

Date:

(1)The County Council of the City and County of Cardiff

And

(2 (Name of appointed provider)

**Supplier Agreement relating to the provision of Domiciliary
Care services via the Council's Dynamic Purchasing System**

DRAFT

CONTENTS

CLAUSE	
1.	Definitions and Interpretation 5
2.	Term 12
3.	Extending the initial term..... 9
4.	Consents, Supplier's warranty and due diligence 9
5.	The services 11
6.	DPS Procedures 12
7.	Service standards 13
8.	Health and Safety 13
9.	Council's Premises and Assets - Not Used 14
10.	[Disaster recovery 14
11.	Charges and Payment 18
12.	Service credits - Not Used 16
13.	Key personnel..... 16
14.	Other personnel used to provide the services 17
15.	Safeguarding children and vulnerable adults..... 18
16.	TUPE and the 2012 Direction 19
17.	Reporting and meetings 19
18.	Monitoring 19
19.	Change control 23
20.	Dispute resolution 23
21.	Sub-Contracting and assignment 21
22.	[Indemnities 22
23.	Limitation of liability 22
24.	Insurance 23
25.	Freedom of information 24
26.	Data protection 26
27.	Confidentiality 26
28.	Audit 27
29.	Intellectual property 29
30.	Termination for breach 29
31.	Termination on notice 30
32.	Force majeure..... 30
33.	Prevention of bribery 31
34.	Consequences of termination 33
35.	Non-solicitation 33
36.	Waiver 34
37.	Cumulation of remedies 34
38.	Severability 34
39.	Partnership or agency 34
40.	Third party rights 34
41.	Publicity 34
42.	Notices..... 35
43.	Entire agreement 35
44.	Counterparts 35
45.	Governing law and jurisdiction 35
46.	Discrimination 36
47.	Council's Continuous Improvement Duty

SCHEDULES

SCHEDULE 1 SPECIFICATION	37
SCHEDULE 2 SERVICE LEVELS.....	38
Part 1. Service Levels	38
1. The Service Levels	38
2. Consistent failure	38
SCHEDULE 3 SUPPLIER'S TENDER	39
SCHEDULE 4 Self Billing Agreement/CHARGES AND PAYMENT (NOT USED)	40
SCHEDULE 5 CONTRACT MANAGEMENT.....	41
1. Authorised representatives	41
2. Key personnel.....	41
3. Meetings	41
4. Reports	41
SCHEDULE 6 BUSINESS CONTINUITY PLAN].....	42
SCHEDULE 7 CHANGE CONTROL.....	43
1. General principles	43
2. Procedure	43
SCHEDULE 8 [BENCHMARKING (NOT USED)].....	46
SCHEDULE 9 EXIT.....	47
SCHEDULE 10 TUPE AND THE 2012 DIRECTION.....	48
SCHEDULE 11 COMMERCIALLY SENSITIVE INFORMATION	58
SCHEDULE 12 COUNCIL'S PREMISES AND ASSETS - NOT USED.....	59
SCHEDULE 13 [INSURANCE] NOT USED	60
SCHEDULE 14 COMPLAINTS PROCEDURE.....	61

THIS AGREEMENT IS MADE ON

BETWEEN

PARTIES

- (1) The County Council of the City and County of Cardiff of County Hall, Atlantic Wharf Cardiff CF10 4UW (the **Council**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Supplier**).

(Full details to be entered into Signature Document)

BACKGROUND

- (A) The Council placed a Contract Notice in the Official Journal of the European Union on [insert date] to give notice of its intention to invite tenders for the provision of Domiciliary Care Services under a Dynamic Purchasing System (DPS) Agreement, known throughout this document as Agreement or DPS Agreement.
- (B) The Supplier has achieved the required standard as set out within the Authority's tender documents and has therefore been selected to join this Agreement.
- (C) The Council has contracted with adam HTT Limited ("the I.T. Platform") to provide an e-procurement platform (a web-based software system namely SProc.Net, or such other technology as may be prescribed by the Council from time to time) (the "Application"), to enable the Council to procure Services via the DPS and for such Services to be transacted as further set out in this agreement.
- (D) The Council shall admit to the DPS each tenderer that satisfies the Council's selection criteria and has submitted an indicative tender which complies with the Specification and any additional documents produced by the Council.
- (E) It is the Parties' intention that there will be no obligation for the Council to award any orders under the DPS system during the DPS Term.
- (F) This DPS system will be operated electronically and the use of standard documentation will be issued, including an "order form" which is referred to as (the **Service Agreement**) on the electronic system. This order form will incorporate, by reference, the terms and conditions set out in this agreement.
- (G) As it will be appreciated a contractual arrangement will be formed between the Council and the Supplier if and when an order is placed with the Supplier under the DPS system. Accordingly, the purpose of this agreement is to set out the process to apply to the placing of orders and the terms and conditions which will apply to any such orders placed under the DPS system. .
- (H) On appointment to the DPS the Supplier will be required to sign this agreement to confirm acceptance of the terms and conditions that will apply to each order made with the Supplier under the DPS system.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

Accreditation and Enrolment: the evaluation of indicative tenders received from tenderers and the admittance to the DPS that fulfil the Council's selection criteria

APL: the accredited provider list established by the Council in relation to the Services

Application: the proprietary web-based software currently called adam HTT Limited (also referred to as "I.T. Platform") or such other technology as the Council may prescribe throughout the DPS.

Associated Company: any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

Auditor: means the Welsh Audit Office or an auditor appointed by the Welsh Audit Office as the context requires.

Authorised Representatives: the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in Schedule 5.

Best Industry Practice: means the national minimum standards, practices, methods and procedures conforming to the Law and demonstrating the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in providing the Services under the same or similar circumstances.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Continuity Plan: a plan which sets out the procedures to be adopted by the Supplier in the event that there is a disruption in the Services as set out in schedule 6

Catastrophic Failure:

- (a) a failure by the Supplier for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms on the occurrence of a Disruption.
- (b) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Council's Representative has or may cause significant harm to the reputation of the Council.

Change: any change to this agreement including to any of the Services, provided that the same does not represent a material change to the Services ordered.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 7.

Charges: the charges which shall become due and payable by the Council to the Supplier in respect of the Services in accordance with the provisions of this agreement.

Commencement Date: the date set out in the Order Form

Commercially Sensitive Information: the information listed in Schedule 11 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

Consistent Failure: shall have the meaning set out in 2 of Schedule 2.

Contract: shall mean the legally binding agreement between the Council and the Supplier consisting of (1) the Order Form incorporating the terms and conditions set out in this agreement (2) the Specification (3) the Self-Billing Agreement (4) the ITT (5) the form of Tender (6) the Service Requirement (7) the Accreditation & Enrolment Guidance (8) Escalating Concerns Documentation (9) any other clauses referred to in the clauses of the Contract

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

Crown Body: any department, office or agency of the Crown.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Deduction: any Default Costs the Council decides to deduct from a payment or recover by any other method.

Default Costs: all and any monies however due which are payable to the Council by the Supplier at any time (and whether before or after the termination of this Contract) under the provision of this Contract.

Default Notice: is defined in clause 5.11

Defective Services: the Supplier's failure to perform the Service or any part thereof in accordance with this Agreement.

Dispute Resolution Procedure: the procedure set out in clause 20.

Dynamic Purchasing System (DPS): an electronic system that can be established to purchase goods and services.

DPS Agreement: means this Dynamic Purchasing System Agreement and all Schedules to this Agreement.

DPS Providers: means the Supplier and other suppliers appointed as DPS providers under this Agreement.

DPS Year: means a period of 12 Months, commencing on the Commencement Date.

Environmental Information Regulations: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

Generic Specification: means the generic specification which sets out the Council's overarching requirements in relation to domiciliary care services and referred to under Schedule 1 to this agreement.

Individual Specification: means the specification specifying the individual Service requirements in respect of the individual Service User and referred to under Schedule 1 to this agreement

Information: has the meaning given under section 84 of FOIA.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos,

instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Invitation to Tender: means an invitation to Tender issued by the Council via the Application for Services required in respect of an individual Service User(s) (and referred to as the "**Requirement**" within the Application)

Key Performance Failure: To be agreed on upon award of each individual Order Form (Service Agreement)

Key Performance Indicators: To be agreed on upon award of each individual Order Form (Service Agreement).

Key Performance Levels: To be agreed on upon award of each individual Order Form (Service Agreement).

Key Personnel: those personnel identified Schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 13.

Management Reports: the reports to be prepared and presented by the Supplier as required for each service

Month: means a calendar month.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation registration with the Care and Social Services Inspectorate Wales

Offer: shall mean the Supplier's tender for the desired Services in response to the Council's Requirement

Open for Offers: shall mean the period during which time the Supplier can create and submit their Offer within the Application

Order: an order for Services by the Council in accordance with the provisions of clause 6.1.4.

Order Form: means the order submitted to the Supplier by the Council which sets out the description of the Services to be supplied, including, where appropriate, the Key Personnel, the timeframe, and the service requirements. The Order Form is referred to on the DPS electronic system as the "Service Agreement"

Party: means the Council and/or the Supplier and "Parties" shall be construed accordingly

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Council in accordance with clause 30.1.1.

Replacement Services: services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement and which shall be provided by a Replacement Supplier who has already been admitted to the DPS.

Replacement Supplier: a third party supplier of Replacement Services admitted to the DPS and appointed by the Council from time to time.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Self-Billing Agreement: the separate agreement between the Supplier and the Council, whereby the Supplier agrees to receive pre-populated Self-Bill Invoices generated through the Application for the billing of the appropriate Price and payment

Self-Bill Invoice: the invoice produced by the Service Provider using the Application

Service(s): the domiciliary care services to be delivered by or on behalf of the Supplier, as more particularly described in the Specification.

Service Provider: The person, firm, or company with whom the Council enters into a contract as identified in the Order Form (also referred to as "Provider" and "Supplier")

Service Requirements: the Services required by the Council in accordance with its Specification

Service Receipt: shall mean the agreed record of payment for the delivery of the Services as quantified and agreed between the Parties within the Application

Service User: shall mean the person receiving the Service from the Supplier.

[Signature Document: *the signed agreement between Council and the Supplier – to be further considered as to how this signing of documents will operate in practice]*

Specification: the Generic Specification and the Individual Specification, referred to under Schedule 1 of this agreement

Sub-Contract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or suppliers that enter into a Sub-Contract with the Supplier.

Successor Supplier: any third party at any time appointed by the Council to provide a Service or any part thereof in succession to or in substitution for the Supplier including where relevant the Council itself.

Supplier: Person, firm or Company that entered into the contract to provide the Services

Supplier Agreement: this overarching agreement made between the Council and the Supplier, such agreement setting out the process to apply when the Council wishes to place an order for the Services and the terms and conditions

Supplier Party: the Supplier's agents and contractors, including each Sub-Contractor.

Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Supplier's Tender: the tender submitted by the Supplier in response to an invitation to suppliers who are admitted to the DPS for a formal offer to supply it with the Services and referred to as the "Offer" on the DPS electronic software.

Tenderer(s): means a supplier(s) who is enrolled on the DPS and who submits a tender in response to the Council's Invitation to Tender

Term: means the period from the commencement date set out in the Order Form to :-

(a) the date of expiry as set out in the Order Form; (b) following an extension pursuant to Clause 3 (Extending the Initial Term) the date of expiry of the extended period; or (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

Term of the DPS: means the period commencing on 4th November 2021 and expiring on 3rd November 2024, or later if extensions are exercised by the Authority, or on earlier termination of this agreement.

Termination Date: the date of expiry or termination of the Contract.

Termination Payment Default: In the event that at any time undisputed Charges of the equivalent of the value of 3 months invoices have been overdue for payment for a period of 60 days or more the Council will have committed a Termination Payment Default.

The 2012 Direction: means The Welsh Authorities Staff Transfers (Pensions) Direction 2012.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended.

Working Day: Monday to Sunday including any public holidays in England and Wales.

Year: means a calendar year.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors and permitted assigns].
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. TERM

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Term).
- 2.2 The term of the DPS means the period from 4 November 2021 to 3 November 2024, unless terminated earlier.

3. EXTENDING THE INITIAL TERM

- 3.1 Subject to satisfactory performance of its obligations under the Contract by the Supplier during the Contract, the Council may, by giving written notice to the Supplier prior to the last day of the initial Term, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

4. CONSENTS, SUPPLIER'S WARRANTY AND DUE DILIGENCE

- 4.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

- 4.3 The Supplier acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
 - (b) it has received all information requested by it from the Council pursuant to clause 4.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
 - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.3(b);
 - (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - (e) it has entered into this Contract in reliance on its own due diligence.
- 4.4 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.5 The Supplier:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract; and
 - (b) shall promptly notify the Council in writing if it becomes aware during the performance of the Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any service requirements as set out in the Specification..
- 4.6 The Supplier shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 4.5(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Council and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.7 Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

5. THE SERVICES

- 5.1 The Supplier shall provide the Services to the Council with effect from the Commencement Date and during the Term in accordance with the provisions of this Contract and the Schedules attached therein.
- 5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the Council may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a Default Notice)

SCOPE OF SUPPLIER AGREEMENT

- 5.3 The Parties acknowledge and agree that the purpose of the Supplier Agreement is to set out the process to apply to the placing of orders and the terms and conditions which will apply to any such orders placed under the DPS system.
- 5.4 The Council may at its absolute discretion and from time to time, order Services from the Supplier in accordance with the procedure set out in the Supplier Entry Guide.
- 5.5 The Supplier acknowledges that there is no obligation whatsoever on the Council to purchase any Services from the Supplier during the DPS Term.
- 5.6 The Council appoints the Supplier as a potential Supplier of the Services and the Supplier shall be eligible to be considered for the award of a contract for such services.

SERVICE FAILURE

- 5.7 The Supplier shall inform the Council's Authorised Representative of anything (including an act or omission by the Council) which might prevent the Supplier from performing the Service either in part or at all and of any risk of such an event. The Supplier shall inform the Council as soon as possible and provide all relevant information in order to avoid the risk. For the avoidance of doubt, this includes situations where the actions of a third party including the intended recipient of the service prevent the performance of the requirement. This matter will then be considered as necessary within the terms and conditions of this Contract.
- 5.8 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Council shall take all reasonable steps to investigate the complaint. The Council may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 30 (Termination for Breach) of the Contract.

5.9 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Council may, without prejudice to its rights under Clause 30 (Termination for Breach), do any of the following:-

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

b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

(c) terminate, in accordance with Clause 30 (Termination for Default), the whole of the Contract; and/or

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

5.10 Not used.

5.11 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) with ten (10) Working Days of the Council's instructions or such other period of time as the Council may direct. In the event that the Contractor:-

(a) fails to comply with Clause 6 and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

(b) persistently fails to comply with Clause 6;

the Customer may terminate the Contract with immediate effect by giving the Contractor notice in writing.

5.12 In the event that the Supplier:-

(a) fails to comply with Clause 5.11 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

(b) persistently fails to comply with Clause 5.11 above;

the Council may terminate the Contract with immediate effect by giving the Supplier notice in writing.

6. DPS PROCEDURE

6.1 Without prejudice to the provisions of Clause 6.4 the Council shall:

6.1.1 Offer tenderers unrestricted, direct and full access to the Specification (by electronic means) and to any additional documents relating to the provision of the Service from the date of publication of the contract notice to the date when the system ceases to be operated.

6.1.2 Give any tenderers the opportunity to submit an indicative tender and be admitted (accredited and enrolled) on to the DPS provided they satisfy the Council's selection criteria and have submitted an indicative tender which complies with the Specification and any additional documents produced by the Council.

6.1.3 Complete the evaluation of an indicative tender within 10 days from the date of its submission or such longer period as the Council may determine

6.1.4 When the Council decides to source Services via the DPS it shall invite all tenderers who have been admitted to the DPS to submit a further tender for each contract within a time limit specified by the Council.

6.1.5 Without prejudice to the provisions of clause 6.2, award the contract to the tenderer who submits the tender which best meets the award criteria specified in the contract notice for the establishment of the DPS.

6.2 Notwithstanding the fact that the Council has followed the DPS procedure set out above in this Clause 6.1, the Council shall be entitled at all times to decline to make an award for its Services requirements. For the avoidance of doubt nothing in this agreement shall oblige the Council to conclude a Contract with and or obtain any Services from the Supplier.

6.3 The Supplier, in responding to the invitation to tender referred to under clause 6.1.4, agrees to accept, if selected, the Contract for the Service User(s) concerned.

6.4 Without prejudice to the generality of the provisions of clause 6.2, the Council reserves the right not to award its Services requirements in accordance with the provisions of clause 6.1 in the following circumstances:-

6.4.1 where the Council has identified that Services are required for an individual Service User and that individual Service User resides with an existing Service User ("Related Service User") then the Council reserves the right to award a contract to the supplier who is already appointed to provide the services to the Related Service User. In the event that the said supplier declines to accept the offer of contract, then the provisions of clause 6.1 shall apply.

6.4.2 where an existing Service User (“Existing Service User”) is receiving the Services from a supplier prior to an admittance to hospital and the Existing Service User is discharged from hospital then the Council reserves the right to award the contract to the supplier who was providing the Services to the Existing Service User prior to his/her admittance to hospital and not to apply the procedure set out in 6.1. In the event that the said supplier declines to accept the offer of contract, then the provisions of clause 6.1 shall apply.

7 SERVICE STANDARDS

7.1 The Supplier shall provide the Service in such a manner as will ensure that it satisfies the required service standards set out in the Specification and Order Form in respect of that Service. .

7.2 Without prejudice to clause 7.1, the Supplier shall provide the Services, or procure that they are provided:

7.2.1 with all due skill, care and diligence and that the Supplier’s Personnel possess such qualifications, skill and experience as are necessary for the proper supply of the Services.

7.2.2 in all respects in accordance with the Council's policies set out in Schedule 1; and

7.2.3 in accordance with all Applicable Laws, and any UK or Welsh Government guidance that applies to the Services, and Best Industry Practice.

7.3 Without limiting the general obligation set out in clause 7.2, the Supplier shall (and shall procure that the Supplier's Personnel shall):

7.3.1 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998; and

7.3.2 not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

7.4 The Supplier shall be registered with the Care and Social Services Inspectorate for Wales and shall maintain such registration during the Term.

8 HEALTH AND SAFETY

8.1 The Supplier shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Contract. .

8.2 Not used.

8.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of the Contract where that incident causes any personal injury or damage to property that could give rise to personal injury.

8.4 The Supplier shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working in the performance of the Contract.

8.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Council on request.

9 COUNCIL'S PREMISES AND ASSETS NOT USED

10 DISASTER RECOVERY

10.1 The Supplier shall comply at all times with the relevant provisions of the Business Continuity Plan.

10.2 Following the disruption of Services the Supplier shall:

10.2.1 implement the Business Continuity Plan ;

10.2.2 continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and

10.2.3 restore the affected Services to normal within the period laid out in the Business Continuity Plan.

To the extent that the Supplier complies fully with the provisions of this clause (and the reason for the disruption did not breach any of the other terms of this agreement on the part of the Supplier), the Service Levels to which the affected Services are to be provided during the continuation of the disruption shall not be the Service Levels as referred to in Schedule 2 but shall be the service levels set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

CHARGES AND PAYMENT

11 PAYMENT

- 11.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this Contract, the Council shall pay the Charges to the Supplier in accordance with the Self Billing Agreement. For the avoidance of doubt, the Service Provider shall act as the Council's payment agent for such transactions.
- 11.2 The Council shall pay the Charges which have become payable in accordance with the Self Billing Agreement within thirty (30) days of receipt and agreement of the appropriate undisputed Self-Bill invoice.
- 11.3 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20

- 11.4 The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Contract under clause 30.4 for failure to pay undisputed charges.
- 11.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Contract.
- 11.6 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council for six (6) years from the end of the Contract Term. If the Supplier is expressly permitted to enter into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 11.7 The Council may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this Contract, or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Council.
- 11.8 The Supplier shall make any payments due to the Council without any Deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.
- 11.9 The Council shall only pay the Service Provider in line with the Pricing Envelope as follows:
- 11.9.1 Minimal Blended Hourly Rate of £16.12 per hour
- 11.10 Maximum Blended hourly rate of £22.72 per hour
- 11.11 The Council reserves the right to purchase care outside of the aforementioned pricing envelope in exceptional circumstances where dictated by the specific needs of the individual or the care package required.
- 11.12 The Council reserves the right to update the applicable pricing envelope at least annually, upon reasonable notice to the Supplier.

11.13 For the avoidance of doubt, the Supplier acknowledges and accepts that the Charges due for the Services provided under the Contract shall be paid by the Council via the Service Provider, acting as the Council's payment agent.

12 SERVICE CREDITS - NOT USED

13 KEY PERSONNEL

13.1 Each party shall appoint the persons named as such in Schedule 5 or the Order Form as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the Council to act on behalf of their respective party on the matters for which they are expressed to be responsible.

13.2 The Supplier shall not remove or replace any of the Key Personnel unless:

13.2.1 requested to do so by the Council;

13.2.2 the person is on long-term sick leave;

13.2.3 the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;

13.2.4 the person resigns from their employment with the Supplier; or

13.2.5 the Supplier obtains the prior written consent of the Council.

13.3 The Supplier shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within 5 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

13.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 20 Working Days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Council becoming aware of the role becoming vacant.

13.5 The Council may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

13.6 If the Supplier replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Supplier.

14 OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 14.1 At all times, the Supplier shall ensure that:
- 14.1.1 each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 14.1.2 there is an adequate number of Supplier's Personnel to provide the Services properly;
 - 14.1.3 only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - 14.1.4 all of the Supplier's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.
- 14.2 The Council may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Supplier shall replace any of the Supplier's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 14.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 14.5 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

15 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 15.1 The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006 and the All Wales Safeguarding Procedures 2020.
- 15.2 The Supplier shall ensure that all individuals engaged in the provision of the Services are:
- 15.2.1 subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service ("DBS") including a check against the adults' barred list or the children's barred list, as appropriate; and

15.2.2 the Supplier shall monitor the level and validity of the checks under this clause 15.2 for each member of staff.

15.3 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

15.4 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.

15.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Service User.

15.6 The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

15.7 The Supplier shall ensure that any sub-contractors used to deliver the service shall be prepared to present a valid DBS check to the Council's representative on site before commencing work.

16 TUPE AND THE 2012 DIRECTION

The Parties agree that the provisions of Schedule 10 shall apply to this Contract. .

CONTRACT MANAGEMENT

17 REPORTING AND MEETINGS

17.1 The Supplier shall provide the management reports in the form and at the intervals set out in Schedule 5 and the Order Form (Service Agreement).

17.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 and the Service Agreement and the Supplier shall, at each meeting, present its previously circulated Management Reports [and Financial Reports] in the format set out in that Schedule.

18 MONITORING

18.1 The Council shall monitor the performance of the Services by the Supplier in accordance with the requirements set out in the Specification. The Council may carry out other periodic monitoring or spot checks at any other time.

18.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Council. The Service Provider shall comply with the Cardiff Escalating Concerns Policy. The current policy is set out in Schedule 1.

19 CHANGE CONTROL

19.1 Any requirement for a Change shall be subject to the Change Control Procedure.

20 DISPUTE RESOLUTION

20.1 Either party may call an extraordinary meeting of the parties by service of not less than [5 days] written notice and each party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Council (if any) shall attend all extraordinary meetings called in accordance with this clause.

20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within [14 days] of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.

20.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

20.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until [21 days] after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).

20.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.

20.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

- 20.7 While the Dispute Resolution Procedure referred to in this clause 20 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

21 SUB-CONTRACTING AND ASSIGNMENT

- 21.1 Subject to clause 21.3, the Supplier shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the Council. Neither may the Supplier sub-contract the whole or any part of its obligations under this Contract except with the express prior written consent of the Council, such consent not to be unreasonably withheld, and provided that the sub contractor satisfies any minimum requirements that may be required by the Council to provide the Services, within the parameters of procurement law, and provided that any such sub contracting does not affect the Council's overall statutory to the Service User.
- 21.2 In the event that the Supplier enters into any Sub-Contract in connection with this Contract it shall:
- 21.2.1 remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - 21.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms; and
 - 21.2.3 provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
- 21.3 The Council shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Council.

LIABILITY

22 INDEMNITIES

The Supplier shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Contract, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or applicable law by the Council or its Representatives (excluding any Supplier's Personnel).

23 LIMITATION OF LIABILITY

- 23.1 Subject to clause 23 and clause 23.5, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 23.3 Subject to clause 23.5, the Council's total aggregate liability in connection with this Contract in each twelve (12) month period during the Term (whether in contract, tort, including negligence, breach of statutory duty or howsoever arising) shall be limited to five million pounds (£5,000,000.00).
- 23.4 Subject to clause 23 and clause 23.5, the Supplier's liability in connection with this Contract (whether in contract, tort, including negligence, breach of statutory duty or howsoever arising) shall be limited to five million pounds (£5,000,000.00) in respect of each and every claim or in respect of any matter for which the Supplier is required to take out and maintain insurance the minimum level of insurance referred to in this Contract.
- 23.5 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
- 23.5.1 fraud or fraudulent misrepresentation;
 - 23.5.2 death or personal injury caused by its negligence;
 - 23.5.3 breach of any obligation as to title implied by statute; or
 - 23.5.4 any other act or omission, liability for which may not be limited under any applicable law.

24 INSURANCE

- 24.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover as a minimum the following levels of cover ("Required Insurances"):
- 24.1.1 public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
 - 24.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000 **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;

The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall

include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 24.2 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract..
- 24.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Contract.

INFORMATION

25 FREEDOM OF INFORMATION

- 25.1 The Supplier 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 Supplier's expense) to enable the Council to comply with these information disclosure requirements.
- 25.2 The Supplier shall and shall procure that its Sub-Contractors shall:
 - 25.2.1 Transfer the Request for Information to the Council as soon as practicable after receipt and in any event within [two] Working Days of receiving a Request for Information;
 - 25.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within [five] Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - 25.2.3 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 of the Environmental Information Regulations.
- 25.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
 - 25.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - 25.3.2 is to be disclosed in response to a Request for Information.

- 25.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 25.5 The Supplier acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- 25.5.1 without consulting with the Supplier; or
- 25.5.2 following consultation with the Supplier and having taken its views into account,
- provided always that where clause 25.5.2 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 25.6 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 25.7 The Supplier acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.5.

26 DATA PROTECTION

- 26.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the Contract.
- 26.2 Notwithstanding the general obligation in clause 26.1, where the Supplier is processing Personal Data as a Data Processor for the Council, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- 26.2.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
- 26.2.2 promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 26.2; and
- 26.2.3 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

26.3 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

27 CONFIDENTIALITY

27.1 Subject to clause 27.2, the parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

27.2 Clause 27.1 shall not apply to any disclosure of information:

27.2.1 required by any applicable law, provided that clause 25.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;

27.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;

27.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;

27.2.4 by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;

27.2.5 to enable a determination to be made under clause 20;

27.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

27.2.7 by the Council to any other department, office or agency of the Government; and

27.2.8 by the Council relating to this Contract and in respect of which the Supplier has given its prior written consent to disclosure.

27.3 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or Service Users, are delivered up to the Council or securely destroyed.

28 AUDIT

28.1 During the Term and for a period of six (6) years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:

28.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services [at the level of detail agreed in Schedule 4 (Payment)];

28.1.2 to review the integrity, confidentiality and security of any data relating to the Council or any service users;

28.1.3 to review the Supplier's compliance with the DPA, the FOIA, in accordance with clause 26 (Data Protection) and clause 25 (Freedom of Information) and any other legislation applicable to the Services;

- 28.1.4 to review any records created [during the provision of the Services];
 - 28.1.5 to review any books of account kept by the Supplier in connection with the provision of the Services;
 - 28.1.6 to carry out the audit and certification of the Council's accounts;
 - 28.1.7 to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - 28.1.8 to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 28.2 The Supplier shall on request afford the Council, the Council's representatives, and/or the Auditor such access to such records and accounts as may be required by the Council and/or the Auditor from time to time.
- 28.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 28.4 Subject to the Council's obligations of confidentiality, the Supplier shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 28.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 28.4.2 reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - 28.4.3 access to the Supplier's Personnel.
- 28.5 The Council shall endeavour to (but is not obliged to) provide at least [15] days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Supplier in which case the Supplier shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 28.7 If an audit identifies that:
- 28.7.1 the Supplier has failed to perform its obligations under this agreement in any material manner, without prejudice to any other rights the Council has under this Contract, the Parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

28.7.2 the Council has overpaid any Charges, the Supplier shall pay to the Council the amount overpaid within [20] days. The Council may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and

28.7.3 the Council has underpaid any undisputed Charges, the Council shall pay to the Supplier the amount of the under-payment [less the cost of audit incurred by the Council if this was due to a default by the Supplier in relation to invoicing] within [20] days.

29 INTELLECTUAL PROPERTY

29.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:

29.1.1 in the course of performing the Services; or

29.1.2 exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

29.2 The Supplier shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

TERMINATION

30 TERMINATION FOR BREACH

30.1 The Council may terminate this Contract in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:

30.1.1 if the Supplier is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Council may only terminate this agreement under this clause 30.1 if the Supplier has failed to remedy such breach within ten (10) Working Days of receipt of notice from the Council (a **Remediation Notice**) to do so;

30.1.2 if a Consistent Failure has occurred;

30.1.3 if a Catastrophic Failure has occurred;

30.1.4 if a resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment;

30.1.5 if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;

30.1.6 if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which the Council reasonably objects.

30.2 The Council may terminate this Contract in accordance with the provisions of clause 31

30.3 If this Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

30.4 In the event that the Council commits a Termination Payment Default the Supplier shall notify the Council of such Termination Payment Default by giving 30 days' written notice. In the event that the Council remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this Contract shall be deemed to have been withdrawn.

31 TERMINATION ON NOTICE

The Council may terminate this Contract at any time by giving no less than forty eight (48) hours written notice to the Supplier unless, where acting reasonably:-

- (a) that the Council has concerns regarding the Service User's welfare in which case the Contract may be terminated in whole or in part upon written notice with immediate effect provided that in this regard the Customer is not acting vexatiously;
- (b) in circumstances where a Service User has died or has been admitted to hospital or a nursing home or such other similar circumstances arise in which case the Council shall give as much notice as is reasonably practicable given the circumstances but in any event shall not be less than twenty four (24) hours written notice.

32 FORCE MAJEURE

32.1 Subject to the remaining provisions of this clause 32, neither Party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

32.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:

- 32.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- 32.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and
- 32.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

32.3A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

32.4The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable Supplier should have foreseen and provided for the cause in question.

32.5As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

32.6The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

32.7The Council may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than five (5) Working Days.

33 PREVENTION OF BRIBERY

33.1 The Supplier:

33.1.1 shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Contract commit a Prohibited Act;

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

33.2 The Supplier shall:

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

33.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.

- 33.4 If any breach of clause 33.1 is suspected or known, the Supplier must notify the Council immediately.
- 33.5 If the Supplier notifies the Council that it suspects or knows that there may be a breach of clause 33.1, the Supplier must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for six years following the expiry or termination of this Contract.
- 33.6 The Council may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 33.1.
- 33.7 Any notice of termination under clause 33.6 must specify:
- 33.7.1 the nature of the Prohibited Act;
 - 33.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
 - 33.7.3 the date on which this Contract will terminate.
- 33.8 Despite clause 20 (Dispute resolution), any dispute relating to:
- 33.8.1 the interpretation of clause 33; or
 - 33.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 33.9 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

34 CONSEQUENCES OF TERMINATION

- 34.1 On the expiry of the Term, or if this Contract is terminated in whole or in part the Supplier shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Supplier.
- 34.2 On termination of this Contract and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Supplier shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Supplier's Authorised Representative or Chief Executive Office] shall certify full compliance with this clause.
- 34.3 The provisions of clause 18, clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 34 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

35 NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this Contract and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

36 WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Supplier in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations to deliver the Services in accordance with the provisions of this Contract.

37 ACCUMULATION OF REMEDIES

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

38 SEVERABILITY

If any of the provisions of this Contract is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

39 PARTNERSHIP OR AGENCY

Nothing in this Contract shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Contract.

40 THIRD PARTY RIGHTS

40.1 No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

41 PUBLICITY

The Supplier shall not:

- 41.1.1 make any press announcements or publicise this Contract or its contents in any way; or
- 41.1.2 use the Council's name or brand in any promotion or marketing or announcement of orders, without the prior written consent of the Council.

42 NOTICES

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Contract. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within [24 hours] by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

43 ENTIRE AGREEMENT

- 43.1 This Contract, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 43.2 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
 - (a) the Order Form;
 - (b) the clauses of the Contract;
 - (c) the Specification;
 - (d) the Self Billing Agreement
 - (e) the ITT;
 - (f) the Tender; and
 - (g) any other document referred to in the clauses of the Contract.

44 COUNTERPARTS

This Contract may be executed in any number of counterparts, provided that the Supplier has signed the appropriate Signature Document, each of which when executed and delivered shall constitute an original of this agreement, but all the

counterparts shall together constitute the same agreement. [No counterpart shall be effective until each party has executed at least one counterpart.]

45 GOVERNING LAW AND THE WELSH LANGUAGE

- 45.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 45.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.
- 45.3 The Supplier shall comply with the requirements of the Welsh Language Scheme and the Welsh Language (Wales) Measure 2011 ("the Measure"), as and when the provisions of the Measure come into force and insofar as they relate to the provision of the Services, during the Term of the Contract.

46 DISCRIMINATION

- 46.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing, the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation or any statutory modification or re-enactment thereof.
- 46.2 The Supplier shall take all reasonable steps to secure the observation of clause 46.1 by all its' staff or agents and all suppliers and sub-contractors employed in the execution of this Contract.
- 46.3 If any Court or Tribunal and/or any similar or equivalent body established to monitor the Equality Act 2010 or the Human Rights Act 1988 or any similar or equivalent legislation makes any finding of unlawful discrimination against the Supplier then the Supplier must immediately give the Authorised Officer full details in writing of such findings and take all necessary steps to prevent a recurrence.

47. COUNCIL'S CONTINUOUS IMPROVEMENT DUTY

- 47.1 The Supplier acknowledges that the Council is subject to the duty to make arrangements to secure continuous improvement in the exercise of its functions under the Local Government (Wales) Measure 2009 and undertakes to assist the Council in discharging its duties in this regard in relation to the Services. The Supplier agrees to fully co-operate with the Council in carrying out any such statutory duty and to actively work to continuously improve the quality of the Services provided and/or reduce the costs of the same.

[This agreement has been entered into between the parties on the date stated within the Signature Document. – this wording is to be further considered]

[This document is a draft and the Council reserves the right to amend it prior to the issuing of the final version.]

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Schedule 1 Specification

Part 1 – Generic Specification – a copy of which can be accessed at adam HTTP Ltd and which sets out the Council's overarching requirements relating to the domiciliary care services.

Part 2 – Individual specification – the specification for each Service User will be set out in detail in each individual service requirement (Order Form) and will be subject to the terms and conditions of this Contract. It is noted that the individual service specification will be issued at the time that an order is placed with the Supplier and shall be deemed to be incorporated within the Contract.

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Schedule 2 Service levels

Part 1. Service Levels

1. SERVICE LEVELS

Service levels will be agreed with the Commissioner at the award of each contract.

2. CONSISTENT FAILURE

In this agreement, **consistent failure** shall mean:

- (a) [a failure rate of at least in meeting:
 - (i) 3 or more agreed service levels in a rolling 6 month period.
 - (ii) **[AND/OR]**
- (b) [the Council serving [3 Remediation Notices in a rolling 6 month period or [2 Default Notices in a rolling year.]

Schedule 3 Supplier's Tender

To be completed within Application

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Schedule 4 Charges and Payment NOT USED

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Schedule 5 Contract management

1. AUTHORISED REPRESENTATIVES

- 1.1 The Council's initial Authorised Representative: Peter Lawrence, Contracts & Service Development Manager
- 1.2 The Supplier's initial Authorised Representative: [INSERT DETAILS]

2. KEY PERSONNEL [INSERT DETAILS]

3. MEETINGS

- 3.1 Type
- 3.2 Quorum
- 3.3 Frequency
- 3.4 Agenda

4. REPORTS

- 4.1 Type
- 4.2 Contents
- 4.3 Frequency
- 4.4 Circulation list

Schedule 6 Business Continuity Plan

- 1 The Supplier shall have in place a Business Continuity Plan (to be made available to the Council on request) that sets out the detailed procedures and processes to be followed and actions to be taken if there is a failure or disruption of the Services.
- 2 The parties shall comply with the provisions of the Business Continuity Plan and the Supplier shall ensure that it is able to implement the Business Continuity Plan at any time in accordance with its terms.
- 3 The Supplier shall test the Business Continuity Plan on a regular basis (and in any event not less than once in every 12 month period). Subject to clause 4, the Council may require the Supplier to conduct additional tests of the Business Continuity Plan where the Council considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan. The Council reserves the right to attend any Business Continuity Plan test undertaken by the Supplier.
- 4 If the Council requires an additional test of the Business Continuity Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Council's requirements and the relevant provisions of the Business Continuity Plan. Following each test, the Supplier shall send to the Council a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Council considers to be necessary as a result of those tests.
- 5 The Supplier shall undertake regular risk assessments and/or business impact analysis in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to those risk assessments or business impact analysis to the Council promptly in writing following each review.

Schedule 7 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Council sees a need to change (vary) this Contract, the Council may at any time request such Change provided that such change/variation does not amount to a material change to the Services. Such a change/variation is hereinafter called a "Change". Any such request for Change shall be dealt with in accordance with the Change Control Procedure set out in this Schedule 7. By way of example if a Service User's care needs change during the term of the Contract this may lead to an increase or decrease in the number of hours of Services required by the individual Service User. Accordingly this will be dealt with as a Change to the Contract
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

2.1 The Council may request a Change by completing and sending a Change Control Note to the Supplier.

2.2 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;

- (ii) the personnel to be provided;
- (iii) the Charges;
- (iv) the Documentation to be provided;
- (v) the training to be provided;
- (vi) working arrangements;
- (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Council and the Supplier.

2.3 In the event that the Supplier is unable to provide the Change to the Services or where the Parties are unable to agree a change to the contract price, the Council may:-

- (i) terminate the Contract either in whole or in part; or
- (ii) agree to continue to perform their obligations under the Contract with the Change..

2.4 If the Parties agree to the Change and any change in the contract price, the Supplier shall carry out such Change and the Change Control Note signed by the Council and by the Supplier shall constitute an amendment to this Contract.

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Schedule 10 TUPE and the 2012 Direction

Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended ("TUPE") and The Welsh Authorities Staff Transfers (Pensions) Direction 2012 ("the 2012 Direction")

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The definitions and rules of interpretation in this paragraph apply in this Agreement:

1.TUPE

1.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended, ("TUPE") may apply in respect of this Contract and any future letting of the Services and the Supplier agrees:-

1.1.1 to comply with the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended, should the same apply to the award of this Contract;

1.1.2 that the payments payable under this Contract shall be deemed to include all costs and expenses incurred by the Supplier in fulfilling its obligations under TUPE should TUPE apply to the award of this Contract; and

1.1.3 to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards and costs and all other liabilities arising from the Supplier's failure to comply with its obligations under TUPE should TUPE apply to the award of this Contract.

1.2 During the period of nine months preceding the expiry of this Contract or after the Council has given notice to terminate the Contract or if the Supplier stops trading, and within 10 working days of being so requested by the Council, the Supplier shall fully and accurately disclose to the Council for the purposes of TUPE all information relating to its employees engaged in providing the Services under this Contract, in particular, but not necessarily restricted to, the following:

(a) The total number of Supplier's Personnel engaged in providing the Services; and

(b) For each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the name of individual members of employed staff do not have to be given); and

- (c) Full information about the other terms and conditions on which the affected staff are employed (including but not limited to their work arrangements), or about where that information can be found; and
- (d) Details of pension entitlements, if any; and
- (e) Job titles of the members of staff affected and the qualifications required for each position; and
- (f) relevant collective agreements..

- 1.3 The Supplier shall permit the Council to use the above information for the purposes of TUPE and of re-tendering. The Supplier will co-operate with the re-tendering of this Contract by allowing, upon practical and reasonable notice, any new service provider to communicate with and meet the affected employees and/or their representatives.
- 1.4 At the Council's request, at least 28 days prior to the expiry of this Contract, provide all relevant employee liability information to the Council and/or future service provider in accordance with Regulation 11 of TUPE.
- 1.5 The Supplier agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of inaccurate or incomplete information or the provision of information under Clauses 1.2 and 1.4
- 1.6 After any information referred to under Clauses 1.2 and 1.4 which has been passed to the Council during the period of nine months preceding the expiry of this Contract or after the Council has given notice to terminate the Contract or if the Supplier stops trading, the Supplier shall not and shall procure that any sub-contractor shall not:-
- (a) materially amend the rates and remuneration or hours to be worked by, or the terms and conditions of employment of any Supplier's Personnel (save where such amendments arise in the ordinary course of a business) or
 - (b) replace, dismiss (other than for serious misconduct, poor performance or incapacity) or redeploy any Supplier's Personnel, or deploy any person who is not Supplier's Personnel to provide the Services under this Contract or materially increase the number of Supplier's Personnel without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.
- 1.7 The Supplier agrees to indemnify the Council from and against all actions, proceedings, claims, expenses, awards and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Contract is terminated and/ or transferred to any third party ("Relevant Transfer") arising out of their employment or its termination whether such claim or claims arise before or after the date of the Relevant Transfer.
- 1.8 In the event that the information provided by the Supplier in accordance with Clauses 1.2 and 1.4 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Council of the inaccuracies and provide the amended information.
- 1.9 Clauses 1.1 to 1.8 shall apply during the continuance of this Contract and indefinitely after its termination.

THE 2012 DIRECTION

2. The 2012 Direction

2.1 In this Clause 2 the following definitions and rules of interpretation shall apply:-

“Admission Agreement” means the agreement to be entered into in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008, as amended, by the Council and the Supplier or Sub-Contractor, as appropriate

“Appropriate Pension Provision” means in respect of Eligible Employees, either:

- (a) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer: or
- (b) pension scheme, which is certified by the Government Actuary’s Department (“GAD”) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.

“Bond” means the bond to be executed in the Council’s standard form

“Effective Date” means the date upon which the Services (or any part of the Services) transfer from the Council (or any Third Party Employer) to the Supplier or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Sub-Contractor

“Eligible Employees” means the Transferring Employees (or employees of Third Party Employers) who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date

“LGPS” means Local Government Pension Scheme

“LGPS Regulations” means

- (a) the Local Government Pension Scheme (Administration) Regulations 2008;
- (b) the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007;
- (c) the Local Government Pension Scheme (Transitional Provisions) Regulations 2008;
- and
- (d) the Local Government Pension Scheme Regulations 1997

as may be amended and/or replaced from time to time.

“Relevant Transfer” means a relevant transfer for the purposes of TUPE

“Replacement Contractor” means any third party supplier of Replacement Services appointed by the Council from time to time

“Replacement Services” means any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following termination or expiry of this Contract, whether those services are provided by the Council internally or by any Replacement Contractor

“Sub-Contractor” means the contractors or service providers engaged by the Contractor to provide the goods, services or works, for or on behalf of the Contractor for the purposes of providing the Services to the Council

“Third Party Employer” means a contractor engaged by the Council to provide part of all of the Services to the Council and whose employers will transfer to the Supplier on the Effective Date.

“Transferring Employees” means employees of the Council whose contracts of employment transfer with effect from the Effective Date to the Supplier by virtue of the application of TUPE

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006

- 2.2 Should the award of this Contract result in an Eligible Employee of the Council transferring under TUPE to the Supplier or any relevant Sub-Contractor then the following provisions set out in this Clause 2 shall apply.
- 2.3 The Supplier shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this Contract.
- 2.4 The provisions of clause 2 shall be directly enforceable by an affected employee against the Supplier or any relevant Sub-Contractor.
- 2.5 Where the Supplier or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Supplier shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Supplier or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate and, if applicable, bond rate, in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Date.
- 2.6 The Supplier shall indemnify and keep indemnified the Council and/or any Replacement Contractor and, in each case, their contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Supplier or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.
- 2.7 The Supplier shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or Bond required in accordance with the Admission Agreement.
- 2.8 The Supplier shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council. The Council shall be responsible for meeting all costs associated with the award of such benefits.

- 2.9 Where the Supplier or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS or such other broadly comparable scheme, the Contractor shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:
- (a) established no later than three months prior to the date of the Relevant Transfer; and
 - (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the LGPS.

and the Supplier shall produce evidence of compliance with this Clauses 2.8 to the Council prior to the date of the Relevant Transfer.

- 2.10 The Council's actuary shall determine the terms for bulk transfers from the LGPS to the Contractor's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this Contract.

Schedule 11 Commercially sensitive information

DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS COMMERCIALY SENSITIVE]

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Schedule 12 Council's Premises and Assets NOT USED

[DETAILS OF COUNCIL PREMISES AND ANY APPLICABLE LEASES OR LICENCES TO BE INSERTED ANY COUNCIL ASSETS]

DRAFT

Schedule 13 [Insurance] NOT USED

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SCHEDULE 14

COMPLAINTS PROCEDURE

- 1 The Supplier must have in place written procedures and information approved by the Authorised Officer for informing Service Users and / or their advocates or representatives on how to make a complaint in the first instance, and failing a satisfactory outcome, how to take the complaint further.
- 2 The Supplier must record all complaints of any nature in a register for that purpose and provide copies when asked by the Authorised Officer. Information to be recorded in the register must include:
 - a) The nature of the complaint;
 - b) The name of the person making the complaint;
 - c) The date and time the complaint was received;
 - d) The action taken to remedy the complaint and communicate this to the complainant;
 - e) The time and the date when the remedy was completed; and
 - f) The names of the Supplier's supervisor and other Staff involved in the action complained of and its remedy.
- 3 If anyone makes a complaint to the Supplier regarding the provision of the Service, the Supplier must tell the Authorised Officer, who will immediately consider the same and the action (if any) taken by the Supplier or agreed to be taken by the Supplier to remedy the same.
- 4 If a complainant is not satisfied with the outcome of the Supplier's investigation or chooses to bypass an investigation by the Supplier and complains directly to the Council, or if the Authorised Officer is not satisfied with the Supplier's action or proposals to remedy the complaint, the Supplier must provide any relevant information and evidence in connection with any investigation, inquiry or proceedings considered necessary by the Authorised Officer or any body or panel appointed by the Council to which the complaint is referred by the Authorised Officer, and must comply at its own cost with the findings and decision of the Authorised Officer or the said body or panel in relation to the provision of this Contract. This will include the Local Government Ombudsman to whom the complainant might complain directly.

Cardiff City Council Signature Document

This Signature Document is made as of **20th August 2021**

BETWEEN

(1) Cardiff City Council, The County Council of the City and County of Cardiff of County Hall, Atlantic Wharf Cardiff CF10 4UW , (the "Council")

and

(2) (Insert Supplier Name),(Insert Company Number) of (Insert Company Address) (the "Supplier")

(Each a "Party", together the "Parties")

Please note that you are signing up to the SProc.Net system that will allow you to manage you contracts you are awarded by the council within the below categories.

Older People and/or Mental Health Services for Older People – Cardiff West
Older People and/or Mental Health Services for Older People – Cardiff South West
Older People and/or Mental Health Services for Older People – Cardiff City and South
Older People and/or Mental Health Services for Older People – Cardiff South East
Older People and/or Mental Health Services for Older People – Cardiff East
Older People and/or Mental Health Services for Older People – Cardiff North
Adults with Learning Disabilities – City Wide
Adults with Mental Health – City Wide
Adults with Substance Misuse – City Wide
Adults with Physical and Sensory Impairment – City Wide

By signing this document you are confirming you will only be signing up to only deliver services that will be for the above categories. If you in future decide to deliver children services, you will need to compete the remaining Children Services Enrolment criteria as well as signing the children's contract.

The contract you originally signed with the council is still in place and is attached below for reference.

Agreed and accepted for and on behalf of Cardiff Council by:

Name:	XXXXX
Position:	XXXXX

Date:

XXXXX

Agreed and accepted for and on behalf of the Supplier by:

(Insert digital or written signature here:)

DRAFT

Name:
Position:
Date:

DRAFT