**CONTRACT TERMS AND CONDITION FOR THE SUPPLY OF SERVICES**

1. **Definitions:**

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| **Agreement** | Means the formal agreement document signed by the Council and Provider. |
| **Authorised Representative** | The persons respectively designated by the Council and the Provider. |
| **Breach of contract** | A failure of a party to this Contract to perform his or her obligations as agreed. |
| **Business Working Day** | Every official working day of the week between and including Monday to Friday, excluding public holidays and weekends in Wales. |
| **Change Control** | Any change in control as defined by section 416 of the Income and Corporation Taxes Act 1988. |
| **Commercially Sensitive Information** | Information of a commercial sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Council that, if disclosed, by the Council, would cause the Provider significant commercially disadvantage or material financial loss. |
| **Contract** | This document setting out the terms and conditions for the supply of services. |
| **Contract Period** | Means the period set out in clause 6 of this Contract from the Commencement Date to the Expiry Date unless otherwise terminated earlier or extended pursuant to the terms and conditions of the Contract. |
| **Contract Price** | Means the price (exclusive of any applicable VAT) applicable for the Contract Period. |
| **Confidential Information** | Any information which has been designated in writing by either Party as being confidential or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to all Personal Information and sensitive Personal Information within the meaning of the Data Protection Act 1998 and Section 124 of the Police Act 1997 in relation to the business, affairs, properties, assets, trading practices, Service Developments, trade secrets, personnel, Person and suppliers of either Party, and the Commercially Sensitive Information. |
| **Commissioner** | Conwy County Borough Council |
| **Data Controller** | Shall have the same meaning as set out in the Data Protection Legislation. |
| **Data Processor** | Shall have the same meaning as set out in the Data Protection Legislation. |
| **Data Protection Legislation** | Shall have the meaning of the Data Protection Act 2018 and the General Data Protection Regulations (GDPR) in force in the UK from the 25th May 2018 and all applicable laws and guidance relating to the processing of Personal Information and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner. |
| **DPA** | Means the Data Protection Act 2018 to the extent that it relates to processing of Personal Information and privacy. |
| **Data Subject** | Means any living person who is the subject of Personal Information as defined in the DPA. |
| **Default** | Means any breach of the obligations of the relevant Party (including but not limited to material breach or breach of a fundamental term or warranty) or any other default, act, omission, negligence or negligent statement of the relevant Party in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other. |
| **Direct Payment Scheme** | means the scheme by which an individual is assessed as being able and willing to arrange and provide for his/her own or an child/young person’s care by purchasing suitable services, or a suitable person for those without mental capacity |
| **Direct Payment Recipient** | The person eligible to receive direct payments on their own or on another’s behalf under the Direct Payment Scheme |
| **Disclosure & Barring Service (DBS)** | Means a Non-Departmental Public Body established under the Protection of Freedoms Act 2012 with the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) |
| **Emergency** | Is an exceptional circumstance where failing to act would cause unacceptable distress to, or affecting the wellbeing of the Person receiving the Service. |
| **Equipment** | The Provider’s equipment, and materials used in the performance of its obligations under this Agreement. |
| **Freedom of Information Act (FOIA)** | The Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation. |
| **GDPR** | General Data Protection Regulations in force in the UK from the 25th May 2018 and as amended and updated from time to time. |
| **Good Industry Standards** | Standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence, and foresight which wold reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances. |
| **Key Personnel** | Any personnel who the Parties notify to be regarded as key personnel during the course of the Service. |
| **Management Report** | The reports to be prepared and presented by the Provider to the Council. |
| **Material Breach** | A breach of contract that has serious consequence on the outcome of the Agreement and can lead, if not remedied, to termination of the Agreement. |
| **Person** | Direct Payment Recipient receiving the services provided by the Provider. |
| **Personal Information** | Shall have the same meaning as set out in the DPA and relates only to Personal Data or Personal Information of which the Council is the Data Controller and in relation to which the Provider is providing the Service under this Contract. |
| **Provider** | Means the Organisation appointed under the Approved Providers List to deliver the Service. |
| **Provider’s Personnel** | Means any Staff members, agents, subcontractors and self employed counsellors engaged and considered by the Provider to be essential to the work being performed under this Contract. |
| **Regulatory Body** | Means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council. |
| **Safeguarding** | Means the promoting of children/adults’ physical, emotional and mental health, protection from harm and neglect, education, training and leisure, contribution to society and social and economic well-being |
| **Safeguarding Co-ordinator** | The person assigned to oversee and co-ordinate the process that deals with allegations of abuse and neglect against children and adults at risk. |
| **Service** | The whole of the work to be undertaken by the Provider as further defined in the Service Specification. |
| **Specification** | Schedule 1 to the Contract that describes the Service. |
| **TUPE** | Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as may be amended or modified from time to time |

1. **Interpretations**

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

* + 1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
    2. words importing the masculine include the feminine and the neuter;
    3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
    4. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
    5. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
    6. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
    7. headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
    8. the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
    9. references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and
    10. references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.

1. **Key Personnel**
   1. Each party shall appoint individuals who shall be responsible for the matters allocated to such Key Personnel.
   2. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation or operation of the Service and who shall be retained on the implementation or operation of the Service and the contract for such time as required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
   3. The Parties have agreed to the appointment of the Key Personnel including an Authorised Representative. The Provider shall, where possible, provide at least one months' written notice of its intention to replace Key Personnel.
   4. The Provider acknowledges that the Key Personnel are essential to the proper provision of the Service. Where a vacancy occurs, the Provider shall endeavour to replace the role of any Key Personnel as soon as practically possible and any such replacement shall have suitable qualifications, experience and be fully competent to carry out the tasks assigned to the Key Personnel.
   5. The Council may require the Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities. If the Provider replaces the Key Personnel as a consequence of this clause, the cost of effecting such replacement shall be borne by the Provider.
2. **Scope of the Contract**
   1. The Service provided under this Contract will be described in the Service Specification.
3. **Contract Period**
   1. The Contract shall take effect on the XXX (“Commencement Date”) and shall continue for a period of thirty six months and shall automatically terminate on the XXXX (“Expiry Date”) unless:
4. it is otherwise terminated in accordance with the terms of this Contract;

ii) awfully extended once in accordance with clause 5.2;

* 1. This Contract may be extended by the Council for a further period of twenty four months (“Extended Contract Period”) by the written agreement of the parties not less than 3 months before the Expiry Date.
  2. The contract terms shall apply throughout the Extended Contract Period.

1. **The Provider’s Status**
   1. At all times during the Contract Period the Provider shall be an independent organisation and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture and neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.
2. **Co-operation and Partnership Working** 
   1. Each Party agrees to cooperate with the other Party in the fulfilment of the Contract. The Parties acknowledge and shall endeavour to work in collaboration and in the spirit of partnership in connection with the Service provided under this Contract.
3. **Contract Review**
   1. The terms of this Contract may be reviewed annually and any modification, amendment or variation shall be confirmed and agreed in writing with the Provider prior to its implementation.
4. **Limits of the Council’s Obligations** 
   1. Except as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.
5. **Mistakes in Information**

10.1 The Provider will be responsible for the accuracy of the documentation and information provided in connection with the provision of the Service under this Contract.

1. **Pre-Requisites and Standard of Service**

11.1 **The Provider’s Base**

11.1.1 The Service shall be managed and provided from sound premises which are suitable for the purpose, providing a safe working environment. The Provider’s premises shall be appropriately located for the management and provision of the Service and contain the equipment and resources necessary for the efficient and effective service delivery.

11.2 **Standard and manner of carrying out the Service**

11.2.1 Without prejudice to any higher standards of the Service required by this Contract, the Provider shall perform its obligations in accordance with:

i) These contract terms and any expressed terms as and when applicable

ii) The Service Specification as set out in Schedule 1 to this Contract

iii) National guidance and local policies;

iv) Reasonable skill and care;

v) The law and good industry practice;

* + 1. Timely supply of the Service shall be of the essence of the Contract, including in relation to commencing the supply of the Service within the time agreed or on a specified date.
    2. If the Provider at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Service in accordance with the Contract, the Provider shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
    3. If the Provider at any time becomes aware of any material matter which prevents or hinders, or may prevent or hinder the Provider from performing the Service in accordance with the Contract, the Provider shall inform the Council immediately.
    4. If the Provider is to have or has a Change in Control, the Provider shall inform the Council as soon as reasonably practicable.

1. **Operation of the Contract**

12.1 During the Period of the Contract, the Provider may be requested to provide the service to Individuals and the Provider shall provide the Service in accordance with the Service Specification as set out in Schedule 1 to this Contract.

1. **Quality Assurance**

13.1 The Provider shall have a Quality Assurance System which includes arrangements for the setting and monitoring of standards and expected outcomes. The Provider shall regularly obtain and act upon the Person’s views as part of its quality assurance process.

1. **Observance of Statutory Requirements**

14.1 The Parties to this Contract shall comply with all statutory and other provisions to be observed in connection with the provision of the Service and any relevant Codes of Practice, Codes of Conduct, Orders and Rules of Law, Regulations, Principles, Standards and Statutory Guidance or other requirements of relevant government agency relating to this Service.

14.2 The Contract shall be read in conjunction with the following (the list is not exhaustive):

i) The Social Services and Well Being (Wales) Act 2014, Code of Practice and Statutory Guidance

ii) The Well Being of Future Generations (Wales) Act 2015

iii) The Wales Interim Policy and Procedure for the Protection of Vulnerable Adults from Abuse 2013

iv) All Wales Child Protection Procedures 2008

v) WG Code of practice - Ethical Employment in Supply Chains

vi) Human Rights Act 1998

vii) The Mental Capacity Act 2005

viii) Equality Act 2010

ix) Data Protection 2018 and the General Data Protection Regulations 2018

x) Protection of Freedoms Act 2012

xi) Civil Contingencies Act 2004

xii) The Welsh Language Measure 2011 including the Welsh Language Standards and the Welsh Language Commissioner’s advice document “Contracting Out Public Services Contracts”

xiii) Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015

1. **Contract Price**

15.1 The Contract Price payable to the Provider for the performance of the Service under this Contract will be in accordance with the tender price as detailed in the Form of Tender.

15.2 The Contract Price shall include all charges associated with the delivery of the Service.

15.3 The Contract price will be reviewed by the Commissioner in consultation with the Provider prior to the extension of contract following the initial thirty six month period.

1. **Payment** 
   1. In consideration of the Service, payment shall be made by the Council to the Provider on a quarterly basis unless agreed otherwise.
   2. Invoices shall be forwarded to Commissioner electronically in a PDF format to the following email address: [socialservices.finance@conwy.gov.uk](mailto:socialservices.finance@conwy.gov.uk) .
   3. All invoices must comply with all the requirements of both the Council and HM Customs and Excise.
   4. Individual invoices must comply with the requirements of a tax invoice and in order to prevent error, duplication and fraud.
   5. Where a Provider elects to issue electronic invoices, they must be received as an attachment via e-mail in a pdf format.
   6. Any unspent monies relating to this Contract must be notified in writing at the end of financial each year to the Council in order that the Council can make a decision with all commissioning partners as regards its use taking into account representations from the Provider. The Provider shall make every effort to inform the Council at the earliest date possible of any projected significant underspend.
   7. The Provider, as a company, shall maintain up to date annual financial accounts. Such accounts must demonstrate that the Contract Price paid by the Council has been used for the Services. The Council reserves the right to request verification of the Provider’s account.
2. **Recovery of Sums Due**

17.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Provider to the Council through a credit note the same may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this Contract or any other Contract with the Council. The Provider and the Council shall use credit notes as the preferred method for recovery of the sums due.

17.2 The Council shall be entitled to recover all or any of the Contract Price paid to the Provider if:

1. the Council establishes on the balance of probability that the Provider was not providing the Service in accordance with the provisions of this Contract or;
2. as a result of any audit or inspection carried out by the Council, an overpayment has been claimed by or made to the Provider.
3. **Costs**

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

1. **VAT**

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

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

1. **The Provider’s Personnel**

20.1 In providing the Service the Provider shall ensure that:

i) sufficient number of the Provider’s Personnel are engaged to deliver the Service;

ii) only authorised Provider’s Personnel are involved with the provision of the Service;

iii) the Provider’s Personnel have the necessary skills and experience for the proper supply, management and evaluation of the Service;

iv) the Provider’s Personnel have the appropriate training and qualifications necessary to deliver the Service

v) the Provider’s Personnel engaged with the direct provision of the Service shall have obtained the necessary registration with relevant professional bodies, if applicable

vi) the Provider’s Personnel operate within their operational boundaries, scope and competence

vii) up to date records of the Provider’s Personnel are maintained and, on request, provide reasonable information including, without limitations, information to the Lead Commissioner on the Provider’s Personnel. The Provider shall reserve at all times the right to provide these records in compliance with the Data Protection Legislation.

viii) policies and procedures are in place to guide and support the Provider’s Personnel;

ix) records are kept in relation to recruitment and employment processes for each member of Provider’s Personnel;

1. **Policies**

21.1 The Provider shall comply with and shall ensure the Provider’s Personnel shall comply with the Council’s published policies and with any further rules, codes of practice, procedures and standards which the Council notifies to the Provider. The Council shall throughout the Contract Period ensure that any changes to any policies, rules, code of practice, procedures and standard are brought promptly for the attention of the Provider.

1. **TUPE**

22.1 The Parties shall acknowledge that the Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (“TUPE”) rules may apply.

22.2 In the event that TUPE applies in connection with the Service provided under a Service Arrangement, the Provider shall comply with the requirements as detailed below.

22.3 Where the Council has notified the Provider that it intends to tender any part of the Service, the Provider shall comply with its obligations in relation to informing and consulting with the Provider’s Personnel engaged in the provision of the Service and then shall, on written request of the Council and in any event within 20 Business Working Days of that request (unless otherwise agreed in writing), provide the Council with all reasonably requested information regarding the provision of the Service to be tendered or retendered that may be subject to TUPE Regulations to at least a level sufficient for a tenderer to determine the overall cost of employing such Personnel

22.4 The Council shall use all reasonable endeavours to procure that any new Provider who provides any services equivalent to the Service or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any Sub-Contractor against any Losses in respect of:

1. any failure by the new Provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new Provider;
2. any claim by any person that any proposed or actual substantial change by the new Provider to that person’s working conditions or any proposed measures on the part of the new provider are to that Person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new Provider on expiry or termination of this Contract or of any Service; and/or
3. any claim by any person in relation to any breach of contract arising from any proposed measures of the new Provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new Provider on expiry or termination of this Contract or of any Service.
4. **Vetting of the Provider’s Personnel**

23.1 The Provider shall:

* 1. ensure that the Provider’s Personnel are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS) where appropriate; and
  2. monitor the level and validity of the checks for each member of Provider’s Personnel and review the DBS check where appropriate;
  3. not employ or use the services of any Provider’s Personnel who is barred, or whose previous conduct or records indicate that he or she may otherwise present a risk to the Person receiving the Service;

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

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

23.3 The Provider shall refer information about any person carrying out the Service to the DBS where it removes permission for such person to carry out the Service (or would have, if such person had not otherwise ceased to carry out the Service) because, in its opinion, such person has harmed or poses a risk of harm to [children OR vulnerable adults].

23.4 The Provider shall ensure that the Council is notified of any person who, subsequent to his/her commencement of employment as a member of the Provider’s Personnel, receives a conviction or whose previous convictions become known to the Provider (or any employee of a sub-contract or involved in the supply of the Service).

23.5 The Provider acknowledges and agrees that any person who fails to co-operate with the vetting process shall not be employed or continue to be employed in the provision of the Service.

23.6 The Provider shall ensure that every DBS check is satisfactory in relation to the Provider’s Personnel and shall carry out risk assessments in relation to any disclosure (whether as a result of a DBS check or from an employee or a potential employee) and shall confirm to the Council, when asked to do so, that the DBS checks are satisfactory.

23.7 If an incident or concern is referred to any of the Council relating to a member of the Provider’s Personnel, the Council shall notify the Provider and the Safeguarding Co-ordinator.

1. **Safeguarding**

24.1 The Provider is required to ensure that the Person to whom the Service is delivered under this Contract is protected from abuse. All agencies and bodies, both statutory and independent caring for children and adults at risk, are responsible for making sure the requirements of Part 7 of the Social Service & Wellbeing (Wales) Act 2014 are met, ensuring that all their Staff are aware of the definition of children and adults at risk and what constitutes abuse.

24.2 The Provider shall ensure that its Personnel know that they have a legal and professional duty to report any concern, suspicion or information about abuse, or if they have reason to suspect someone is being abused or at risk of abuse.

24.3 The Provider must have a policy which states how it will meet all its legal obligations to protect children and adults at risk from abuse and which acknowledges the duty to report a reasonable cause to suspect that any Person is being, has been or is at risk of abuse to the Safeguarding Team. The Provider must include protecting children and adults at risk from verbal, physical, psychological, financial and sexual abuse and state the Provider's commitment to preventing such incidents, and that any allegations will be treated very seriously. The policy must have a statement that the Provider will comply with the Social Service & Wellbeing (Wales) Act 2014 and any related guidance and should describe to Staff, in each service setting of their agency, how they will ensure that their legal obligations are met.

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

24.5 The Provider must ensure that the Provider’s Personnel:

i. receive training in relation to safeguarding

ii. are able to demonstrate their understanding on what constitutes abuse, what types of abuse are considered, what are the indicators and where to go for advice;

iii. know how to report safeguarding concerns

24.6 The Council shall notify the Provider of any relevant referrals received wherever appropriate in relation to the Provider’s Personnel.

24.7 The Provider shall co-operate in any safeguarding investigation and shall assist in any reasonable requests for information that relates to the allegation and / or the investigation.

24.8 The Provider’s policies, procedures in relation to safeguarding shall be compliant with the policies and procedures of the North Wales Safeguarding Board published through the web link at www.northwalessafeguardingboard.wales.

1. **Conflict of Interest**

25.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where in the reasonable opinion of the Council there is or may be conflict or potential conflict between the personal interests of the Provider or the Provider’s Personnel and the duties owed to the Council.

25.2 The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where in the reasonable opinion of the Council there is or may be an actual conflict, or a potential conflict between the personal interests of the Provider and the duties owed to the Council.

1. **Prevention of Bribery**

26.1 The Provider shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out.

1. **Discrimination**

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

27.2 The Provider shall take all reasonable steps to secure the observance of this clause (Discrimination) by all servants, employees or agents of the Provider and all suppliers and sub-contractors employed in the execution of the Contract.

1. **Whistleblowing**

28.1 Under the Public Interest Disclosure Act 1998, which came into force in July 1999, members of Staff who speak out against corruption and malpractice at work are protected by statute from victimisation and dismissal. The Provider’s employees, volunteers and board members shall operate within the terms of the Public Interest Disclosure Act, 1998, and the NHS (Wales) Whistle Blowing Policy and Procedures.

28.2 The Provider’s Whistleblowing policy shall provide a mechanism for people outside of the organisation to raise suspicions of unlawful and unethical employment practices.

1. **Business Continuity**

29.1 The Provider shall have a robust Business Continuity Plan in place to ensure that the Service will be maintained in the event of disruption (including but not limited to, disruption to premises, information technology systems, adverse weather, loss of Staff etc) to the Provider’s operation, however caused.

29.2 Such Business Continuity Plan shall be available to the Council to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Contract Period.

29.3 If requested and at no cost to the Council the Provider shall provide copies of the Business Continuity Plan to the Council and update such plans to the Council reasonable satisfaction.

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

i) Defining and prioritising the critical functions of the business

ii) Analysing the emergency risks to the business e.g. financial crisis, adverse weather, epidemics, energy/fuel shortages, loss/damage of records due to fire/flood

iii) Detailing the planned response to an emergency

iv) Identifying key contacts during an emergency.

1. **Premises**

30.1 Any premises made available from time to time by the Council to the Provider in connection with the Contract shall be made available to the Provider solely for the purpose of performing its obligations under the Contract.

30.2 The Provider shall limit access to the premises to such of the Provider’s Personnel as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure its Personnel shall co-operate) with such other individuals working concurrently on such premises as the Council may reasonably request.

30.3 The Provider’s Personnel shall observe and comply with such rules and regulations as may be in force at any time for the use of the premises notified to it by the Council and the Provider shall pay for the cost of making good any damage to the fabric of the buildings, plant, fixed equipment of fittings therein caused by the negligent act or omission of the Provider’s Personnel.

1. **Environmental Requirements**

31.1 The Provider shall perform its obligations under the Contract in accordance with the Council’s environmental policy (as provided to the Provider form time to time) which is to conserve energy, water, wood, paper and other resources, reduce waste and carbon emissions.

1. **Social Value/Community Benefits**

32.1 The Provider agrees that it shall, where applicable and appropriate, actively seek to maximise appropriate funding streams and grant opportunities to ensure that sustainable outcomes are achieved for the benefit of the citizens and communities.

32.2 The Provider shall, where relevant to the Service Specification, co-operate with the Council in relation to the economic, social and environmental well-being of their area and shall accordingly notify the Council of any best practice ideas which may improve the same.

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

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

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

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

1. **Welsh Language**

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

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

i. Ensure the “active offer” is applied at all times in providing Services in order to ensure that linguistic needs are respected;

ii. Ensure the Services are provided in the preferred language of the Person and his / her family;

iii. Record the preferred language of the Person and his / her family;

iv. Keep a record of Staff skills in relation to the Welsh language to ensure the Provider can plan the workforce (work rotas etc) to fulfil any need for Welsh language services by the Person;

v. Commit to improving skills and awareness of Staff in relation to the Welsh language through regular training programmes;

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

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

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

34.6 The Council is committed to offering support and guidance to the Provider on the planning and provision of bilingual services. This includes guidance regarding a Welsh language policy and advice on the relevant standards.

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

1. **Health and Safety**

35.1 The Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Contract. The Council shall promptly notify the Provider of any health and safety hazards that may exist or arise at the Council’s premises and that may affect the Provider in the performance of the Contract.

35.2 While on the Council’s premises, the Provider shall comply with any health and safety measures implemented by the Council in respect of the Provider’s Personnel.

35.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of the Contract on the Council’s premises where that incident causes any personal injury or damage to property that could give rise to personal injury.

35.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Council’s premises in the performance of the Contract.

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

1. **Confidentiality**

36.1 The Provider will at all times maintain the integrity and confidentiality of all information relating to the Person held or known and any other information that the Council may from time to time determine. It will hold and process in relation to the Person’s manual and computer) in accordance with the Data Protection Legislation.

36.2 The Provider shall not use any Confidential Information it receives from the Council otherwise than for the purposes of this Contract.

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

36.4 In the event that the Provider fails to comply with this Clause, the Council reserves the right to terminate this Contract by written notice with immediate effect

1. **Security of Confidential Information**

37.1 In order to ensure that no unauthorised individuals gain access to any Confidential Information or any data obtained in the supply of the Service under the Contract, the Provider undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best industry practice.

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

37.3 The Provider shall, at its own expense, alter any security systems at any time during the Contract Period at the Council’s request if the Council reasonably believes that the Provider has failed to comply with this clause (Confidentiality) and (Data Protection).

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

1. **Data Protection**

38.1 The Provider acknowledges that the Data Protection Legislation will include the GDPR from its entry force on the 25th May 2018 and it will ensure that it complies will the requirements of the GDPR. The Parties shall comply with their obligations under the Data Protection Legislation at all times and in particular as set out below.

38.2 **Information Governance – General Responsibilities**

38.2.1 The Parties acknowledge their respective obligations arising under the DPA and the GDPR and will assist each other as necessary to enable each other to comply with these obligations.

38.2.2 The Provider shall (and shall ensure that any Sub-Contractor or third party shall) comply at all times with the Data Protection Legislation and their obligations as a Data Processor or Data Controller as the case may be and shall not perform its obligations under this Contract in any such way as to cause the Council to breach their obligations under the Data Protection Legislation.

38.2.3 The Council shall be the Data Controller of the Personal Information and the Provider shall be the Data Processor of the Personal Information unless it is agreed or is apparent from the nature of the processing that the Provider shall be a Data Controller in which case the Parties shall comply with the provisions of the Data Protection Legislation in relation to Data Controllers or Joint Data Controllers as the case may be.

38.2.4 The Provider shall comply with its obligations under the DPA and all statutory re-enactments or modifications thereof, any regulations, rules, orders and any codes of practice or any guidelines issued by the Information Commissioner.

38.2.5 The Provider shall have a Data Protection Policy and Procedures in place that will take account of but not limited to usage fax, email, manual document disposal; physical security; homeworking; retention of information; system access; dealing with disclosures over the telephone; archiving; data back up and retrieval; incident reporting and training.

38.2.6 The Provider undertakes to:

i) treat as confidential all Personal Information which may be derived from or obtained in the course of the Contract or which may come into the possession of the Provider or the Provider’s Personnel as a result of or in connection with the Service;

ii) provide all necessary precautions to ensure that all such information is treated as confidential by the Provider and the Provider’s Personnel;

iii) ensure that the Provider’s Personnel are aware of the provisions of the DPA and GDPR and that any personal information obtained in the course of the performance of this Contract shall not be disclosed or used in any unlawful manner;

iv) indemnify the Council against any loss arising under the DPA and GDPR caused by any action, authorised or unauthorised, taken by the Provider or the Provider’s Personnel;

v) Have in place adequate mechanism to ensure that any sub-contractors to whom the personal information is disclosed comply with their obligations under this Contract to keep Personal Information and information secure and confidential in accordance with the Data Protection Legislation;

38.3 **The Provider as a Data Processor**

38.3.1 Notwithstanding the general obligations, where the Provider is processing Personal Information as a Data Processor , the Provider shall:

i. comply with applicable laws of the DPA and the GDPR;

ii. act on a written instruction of the Council and process Personal Information in accordance with Schedule 3 to this Contract unless otherwise required by law;

iii. obtain a commitment of confidentiality from anyone it allows to process the Personal Information, unless they are already under such a duty by law;

iv. make appropriate protective measures to ensure the security of processing;

v. assist the Council in providing access and allowing Data Subjects to exercise their rights under the GDPR;

vi. assist the Council in meeting its GDPR obligations in relation to the security of processing, the notification of Personal Information breaches and data protection impact assessments;

vii. implement appropriate technical and organisational measures to protect the Personal Information against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;

viii. be able to demonstrate that the Provider’s Personnel associated with the performance of the Contract are aware of their personal responsibilities under the DPA and GDPR to maintain the security of the Personal Information;

ix. take reasonable steps to ensure the reliability of the Provider’s Personnel who may have access to the Personal Information and use all reasonable endeavours to ensure that such individuals have sufficient skills and training in the use, care and handling of Personal Information;

x. ensure that the Provider’s Personnel who may be required in the course of their duties to have access to Personal Information have undergone instruction relating to the care and handling of Personal Information and are honest, reliable and competent in handling of Personal Information;

xi. not disclose the Personal Information to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation impost upon the Council; and

xii. co-operate with the Council and enable the Council to comply with any request under Section 7 of the DPA and the GDPR;

xiii. ensure that Personal Information shall be returned to the Council within seven (7) days’ of request or; under the Council’s written instruction, be safely and securely transferred to another Provider in accordance with the Data Protection Legislation at the end of this Contract;

38.3.2 The Provider shall identify the Personal Information required for processing as part of the performance of this Contract and unless otherwise required by law, the Provider shall process the Personal Information in accordance with Schedule 3 to this Contract (Processing Personal Information and Data Subjects) including the following information:

i) the subject matter;

ii) the duration of the processing;

iii) the nature and purpose of the processing

iv) the type of Personal Information

v) the categories of Personal Information ;

vi) the retention of Personal Information;

vii) the security of Personal Information;

viii) the storage of Personal Information;

ix) the training of Staff;

38.3.3 The Provider shall permit the Council to inspect and audit the Provider’s data processing activities in accordance with the checklist to be agreed during the term of the Contact and shall comply with all reasonable requests or direction by the Council to vary and / or procure that the Provider is in full compliance with its obligations under this Contract. The Provider shall:

i) not process, cause or permit the Personal Information to be transferred outside of the European Economic Area without prior written consent of the Council;

ii) ensure that all Provider’s Personnel required to access the Personal Information are informed of the confidential nature of the Personal Information and comply with the obligations set out in this clause (Data Protection);

iii) process Personal Information for the sole purpose of undertaking the Provider’s obligations under the Contract and for no other purpose;

iv) ensure that none of the Provider’s Personnel publish, disclose or divulge any of the Personal Information to any third party unless directed in writing by the Council

v) not disclose Personal Information to any third parties in any circumstances other than with the written consent of the Commissioner(s) or in compliance with a legal obligation imposed upon by the Council

vi) ensure Personal Information is not be copied and/or retained in any form by the Provider upon expiration or early termination of the Contract except as required by law and if this is the case shall be kept secure at all times;

38.3.4 The Provider shall notify the Council within 2 Working Days:

i) If it receives a request from a Data Subject or a third party to have access to a Person’s Personal Information; or

ii) If it receives a complaint or request relating to the Council’s obligations under the DPA or GDPR or;

iii) In the event of any breach or alleged breach of the Data Protection Legislation;

38.3.5 The Provider shall implement and maintain appropriate technical and organisational measures so as to prevent the destruction damage loss or alteration of any Data or the unauthorised or unlawful processing of any Data. The Provider shall provide to the Council such information as may be required to confirm that the Provider is complying with such obligations, including but not limited to the following;

i. a copy of the registration/notification to the Information Commissioner under the Act;

ii. copy/s of all information security policies/procedures covering the use of information technology, mobile devices, home working etc;

iii. shall permit any authorised representative of the Council to have access to any site at which Personal Information is processed to monitor the implementation/operation or existence of such policies/procedures;

38.3.6 The Provider shall ensure that it does nothing which places the Council in breach of the DPA and GDPR and shall have or establish appropriate systems, policies and procedures to ensure compliance. The compliance of this clause will be monitored as part of the contract monitoring activities in accordance with the Checklist set out in the Schedule 3.

38.3.7 For avoidance of doubt, in the event of the Provider’s termination of the Contract, the Personal Information relating to this Contract shall be:

i) returned to the Council within seven days’ of request or;

ii) archived or destroyed in accordance with Provider’s Data Protection Policy and Procedures;

as agreed between the Council and the Provider.

38.3.8 The Provider’s retention of Personal Information as part of their Data Protection Policy and Procedures should:

i. apply to both electronic and manual records;

ii. justify the retention of records based on the type and any business or legislative need;

iii. set out how any exceptions to retention schedules are applied and reviewed;

iv. specify who is responsible for destroying records;

v. list appropriate disposal methods and security requirements;

vi. set out the requirements for recording records as destroyed; and

vii. require periodic review to ensure the retention schedule is correctly applied;

38.4 **Provider’s engagement of sub-contractors and sub-processors**

38.4.1 Prior to allowing any Sub-contractor to process any Personal Information related to the Contract, the Provider shall:

i) notify the Council in writing of the intended Sub-contractor and processing;

ii) obtain the written consent of the Council;

iii) enter into a written agreement with the sub-contractor which shall give effect to the terms set out in Schedule 3 and provisions of this clause (Data Protection)

iv) provide the Council such information regarding the Sub-contractor as the Council may require;

38.4.2 In the event that the Provider engages as part of the performance of this Contract a Sub-Contractor who will process Personal Information in the capacity of a Sub-Processor, then the Provider must ensure that the Subcontractor complies with the terms as detailed in this Contract.

38.5 **Notices in respect of Data Protection**

38.5.1 The Parties shall serve a notice pursuant to Clause 39 (Data Protection) in writing and each notice shall be delivered personally, or sent by pre-paid first class post, or by recorded delivery, or by commercial courier, to the address of the Parties as set out above.

38.6 **Additional Provider’s Responsibilities**

38.6.1 Nothing in this Contract shall relieve the Provider of its own direct responsibilities and liabilities under the GDPR. In addition to its contractual obligations, under the GDPR the Provider as a Data Processor shall have the following direct responsibilities in accordance with Article 28.2 of the GDPR.

i) not to use a sub-processor without the prior written authorisation of the data controller;

ii) to co-operate with supervisory authorities (such as the ICO);

iii) to ensure the security of its processing;

iv) to keep records of processing activities;

v) to notify any Personal Information breaches to the data controller;

vi) to employ a data protection officer;

vii) to appoint (in writing) a representative within the European Union if needed.

38.6.2 The Provider acknowledges that if it fails to meet any of these obligations, then it may be liable to pay damages in legal proceedings, or be subject to fines or other penalties or corrective measures.

1. **Information Sharing**

39.1 The Provider agrees that the Council may in its absolute discretion, acting reasonably, disclose to other public authorities any proper and genuine concerns regarding any provision of the Service provided under this Contract where necessary.

1. **Freedom of Information (FOI)**

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

40.2 The Provider shall:

i) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA.

ii) transfer to the Council all requests for information relating to this Agreement that it receives as soon as practicable and in any event within two (2) working days of receipt.

iii) Provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within five (5) working days (or such other period as the Council may reasonably specify) of the Council’s request for such information; and

iv) not respond directly to a request for information unless authorised in writing to so by the Council.

40.3 The Provider notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities’ Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to time. The Provider will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Provider from time to time) to the extent that they apply to the Provider’s performance under the contract.

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

40.5 The Provider acknowledges that the decision on whether any exemption applies as to a request for disclosure of recorded information is a decision solely for the Council. Where the Council is managing a request as referred to in this clause, the Provider shall co-operate with the Council if it so requests and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

40.6 The Provider shall ensure that it and any of its representatives notify the Council in writing of requests for information under the Information Laws relating to this Agreement, that it receives as soon as practicable.

1. **Publicity, Media and Official Enquiries**

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

41.2 The Provider shall not use business logos or publicise the logos of the Council either in print or electronically without the prior written consent of the Council. Such consent not to be unreasonably withheld or delayed.

41.3 The Provider must acknowledge the financial contribution made to its activities by the Welsh Government in any publicity materials. All publicity materials should display the relevant Conwy County Borough Council and Families First logos (available upon request) and be in line with any specific guidance issued by the respective funding bodies.

41.4 The Service Provider must actively seek to share their good practice outcomes and agree to adopt a co-working ethos to ensure good working practice.

41.5 All equipment purchased for the Provider by the Council shall remain the property of the Council for the duration of the project. Should the Provider cease to operate within that period, the Council will reclaim all equipment and re-distribute it to other providers.

8.5 The Provider will be permitted to retain any property purchased by the Council if / when the project draws to a close.

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

41.4 The Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 42 by all their servants, employees, agents, professional advisors and consultants.

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

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

1. **Ombudsman**

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

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

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

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

1. **Records and Audit Access**

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

43.2 The Provider shall keep the records and financial accounts in accordance with good accountancy practice and shall include a full and accurate record of all monies expended by the Provider in observing and fulfilling the Provider’s obligations under the Contract.

43.3 The Provider shall on request afford the Council to such records and accounts as may be required from time to time.

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

43.5 Subject to the Council’s rights of confidentiality, the Provider shall on request provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:

i) all information requested by the Council within the scope of the audit;

ii) reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Service; and

iii) access to the Provider‘s Personnel.

1. **Contract Management and Monitoring**

44.1 The Service provided under this Contract will be under continuous review and monitoring.

44.2 The Provider shall at all times co-operate with the Council’s processes for monitoring activities in whatever way as reasonably requested by the Council, including but not limited to Staff and records.

44.3 The Provider shall provide the required Management Information to the Council in order to evaluate the effectiveness of the Service. The Provider shall provide the Management Information in the format required and at the intervals agreed between the parties.

44.4 The Council and the Provider’s Key Personnel shall meet to monitor the performance of the Contract as agreed between the parties and as further detailed in the Service Specification.

1. **Remedies of Inadequate Performance**

45.1 Where in the reasonable opinion of the Council:

i. the standard of Service is not in accordance with the terms of the Contract;

ii. the manner in which any Service has been performed is not in accordance with the terms of the Contract;

iii. the procedures used by the Provider in the delivery of the Service is not in accordance with the terms of the Contract; or

iv. it has concerns about any other matter connected with the performance of the Provider’s obligations under the Contract,

v. the provisions of clause 45.2 shall apply.

45.2 The Council may, without prejudice to its right under clause 62 (Resolution of Dispute), if it is the reasonable opinion of the Council that there has been a breach of the Contract by the Provider pursuant to the provisions of clause 45.1 above, do any of the following:

i. without terminating the Contract, itself supply or procure the supply of all or part of the Service until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Service in accordance with the Contract;

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

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

45.3 If the Provider fails to provide any of the Service in accordance with the Contract and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within [ten] Business Working Days of the Council’s instructions or such other period of time as the Council may direct.

45.4 If the Provider:

i) fails to comply with clause 45.3 and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

ii) persistently fails to comply with clause 45.3 above,

the Council may terminate the Service under this Contract with immediate effect by giving the Provider notice in writing.

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

45.6 During the period of suspension, the Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to the Person(s) receiving the Service as a result of the suspension.

1. **Rights and Remedies**

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

1. **Assignment and Subcontracting**

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

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

47.3 This Contract is binding on the Council including its successors and assignees and the Provider and the Provider’s successors and permitted assignees.

1. **Waiver**

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

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

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

1. **The Contracts (Rights of Third Parties) Act 1999**

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

1. **Severance**

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

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

1. **Insurance**

51.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

a) 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;

b) employer’s liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims; and shall ensure that all Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover.

The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider’s performance of the Contract, 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 Provider.

51.2 The Provider 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.

51.3 If, for whatever reason, the Provider 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 Provider.

51.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.

51.5 The Provider shall hold and maintain the required insurances for a minimum of six years following the expiration or earlier termination of this Contract.

1. **Liability**

52.1 Neither Party shall have any liability whatsoever for any indirect, economic or consequential loss suffered by the other Party or any third party in relation to this Agreement, and for these purposes consequential loss shall include without limitation all loss of profit, goodwill and / or opportunity.

52.2 The Provider agrees to indemnify and hold harmless the Council against all liabilities, costs, expenses, damages and losses that the Council may suffer or incur arising out of or in connection with any breach of this Contract by the Provider or any negligent or wilful act or omissions of the Provider or its personnel, servants or agents.

52.3 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

a) fraud or fraudulent misrepresentation;

b) death or personal injury caused by its negligence;

c) breach of any obligation as to title implied by statute; or

d) any other act or omission, liability for which may not be limited under any applicable law

1. **Warranties and Representation**

53.1 The Provider warrants and represents that:

53.2 The Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that is executed by a duly authorised representative of the Provider as further set out in the Contract.

53.3 The Provider shall discharge its obligations hereunder with all due skill, care and diligence and in accordance with its own established internal procedures

1. **Termination**

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

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

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

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

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

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

vi. a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;

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

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

ix. any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 54i to 54viii (inclusive); or

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

xi. any warranty given by the other party in clause 50 (Warranties and Representations) of this Contract is found to be untrue or misleading.

1. **Termination on Default**

55.1 The Council may terminate this Contract by giving written notice to the Provider with immediate effect if the Provider commits a Material Breach and if:

55.2 (i) the Provider has not remedied the material breach to the satisfaction of the Council within 20 Business Working Days (excluding Saturday, Sunday and bank holidays), or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied; or

(ii) the material breach is not, in the opinion of the Council, capable of remedy.

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

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

55.5 The Council may terminate this Contract without notice and recover any resulting financial loss from the Provider in the following circumstances:

i) If the Provider or a member of the Provider’s Personnel engages in any conduct which, in the opinion of the Council, is prejudicial whether by positive action or neglect or to the detriment of the welfare of the Person receiving the Service. Such action will include fraud and theft from the Person, neglect or inappropriate care, cruelty and assault including verbal abuse.

ii) If the Council is satisfied that the Provider has committed a breach of the Contract or has consistently failed to perform the terms, conditions and obligations imposed by this Contract;

iii) If the Provider persistently fails to take corrective action following a default in the provision of this Contract following a reasonable period of notice given by the Council;

iv) If the Provider or a person on the Provider’s behalf takes unreasonable financial advantage of the relationship with a Person supported under this Contract;

v) If the Provider shall have given any financial inducement or reward to an elected Member or employee of the Council in order to gain unfair advantage under or in connection with this Contract and or has committed any offence under the Prevention of Corruption Acts or Section 117 of the Local Government Act 1972;

1. **Termination of Notice**

56.1 Either party may terminate this Contract by giving not less than three months’ notice to the other. A notice period in excess of three months but not more than six months may be negotiated with the agreement of both parties.

56.2 In the event of a Termination of this Contract all parties shall co-operate to ensure that the interests of the individuals receiving the Service are met under whatever new arrangements may be proposed.

56.3 In the event of termination, the Provider shall provide any and all relevant information relating to the services reasonably required by the Council to enable it to prepare the necessary documentation in respect of any subsequent tendering or re-tendering activities. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise. (For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Council to comply with its duties under the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended, if applicable.

1. **Fixed Termination**

57.1 The Contract shall expire automatically at the end of the Contract Period.

1. **Consequence of Termination**

58.1 Where the Council terminates the Contract under clause 55 (Default) and then makes other arrangements for the provision of Service, the Council may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period.

58.2 The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 55 (Default), no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making other arrangements.

58.3 Subject to clause 52 (Liability), where the Council terminates the Contract under the clause 54 (Termination), the Council shall indemnify the Provider against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under clause 54 (Termination).

58.4 The Council shall not be liable under clause 58.3 to pay any sum that:

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

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

58.5 Except as otherwise expressly provided in the Contract:

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

ii) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider.

58.7 In the event of termination, the Provider shall cease to provide the Service to any individual from the day following the expiry of the notice period as agreed between the parties.

1. **Complaints**

59.1 The Provider shall have in force a complaints procedure which will be made available to all individuals who are directly referred or funded under this Contract. This shall include written records of all complaints and actions taken to resolve them. The procedure shall also include reference to the right and method of access to the Council’s own complaints procedure at any time. In the event that a complainant feels that his complaint has not been dealt with appropriately, the matter shall be dealt with by the Council’s Key Personnel.

59.2 All documentation relating to the complaints procedure and any complaints made thereunder shall be made available to the Council on request subject to the rights of confidentiality.

1. **Disruption**

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

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

60.3 In the event of industrial action by the Staff, the Provider shall seek the Council’s consent to its proposals for the continuance of the supply of the Service in accordance with its obligations under the Contract.

60.4 If the Provider's proposals referred to in clause 56.3 are considered insufficient or unacceptable by the Council acting reasonably then the Council may:

i. require the Provider to provide alternative proposals; or

ii. undertake the Service itself and recover from the Provider the additional costs incurred in the process.

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

1. **Recovery Upon Termination**

61.1 On the termination of the Contract for any reason the Provider shall upon request from the Council:

i. promptly provide all information concerning the provision of the Service which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Service has been provided or for the purpose of allowing the Council or replacement Provider to conduct due diligence.

ii. assist and co-operate with the Council to ensure an orderly transition of the provision of the Service to any replacement Provider

iii. deliver to the Council all property (including materials, documents, information, access keys etc) provided to the Provider.

iv. provide to the Council all confidential information, Personal Information in its possessions or under the control of any permitted sub-contractors which was obtained for the provision of the Service.

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

i. give to the other written notice of the dispute, setting out its nature and full particulars (the “Dispute Notice”), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Officer and the Contract Manager shall attempt in good faith to resolve the Dispute;

ii. request a meeting between representatives of the Council and any of the members of the Key Personnel within 14 working days of the dispute being raised, and if unresolved;

iii. request a further meeting of Senior Representatives of the Council the Provider and any of the members of the Key Personnel within a further 28 Business Working Days. The parties may invite an independent representative.

62.3 Where the dispute cannot be resolved, a formal mediation facilitated by an independent mediator will be arranged, the costs of which are to be shared equally between all parties, or otherwise by agreement. This will be arranged by the Council in consultation with all Key Personnel.

1. **Force Majeure**

63.1 In this Contract ‘Force Majeure’ shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts events omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

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

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

* + 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;
    2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
    3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

63.4 A 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.

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

63.6 As 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 Agreement. Where the Provider is the affected party it shall take or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with best industry practice.

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

63.8 The Council may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

1. **Human Rights**

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

64.2 The Provider agrees that it will take such action as the Council may reasonably require for the purpose of ensuring compliance with the said Convention and Act.

1. **Fraud**

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

1. **Whistleblowing**

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

1. **Gratuities**

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

1. **Electronic Business**

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

1. **Proper Law and Jurisdiction**

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

1. **Agreement is to Prevail**

70.1 In the event of any conflict between the provisions of this Agreement and the provisions of any other document published or prepared in relation to the procurement of the Service by the Council and the responses of the Provider in any procurement exercise or scheme, the provisions of this Contract shall prevail.

1. **Survival of Terms**

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

1. **Cumulative Remedies**

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

1. **Default**

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

73.2 Where, despite any action taken the Party is still in default, the aggrieved Party may issue a default notice specifying the default and the action to be taken to rectify it. The notice shall state a reasonable period of time within which the required action is to be taken. If the default is not remedied within this period to the reasonable satisfaction of the other party, the aggrieved party shall refer to clause 62 (Resolution of Dispute).

1. **Entire Contract**

74.1 This Contract and its Schedules constitutes the entire agreement and understanding of the parties and supersedes any previous agreement relating to the subject matters of this Contract.

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

1. **Notices (Service of Notices and Documents)**

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

1. **The Council’s Obligations**

76.1 Except as otherwise expressly provided, the obligations of the Council under the Contract are obligations in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

**Schedule 1**

**SERVICE SPECIFICATION**

**DIRECT PAYMENTS SUPPORT SERVICE**

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**Schedule 2**

**PRICE BREAKDOWN**

**(TO BE INCLUDED FOLLOWING COMPLETION OF TENDER)**

**Schedule 3**

**GDPR Processing, Personal Data and Data Subjects**

**(To be included following completion of tender)**

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

Any such further instructions shall be incorporated into this Schedule.

**Description Details**

**Subject matter of the processing**

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

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**Duration of the processing**

*Clearly set out the duration of the processing including dates*

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**Nature and purposes of the processing**

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

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**Type of Personal Data**

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

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**Categories of Data Subject**

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

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**Retention of Personal Data**

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

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