



**TERMS AND CONDITIONS OF CONTRACT**

**BETWEEN**

**MONMOUTHSHIRE COUNTY COUNCIL**

**&**

**XXXXXXXXXX**

**BLOCK CONTRACT ARRANGEMENTS FOR  
THE PROVISION OF DOMICILIARY CARE AND  
SUPPORT (SOUTH MONMOUTHSHIRE)**

**Contract Start Date:**

**Contract End Date:**

**XXXXXX**

**XXXXXX**

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## CONTRACT PARTICULARS

<b>Contract Title</b>	Block contract arrangements for the provision of domiciliary care and support (South Monmouthshire)
<b>Contract Reference</b>	MCC/XXX
<b>Council</b>	Monmouthshire County Council
<b>Provider</b>	XXXX a company incorporated and registered in England and Wales with company number XXXXX with a registered office at XXXXX
<b>Commencement Date</b>	
<b>Expiry Date</b>	
<b>Any option to extend</b>	Up to 4 years
<b>Services</b>	As set out in the Specification
<b>Contract Price</b>	TBC
<b>Delivery Location</b>	South Monmouthshire: Lot 1 – Chepstow and Rural (Delete as applicable) Lot 2 – Caldicot and Surrounds (Delete as applicable) Lot 3 – The Levels and rural (Delete as applicable)
<b>Payment Profile</b>	An advance payment of 80% of the weekly contractual hours will be made for each 4 weekly payment period. Following data submission and validation a further payment will be made up to the remaining 20% based on actual hours delivered in the 4-week period. In accordance with the Terms and Conditions of Contract and Service Specification.
<b>Intellectual Property Rights</b>	Unless otherwise specified in the Specification, all Intellectual Property Rights will be the property of the Council.
<b>Quality Standards</b>	As set out in the Specification.

<b>Authorised Officer Council:</b>		
<b>Name</b>	<b>Position</b>	<b>Contact Details</b>
<b>Contract Manager (Provider):</b>		
<b>Name</b>	<b>Position</b>	<b>Contact Details</b>
<b>Key Personnel (Provider)</b>		
<b>Name</b>	<b>Position</b>	<b>Contact Details</b>
<b>Address for Service</b>		
<b>Address for Official Notices</b>		

## PRELIMINARIES

1.1 In this document:

1.1.1 the “Provider” shall mean the body, person or persons tendering for or supplying the Services;

1.1.2 the “Council” shall mean Monmouthshire County Council and any successor authority or any person or body to which the Council has assigned the benefit of this Agreement, or any part thereof as referred to in clause 50 and

1.1.3 the Council and the Provider are each referred to as a “Party” and together, the “Parties”.

1.2 The Provider shall, if required to do so by the Council, enter into a form of supplementary agreement determined by the Council to reflect the relevant requirements of any Invitation to Tender and (as appropriate) the offers or proposals set out in any Tender submitted in response to it.

## DEFINITIONS AND INTERPRETATION

2.1 For the purposes of this Agreement except where expressly stated to the contrary, the following words shall have the following meaning:

Acceptance Criteria	means any acceptance criteria set out in the Agreement;
Affected Party	means the party seeking to claim relief in respect of a Force Majeure Event;
Agreement	has the meaning given at Clause 4.1
Award Letter	means the letter sent by the Council to the Provider notifying them that their tender has been successful, and they have been awarded a contract for the supply of services;
BACS System	means the Bankers’ Automated Clearing Services System which is a UK scheme for the processing of financial transactions;
Best Value	shall have the meaning given in Part I of the Local Government Act 1999 (as amended);
Change Control Request	means a written notice served on the Provider by the Council which requests a variation to the Services
Commercially Sensitive Information	means any information listed in the FOI Schedule which is considered by the Provider to be commercially sensitive



	under Section 43 of the FOIA (without prejudice to the Council's obligations under the FOIA);
Confidential Information	means information listed in the FOI Schedule, or designated as such by the Council, which is considered by the Provider or the Council to be confidential under Section 41 of the FOIA and the disclosure of which would be considered by the Provider or the Council to constitute an actionable breach of confidence (without prejudice to the Council's obligations under the FOIA);
Confidentiality Undertaking	means an undertaking not to use or disclose any Confidential Information received save as strictly required to fulfil the purposes of this Agreement (including, without limitation, its re-tender);
Contract Period	means the period calculated in accordance with Clause 3;
Contracting Authority	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006;
Council Representative	means a person appointed by the Council to act on its behalf for the purposes of this Agreement;
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Regulations;
FOIA	means 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 or relevant government department in relation to such Act;
FOI Schedule	means the schedule of information submitted by the Provider with the Provider's tender setting out the information which the Provider considers

	to be Commercially sensitive Information or Confidential Information;
Force Majeure Event	means an event occurring after the date of this Agreement of war, armed conflict, acts of terrorism, riots, fire, flood, storm, earthquake, disaster, decree of Government, pandemic or such other similar events which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Agreement but excluding any industrial dispute relating to the Provider, the Provider Personnel or any other failure in the Provider or any Sub-contractor's supply chain
Good Industry Practice	means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading provider within the relevant industry or business sector of services of a similar type to the Services to be supplied under the Agreement;
Health and Safety Regime	means the Factories Act 1961, the Offices, Shops and Railway Premises Act 1963, the Health & Safety at Work etc Act 1974, the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Food Safety Act 1990 the Environment Act 1995, the Water Industry Act 1991, and the Water Resources Act 1991 (including in each case any associated regulations, guidance or approved codes of practice), and any similar or analogous health, safety or environmental Legislation which has as its aim the protection of persons or the environment or the prevention or reduction of risk of harm or injury to persons or the environment, or relating to the health and safety of the Services or their provision, as is in force from time to time;
Holding Company	shall have the meaning given in section 1159 of the Companies Act 2006;

Implementation Date	means the date by which the Services must be implemented;
Information	shall have the meaning given under section 84 of the Freedom of Information Act 2000 and/or Regulation 2 of the Environment Information Regulations;
Intellectual Property Rights	<p>means:</p> <p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, rights in Internet domain names and website addresses and other rights in trade names, designs, trade secrets and rights in confidential information</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
Legislation	<p>means:</p> <p>(a) any applicable statute or proclamation or any delegated or subordinate legislation; (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; any applicable guidance, direction or determination with which the Council and/or the Provider is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by the Council; and</p> <p>(c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales,</p> <p>In each case in force or applicable in England and Wales, or in Wales;</p>

Parent Company	shall have the meaning given to it in section 1162 and Schedule 7 of the Companies Act 2006;
Price	means the price or prices specified in the Tender;
Programme of Work	means any programme, timetable or key milestones which regulates or specifies the period or periods for the completion of the Services or any part thereon;
Relevant Authority	means any court with relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Welsh Ministers, the government of the United Kingdom or of the European Union;
Requests for Information	shall have the meaning set out in section 8 of the FOIA and/or Regulation 5 of the Environmental Regulations 2004 and includes any apparent request for such Information;
Schedule	means any schedule attached hereto;
Services	means any and all of the services supplied or to be supplied by the Provider in accordance with this Agreement, including any goods supplied or works carried out as part of such services;
Special Conditions	means any special conditions either referred to in the Invitation to Tender or set out in the Schedule hereto;
Specification	means the specification attached to the Invitation to Tender;
Sub-contractor	means any third party with whom the Provider enters into a sub-contract or its servants or agents and any third party with whom that third party enters into a subcontract or its servants or agents for the performance of any part of the Provider's obligations under this Agreement;
Provider Personnel	means all officers, partners, employees, servants, agents, consultants and contractors of whatever nature of the Provider and/or of any Sub-contractor;

Tender	means the documentation submitted by the Provider and any other Tenderers in response to the Invitation to Tender; and Tenderers means all individuals or organisations who submitted a Tender in response to the Invitation to Tender
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2.2 In this Agreement the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.

2.3 A reference 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 subsequently amended and as in force at the relevant time.

2.4 A reference to any document shall be construed as a reference to the document as at the date of execution of this Agreement.

2.5 Each Party shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is referred to in this Agreement.

2.6 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2.7 Neither Party shall be liable for any default of its obligations under this Agreement to the extent that such default is caused by a failure or delay by the other Party in performing its obligations under this Agreement provided and to the extent, that the affected party notifies the other Party of such failure or delay within thirty (30) days of the affected Party becoming aware of its occurrence and of its likely impact.

## **COMMENCEMENT AND DURATION**

3.1 This Agreement shall take effect on the Contract Start Date.

3.2 This Agreement shall expire on the Contract Expiry Date subject to;

3.2.1 the rights of termination contained herein.

3.3 The Council may extend the Contract Period beyond that stated in Clause 3.2 above, for a further period as specified in the Invitation to Tender on the same terms and conditions, by giving such written notice to the Provider as is allowed for in the Invitation to Tender or if none is specified, a reasonable period of notice.

## **SCOPE**

4.1 This Agreement shall comprise the following;

- 4.1.1 the Terms and Conditions;
- 4.1.2 the Specification;
- 4.1.3 the Tender;

4.2 The documents listed in Clause 4.1 above shall be read together and construed to be consistent with one another so far as possible. In the event of any unavoidable conflict or inconsistency between any of the various documents forming part of this Agreement the following order of precedence shall apply (with the first listed below taking precedence over those items listed subsequently):

- 4.2.1 the Terms and Conditions;
- 4.2.2 the Specification;
- 4.2.3 the Tender;

4.3 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of the Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

## **THE SERVICES**

5.1 Without prejudice to any higher standard required by this Agreement, the Provider shall at its own cost ensure that all Services supplied to the Council pursuant to this Agreement shall be compliant with:

- 6.1.1 the Specification;
- 6.1.2 any relevant Legislation;
- 6.1.3 any relevant British Standard; and
- 6.1.4 any policies, rules, codes of practice, procedures and standards with which the Provider is required to comply.

5.2 The Services shall be carried out to the reasonable satisfaction of the Council and in accordance with Good Industry Practice.

5.3 Where Services include the provision of goods, materials or plant these shall be of satisfactory quality and fit for any purpose for which such goods, material or plant are commonly used or which is made known to the Provider in writing by the Council.

5.4 The Services shall be delivered at the expense of the Provider at the place or places specified by the Council.

5.5 The Provider shall;

5.5.1 provide to the satisfaction of the Council such appropriately qualified and experienced Provider Personnel as shall be necessary for the proper execution of the Services and shall not remove or replace such persons without the prior written approval of the Council;

5.5.2 ensure that all Provider Personnel involved in delivering the Services are sufficiently instructed with regard to the Services and on all relevant provisions of the Agreement;

5.5.3 obtain and at all times maintain all necessary licences and consents, and comply with all applicable Legislation;

5.5.4 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

5.5.5 co-operate with such others as the Council may reasonably require;

5.5.6 satisfy itself that the information, including documentation, provided by the Council is adequate and will not prejudice the performance of any of the Provider's obligations under the Agreement. The Provider shall inform the Council immediately of any inadequacy of which it becomes aware and the Parties shall discuss in good faith how to resolve the matter;

5.5.7 work diligently to protect and promote the Council's interests;

5.5.8 comply with all the Council's policies or other matters which the Council has disclosed to the Provider pursuant to Clause 8; and

5.5.9 in all matters act in good faith towards the Council.

## **REJECTION OF SERVICES**

6.1 The Council shall have the power by notice to reject any Services which it does not consider to have been carried out in accordance with this Agreement and the Provider shall, without prejudice to the Council's other rights, promptly and at its own expense, re-perform the Services or remedy the deficiency in the Services to the satisfaction of the Council.

6.2 If the Provider fails to remedy the deficiency promptly in accordance with the Council's instructions, the Council may remedy or cause to be remedied any deficiency, the costs of which will be payable by the Provider.

6.3 Notwithstanding that the Services or any part thereof have been the subject of any instruction, review, approval, acknowledgement or inspection, the Provider shall not be relieved from any liability or obligation under the Agreement.

6.4 Any additional costs (including costs of any audit) incurred by the Council as a result of the Provider failing to carry out the Services in accordance with the Agreement shall be reimbursed to the Council by the Provider.

## **TIME OF DELIVERY**

7.1 The Provider shall perform the Services.

7.1.1 in accordance with the dates and times specified.

7.2 Time shall be of the essence and if the Provider fails to perform the Services within the time specified, the Council may release itself from any obligation to accept and pay for the Services and/or may terminate the Agreement, in either case without prejudice to any other rights and remedies of the Council.

## **POLICIES ETC.**

8.1 The Provider shall comply with all the Council's published policies and with any further rules, codes of practice, procedures and standards which the Council notifies to the Provider or that the Provider and/or Council deems relevant. The Council shall throughout the Contract Period ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Provider.

## **LEGISLATIVE CHANGE**

9.1 The Provider shall bear the cost of complying with all Legislation and any amendments thereto. In the event that a change in Legislation necessitates a material change to the performance of this Agreement and provided that such change could not have reasonably been foreseen by the Provider at the date of the Agreement the Parties shall enter into negotiations in good faith to make such adjustments to the Price as may be necessary to compensate the Provider for any additional costs as are both reasonably and necessarily incurred by the Provider in accommodating such changes. If the Parties cannot reach agreement on such costs within a reasonable time, then the Council may at its discretion terminate this Agreement in whole or in part.

## **DISRUPTION**

10.1 The Provider shall (and shall ensure that its Provider Personnel shall) always take all reasonable care to ensure that in its execution of the Services it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

10.2 The Provider shall co-ordinate its activities in the provision of the Services with the Provider Personnel and other contractors engaged by the Council.



## **PROGRESS REPORTS AND INSPECTION**

11.1 Where a progress report, or other information pertaining to the progress of the performance of either Party of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either Party under this Agreement.

11.2 The Council may inspect and examine the work or Services being carried out on the Council's premises without notice at any time.

11.3 The Provider shall give all such assistance as the Council may require for such inspection and examination.

## **REVIEW MEETINGS AND MANAGEMENT INFORMATION**

12.1 The Provider shall submit management information reports to the Council on a monthly basis unless otherwise agreed, covering the period since the date of the previous management information report.

12.2 The content of such reports shall be agreed between the Council and the Provider following the date of this Agreement.

12.3 The Provider and the Council shall meet on a quarterly basis, unless otherwise agreed, to review and discuss any issues relating to the performance of the Agreement.

## **INTELLECTUAL PROPERTY**

13.1 It shall be a condition of the Agreement that, except to the extent that the Services incorporate designs furnished by the Council, the Services will not infringe any Intellectual Property Right of any third party and the Provider shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Clause.

13.2 All Intellectual Property Rights in all documents (in whatever format) including but not limited to specifications, instructions, plans, drawings, patents, patterns, models, designs or other material:

13.2.1 furnished to or made available to the Provider by the Council shall remain the property of the Council;

13.2.2 prepared by or for the Provider for use, or intended use, in relation to the performance of this Agreement shall be the subject of a perpetual, irrevocable, royalty free licence for the Council to copy, adapt, distribute, communicate and make available those documents (and shall carry the right for the Council to grant sub-licences in respect of the same) for all purposes reasonably contemplated by, connected with or ancillary to this Agreement.

13.3 The Provider shall not have the right to use any data, reports, drawings, specifications, designs, inventions, plans, programs or other material referred to in Clause 13.2.1 for its own commercial purposes except upon obtaining the prior written consent of the Council and then only upon such terms as may be imposed in connection therewith.

13.4 At the termination of the Agreement the Provider shall immediately return to the Council all materials, work or records held in connection with this Agreement, including any back up media.

13.5 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

#### **PURCHASING ON BEHALF OF THE COUNCIL**

14.1 In the event that the Provider procures goods or services including equipment from third parties on behalf of the Council, then it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2006 (if and to the extent applicable) as though the Provider were a Contracting Authority.

#### **FRAUD**

15.1 The Provider must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Council.

15.2 Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Council the Provider shall immediately inform the Council.

#### **PROVIDER'S PERSONNEL**

16.1 The Council reserves the right under this Agreement to refuse any Provider Personnel admission to any premises occupied by or on behalf of the Council if in the opinion of the Council, such admission is undesirable.

16.2 If and when directed by the Council, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with this Agreement and such other particulars as the Council may reasonably require.

16.3 The Provider and the Provider's Personnel shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at any Council establishment and when in the vicinity thereof.

16.4 The decision of the Council as to whether any person is to be refused admission to any premises occupied by or on behalf of the Council and as to whether the Provider has failed to comply with Clause 16.3 shall be final and conclusive.

16.5 If the Provider shall fail to comply with Clause 16.3 or fails to do so within a reasonable time of written notice so to do, then the Council may terminate this Agreement in accordance with Clause 45 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

16.6 The Provider acknowledges that each member of its Provider Personnel engaged in the performance of the Services shall have full authority to act on behalf of the Provider for all purposes in connection with this Agreement provided always that if the Council shall at any time be dissatisfied for any reason with the performance of any person engaged in carrying out the Services, the Provider shall, if the Council so requires, cease to engage such person in the execution of the Services and provide a competent substitute at no additional cost to the Council.

## **INDUSTRIAL ACTION**

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

17.2 In the event of industrial action by the Provider's Personnel, the Provider shall seek the Council's prior written approval to any revised proposals to deliver the Services.

17.3 If the Provider's proposals referred to in Clause 17.2 are considered insufficient or unacceptable by the Council, then the Council may terminate this Agreement in whole or in part.

## **NATIONAL MINIMUM WAGE**

18.1 The Provider shall ensure that, where appropriate, its Provider Personnel are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998 or any other Legislation making similar provision.

18.2 The Provider shall ensure that, eligible staff, receive real Living Wage as per the terms laid out in the service specification.

## **HEALTH AND SAFETY**

19.1 The Provider and its Provider Personnel shall:

19.1.1 comply with all relevant parts of the Health and Safety Regime;

- 19.1.2 in relation to all persons likely to be affected by the Services take all such steps as may be reasonably practicable to ensure their health and safety;
- 19.1.3 notify the Council of any health and safety hazards, which may arise in connection with the performance of this Agreement;
- 19.1.4 not treat, keep or dispose of any waste produced and/or carried by the Provider as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every statutory duty which is relevant;
- 19.1.5 notify the Council of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise in connection with the performance of this Agreement;
- 19.1.6 during the execution of the Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment;
- 19.1.7 ensure that its staff, whilst on the Council's premises comply with all relevant provisions of the Health and Safety Regime and with the Council's own policies and procedures;
- 19.1.8 ensure that in performing the Services it adopts safe methods of work in order to protect the health and safety of:
- 19.1.8.1 the employees of the Provider;
  - 19.1.8.2 the employees of the Council;
  - 19.1.8.3 the employees of the Provider Personnel; and
  - 19.1.8.4 any other persons including but without limitation, members of the public.
- 19.1.9 produce to the Council if requested its detailed safe working system for carrying out duties under this Agreement.

19.2 The Council shall notify the Provider of any health and safety hazards which may exist or arise at any Council premises and which may affect the Provider. The Provider shall draw these hazards to the attention of its Provider Personnel.

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

19.4 Nothing in this Clause 19 shall relieve the obligations of the Provider to comply with its statutory duties.

## **GOODS AND MATERIALS OF THE COUNCIL**

20.1 All goods and materials issued by the Council in connection with the Agreement shall remain the property of the Council and shall be used in the execution of the Agreement and for no other purpose whatsoever without the prior approval in writing of the Council.

20.2 Such goods and materials shall be deemed to be in good condition when received by or on behalf of the Provider unless it notifies the Council to the contrary within fourteen (14) days or such other time as specified in the Agreement.

20.3 The Provider shall keep all such goods and materials used in the performance of the Services in good, clean and serviceable repair for the proper performance of the Services and the Council shall be under no liability in respect thereof.

20.4 The Provider shall return such goods and materials on demand and shall be responsible for all loss thereof or damage and the costs of repair or replacement thereto howsoever caused prior to their re-delivery to the Council.

20.5 The Provider shall, following completion of the Services or in response to an earlier request by the Council, return the goods, materials work or records held, including any back up media, in good condition, fair wear and tear excepted.

## **ENVIRONMENTAL REQUIREMENTS AND SOCIAL VALUES**

21.1 The Provider shall be required to deliver any agreed social value elements in accordance with the Well-being of Future Generations (Wales) Act 2015 and the Specification.

21.2 The Provider shall where relevant to the Specification co-operate with the Council in relation to the economic, social and environmental wellbeing of the Council's area and shall accordingly notify the Council of any best practice ideas which may improve the same.

21.3 The Council is committed to becoming a net zero Council by 2030 as such may request that the Provider provides a Carbon Reduction Plan for this Contract in accordance with WPPN 06/21 - <https://www.gov.wales/wppn-06-21-decarbonisation-through-procurement-taking-account-of-carbon-reduction-plans-html>. The Council will give suitable notice should it request a Carbon Reduction.

## **WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015**

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

22.2 The Provider shall ensure that, in providing the Services, it improves the economic, social and environmental wellbeing of the area of the Council in accordance with the requirements of the Specification and the Tender.

## **OFFERS OF EMPLOYMENT**

23.1 For the duration of the Agreement and for a period of twelve (12) months thereafter the Provider shall not employ or offer employment to any of the Council's staff who have been associated with the Services without the Council's prior agreement in writing save that this condition shall not relate to a bona fide advertisement for employment with either the Council or the Provider.

## **TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (TUPE)**

24.1 If required to do so by the Council, the Provider shall provide the Council with any and all relevant information regarding its employees to comply with the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), within fourteen (14) days of request by the Council.

24.2 The Council may disclose such TUPE information to any third party who may potentially become an employer of any employees of the Provider who are potentially affected by TUPE.

24.3 Where TUPE information has been provided, the Provider shall:

24.3.1 inform the Council of any change to the information provided or provide any new TUPE information not previously provided;

24.3.2 use its best endeavours to clarify any matter upon which clarification is requested by the Council; and

24.3.3 use its best endeavours to co-operate with any other reasonable request made by the Council regarding TUPE information or the Provider's employees within fourteen (14) days of any such change, discovery of new information, or receipt of such request.

24.4 For the purposes of this clause "TUPE information" shall mean written details of:

24.4.1 the total number of employees employed by the Provider whose work or any part thereof is undertaken for the purposes of this Agreement;

24.4.2 the employees' age and gender;

24.4.3 the employees' salary, length of service, contractual period of notice, any pay settlement covering future dates which has already been agreed by the Provider and any redundancy entitlement;

24.4.4 those particulars of employment that an employer is obliged to give to an employee pursuant to Section 1 of the Employment Rights Act 1996;

24.4.5 entitlement to pensions, paid holidays and any other benefits;

24.4.6 terms incorporated from any collective agreement; and

24.4.7 any outstanding or potential liability for past breaches of such contracts;

24.4.8 information regarding any:

24.4.8.1 disciplinary procedure taken against an employee within the previous two (2) years;

24.4.8.2 grievance procedure taken by an employee, within the previous two (2) years;,

24.4.8.3 any Court or Tribunal case, claim or action brought by an employee against the Provider, within the previous two (2) years; and

24.4.8.4 any potential claim the Provider has reasonable grounds to believe that an employee may bring against the Provider, arising out of the employee's employment with the Provider.

24.5 The Provider shall indemnify the Council fully and hold it harmless at all times from and against all actions proceedings claims expenses awards costs and all other liabilities howsoever in any way connected with or arising from claims by its employees (or former employees) affected by, or claiming to be affected by, TUPE.

24.6 The provisions of this condition shall apply during the continuance of this Agreement and indefinitely after its termination.

#### **CONFLICTS OF INTEREST**

25.1 The Provider shall take appropriate steps to ensure that neither itself nor the Provider Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict between the pecuniary or personal interests of such persons and the duties owed to the Council under the provisions of this Agreement. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

25.2 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after termination. Failure to disclose this information will be considered a material breach incapable of remedy and this Agreement may be terminated in accordance with Clause 45.

#### **DISCRIMINATION AND EQUALITY**

26.1 The Provider shall ensure that it complies (and shall take all reasonable steps to ensure that all Provider Personnel comply) with all relevant requirements of all current Equalities legislation, including but not limited to the Equality Act 2010 and all other similar Legislation ("equality legislation") in force from time to time together with any guidance or Codes of Practice issued by the Equality and Human Rights Commission (EHRC) and shall in addition discharge its obligation under this agreement and provide the services in a manner consistent with the Councils equalities policies.

26.2 The Provider shall provide any information reasonably requested by the Council in respect of such equality legislation in so far as it relates to the performance of this Agreement.

26.3 The Council is required by the Welsh Language Act 1993 to maintain a Welsh Language Scheme. The Provider shall (and shall take all reasonable steps to ensure that all Provider Personnel shall) comply with the Council's Welsh Language Scheme as updated from time to time and notified to the Council in writing.

## **SECURITY OF CONFIDENTIAL INFORMATION**

27.1 In order to ensure that no unauthorised person gains access to any Confidential Information, or any data obtained in the performance of the Agreement, the Provider undertakes to maintain appropriate security systems, which may be subject to review and approval by the Council.

27.2 The Provider will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Provider's obligations under Clauses 26 and 48.

27.3 The Provider shall at its own expense co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

27.4 The Council may require the Provider to alter or update any security systems at any time during the Contract Period.

## **DATA PROTECTION**

28.1 The Provider and the Council have a Data Controller to Data Controller relationship. The Data Controllers have agreed on the following contractual clauses in order to ensure adequate safeguards are in place in respect of and to protect the processing of Personal Data by each Data Controller in terms of this Agreement.

28.2 The Data Controllers have agreed to transfer to each other the following class of Personal Data:-

- Identifying information – names and former names, and dates of birth, reference numbers (e.g. NI), etc.
- Contact information – postal and email addresses (current and former), telephone number
- Education/training records and examination results
- Employment details
- Family lifestyle and social circumstances
- Financial details
- Goods and/or services provided

Special Categories of Personal Data as defined by the Act:-



- Criminal allegations, proceedings, outcomes and sentences
- Physical or mental health or condition
- Politics
- Racial or ethnic origin
- Religion or other beliefs of a similar nature
- Sex life
- Sexual orientation

The Personal Data transferred or to be transferred in terms of Clause 29.2 concerns the following categories of Data Subjects:

- Advisers, consultants and other experts
- Agents and contractors
- Complainants, correspondents and enquirers
- Landlords or tenants
- Offenders and suspected offenders
- Service Users/Councils/clients/patients
- Previous and prospective employers of the staff and referees
- Relatives, guardians, and associates of the data subject
- Staff including volunteers, agents, temporary and casual workers
- Providers

28.3 The Data Controllers warrant and undertake that they are responsible for ensuring that the Personal Data is processed by them in accordance with the Act from the date that it is accessed.

28.4 The Data Controllers undertake to use the Personal Data only for the Specified Purposes. If the Data Controllers propose to use or process the Personal Data for a purpose which is not a Specified Purpose, the Data Controllers shall ensure that, prior to using or processing the Personal Data in such manner, it will ensure that such use or process is in compliance with the Act.

28.5 The Data Controllers shall notify each other forthwith upon becoming aware that they are or are likely to become unable to comply with either their obligations under this Agreement and/or the Act whereupon the other Data Controllers shall be entitled, at their discretion, to either:-

28.6 Suspend the right of the Data Controller to receive and process further Personal Data under or pursuant to the terms of this Agreement (to such extent and for howsoever long as the other Data Controllers may determine) until the Data Controller is able to demonstrate to the reasonable satisfaction of the other Data Controllers that the Data Controller is able and will continue to be able to so comply PROVIDING ALWAYS THAT if the Data Controller is unable to demonstrate to the reasonable satisfaction of the other Data Controllers that the Data Controller is able and will

continue to be able to comply with the terms of this Agreement, the other Data Controllers shall be entitled to terminate this Agreement on five (5) working days' written notice.

28.7 Each party shall be liable to the other for damages it causes by any breach of these clauses or the Act. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded.

28.8 The Data Controllers acknowledge and agree that:-

- (a) Data Subjects who suffer damage (the "Damages") as a result or a consequence of the acts and/or omissions of or a breach of the provisions of this Agreement by or on behalf of a particular Data Controller shall be entitled to receive compensation from that particular Data Controller for such Damages; and
- (b) they shall be individually liable for any such Damages that they individually have caused that may be due to or awarded to any such Data Subject by any court, authority or person of competent jurisdiction.

28.9 The Data Controllers warrant, represent and undertake that they possess financial resources sufficient to fulfil its responsibilities under clause 45.2.8

28.10 The Data Controllers warrant, represent and undertake that:-

- (a) they have full power and authority to receive, store and process the Personal Data, to use it for the purposes set out in this Agreement and to give the warranties, indemnities and enter into and perform its obligations under and in terms of this Agreement; and
- (b) they have no reason to believe that any legislation applicable to them in any way prevents, restricts or limits their ability or right to comply with and fulfil their obligations under this Agreement.

28.11 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

- (a) the Purchaser determines that the processing is not occasional;
- (b) the Purchaser 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; and
- (c) the Purchaser determines that the processing is likely to result in a

risk to the rights and freedoms of Data Subjects.

28.11.1 The Provider shall allow for audits of its Data Processing activity by the Purchaser or the Purchaser's designated auditor.

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

28.11.3 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:

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

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

28.12 The 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).

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

## **NO PARTNERSHIP**

29. Nothing in this agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise any party to act as the agent for another, and no party shall have authority to act in the name or on behalf of or otherwise to bind another in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **SEVERABILITY**

30. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all

provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

## **FORCE MAJEURE**

31.1 No party hereto shall be liable for any breach of its obligations under this Agreement resulting from causes beyond its reasonable control including, but not limited to, fire, insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (an "Event of Force Majeure").

31.2 All of the parties agree to give notice forthwith to the other upon becoming aware of any Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

31.3 If a default due to any Event of Force Majeure shall continue for more than one week, then parties not in default shall be entitled to terminate this Agreement. No party shall have any liability to the other in respect of the termination of this agreement as a result of an Event of Force Majeure.

## **NOTICES**

32.1 Any communication or notice required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by first class registered or recorded delivery if posting

## **CARE PROVISION**

33.1 The Provider shall comply with the Council's Assessment and Care Management systems and procedures which place responsibilities on both the Council and Provider.

33.2 The Council shall assess the needs of the Service User and prepare a Care Plan identifying the personal details and individual outcomes for the Service User and how these assessed needs will be addressed. The Council shall send the Care Plan to the Provider at least 24 hours prior to the commencement of the Service.

33.3 The Provider shall ensure that its staff read the Council's Care Plan in order to develop a consistent Service Delivery Plan in accordance with the requirements of the Service Specification. The Provider must provide upon request evidence that staff have read and understood the Care Plan.

33.4 The Provider shall cooperate and work positively with the Council and other care professionals and organisations to ensure that planned responses to any changing needs are in the best interests of the Service User.

33.5 At least once in every 12 month period the Care Plan will be reviewed by the Care Manager/Social Worker and shall involve the Provider, Service User and where appropriate their family/primary carer and/or an Advocate. The Provider shall support this formal review process by ensuring that the needs of Service Users are regularly monitored and any changed fed back during the formal review process.

33.6 The Council shall ensure that the Provider receives the assessment information pertinent to the service provision prior to the commencement of the Service, except in an emergency situation as defined within Service Specification.

33.7 The Provider, Service User or their representative may request a Care Plan review if, in their opinion, the care needs of the Service User have significantly changed or cannot be met.

## **HUMAN RIGHTS**

34.1 The Provider shall not (and shall ensure that the Provider Personnel shall not) do or permit or allow anything to be done which may result in the Council acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

## **ENVIRONMENTAL REQUIREMENTS**

35.1 The Provider shall;

35.1.1 have a sustainable approach to waste management and not treat, keep or dispose of any waste produced and/or carried by the Provider as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with all relevant Legislation including The Producer Responsibility (Packaging Waste) Regulations 1997 – 2007 together with any amendments, additions or re-enactments that may take place from time to time;

35.1.2 Perform the Agreement in such a way as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

35.1.3 During the execution of this Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.

35.2 In the event the Provider believes that a change to this Agreement or a change to the Specification would reduce the overall environmental impact of this Agreement or the Services (for example by the increased use of re-cycled or re-furbished or otherwise environmentally friendly materials, or by the production of goods with a

longer life span, or that a change would result in increased energy efficiency or reduce in other ways the impact on the environment) the Provider must notify the Council (whether or not this change would effect the Price payable for the Services). The Council will consider the proposed change and may implement such change in accordance with Clauses 37 or 38.

35.3 Nothing in this Clause 35 shall relieve the obligations of the Provider to comply with its statutory duties and Good Industry Practice.

## **CHARGES AND PAYMENT**

36.1 The charges payable by the Council in respect of Services shall be determined by reference to the Price for Services comprised in the Contract Award and shall be the full and exclusive remuneration of the Provider in respect of the performance of the Services.

36.2 The charges are exclusive of Value Added Tax. The Council shall pay the Value Added Tax on the charges at the rate and in the manner prescribed by law, from time to time.

36.3 All invoices submitted by the Provider to the Council shall be valid VAT invoices and shall contain the Contract number to which the invoice relates and shall be denominated in sterling.

36.4 The Price of the Services shall include all royalties, licence fees or similar expenses in respect of making, use or exercise by the Provider of any invention or design for the purposes of performing the Agreement.

36.5 In the event of the submitted invoice being incorrect, the invoice shall be returned to the Provider as a query. The thirty (30) days payment timescale shall commence from the date of an accurate invoice being received by the appropriate section within the Council.

36.6 The Provider shall ensure that all invoices clearly show the following information:

- 36.6.1 name and address of the Provider;
- 36.6.2 the period to which the payment relates;
- 36.6.3 hourly rate

36.7 Payment of invoices payable by the Council for Services supplied shall be made by way of the BACS system. The Council shall only consider an alternative method of payment where it can be determined that payment by way of BACS is not possible.

36.8 Payment shall be made within thirty (30) days of receipt by the Council (at its nominated address for invoices) of a valid and agreed invoice from the Provider.

## **CHANGE CONTROL**

37.1 The Council has the right to propose any variation(s) to the Services (including a request for the Provider to cease any one or more or any part of the Services) in accordance with this Clause 37. If the Council wishes to propose a variation to the Services, the Council shall serve a Change Control Request on the Provider. No change shall be deemed to occur, and the Provider shall not be entitled to any additional payment, unless the procedures in this Clause 37 are complied with.

37.2 The Provider shall accommodate any variation(s) required by the Council provided that it shall only be entitled to payment for any agreed additional costs it incurs as a result on the basis set out in this Clause 37.

37.3 The Change Control Request shall set out the variation to the Services required by the Council in detail and request a cost estimate ("the Estimate") of the costs arising as a direct result of the variation.

37.4 The Provider shall provide the Council with the Estimate within ten (10) working days of the receipt of the Change Control Request or such longer period as is reasonable in all the circumstances. The Estimate shall include a statement of:

37.4.1 the impact of the proposed variation on the provision of the Services;

37.4.2 any amendment required to this Agreement to accommodate the proposed variation.

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

37.4.4 any other information reasonably requested by the Council or appearing to the Provider to be relevant.

37.5 As soon as practicable after the Provider provides the Council with the Estimate, the Council and the Provider shall meet to discuss and agree any issues arising from the Change Control Request or the Estimate.

37.6 The Parties shall endeavour to agree the terms of the Estimate. In the event the Parties cannot agree any part of the content of the Estimate within a reasonable time of the meeting under Clause 34.5 then the Change Control Request shall be withdrawn by the Council.

37.7 As soon as practicable after any part of the contents of the Estimate have been agreed in accordance with Clause 34.6 the Council shall:

37.7.1 confirm in writing that it wishes to proceed with the Change Control Request

(or that part of it which has been agreed or determined as above); or

37.7.2 withdraw the Change Control Request (or the relevant part).

37.8 If the Council confirms that it wishes to proceed with the Change Control Request, the Services shall be deemed to have been amended accordingly. The annual cost of, or savings from, implementing the variation (as agreed or determined) shall be added to or deducted from the payments, as appropriate.

37.9 If the Council has not confirmed or withdrawn the Change Control Request within twenty (20) calendar days of the date of agreement in accordance with Clause 37.6 then the Change Control Request shall be deemed to be withdrawn by the Council.

37.10 The Council shall not be liable for any costs incurred by the Provider in implementing the procedures pursuant to this Clause 37.

### **MINOR VARIATIONS**

38.1 Variations of a minor or temporary nature may be required to the Services from time to time and such variations shall be agreed in writing between the Council and the Provider. The Provider shall comply with such minor or temporary variations, which shall normally be accommodated at no extra cost to the Council, provided they do not involve additional cost to the Provider. If such extra cost is incurred, the Provider shall provide written evidence to the Council and the Parties shall then agree such additional costs. If the Parties cannot reach agreement on such costs within a reasonable time, then the Council may at its discretion terminate the Agreement in whole or in part. The Council shall not as a result of such termination be in breach of this Agreement or be under any liability to the Provider (whether in contract, tort, legitimate expectation, restitution, statutory duty or in any other way whatsoever).

### **INTEREST**

39.1 If the Council fails to pay any amount properly due and payable by it under this Agreement, the Provider shall have the right to charge interest on the overdue amount at the rate of two (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. The Parties agree that the rate is a substantial remedy in accordance with section 9 of the Late Payments of Commercial Debts (Interest) Act 1998. This Clause shall not apply to payments that the Council disputes in good faith

.

### **SET OFF**

40.1 The Council may retain or set off any amount owed to it by the Provider whether under this Agreement or otherwise which has fallen due and payable against any amount due to the Provider under this Agreement.



## **COMPLIANCE WITH VALUE ADDED TAX AND OTHER TAX REQUIREMENTS**

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

41.2 Failure to comply will constitute a material breach of this Agreement and the Council may exercise the rights and provisions conferred by Clause 45.

41.3 The Provider shall furnish to the Council the name, and if applicable, the VAT registration number of any Provider Personnel prior to the commencement of any work under this Agreement by such Provider Personnel.

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

## **WARRANTIES AND REPRESENTATIONS**

42.1 The Provider warrants and represents that:

42.1.1 it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Provider;

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

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

## **LIMITATION OF LIABILITY**

43.1 Neither Party excludes or limits liability to the other Party for death of or personal injury to any individual or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

43.2 Subject always to Clause 45.1, and notwithstanding any other provision contained herein, the total liability of the Provider (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed five million (£5,000,000) pounds in respect of any one incident or series of related incidents and ten million (£10,000,000) pounds in the aggregate for any or all incidents (whether related or not) arising during the period of the Agreement.

43.3 Without prejudice to the Council's obligation to pay the charges as they fall due, the Council's liability under this Agreement shall be limited to 50% of total Price payable for the Services pursuant to this Agreement.

43.4 Subject always to Clause 45.2, in no event shall either Party be liable to the other for:

43.4.1 indirect or consequential loss or damage; and/or

43.4.2 loss of profits; and/or

43.4.3 loss of business; and/or

43.4.4 loss of revenue; and/ or

43.4.5 loss of goodwill, save as expressly provided for under the terms of this Agreement.

43.5 The provisions of Clause 45.4 shall not be taken as limiting the right of the Council to claim from the Provider for any:

43.5.1 additional operational and administrative costs and expenses; and/or

43.5.2 any costs or expenses rendered worthless; and/or

43.5.3 loss or damage resulting directly from the default of the Provider.

43.6 The Parties expressly agree that neither Party shall be entitled to an order for specific performance to enforce any provision hereunder.

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

## **INSURANCE**

44.1 The Provider shall indemnify and keep the Council indemnified against the injury to or death of any person or persons, and loss of or damage to any property including property of the Council, and against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of the provision of the Service or in relation thereto (which for the avoidance of doubt includes any claims based on the Human Rights Act 1998), except and to the extent that it may arise out of the act, default or negligence of the Council, their employees or agents not being the Provider or employed by the Provider.

44.2 The Provider will maintain or cause to be maintained, a Public Liability Insurance of a sum of not less than £5 million in respect of any one claim or series of claims arising out of one event.

44.3 Without thereby limiting its responsibilities under this Condition, the Provider shall insure, with a reputable insurance company which is satisfactory to the Council, against all loss of and damage to property and injury to, or death of, persons arising out of or in consequence of the Provider's obligations under the Agreement and against all

actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof.

44.4 Save only in respect of liabilities for death or personal injury resulting from the negligence of the Council or their servants the Council shall not be liable for any loss or damage whether caused by the negligence of the Council or its servants or agents or in any other way whatsoever and the Council shall in no circumstances be liable to the Provider for any loss of profit business or production or any similar loss or damage whether direct indirect or consequential howsoever caused.

44.5 The insurance in respect of personal injury or death of any person arising under a contract of service with the Provider and arising out of an incident occurring during the course of such person's employment shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1972 and any statutory orders made thereunder and any subsequent amendments or additional relevant legislation applicable to employer's liability insurance in Great Britain and shall provide a minimum indemnity of £10,000,000.

44.6 For all claims other than under Condition 10.5 above, the insurance cover shall be £5,000,000, or such greater sum as the Provider may choose in respect of any one incident, and the Provider's insurance policy effecting such cover shall have the interest of the Council endorsed thereon or shall otherwise expressly by its terms confer its benefits upon the Council.

44.7 The Provider will maintain or cause to be maintained, a Professional Liability Insurance of a sum of not less than £5 million in respect of any one claim or series of claims arising out of one event.

44.8 The Provider's liability and indemnity to the Council arising under these conditions shall be without prejudice to any other right or remedy available to the Council including the ability/right of the Council to enforce any bond or guarantee given to the Council.

44.9 The Provider shall supply to the Council a certificate from its insurers or brokers confirming that the Provider's insurance policies comply with this Condition and shall supply to the Council on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with this Condition.

## **TERMINATION**

### *Provider Default*

45.1 The Council may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

45.1.1 any of the circumstances detailed in Clause 165 (Provider Personnel), Clause 17.3 (Industrial Action), Clause 41.2 (Compliance with Value

Added Tax and Other Tax Requirements), Clause 47.2 (Corrupt Gifts and Payments of Commission).

(Confidentiality); or

- 45.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Provider or its Parent Company provided that the Council shall only be permitted to exercise its rights pursuant to this Clause 44.1.2 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Council has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
- 45.1.3 the Provider, being a company, passes a resolution, or the Court makes an order that the Provider or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Provider or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Provider or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123, 1(a) and is for an amount of not less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or
- 45.1.4 the Provider, being an individual, or where the Provider is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction; or
- 45.1.5 the Provider commits a breach of its obligations under this Agreement (other than as a consequence of a breach by the Council of its obligations under this Agreement) which breach results in the criminal investigation, prosecution and conviction of the Provider or any Sub-

- contractor under the Health and Safety Regime (a “Health and Safety Conviction”); or
- 45.1.6 the Provider;
  - 45.1.6.1 commits a material breach of this Agreement which the Authority acting reasonably believes to be incapable of remedy and/or;
  - 45.1.6.2 the material breach is capable of remedy and the Provider shall have failed to remedy the material breach within thirty (30) days of written notice to the Provider specifying the material breach and requiring its remedy; or
  - 45.1.6.3 the Provider commits a series of breaches of this Agreement which when taken together amount to a material breach of this Agreement.

#### **“No Default” termination**

45.2 The Council may terminate this Contract by giving the Provider six months prior notice in writing.

45.3 The Provider may terminate this Contract by giving the Council six month’s prior notice in writing.

45.4 Without prejudice to Clause 45.1:

45.5 the Council may by notice in writing terminate this Agreement as from the date of service of such notice if any of the circumstances detailed in Clause 9.1 (Legislative Change), Clauses 31.5 and 31.8 (Force Majeure) and/or Clause 30.1 (Severability) arise; and

45.6 the Provider may by notice in writing served in accordance with Clause 56.3 terminate this Agreement as from the date of service of such notice if any of the circumstances in Clause 30.1 (Severability) arise.

#### ***Council Default***

45. The Provider may at any time by notice in writing terminate this Agreement from the date of service of such notice if:

- 45.6.1 the Council has failed to pay any sum which is properly due and owing to the Provider (such sum not being in dispute) by the due date under Clause 36.8 (Charges and Payments); and
- 45.6.2 which sum amounts to at least fifteen percent (15%) of the total Contract Price; and
- 45.6.3 the Provider has given to the Council at least thirty (30) days’ written notice that such sum is overdue for payment and clearly stated in that

notice the Provider's intention to terminate the Agreement if such sum is not paid; and

45.6.4 the Council has not paid within the time specified in the Provider's notice under Clause 45.6.3 above.

## **CONSEQUENCES OF TERMINATION**

46.1 The termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

46.2 In the event of any termination of this Agreement , any Services which at the date of termination have yet to be discharged shall be terminated and the Council shall, in respect of any non-discharged Services, be entitled without prejudice to the Council's other rights and remedies, to obtain a refund of any payments made by the Council in respect of any Services which have not been performed by the Provider in accordance with the terms of the non-discharged Services.

46.3 In the event of the termination of this Agreement by either Party, the provisions of this Clause and Clauses 28 (Data Protection), 39 (Interest), 43 (Limitation of Liability), 44 (Insurance), 47 (Corrupt Gifts and Payment of Commission), 48 (Confidentiality), 51 (Indemnity), 53 (Information and Assistance), 63 (Law and Jurisdiction) and 65 (Freedom of Information) shall survive the termination of this Agreement

46.4 Where, following a termination by the Council pursuant to Clauses 45.1 the Council relets the Agreement or any part thereof to an alternative Provider pursuant to Clause 52 the Provider shall make good to the Council all losses damages and expenses it may incur or be liable to in consequence of such re-letting.

## **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

47.1 The Provider shall neither:

47.1.1 offer or give or agree to give any person employed by the Council or acting on its behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor

47.1.2 enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person employed by the Council or acting on its behalf by the Provider or the Provider's Personnel, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council.

47.2 In the event of any breach of this Clause 47 by the Provider or by any Provider Personnel (whether with or without the knowledge of the Provider) or the commission of any offence by the Provider or by anyone employed by the Provider or acting on behalf of the Provider under the Prevention of Corruption Acts, 1889 to 1916 or under Section 117(2) and (3) of the Local Government Act 1972 in relation to this or any other agreement with the Council, the Council may summarily terminate this Agreement or the relevant Order by notice in writing to the Provider in accordance with Clause 44.1 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council and provided always that the Council may recover from the Provider the amount or value of any such gift, consideration or commission together with all costs to the Council of terminating and re-letting.

47.3 The decision of the Council shall be final and conclusive in any dispute, difference or question arising in respect of:

47.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Provider under Clause 47.2 in respect of any loss resulting from such termination of this Agreement); or

47.3.2 the right of the Council under this Clause 47 to terminate this Agreement;  
or

47.3.3 the amount or value of any such gift, consideration or commission.

## **CONFIDENTIALITY**

48.1 The Provider acknowledges that any Confidential Information obtained from or relating to the Council, its servants or agents is the property of the Council.

48.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall;

48.2.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

48.2.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

48.3 Clause 48.1 shall not apply to the extent that:

48.3.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 65;

47.3.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

47.3.3 such information was obtained from a third party without obligation of confidentiality;

47.3.4 such information was already in the public domain at the time of the disclosure otherwise than by a breach of this Agreement; or

47.3.5 it is independently developed without access to other Party's Confidential Information.

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

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

48.6 The Provider undertakes (except as may be required by law or in order to instruct professional advisers in connection with this Agreement) not to:

48.6.1 disclose or permit disclosure of any details of this Agreement to the news media or any third party other than Provider Personnel;

48.6.2 disclose that the Council is a customer or client of the Provider; or

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

48.7 At the written request of the Council, the Provider shall procure that those members of the Provider Personnel identified in the Council's notice signs a Confidentiality Undertaking prior to commencement of any work in accordance with this Agreement.

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

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

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

48.8.3 for the purpose of the examination and certification of the Council's accounts; or

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

48.9 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom



the Provider's Confidential Information is disclosed pursuant to this Clause 48 is made aware of the Council's obligations of confidentiality.

48.10 Nothing in this Clause 48 shall prevent either Party from using techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

48.11 In the event that the Provider fails to comply with this Clause 48 the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

## **PUBLICITY**

49.1 Except with the written consent of the other Party, such consent not to be unreasonably withheld or delayed, neither Party shall make any press announcements or publicise this Agreement in any way.

49.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 49.1 by all their servants, employees, agents and consultants and the Provider shall take all reasonable steps to ensure the observance of the provisions of Clause 49.1 by its Provider Personnel.

49.3 Neither Party shall use business logos or publicise the logos of the other Party either in print or electronically without the express written consent of the other Party such consent shall not be unreasonable withheld or delayed.

49.4 Notwithstanding the provisions of Clause 49.1, the Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the Audit Commission and the Council's external Auditors and the provisions of the FOIA.

49.5 The Parties acknowledge that the Audit Commission has the right to publish details of this Agreement (including Confidential Information) in its relevant reports to Parliament to the extent permitted by law.

## **ASSIGNMENT AND SUB-CONTRACTING**

50.1 This Agreement is personal to the Provider.

50.2 The Provider shall not assign, novate, or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Council acting in its absolute discretion.

50.3 The Provider shall not sub-contract the performance of its obligations under this Agreement without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.

50.4 The Provider shall adhere to detail in the Service Specification around sub-contracting, and only utilise this as a temporary option.

50.5 Notwithstanding any sub-contracting permitted hereunder, the Provider shall remain primarily responsible for the acts and omissions of its Sub-contractors as though they were its own.

50.6 Subject to Clause 51, the Council shall be entitled to:

50.5.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority; or

50.5.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Council.

50.7 This Agreement is binding on the Council and its successors and assignees and the Provider and the Provider's successors and permitted assignees.

50.8 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Council.

50.9 In the event that the Provider, in accordance with the terms of this Agreement, enters into a sub-contract in connection with this Agreement, the Provider shall ensure that a term is included in the sub-contract which requires the 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).

## **INDEMNITY**

51.1 The Provider shall keep the Council indemnified in full against all costs, liabilities, expenses, damages and losses including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with:

51.1.1 any claim made against the Council by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Provider, its Provider Personnel or its Sub-contractors.

## **POWER OF THE COUNCIL IN DEFAULT**

52.1 Where the Council re-lets the Agreement or any part thereof following termination in accordance with Clause 46 (Consequences of Termination), the Provider shall make good to the Council all loss damages and expenses that the Council may incur or be liable for in consequence of such re-letting.

## **INFORMATION AND ASSISTANCE**

53.1 Throughout the Period of the Agreement and for a period of six (6) years after its expiry, the Provider shall:

53.1.1 maintain full and accurate records of the Agreement, all expenditure reimbursed by the Council and all payments made by the Council; and shall on request afford the Council or the Council's Representatives including the Audit Commission and the Council's external auditors such access to and copies of those records as may be required in connection with the Agreement; and

53.1.2 give all reasonable assistance to the Council including attending all meetings of any body of the Council and/or of the Council's Executive in order to answer questions pertaining to this Agreement should the need arise.

## **BEST VALUE**

54.1 The Provider shall co-operate with the Council with the introduction and implementation of any requirements imposed on the Council in connection with Best Value and shall comply with the reasonable instructions and requests for information of the Council's responsible officer in respect thereof.

54.2 The Provider shall assist the Council to ensure continuous improvements in the efficiency of the Services in order to achieve value for money for the Council. The Provider shall report to the Council on the ways in which they intend to improve the Services on a quarterly basis.

## **DESIGNATED REPRESENTATIVES**

55.1 The Council's Representative have the authority to act on behalf of the Council for all purposes connected with the Agreement.

55.2 The Council shall also appoint an authorised representative ("the Authorised Representative") to act should the Council Representative not be available.

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

55.3.1 managing the provision of the Services;

55.3.2 attending meetings with the Council Representative to review the provision of the Services;

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

55.4 The Council reserves the right to reject the appointment of any person as the Provider's Representative who does not in the opinion of the Council have appropriate

experience in the management of services similar to the Services or who is otherwise unsuitable for such appointment.

## **COMMUNICATIONS**

56.1 Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing.

56.2 The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of Clause 56.1.

56.3 Any notice whatsoever which either Party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by post, or by facsimile transmission confirmed by post, or e-mail addressed to the other Party in the manner referred to in this Agreement and if that letter is not returned as being undelivered that notice shall be deemed for the purposes of this Agreement to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two days for a letter delivered by post or four hours for a facsimile transmission or e-mail.

56.4 For the purposes of Clause 56.3 above the address and contact details of the Provider shall be set out in the contact form in the Invitation to Tender and the Councils details shall be referred to in the Award Letter.

56.5 Either Party may change its address for service by notice as provided in this Clause

## **SEVERABILITY**

57.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity and if no agreement has been reached within twenty (20) working days of commencement, either Party may by notice to the other terminate the Agreement and neither Party shall bear any liability to the other in respect of such termination (but without prejudice to any other provisions of this Agreement).

## **WAIVER**

58.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

58.2 Waiver of any default shall not constitute a waiver of any subsequent default.

58.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 56.

## **REMEDIES CUMULATIVE**

59.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of this Agreement 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.

## **AMENDMENTS TO THIS AGREEMENT**

60.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the Council's Representative on behalf of the Council and the Provider's Representative on behalf of the Provider.

## **THIRD PARTY RIGHTS**

61.1 A person who is not a Party to this Agreement shall not have any rights under or in connection with it and shall not be entitled to enforce any part of it.

## **DISPUTE RESOLUTION PROCESS**

62.1 The Parties shall refer all matters in dispute arising out of or in connection with this Agreement for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days, and failing which, unless the Parties agree another period of time, any such dispute may, upon agreement of the Parties be dealt with as set out in sub-clause 62.2.

62.2 If the dispute cannot be resolved by the Parties' representatives nominated under Clause 62.1, the dispute may be referred to mediation under the supervision of the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU ("CEDR"). Mediation shall commence by either Party serving on the other written notice ("Mediation Notice") setting out in summary the issues in dispute and calling upon that other Party to join in an approach to CEDR for the appointment of a mediator.

62.3 The mediation shall be conducted using a sole mediator in or substantially in accordance with CEDR's recommended agreement for the time being in use. The mediator must be a CEDR accredited mediator agreed between the Parties, or in default of agreement within fourteen (14) days of notice of either Party calling upon the other to engage in mediation, appointed by CEDR (provided both Parties have agreed to mediation).

62.4 The Parties agree to co-operate fully and promptly and in good faith with CEDR and/or the mediator in the performance of their obligations under this Clause. Both Parties will afford the mediator all necessary assistance which the mediator requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the matters in dispute.

62.5 Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of the mediation.

62.6 If and to the extent that after engaging in good faith in mediation the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts in accordance with Clause 63 below.

62.7 In the event that the process of mediation does not succeed in finding a resolution to the dispute within a period of fifty-six (56) days, or such other time as the Parties may agree, either Party may take such action as is available to it under this Agreement or at Law.

62.8 Nothing in this Agreement shall be taken to prevent or constrain either Party from seeking an injunction or other urgent remedy where justified in the circumstances.

62.9 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

## **LAW AND JURISDICTION**

63.1 This Agreement is a contract made in Wales and the applicable law shall be the law of England and Wales, as it applies in Wales. Subject to Clause 62 the Parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales sitting in the locality of the Council, or at Cardiff.

## **NO AGENCY**

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

## **FREEDOM OF INFORMATION**

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

65.2 The Provider shall and shall procure that its Sub-contractors shall:

65.2.1 transfer all Requests for Information to the Council as soon as practicable after receipt and in any event within two (2) working days of receiving a Request for Information;

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

65.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5(2) of the Environmental Information Regulations.

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

65.3.1 is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

65.3.2 is to be disclosed in response to a Request for information.

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

65.5 The Provider acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA ("the Code") be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:

65.5.1 in certain circumstances without consulting with or obtaining consent from the Provider; or

65.5.2 following consultation with the Provider and having taken its views into account.

65.6 Provided always that where 65.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

65.7 The Provider shall ensure all information submitted in connection with the tendering process or in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

65.8 The Provider acknowledges that any lists or schedules provided by it as part of the tendering process outlining the Provider's Confidential Information and Provider's Commercially Sensitive Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this Clause.

65.9 Any failure to agree between the Council and the Provider arising out of or in connection with the disclosure of information under the FOIA shall be referred to the Information Commissioner for determination and resolution prior to any disclosure.

## **EMERGENCY AND DISASTERS**

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

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

66.3 The Provider shall if requested by the Council prior to the commencement of the Agreement provide the Council with the names, address and telephone numbers of up to three (3) of its employees who may be contacted at anytime (approved by the Council) and who will be able to initiate an immediate response to the tasks identified by the Council in the event of an emergency or disaster. The Provider shall further notify the Council of any changes in the information provided as soon as reasonably practicable.

66.4 The Provider shall have no liability for any failure to perform the Services and/or Works or provide Supplies as a result of the Council exercising its powers under this clause, subject to the Provider using all reasonable endeavours to continue to perform its obligations under this Agreement during such emergency or disaster situations.

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



## **WHISTLEBLOWING**

67.1 The Provider shall comply with the Council's whistle blowing procedure which ensures that employees of the Provider are able to bring to the attention of a Relevant Authority malpractice, fraud and breach of Legislation on the part of the Provider or any Provider Personnel without fear of disciplinary and other retribution or discriminatory action.

## **MONITORING OF CONTRACT PERFORMANCE**

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

68.2 The Council may monitor, inspect and examine the work or Services being carried out by the Provider without notice at any time.

68.3 The Provider shall give all such assistance as the Council may reasonably require for such inspection and monitoring.

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

68.5 Without prejudice to Clause 44, the Provider may be required to rectify any deficiencies in service and bring it up to the required standard in a time specified by the Officer in writing.

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

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

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

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

68.10 The Council may undertake unannounced visits to the Provider in order to evidence any aspect of compliance of the Providers performance against this Contract, and when so doing, the Provider shall afford every co-operation and assistance to the Council, where practicable, so that they may be able to discharge their duties of establishing compliance of the Provider under this Contract. For the avoidance of doubt, the Council may also monitor the Service through:

- (a) Feedback from people who use the service;
- (b) Inspection of People's Care and Support Plans and other care planning documentation;
- (c) CIW inspection reports;
- (d) Contract reviews;
- (e) Annual Monitoring Questionnaires;
- (f) If appropriate, other Local Authorities Officer reports, for example, Wellbeing Monitoring Officer's reports;
- (g) Care Manager's reviews;
- (h) The Provider's Quality Assurance Procedures;
- (i) Escalating Concerns Procedures.

## **Contract Specific Terms and Conditions**

### **FUNDAMENTAL PRINCIPLE**

69.1 It is a fundamental principle of this Contract that the parties shall at all times act in a timely and transparent manner with each other and with the individual, placing a high priority on working in partnership where the individual's needs are paramount. The individual's perspective shall be a key consideration in relation to the parties' exercise of their respective duties, rights and powers under this Contract.

### **LEGISLATION AND GUIDANCE**

70.1 The Provider shall comply at all times with the relevant legislation and guidance that pertain to the safe operation of the Service and (without affecting the generality of the foregoing) in particular:

- 70.1.1 Comply with the regulations made and national standards set under the Regulation and Inspection of Social Care (Wales) Act 2016 and any subsequent amendments.
- 70.1.2 Provide the Service in accordance with the relevant industry standards within which the Service operates.
- 70.1.3 Provide the Service in accordance with any relevant registration standards as specified and approved and updated by CIW.
- 70.1.4 The Provider will inform the Authorised Officer of any enforcement notice from CIW or any other regulatory body immediately and provide a copy to him/her within 24 hours.
- 70.1.5 The Provider shall ensure that their staff have a good working knowledge of the appropriate good practice guidelines and any amendments, updates or new guidance as they come. They must make copies of these documents available for their staff's use and for inspection by the Council. The Provider shall ensure that the Service is delivered in accordance with the above guidance.
- 70.1.6 All Domiciliary Care Workers must register with Social Care Wales, the Provider and its staff must comply with registration rules and the codes of conduct/practice issued by the Social Care Wales.
- 70.1.7 The Provider shall comply with all relevant primary and secondary legislation including the Health & Safety at Work Act 1974 and all subsequent relevant amendments and/or Regulations, Codes of Practice and the like.
- 70.1.8 The Provider shall comply with all relevant primary and secondary legislation including the Human Rights Act 1998 and the Convention to which this legislation relates and the UN Convention on the Rights of the Child 1989.
- 70.1.9 The Provider shall provide the Service in accordance with the Mental Capacity Act 2005 and Mental Health Act 2007.
- 70.1.10 The Provider shall adopt and implement procedures in respect of violence at work which will include responses to any incident in which an

employee is abused, threatened or assaulted by a member of the public in circumstances arising out of the course of his/her employment. The Provider shall also have in place a Lone Working Policy which ensures that procedures are in place to protect the health and safety of staff that are required to work alone at any time of the day or night.

70.2 In relation to health and safety matters the Provider shall produce as required by the Council from time-to-time satisfactory records of instruction and training of its staff and its written procedures showing compliance with the relevant legislation.

70.3 The Provider recognises that the underpinning legislation and guidance referred to in this Agreement may be subject to change throughout the duration of this Agreement and the Provider should ensure that it and its staff are aware of such changes.

## **COMPLIMENTS AND COMPLAINTS**

71.1. The Provider will operate a procedure for recording compliments received to evidence good practice.

71.2. The Provider will operate a procedure for investigating any complaint made by or on behalf of the person. The Provider will make people, their families and carers aware of how to access this procedure at the commencement of the provision of service. People and their families shall be informed in writing by the Provider of the means of registering a complaint, how the complaint will be dealt with and of the outcome, as soon as is reasonably possible, or in any event within 7 days of the start of the placement. Public information on the Provider's complaints process should be easily accessible and visible to people and their families.

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

71.4. All complaints made to the Provider by or on behalf of the person to the Provider will be recorded and a copy of any such complaints shall be forwarded to the Council upon request. The Provider shall set out his response to the complainant in writing with a copy to the Authority within 15 Business working days (if required). Any extension to this timescale must be negotiated and agreed with the person and/or their family and the Authority should be notified of the agreed timescale.

71.5. Where the Provider's complaints procedure is a two-stage process, and the person remains dissatisfied following the first stage then a further investigation of the issues by a senior manager should be undertaken and a response provided within 25

days. A copy of the investigation and response should be forwarded to the Council no later than 2 days following completion.

71.6. Should the complainant remain dissatisfied after the Providers internal procedures have been exhausted then they should be provided with information and contact details for the Contracting Authorities complaint's officer. For complainants who are self-funding details of the Public Services Ombudsman for Wales should be provided.

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

71.8. The Provider will advise people, their families and carers of their rights to access the Council's complaints procedures in the event that they are not satisfied with the way in which the Provider has dealt with their complaint.

## **ADVOCACY**

72.1. There will be occasions where a person requires the assistance of a professional advocate to represent their wishes and feelings and to ensure their voice is heard when exercising choice or making decisions about how their care and support is provided.

72.2. The Provider will promote the use of Advocacy services and will signpost people and their families on to services. The Provider will actively offer advocacy where it is considered appropriate to do so and where it is requested will make the necessary arrangements for an advocate to be provided.

## **MENTAL CAPACITY & DEPRIVATION OF LIBERTY**

73.1 The Provider will ensure that its staff all understand and apply the requirements of the Mental Capacity Act 2005. All services provided for people who have been assessed as unable to consent to the care and support that they need can only be given that care and support in their best interests according to Sections 4 and 5 of the Mental Capacity Act 2005. Any restrictions placed on people's liberty can only be legally justified if they are demonstrated to be necessary, proportionate and in the individuals' best interests.

## **SAFEGUARDING ADULTS AND CHILDREN**

74.1 The Provider shall prepare and implement written policies in relation to Adult and Children's Safeguarding, which all Staff are made fully aware of through induction, supervision, access to the policy, team meetings, and ongoing training/development. The Provider shall inform people using the service of the policy on commencement of the Service and during the Service within ongoing discussions.

74.2 The Provider shall ensure that training for Staff in connection with adult safeguarding and where applicable children's safeguarding includes the recognition of where there are concerns of significant harm, risk or abuse, dealing with disclosures of abuse, confidentiality, bullying and including the protection of the person from other people using the service.

74.3 The Provider must clearly set out the procedures for reporting concerns or allegations. Where the Provider or its Staff have received information that a person using the service has been abused, or is at risk from abuse/significant harm, the Provider must, without exception, immediately report this to the Designated Officer at Monmouthshire Council, their line manager or if outside of office hours, the Emergency Duty Team and/or Police.

## **PROVIDER'S STAFF**

75.1. The Provider shall provide sufficiently trained and competent staff who have adequate skills to provide good standards of care and are able to provide the Services in accordance with the Specification.

75.2. In providing the Service the Provider shall comply with legislation, regulations and guidance in force or applicable at the time including any local policies required by the Council relating to the recruitment, appointment and employment of staff. The Provider shall keep records in relation to these processes for each member of staff and, where the member of staff consents or where the law requires, shall provide information to the Council. The Provider shall ensure that policies are in place to guide and support staff.

75.3. The Provider shall ensure that every DBS check is satisfactory in relation to an individual'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 Council, when asked to do so, that the DBS checks are satisfactory.

75.4. The Provider shall ensure that the staff have the appropriate competencies and must be able to demonstrate that these competencies have been specifically set out in job descriptions, person specifications and personal development plans.

75.5. The Provider will ensure that there are appropriate management arrangements in place to deliver the service.

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

75.7. The Provider shall maintain an organisational chart, or similar, outlining staffing structures, staffing levels, staff duties and areas of responsibility pursuant to the

Services. If the Council requests a copy of this the Provider must provide a copy in good time.

75.8. The Provider shall ensure that there are sufficient staff to cover staff holidays or absences for any reason.

75.9. The Provider shall inform the Council without delay if the Provider is experiencing difficulty maintaining adequate staffing levels and shall use their best endeavours to maintain continuity of staff for individuals.

75.10. The Provider will consider the requirements of the Welsh Language Standards (as listed within Clause 26.3) when planning its workforce and where possible ensure that a Welsh Language speaker is available to provide good standards of care, in the language choice of the individual.

## **STAFF INDUCTION**

76.1 The Provider shall, during the first day of employment, ensure that all new staff including agency staff are made aware of and instructed and trained to ensure that they understand the fire precautions applicable to the service and the action to be taken in the event of a fire.

76.2 The Provider shall provide an induction programme from the first day of employment which will comply with legislation, standards and guidance in force at the time. See RISCA regulation 36

76.3 In relation to training in moving and handling, the Provider shall ensure that staff are trained to the All-Wales Passport level.

76.4 Providers shall aim to enable care staff to be registered within six (6) months of commencing employment with the Provider currently people have to register at 6 months, either with a qualification such as Health and Social Care Core L2/Practice or a predecessor qualification such as QCF Diploma. If the worker does not hold a qualification they would either need to complete the L2 Health and Social Care Core or an employer's assessment. They would then need to access a training programme leading to the New Health and Social Care Qualifications Core L2, Practice L2 or Practice L3. The Provider will ensure they adhere to all registration requirement as stipulated by Social Care Wales.

## **ONGOING TRAINING & SUPERVISION**

77.1 The Provider shall ensure that appropriate education, training, development and supervision is provided for all staff involved in policy development or care / service delivery to Individuals. This must include awareness of equalities, including age discrimination and specialist training appropriate to the Service's Statement of Purpose, in accordance with the Service Specification and in line with legislative requirements.

Ongoing training must be provided, or made available, by Providers for all Staff commensurate with the tasks and duties they are required to perform.

77.2 The Provider shall record details of their training and supervision provided to individual members of staff in their personal file. At least each year the Council may request information relating to the training and supervision provided to staff. The Council acknowledges that the information provided may be limited by the provisions of the data protection legislation.

77.3 All Providers shall complete the Council's Workforce Development Survey on an annual basis and return by the due date to the Contracting Authority. This survey is collated to ensure that accurate workforce data is available for the Welsh Government in relation to staff in post and qualifications held. It is also used to plan any forthcoming training events.

## **CARE WORKFORCE DEVELOPMENT**

78.1 In the delivery of this contract, Providers will be required to provide information to the Council's nominated officer that will be used to contribute to an annual Learning and Development programme for the Care Sector as a whole. This information will include a comprehensive training needs analysis for all staff employed by the Provider.

78.2 The information required shall be provided to the nominated officer in the determined format by the end of December each year in order to be included within the Council's Learning and Development Strategy for the following financial year as required by the Welsh Government.

78.3 In addition, Providers will be required to provide information to the Council's nominated officer which will be used to contribute to the profile of the care workforce in Wales. This information will include workforce information on pre-determined data sets for all staff employed or volunteering for the Provider.

## **CONTRACT PRICE**

79.1 The Contract Price for the Services shall be the full and exclusive remuneration due to the Provider in respect of the provision of the Services.

79.2 The Contract Price in relation to the number of hours allocated to the Lot will be reviewed quarterly in the first year of the contract and thereafter biannually for the remaining term of the contract. The Council reserves the right to review the hours allocated to the Lot quarterly or at any time during the contract if there is significant fluctuation in the hours allocated.

79.3 If any changes to the Specification are deemed necessary and are authorised in writing by the Authorised Officer, any revisions to the Contract Price shall be amended in the Contract Particulars.



79.4 Any variations other than that of the annual price increase must be submitting in writing in accordance with Clause 37 and will be determined by the provisions of that Clause.

79.5 In line with the Welsh Government's Programme for Government, the Provider will ensure that all Social Care Workers assigned to the contract shall be paid the minimum of the Real Living Wage. Travel Expenses will be paid in line with the current HMRC at a rate (currently set at 45 pence per mile for 24/25). Any future amendment to current Welsh Government Policy may necessitate a contract variation.

## **ANNUAL PRICE INCREASE**

80.1 The annual price review will be undertaken through an assessment and calculation based on a weighted average using a range of financial indices that will be applied to each cost element of the pricing schedule. These indices include but not limited to the following:

- Any increases relating to the Real Living Wage from the 1<sup>st</sup> of April in the year following publication of annual increase by the Living Wage Foundation.
- The annual price review will also have due regard to any legislative costs that may arise during the period of the contract. E.g., Changes to Employer's National Insurance Contribution rates.

## **PAYMENT**

81.1 Payment of invoices will be carried out in line with clause 36 of this Contract.

81.2 The nature of this service is such that there is likely to be an ebbing and flowing of hours in any given week. To enable the contract to pragmatically operate within this fluctuation in weekly hours, without the need to review and revise the LOT hours, both a minimum and maximum tolerance level will be applied, resulting in no claw back or additional payment when services are delivered within these tolerance parameters. On validation, where it is confirmed that a service has delivered less than the 80% of contract hours paid for in the 4 weekly advance payment, where the level is no greater than 5% (i.e. 75% of the LOT hours) no clawback will be applied. Equally, on validation where it is confirmed that the service has provided in excess of 100% of the LOT hours, no additional payment will be made. Where the service has provided more than 100% of hours and considers there is need for a consistent increase, the provider will need to seek a review of the contract hours as per clause 36. Where the service has delivered less than 80% of the contract hours for a period of four consecutive weeks the Provider must immediately notify the Council of that fact in writing.

81.3 80% of the LOT Hours, will be paid 4 weekly in advance, these would be guaranteed hours for the quarter and would not be subject to any clawback subject to the Providers compliance with clause 81.2.

81.4 Any hours delivered between 80 and 100% of the contract value (subject to the maximum 20%) will be payable once all the actual data has been submitted by the Provider, and the council has undertaken a reconciliation process. Following this the provider would then submit an invoice for payment up to the remaining 20%. The payment of this invoice will then be made within the standard 30 days.

