarding is everyone's responsibility.
 - Definition of what Safeguarding means.
 - What the law states regarding Safeguarding responsibilities.
 - The expectations of employees in terms of safeguarding.
 - The definitions of abuse and neglect.
 - Recognising signs and symptoms of abuse and neglect.
 - How to report a concern and to whom.
 - 4.2.2. **Level 2** – This level of training is required where employees work brings them into contact with children and/or adults whom may be at risk. The training must include the following areas as a minimum:
 - Recognise who is an adult at risk
 - Identify some signs & symptoms of adult abuse
 - Name and define the categories of abuse.
 - Define their roles & responsibilities in relation to current Safeguarding legislation & policy
 - The Codes of Professional Practice.
 - Consider what abuse and neglect are.
 - Understand the difference between the terms 'Safeguarding' and 'Child Protection'.
 - Consider the laws regarding children in need of protection.
 - Who abuses children and/ or adults.
 - Know how to respond should a child or adult make an allegation.
 - Know how to report a concern, disclosure or allegation of abuse

4.2.3. **Level 3** – Is the minimum required level of training required for the Named Safeguarding Person and all staff members with a supervisory role. The training must include the following areas as a minimum:

- How to manage immediate risks to maintain the safety of the person
- Capacity & consent issues relevant to the Safeguarding process
- What to do & what not to do with regard to preserving evidence
- The next stages of the Safeguarding process & the implications for yourself or your agency
- Child protection and the law.
- Identifying child abuse.
- Missing, Child Sexual Exploitation and Criminal Exploitation Strategy Meetings
- The differences between Fact and Opinion
- Role of IIAA - Integrated Information Advice and Assistance.
- Contributing to a Child Protection Case Conference and core group – roles and responsibilities
- The decision making process, thresholds and professional differences.
- Child Practice Reviews
- Professional Strategy Meetings (PSMs).

5. Whistle Blowing

The Service Provider shall have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Service Provider as regards any part of the provision of the Services in compliance with paragraph 41.7 of the Conditions of Contract.

6. Subcontracting Arrangements

All sub-contractors, must comply with the above requirements. It is the Providers responsibility to ensure that all sub-contractors have in place a commensurate safeguarding policy and procedure as detailed above or that the subcontractor adopts the policy and procedure of the Provider for the duration of their work on this contract.

7. Designated Safeguarding Lead (Named Safeguarding Person)

7.1. The Service Provider shall appoint a Designated Safeguarding Lead (Named Safeguarding Person). This person must be of sufficient seniority for responsibility of the safeguarding of children and/or adults and have completed to a minimum Level 3 training in safeguarding as per para 4.2.3 above.

7.2. The Service Provider's Named Safeguarding Person is responsible for following duties (this list is not exhaustive and there may be other duties to include):-

7.2.1. To implement and monitor the Service Provider's safeguarding policies, procedures and relevant training including management of allegations and concerns.

7.2.2. To support all activities necessary to ensure that the Service Provider meets its responsibilities to safeguard/protect both children and adults.

7.2.3. To advise social care services and the police with regard to any safeguarding issues.

- 7.2.4. To provide advice and signposting to the Service Provider's workforce about legal processes, policies and procedures.
 - 7.2.5. To contribute to the delivery of safeguarding training for all staff and tailor provisions to meet the learning needs of participants within the Service Providers workforce.
 - 7.2.6. To ensure provision of effective safeguarding appraisal, support, peer review and supervision of the Service Providers workforce.
 - 7.2.7. Work with the Service Purchaser on safeguarding issues as and when required.
- 7.3. A deputy person shall also be appointed so reports could be made to in the absence of the Named Safeguarding Person in para 7.1 or in cases where that person themselves is the subject of the allegation or concern.

SCHEDULE 2
Scope and Specification of the Service

SCHEDULE 3 Payment Provisions

- 1.1 Invoices shall only be submitted for work already satisfactorily completed, and accompanied by such information as the Contract Supervisor may reasonably require to verify the Service Provider's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Service Purchaser.
- 1.2 If any sum is payable by the Service Provider under this Contract or any other contract with the Service Purchaser, such sum may be deducted from any invoices submitted by the Service Provider.
- 1.3 The Service Purchaser reserves the right to withhold payment against any invoice which is not submitted in accordance with the Contract or if the Service Provider is in breach of any of its obligations under the Contract or any other contract between the parties until such time as a corrected invoice is submitted or the breach is cured. The Service Purchaser shall in each case notify the Service Provider in writing of the reason for withholding payment.
- 1.4 The Service Provider is referred to Schedule 2 for any further conditions relating to payment provisions.

SCHEDULE 4
Monitoring of the Service/Key Performance Indicators

SCHEDULE 5

Data Protection Schedule

SCHEDULE 6
Tender Response