



Gofal Cymdeithasol **Cymru**  
Social Care **Wales**

Dated: ###

**CONTRACT TITLE**

between

(1) Social Care Wales

and

(2) **SUPPLIER NAME**

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This agreement is dated [xx] and made between:

- (1) Social Care Wales, whose principal place of business is at South Gate House, Wood Street, Cardiff, CF10 1EW (**Social Care Wales**, which term includes any successor to it in the exercise of its statutory functions)
- (2) [full company name] incorporated and registered in England and Wales with company number [number] whose registered office is at [registered office address] (**Supplier**)

each a 'party', and together the 'parties'

#### AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

The following definitions and interpretation apply to this agreement

#### 1.1 Definitions

<b>Affected Party</b>	a party that is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event.
<b>Audit</b>	an audit carried out pursuant to clause 17.
<b>Auditor</b>	the Wales Audit Office or an auditor appointed by Social Care Wales as the context requires.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in Wales.
<b>Change Order</b>	has the meaning given in clause 6.
<b>Charges</b>	the fees, costs and expenses payable by Social Care Wales to the Supplier for the performance of the Services, as set out in Schedule 3.
<b>Commencement Date</b>	[insert date] OR [the date of this agreement]
<b>Contract Managers</b>	the persons respectively designated as such by Social Care Wales and the Supplier, the first such persons being set out in Schedule 1.
<b>Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of Control</b> shall be construed accordingly.
<b>Data Protection Legislation</b>	all applicable laws, regulations and regulatory rules which govern the processing of Personal Data including: (i) the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as

amended), the UK GDPR and any subsequent legislation enacted and duly in force from time to time relating to the processing of Personal Data; and (ii) all guidance issued by regulatory authorities including the Information Commissioner's Office relating to the use of Personal Data and which is binding on Social Care Wales or the Supplier.

<b>Deliverables</b>	any outputs of the Services and all documents, products and materials provided in any form by the Supplier (or the Supplier's Personnel) to Social Care Wales as specified in Schedule 1 and the Project Plan.
<b>EIRs</b>	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>FOIA</b>	the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
<b>Force Majeure Event</b>	means any circumstances or event beyond a party's reasonable control which prevents or delays the performance of any of the party's obligations under this agreement including (to the extent not of that party's making nor reasonably capable of prevention or mitigation by contingency planning): (i) earthquake, storms, flood and other acts of nature, epidemic or pandemic, war, riots, hostility (whether or not war has been declared), terrorist acts, acts of any civil or military authority, public disturbance, or (ii) any strike, lock-out or other industrial trade dispute (other than in each case by the personnel or other employees, contractors, suppliers or agents of the party seeking to rely on clause 25).
<b>Good Industry Practice</b>	means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading provider within the relevant industry or business sector of services of a similar type to the Services to the supplied under this agreement.
<b>Information</b>	has the meaning given under section 84 of FOIA.
<b>Initial Term</b>	a period of [xx] [months/years] from, and including the Commencement Date

<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), semiconductor topography rights, image rights, rights to personality and other similar rights, and all other Intellectual Property Rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Key Personnel</b>	the Supplier's Contract Manager and the individuals identified as key personnel in Schedule 1, or any replacement individuals appointed by the Supplier pursuant to clause
<b>Law</b>	the laws of England and Wales (as applied in Wales) and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.
<b>Necessary Consents</b>	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services.
<b>Personal Data</b>	shall have the same meaning as set out in the Data Protection Act 2018
<b>Project</b>	the project described in Schedule 1.
<b>Project Milestones</b>	a date by which a part of the Project is to be completed as detailed in Schedule 2.
<b>Project Plan</b>	the detailed plan, set out in Schedule 2, describing the Project and setting out the Project timetable (including Project Milestones) and responsibilities for the provision of the Services
<b>Relevant Requirements</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

<b>Remediation Notice</b>	a written notice given by Social Care Wales to the Supplier pursuant to clause 22 to initiate the Remediation Plan Process.
<b>Remediation Plan</b>	the plan agreed in accordance with clause 22 for the resolution of a Supplier's default in complying with its obligations under this agreement.
<b>Remediation Plan Process</b>	the process for resolving certain of the Supplier's defaults as set out in clause 22.
<b>Request for Information</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
<b>Services</b>	the services to be provided by the Supplier under this agreement, as set out in Schedule 1, including services which are incidental or ancillary to such services.
<b>Social Care Wales Material</b>	all documents, information, items and materials in any form (whether owned by Social Care Wales or a third party), which are provided by Social Care Wales to the Supplier in connection with the Services, including the items specified in the Project Plan.
<b>Specification</b>	the specification for the Project set out in Schedule 1.
<b>Supplier Personnel</b>	all employees, officers, staff, workers, agents, individual contractors and consultants of the Supplier and of any sub-contractors who are engaged in the performance of the Services from time to time.
<b>Supplier's Proposal</b>	the tender response submitted by the Supplier and other associated documentation describing how the Supplier proposes to carry out the Services, as set out in Schedule 4
<b>Term</b>	the period of the Initial Term as may be varied by: <ul style="list-style-type: none"> <li>a) any extension pursuant to clause 2.2; or</li> <li>b) the earlier termination of this agreement in accordance with its terms.</li> </ul>
<b>Termination Payment Default</b>	where undisputed Charges of [xx] thousand pounds (£[xx],000) have been overdue for payment for a period of 60 days or more,
<b>UK GDPR</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Commented [BT1]:** Guidance - set the amount to the lowest value invoice we would expect.

**VAT** value added tax chargeable under the Value Added Tax Act 1994.

**Welsh Language Obligations** the obligations of Social Care Wales in respect of the use of the Welsh language, whether under any Law, under any Welsh language scheme made under the Welsh Language Act 1993, under any Welsh language standards which apply to Social Care Wales under the Welsh Language (Wales) Measure 2011 (whether or not a compliance notice has been given to Social Care Wales) or any specific obligations in respect of the use of the Welsh language in connection with the delivery of Services which are notified to the Supplier from time to time by Social Care Wales.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

1.5 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.

1.6 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.

1.7 If there is any conflict or ambiguity between any of the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

1.7.1 the clauses of this agreement;

1.7.2 Schedule 1 to this agreement;

1.7.3 the remaining schedules to this agreement other than Schedule 4;

1.7.4 Schedule 4 to this agreement.

## **2 COMMENCEMENT AND DURATION**

2.1 This agreement shall come into force on the Commencement Date and unless terminated at an earlier date in accordance with clause 21.6 or extended in accordance with clause 2.2, terminate at the end of the Initial Term.

2.2 Social Care Wales may extend this agreement beyond the Initial Term (and any relevant Extension Period) by further period(s) of up to **12** months each (each such extension an "**Extension Period**") subject to the Term of this agreement not exceeding a period of **xx** years from the Commencement Date.

2.3 If Social Care Wales wish to extend this agreement, it shall give the Supplier at least **xx** months' written notice of such intention before the expiry of the Initial Term or Extension Period (as applicable). If Social Care Wales gives such notice, then the Term shall be extended by the period set out in the notice.

### **3 SUPPLY OF SERVICES**

3.1 The Supplier shall provide the Services and the Deliverables to Social Care Wales with effect from the Commencement Date for the duration of the Term in accordance with the provisions of this agreement, including without limitation Schedule 1 and Schedule 2.

3.2 In providing the Services, the Supplier shall, and shall procure that the Supplier Personnel shall, at all times:

3.2.1 obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with Social Care Wales);

3.2.2 hold all Social Care Wales Material in safe custody at its own risk and maintain the Social Care Wales Material in good condition until returned to Social Care Wales, and not dispose of or use the Social Care Wales Material other than in accordance with Social Care Wales's written instructions or authorisations;

3.2.3 notify Social Care Wales in writing immediately upon the occurrence of a change of Control of the Supplier;

3.2.4 allocate sufficient resources to provide the Services in accordance with the terms of this agreement;

3.2.5 co-operate with Social Care Wales in all matters relating to the Services and the Project, and comply with Social Care Wales's instructions; and

3.2.6 provide such reasonable co-operation and information in relation to the Services to such of Social Care Wales's other suppliers as Social Care Wales may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by Social Care Wales.

3.3 The Supplier shall perform the Services so as to achieve the Project Milestones specified in Schedule 2 (as amended from time to time in accordance with the provisions of clause 6). If the Supplier fails to meet the relevant deadlines, then, (without prejudice to any other rights it may have), Social Care Wales may, at its option:

- 3.3.1 refuse to accept any subsequent attempts to perform the Services and terminate this agreement immediately by written notice to the Supplier;
- 3.3.2 procure services similar to the Services from an alternative supplier; and
- 3.3.3 recover from the Supplier all losses, damages, costs and expenses incurred by Social Care Wales arising from the Supplier's default.

#### **4 WARRANTY**

- 4.1 No representations, warranties or conditions are given or assumed by Social Care Wales in respect of any information which is provided to the Supplier by Social Care Wales and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.2 The Supplier warrants and represents that:
  - 4.2.1 all information and statements made by the Supplier including without limitation, the Supplier's Proposal or response to any qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to Social Care Wales prior to execution of this agreement;
  - 4.2.2 it has the right, power and authority to enter into this agreement and grant to Social Care Wales the rights (if any) contemplated in this agreement and to perform the Services;
  - 4.2.3 the Services shall be performed in accordance with Good Industry Practice;
  - 4.2.4 the Services and the Deliverables shall comply with all applicable Law;
  - 4.2.5 the Services and the Deliverables shall conform to the Specification;
  - 4.2.6 the Services and the Deliverables shall not infringe the Intellectual Property Rights of any third party;
  - 4.2.7 the Deliverables shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979, s 14; and
  - 4.2.8 the Services and the Deliverables shall be fit for any purpose held out by the Supplier.
- 4.3 The provisions of this clause 4 are in addition to, and are not exclusive of, any other rights and remedies to which Social Care Wales may be entitled, and the warranties and conditions implied by the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982 are not excluded.

## 5 CHARGES, INVOICING AND PAYMENT

- 5.1 Subject to the Supplier performing its obligations in accordance with this agreement, Social Care Wales shall pay the Charges to the Supplier as they fall due in accordance with Schedule 3.
- 5.2 The Charges:
- 5.2.1 shall remain firm and fixed and shall not be subject to any increase except those increases expressly agreed by Social Care Wales in writing in strict accordance with the provisions of this agreement; and
- 5.2.2 are the entire price payable by Social Care Wales to the Supplier in respect of the Services and include, without limitation, any royalties, consents, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.
- 5.3 The Supplier shall invoice Social Care Wales for payment of the Charges at the time the Charges are expressed to be payable in accordance with Schedule 3. All invoices shall be directed to Social Care Wales's authorised representative and shall contain such information as Social Care Wales may inform the Supplier from time to time.
- 5.4 Social Care Wales shall pay the Supplier any Charges due under any invoice submitted to it by the Supplier within 30 days of verifying that the invoice is valid and undisputed.
- 5.5 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 41. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 7 days after resolution of the dispute between the parties.
- 5.6 If Social Care Wales fails to make a payment due to the Supplier under this agreement by the due date, then, Social Care Wales shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when that base rate is below 0%. The parties agree that the provisions of this clause 5.6 constitute a substantial remedy for the purposes of section 9 (1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 23.3.
- 5.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by Social Care Wales following delivery of a valid VAT invoice. The Supplier shall indemnify Social Care Wales against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on Social Care Wales at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

Commented [BR2]: Internal - Remove for smaller under threshold / low risk contracts

5.9 Social Care Wales may at any time, set off any liability of the Supplier to Social Care Wales against any liability of Social Care Wales to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by Social Care Wales of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

## **6 CHANGE CONTROL**

6.1 Either party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect those changes will have on:

6.1.1 the Services (including the Deliverables);

6.1.2 the Charges;

6.1.3 the timetable for the Services; and

6.1.4 any terms of this agreement.

6.2 If Social Care Wales wishes to make a change to the Services:

6.2.1 it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft Change Order; and

6.2.2 the Supplier shall, within **[number]** Business Days of receiving Social Care Wales's request at clause 6.2.1, provide a draft Change Order to Social Care Wales.

6.3 If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to Social Care Wales.

6.4 If the parties:

6.4.1 agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or

6.4.2 are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with clause 41.

## **7 KEY PERSONNEL**

7.1 The Key Personnel shall be those people who are identified by the Supplier as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of the Supplier on the matters for which they are expressed to be responsible.

- 7.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- 7.2.1 required to do so by Social Care Wales in accordance with clause 8.2;
  - 7.2.2 the person is on long-term sick leave;
  - 7.2.3 the element of the Services in respect of which the individual was engaged has been completed to Social Care Wales's satisfaction;
  - 7.2.4 the person resigns from their employment with the Supplier; or
  - 7.2.5 the Supplier obtains the prior written consent of Social Care Wales.

## **8 SUPPLIER PERSONNEL**

- 8.1 At all times, the Supplier shall ensure that:
- 8.1.1 each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - 8.1.2 there is an adequate number of Supplier Personnel to provide the Services properly; and
  - 8.1.3 only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services;
- 8.2 The Supplier shall replace any of the Supplier Personnel whom Social Care Wales reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 8.3 The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

## **9 MONITORING**

- 9.1 Social Care Wales may monitor the performance of the Services by the Supplier.
- 9.2 The Supplier shall, and shall procure that the Supplier Personnel shall, co-operate, with Social Care Wales in carrying out the monitoring referred to in clause 9.1 at no additional charge to Social Care Wales.

## **10 INTELLECTUAL PROPERTY RIGHTS**

- 10.1 In relation to the Social Care Wales Material:

- 10.1.1 Social Care Wales and its licensors shall retain ownership of all Intellectual Property Rights in the Social Care Wales Material; and
- 10.1.2 Social Care Wales grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Social Care Wales Material for the term of this agreement for the purpose of providing the Services to Social Care Wales.

10.2 In relation to the Deliverables:

- 10.2.1 the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Social Care Wales Material;
- 10.2.2 the Supplier grants to Social Care Wales, or shall procure the direct grant to Social Care Wales of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Social Care Wales Material) for the purpose of receiving and using the Services and the Deliverables in its business; and
- 10.2.3 Social Care Wales may sub-license the rights granted in clause 10.2.2 to third parties for the purpose of Social Care Wales's receipt of services similar to the Services.

10.3 The Supplier:

- 10.3.1 warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding Social Care Wales Material) by Social Care Wales and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 10.3.2 shall indemnify Social Care Wales in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Social Care Wales arising out of or in connection with any claim brought against Social Care Wales for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services and the Deliverables by Social Care Wales and its licensees and sub-licensees. This clause 10.3.2 shall survive termination of this agreement, however arising.

**11 INDEMNITY**

- 11.1 The Supplier shall indemnify and keep indemnified Social Care Wales against all liabilities, costs, expenses, damages and losses incurred by Social Care Wales arising out of or in connection with:
  - 11.1.1 the Supplier's breach or negligent performance or non-performance of this agreement;

11.1.2 any claim made against Social Care Wales arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;

11.1.3 the enforcement of this agreement.

## **12 LIMITATION OF LIABILITY**

12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Nothing in this clause 12 shall limit any liability under:

12.2.1 clause 5.8 (VAT indemnity)

12.2.2 clause 10.3.2 (IPR indemnity)

12.2.3 clause 15.9 (Data Protection indemnity)

12.2.4 breach of clause 18 (Anti-Bribery)

12.2.5 the indemnities in Schedule 5 (TUPE)

12.3 Nothing in this agreement limits any liability for:

12.3.1 death or personal injury caused by negligence;

12.3.2 fraud or fraudulent misrepresentation;

12.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

12.3.4 any liability that cannot legally be limited.

12.4 Subject to clause 12.2 and clause 12.3, the Supplier's total aggregate liability to Social Care Wales shall not exceed £ [amount];

**Commented [BT3]:** Guidance - contract value

12.5 Subject to clause 12.3, Social Care Wales's total aggregate liability to the Supplier shall not exceed £ [amount];

**Commented [BT4]:** Guidance: 50% of contract value

## **13 INSURANCE**

13.1 During the term of this agreement and for a period of 2 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance with a limit of indemnity of not less than £500,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. This clause 13 shall survive termination of this agreement, however arising.

## 14 FREEDOM OF INFORMATION

- 14.1 The Supplier acknowledges that Social Care Wales is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 14.1.1 provide all necessary assistance and cooperation as reasonably requested by Social Care Wales to enable Social Care Wales to comply with its obligations under the FOIA and EIRs;
  - 14.1.2 transfer to Social Care Wales all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 14.1.3 provide Social Care Wales with a copy of all Information belonging to Social Care Wales requested in the Request for Information which is in its possession or control in the form that Social Care Wales requires within 5 Working Days (or such other period as Social Care Wales may reasonably specify) of Social Care Wales's request for such Information; and
  - 14.1.4 not respond directly to a Request for Information unless authorised in writing to do so by Social Care Wales.
- 14.2 The Supplier acknowledges that Social Care Wales may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. Social Care Wales shall take reasonable steps to notify the Supplier 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 (notwithstanding any other provision in this agreement) Social Care Wales shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 14.3 This clause 14 shall remain in force without limit in time.

## 15 DATA PROTECTION

- 15.1 In this clause, the terms **Controller**, **Processor**, **processing**, **Personal Data** and **Data Subject** shall have the meanings set out in the Data Protection Legislation.
- 15.2 This clause 15 shall apply where the Supplier pursuant to this agreement processes Personal Data on the behalf of Social Care Wales. Where Personal Data is transferred from Social Care Wales to the Supplier in their capacities as independent controller of that Personal Data, then the parties shall agree a data sharing agreement prior to sharing such Personal Data. Where such Personal Data is under the joint control of the parties, the parties shall agree a joint controller agreement prior to processing such Personal Data.
- 15.3 For the purposes of this agreement, the parties acknowledge and agree that Social Care Wales is the Controller and the Supplier is the Processor of that Personal Data.

Schedule 6 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing, the types of Personal Data and categories of Data Subject.

- 15.4 The Supplier will only process and use the Personal Data in accordance with Social Care Wales's written instructions and for the purposes of performing the Services and for no other purpose. The Supplier must at all times process the Personal Data lawfully and fully in compliance with the Data Protection Legislation.
- 15.5 In respect of its processing of Personal Data under this agreement, the Supplier must:
- 15.5.1 for the duration of this agreement maintain in place appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful Processing and against accidental loss or destruction of, or damage to, the Personal Data. The Supplier will provide Social Care Wales with details of such security measures and procedures as required by this clause 15;
  - 15.5.2 not process Personal Data outside the United Kingdom and/or the European Economic Area without Social Care Wales's prior written consent, which Social Care Wales may withhold in its absolute discretion (or where it grants such consent subject to conditions, including complying with the provisions of Chapter V of the UK GDPR);
  - 15.5.3 fully co-operate with Social Care Wales to enable Social Care Wales to comply in good time with any request by a Data Subject to exercise any of their rights under the Data Protection Legislation, including the right to subject access, and/or responding to any enquiry made, or investigation or assessment of processing initiated by any regulatory authority (including the Information Commissioner's Office) in respect of the Personal Data;
  - 15.5.4 ensure that all personnel of the Supplier or of any authorised subcontractor are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data and that only such personnel as are strictly required to do so in order to meet the Supplier's obligations under this agreement shall have access to the Personal Data. The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data;
  - 15.5.5 not appoint any third party to process the Personal Data for any purpose without Social Care Wales's prior written consent. Where Social Care Wales provides such consent, the Supplier shall procure that the third party processes the Personal Data in accordance with the Supplier's obligations under this agreement and the Supplier must be responsible directly to Social Care Wales for any failure by the third party to process Personal Data accordingly; and

15.5.6 provide such information as is reasonably required by Social Care Wales to enable Social Care Wales to satisfy itself as to the Supplier's compliance with its obligations under this agreement and the Data Protection Legislation, and shall permit Social Care Wales, its employees or authorised agents or advisers (on reasonable notice and during normal working hours) reasonable access to any relevant premises, to audit the Supplier's compliance with its obligations under this agreement and the Data Protection Legislation, and to inspect the procedures and measures referred to in this Clause. Social Care Wales shall:

- (a) observe the Supplier's procedures relating to the protection of confidential information about any clients or customers of the Supplier; and
- (b) take all reasonable steps to minimise disruption to the Supplier's business during such audit.

15.6 The Supplier must promptly (and in any event by the end of the next Business Day) notify Social Care Wales by emailing [databreach@socialcare.wales](mailto:databreach@socialcare.wales) if any Personal Data processed under this agreement has been lost, destroyed, damaged, corrupted or accessed by or disclosed to unauthorised third parties or if the Supplier suspects or has reason to believe that any Personal Data may have been lost, destroyed, damaged, corrupted or accessed by or disclosed to unauthorised third parties (each, a Personal Data Breach). Any notification under this clause 15.6 must include (if known by the Supplier):

15.6.1 the nature of the Personal Data Breach;

15.6.2 the categories and approximate number of Data Subjects who may be affected by the Personal Data Breach;

15.6.3 the categories and approximate number of Personal Data records that may be affected;

15.6.4 the likely consequences of the Personal Data Breach; and

15.6.5 any measures that the Supplier has taken or proposes to take to address the Personal Data Breach.

15.7 The Supplier shall take all steps as reasonably required by Social Care Wales, and provide all reasonable assistance to Social Care Wales, in order for Social Care Wales to deal with any Personal Data Breach notified in accordance with clause 15.6, including where relevant notification to the Information Commissioner's Office and notification to individual Data Subjects.

15.8 Upon expiry or termination of this agreement (for whatever reason) and at other times when requested to do so by Social Care Wales, the Supplier must, at the choice of Social Care Wales, either:

15.8.1 deliver up to Social Care Wales all Personal Data in its then current format and such other format as Social Care Wales may require; or

15.8.2 delete all Personal Data, including without limitation, any Personal Data stored on any magnetic or optical disk or memory and confirm such deletion to Social Care Wales within ten (10) days of Social Care Wales's instruction.

15.9 The Supplier must indemnify and keep indemnified Social Care Wales against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by Social Care Wales as a result of any claim or proceedings made or brought by any person in respect of any loss, damage or distress caused to that person or any enforcement action taken by the Information Commissioner as a result of the Supplier's unauthorised processing, unlawful processing, destruction of and / or damage to any Personal Data processed by the Supplier.

## 16 CONFIDENTIALITY

16.1 Subject to clause 16.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

16.2 Clause 16.1 shall not apply to any disclosure of information:

16.2.1 required by any applicable law, provided that clause 14.2 shall apply to any disclosures required under the FOIA or the EIRs;

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

16.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 16.1;

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

16.2.5 by Social Care Wales to any department, office or agency of the Welsh Government.

16.3 The provisions of this clause 16 shall survive for a period of [xx] years from the expiry or termination of this agreement.

**Commented [BT5]:** Guidance: typically set between 2-5 depending on initial term

## **17 AUDIT**

- 17.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this agreement (or as long a period as may be agreed between the parties), full and accurate records and accounts of the operation of this agreement including the Charges, and Services provided under it.
- 17.2 The Supplier shall keep the records and accounts referred to in clause 17.1 above in accordance with good accountancy practice and shall afford Social Care Wales or the Auditor (or both) such access to any of the Supplier's premises, systems, Supplier Personnel and relevant records as may reasonably be required.
- 17.3 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of six (6) years after expiry of the Term to Social Care Wales and the Auditor, and shall provide the Auditor with all reasonable co-operation and assistance in relation to each Audit.
- 17.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the Audit identifies a material breach by the Supplier to perform its obligations under this agreement in any material manner, in which case the Supplier shall reimburse Social Care Wales for all reasonable costs incurred in the course of the Audit.

## **18 ANTI-BRIBERY**

- 18.1 The Supplier shall:
- 18.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
  - 18.1.2 ensure that all of its Supplier Personnel Sub-contractors or and other members of its supply chain, all others associated with the Supplier, and each person employed or acting for or on behalf of any of such persons involved in performing the Services or with this agreement so comply;
  - 18.1.3 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 18.1.4 comply with Social Care Wales's Anti-Fraud, Bribery and Corruption Policy, as Social Care Wales may update them from time to time;
  - 18.1.5 maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements;
  - 18.1.6 shall immediately notify Social Care Wales any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement.

**19 SAFEGUARD AGAINST FRAUD**

19.1 The Supplier shall safeguard Social Care Wales's funding of this agreement against fraud generally and, in particular, fraud on the part of the Supplier or the Supplier's Personnel. The Supplier shall notify Social Care Wales immediately if it has reason to suspect that any fraud has occurred, is occurring, or is likely to occur.

**20 EQUALITY ACT**

20.1 The Supplier acknowledges and agrees that Social Care Wales is subject to the public sector equality duty set out in section 149 of the Equality Act 2010 ("2010 Act").

20.2 The Supplier must, in respect of its performance of this agreement, comply with section 149 of the 2010 Act and warrants and undertakes to have due regard in its performance of this agreement to:

20.2.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the 2010 Act;

20.2.2 advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the 2010 Act) and persons who do not share it;

20.2.3 foster good relations between persons who share a relevant protected characteristic (as defined in the 2010 Act) and persons who do not share it;

20.2.4 and for the avoidance of doubt this obligation shall apply irrespective of whether the Supplier is a public authority for the purposes of such section.

20.3 Without prejudice to clause 20.2, the Supplier shall:

20.3.1 comply with Social Care Wales's instructions and directions and any policies and codes of practice issued by it from time to time in relation to the 2010 Act; and

20.3.2 promptly notify and keep Social Care Wales informed (with full supporting details if requested) of all complaints and investigations in relation to the 2010 Act.

20.4 The Supplier shall provide to Social Care Wales such information as Social Care Wales may reasonably require to:

20.4.1 monitor the equity of access to the Services; and

20.4.2 fulfil its obligations under the Law; and

20.4.3 monitor equality of opportunity in employment.

## **21 MODERN SLAVERY ACT**

- 21.1 The Supplier acknowledges and agrees that Social Care Wales is subject to the public sector equality duty set out in schedule 3 of the Modern Slavery Act 2015 ("2015 Act").
- 21.2 The Supplier must, in respect of its performance of this agreement, comply with part 6 of the 2015 Act and warrants and undertakes to have due regard in its performance of this agreement, and in accordance with regulations to uphold transparency in supply chains, will upon request as required:
- 21.2.1 provide a statement for the current financial year of the organisation, to ensure that slavery and human trafficking is not taking place;
- (a) in any of its supply chains, and
- (b) in any part of its own business, or
- 21.2.2 provide a statement that the organisation has taken no such steps.
- 21.3 As guidance, a slavery and human trafficking statement may include information about:
- 21.3.1 the organisation's structure, its business and its supply chains;
- 21.3.2 its policies in relation to slavery and human trafficking;
- 21.3.3 its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- 21.3.4 the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- 21.3.5 its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
- 21.3.6 the training about slavery and human trafficking available to its staff.
- 21.4 Without prejudice to clause 21.2, the Supplier shall:
- 21.4.1 comply with Social Care Wales's instructions and directions, and any policies and codes of practice issued from time to time in relation to the 2015 Act; and
- 21.4.2 immediately notify and keep Social Care Wales informed (with full supporting details if requested) of all complaints and investigations in relation to the 2015 Act including if it becomes aware or has reason to believe that it, or any of its Supplier Personnel, sub-contractors or any other member of its supply chain has breached or potentially breached any of Supplier's obligations under this clause

21.5 The Supplier shall provide to Social Care Wales such information as Social Care Wales may reasonably require to:

21.5.1 fulfil its obligations under the Law; and

21.5.2 monitor compliance of this Act.

21.6 The Supplier shall provide ongoing training for Supplier Personnel in compliance with the Supplier's obligations under this clause 21.

## **22 REMEDIATION PLAN PROCESS**

22.1 If the Supplier is in default in complying with any of its obligations under this agreement and the default is capable of remedy, Social Care Wales may, at its discretion, (and without prejudice to any other rights it may have), give a Remediation Notice to the Supplier which shall specify the default in outline and the actions the Supplier needs to take to remedy the default. Social Care Wales shall be under no obligation to initiate the Remediation Plan Process.

22.2 Within twenty (20) Business Days of receipt of a Remediation Notice, the Supplier shall:

22.2.1 submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or

22.2.2 inform Social Care Wales that it does not intend to submit a Remediation Plan, in which event Social Care Wales shall be entitled terminate this agreement under clause 23.

22.3 Social Care Wales shall either approve the draft Remediation Plan or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan, which it shall submit to Social Care Wales within twenty (20) Business Days of its receipt of Social Care Wales's comments.

22.4 Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.

22.5 If, despite the measures taken under clause 22.3, a Remediation Plan cannot be agreed within twenty (20) Business Days then Social Care Wales may elect to end the Remediation Plan Process and terminate this agreement under clause 23.

22.6 If a Remediation Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Remediation Plan by the required completion date, Social Care Wales may:

22.6.1 terminate this agreement under clause 23;

22.6.2 give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or

22.6.3 refer the matter for resolution under clause 41.

22.7 If, despite the measures taken under clause 22.6, the Supplier fails to implement the Remediation Plan in accordance with its terms, Social Care Wales may elect to end the Remediation Plan Process and refer the matter for resolution under clause 41 or terminate this agreement under clause 23;

### **23 TERMINATION**

23.1 Without limiting its other rights or remedies, Social Care Wales may terminate this agreement at any time by giving the Supplier **one (1)** months' written notice.

23.2 Without limiting its other rights or remedies, Social Care Wales may terminate this agreement with immediate effect by giving written notice to the Supplier if:

23.2.1 materially breaches any duty or obligation under this agreement which is not capable of being remedied

23.2.2 the Supplier commits a material breach of any term of this agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;

23.2.3 the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;

23.2.4 the Supplier fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;

23.2.5 the Supplier 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) 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;

(a) 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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

(b) a creditor or encumbrancer of the Supplier 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 its assets and such attachment or process is not discharged within 14 days; and

- (c) 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 Supplier (being a company).

- 23.3 The Supplier may terminate this agreement in the event that Social Care Wales commits a Termination Payment Default by giving 30 days' written notice to Social Care Wales. In the event that Social Care Wales remedies the Termination Payment Default in the 30-day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.
- 23.4 Termination of this agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 23.5 Clauses which expressly or by implication survive termination of this agreement shall continue in full force and effect, including but not limited to
- 23.6 During any period of notice of termination all provisions of this agreement shall continue to apply.

#### **24 CONSEQUENCES OF TERMINATION**

- 24.1 On termination or expiry of this agreement,
  - 24.1.1 the Supplier shall immediately deliver to Social Care Wales all Deliverables whether or not then complete, and return all of the Social Care Wales Material. The Supplier shall certify to Social Care Wales that it has not retained any copies of Social Care Wales Material or other information or data. If the Supplier fails to do so, then Social Care Wales may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for the safe keeping of all Deliverables and Social Care Wales Material in its possession and will not use them for any purpose not connected with this agreement;
  - 24.1.2 the Supplier shall, if so requested by Social Care Wales, provide all assistance reasonably required by Social Care Wales to facilitate the smooth transition of the Services to Social Care Wales or any replacement supplier appointed by it;
  - 24.1.3 the provisions of Schedule 5 (TUPE) shall come into effect; and
  - 24.1.4 Social Care Wales shall be repaid forthwith any sums paid to the Supplier in advance for Services which have not been supplied or provided at the point of actual termination of the Services.

24.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination or expiry.

## **25 FORCE MAJEURE**

25.1 Social Care Wales reserves the right to defer the date for performance of, or payment for, the Services, or to terminate this agreement, if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes (whether involving the workforce of Social Care Wales or any other party), failure of a utility service or transport network, 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 the Supplier or subcontractors.

25.2 The Supplier shall use all reasonable endeavours to continue to perform, or resume performance of this agreement for the duration of such Force Majeure Event or if the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

25.3 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this 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 agreed otherwise by the parties.

25.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [x] weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving [x] weeks' notice to the Affected Party.

## **26 ASSIGNMENT AND OTHER DEALINGS**

27 Social Care Wales may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Supplier.

28 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of Social Care Wales (such consent not to be unreasonably withheld or delayed).

## **29 PUBLICITY**

29.1 The Supplier shall not:

29.1.1 make any press announcements or publicise this agreement or its contents in any way; or

29.1.2 use Social Care Wales's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of Social Care Wales.

### **30 VARIATION**

30.1 Subject to clause 6, no variation of this agreement shall be valid or effective unless it is in writing, refers to this agreement and is signed by the parties (or their authorised representatives).

### **31 WAIVER**

31.1 No failure or delay by a party to exercise any right, power or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the future exercise of that or any other right or remedy. No single or partial exercise of such right, power or remedy shall prevent or restrict the future exercise of that or any other right, power or remedy.

### **32 RIGHTS AND REMEDIES**

32.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **33 SEVERANCE**

33.1 If any provision or part-provision of this agreement 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 agreement.

### **34 ENTIRE AGREEMENT**

34.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

### **35 NO PARTNERSHIP OR AGENCY**

35.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent

of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

### **36 THIRD PARTY RIGHTS**

36.1 No one other than a party to this agreement shall have any right to enforce any of its terms.

### **37 NOTICES**

37.1 Notices under this agreement shall be in writing and sent to a party's address as set out on the first page of this agreement (or to the email address set out below). Notices may be given, and shall be deemed received:

37.1.1 by first-class post: two Business Days after posting;

37.1.2 by hand: on delivery; and

37.1.3 by email to:

(a) procurement@socialcare.wales in the case of Social Care Wales, and

(b) **[insert supplier email]** in the case of the Supplier:

on receipt of a delivery return email.

37.2 The provisions of this clause shall not apply to notices given in legal proceedings or arbitration.

### **38 WELSH LANGUAGE OBLIGATIONS**

38.1 The Supplier warrants that it will not supply the Services in breach of the Welsh Language Obligations, nor in such a way so as to render Social Care Wales in breach of its Welsh Language Obligations.

38.2 For any required translation services the Supplier warrants it will utilise a professional English to/from Welsh translator who is a registered "**full member**" of Cymdeithas Cyfieithwyr Cymru. Social Care Wales reserves the right to request the Supplier to re-work any translations at their own expense should they not adhere to the Cymdeithas Cyfieithwyr Cymru standards.

### **39 TONE OF VOICE OBLIGATIONS**

39.1 The Supplier warrants that it will supply the Services, at its own expense, in line with Social Care Wales's tone of voice guidelines. Social Care Wales reserves the right to request the Supplier to re-write any Deliverables should it not adhere to the tone of voice guidelines.

#### **40 ACCESSIBILITY**

40.1 The Supplier shall comply with the World Wide Web Consortium (W3C), Web Accessibility Initiative (WAI), Web Content Accessibility guidelines (WCAG) and the 2.2 conformance level AA standard for accessibility when delivering their services to design, develop and build any public facing websites and mobile applications. The Supplier's compliance with this requirement in turn enables Social Care Wales to comply with their own obligations under Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.

#### **41 DISPUTE RESOLUTION PROCEDURE**

41.1 From time to time disputes may arise out of, or relating to, this agreement, including with respect to the interpretation of any provision of this agreement, the performance by either party of its rights and obligations under this agreement or deficiencies identified in the course of performance monitoring. Either party (acting through its Contract Manager) may refer such a dispute for resolution in accordance with this clause 41, without prejudice to the continued performance of this agreement.

41.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Contract Manager, either party may refer the matter to the Chief Executive Officer of Social Care Wales and the Chief Executive Officer of the Supplier, with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by Social Care Wales and the Supplier.

41.3 In the absence of agreement under clause 41.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

#### **42 GOVERNING LAW AND JURISDICTION**

42.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales as applied in Wales.

42.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales sitting in Cardiff (save where the Welsh Ministers direct that the High Court in London (or elsewhere) should have jurisdiction).

Signed by:

[insert name]

for and on behalf of

[insert supplier name]

.....

.....

Authorised Signatory    Date

Signed by:

**[insert name]**

for and on behalf of **Social Care Wales**

.....

.....

Authorised Signatory    Date

**Schedule 1 Services**

**Commented [BT6]:** include social value deliverables from quality response

**Part 1 – [xxx]**

**Part 2 – [xxx]**

**Part 3 – Contract Managers**

Social Care Wales's Contract Manager: [xxx]

The Supplier's Contract Manager: [xxx]

**Part 4 – Key Personnel**

Name	Role(s)

**Schedule 2 Project Plan**

**Part 1– [xxx]**

**Part 2 – [xxx]**

**Schedule 3 Charges**

**Part 1 – Price**

1 Breakdown of costs for the Services


**Part 2 – Payment schedule**

1 The Services will be invoiced for appropriate activity, delivered across the Project phases

[xx]

2 Payment of the Charges shall be due and owing:

- on completion of the Deliverables on the dates provided for and as set out
- on receipt of Social Care Wales approving (which shall not be unreasonably withheld) the Deliverable.

**Schedule 4 Supplier's Proposal**

## Schedule 5 TUPE

1 In this Schedule 5 the following definitions apply:

**Replacement Supplier:** another party chosen by Social Care Wales to take over the provision of all or part of the Services.

**Relevant Transfer:** a transfer of employment to which TUPE applies;

**Service Transfer:** any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or its Sub-contractors to Social Care Wales, a Replacement Supplier or its sub-contractors as may be the case;

**Service Transfer Date:** the date of a Service Transfer;

**Staffing Information:** in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as Social Care Wales may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- a) a list of those personnel engaged in the Services;
- b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- c) the identity of the employer or relevant contracting party;
- d) their job titles, age, length of continuous services, current remuneration, benefits, and notice periods;
- e) their terms and conditions of employment including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996;
- f) any current disciplinary or grievance proceedings ongoing in respect of such personnel and any such proceedings in the preceding two years;
- g) any claims, current or which the Supplier has reasonable grounds to believe will be brought by such personnel or any of them or their representatives or which have been brought in the preceding two years, including in respect of personal injury claims;
- h) details of any such personnel on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- i) all benefit schemes or arrangements (whether contractual or not) applicable in respect of such personnel;

- j) information on any collective agreements which will have effect in relation to such personnel after the Service Transfer Date pursuant to TUPE;
- k) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such personnel); and
- l) any other "employee liability information" as such term is defined in regulation 11 of TUPE;

**"Sub-contract"**: any contract between the Supplier and a third party (other than an employee) pursuant to which the Supplier agrees to source the performance of the Services (or any of them) from that third party;

**"Sub-contractor"**: those persons with whom the Supplier enters into a Sub-contract and the direct and indirect agents, contractors and sub-contractors of any such Sub-contractor contracted to perform the Services (or any of them);

**Supplier's Final Personnel List**: a list provided by the Supplier of all Supplier Personnel who will transfer under TUPE on the Service Transfer Date;

**Supplier's Provisional Personnel List**: a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**Transferring Employees**: those Supplier Personnel to whom TUPE will apply on the Service Transfer Date.

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

- 2 The Parties acknowledge that that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of expiration, termination or partial termination of this Agreement or otherwise) resulting in the Services being undertaken by Social Care Wales, a Replacement Supplier or its sub-contractors. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which TUPE will apply. Social Care Wales and the Supplier further agree that, as a result of the operation of TUPE, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between Social Care Wales, a Replacement Supplier and/or its sub-contractor (as the case may be) and each such Transferring Employee.

- 3 The Supplier agrees that within 20 Working Days of the earliest of
- 3.1 receipt of a notification from Social Care Wales of a Service Transfer or intended Service Transfer;
- 3.2 receipt of the giving of notice of early termination or any partial Termination of this Agreement;
- 3.3 the date which is 12 months before the end of the term of this agreement; and
- 3.4 receipt of a written request of Social Care Wales at any time
- it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List and Staffing Information at such intervals as are reasonably requested by Social Care Wales.
- 4 At least 28 Working Days prior to the Service Transfer Date, the Supplier shall provide to Social Care Wales or at the direction of Social Care Wales, to any Replacement Supplier and/or any of its sub-contractors:
- 4.1 the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Employees; and
- 4.2 the Staffing Information in relation to the Supplier's Final Personnel List (insofar as such information has not previously been provided).
- 5 Social Care Wales shall be permitted to use and disclose information provided by the Supplier under Clauses 3 and 4 for the purpose of informing any prospective Replacement Supplier and/or its sub-contractors.
- 6 The Supplier shall provide updates of the Staffing Information at regular intervals to be specified by Social Care Wales and warrants, for the benefit of Social Care Wales, any Replacement Supplier, and its sub-contractors that all information provided pursuant to Clauses 3 and 4 shall be true and accurate in all material respects at the time of providing the information.
- 7 From the date of the earliest event referred to in Clauses 3.1, 3.2 and 3.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not:
- 7.1 assign any person to the provision of the Services who is not listed on the Supplier's Provisional Personnel List and shall not without the approval of Social Care Wales (not to be unreasonably withheld or delayed);
- 7.2 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of equivalent grade, skills,

experience and expertise and is employed on the same terms and conditions of employment as the person they replace;

- 7.3 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- 7.4 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 7.5 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;
- 7.6 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 7.7 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, Social Care Wales or, at the direction of Social Care Wales, any Replacement Supplier and any of its sub-contractors of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Personnel List regardless of when such notice takes effect.

- 8 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to Social Care Wales any information Social Care Wales may reasonably require relating to the manner in which the Services are organised, which shall include:
  - 8.1 the numbers of employees engaged in providing the Services;
  - 8.2 the percentage of time spent by each employee engaged in providing the Services; and
  - 8.3 a description of the nature of the work undertaken by each employee by location..
- 9 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing the Supplier's Final Personnel List prior to the Service Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Transferring Employees to Social Care Wales and/or the Replacement Supplier or its sub-contractors.
- 10 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Employees arising under the TUPE in

respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) Social Care Wales, the Replacement Supplier and/or its sub-contractors as appropriate.

- 11 The Supplier shall indemnify Social Care Wales (both for itself and any Replacement Supplier and its sub -contractors as appropriate) against all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment ("**Employment Liabilities**") incurred by Social Care Wales and/or a Replacement Supplier and its sub -contractors as appropriate in connection with or as a result of:
- 11.1 any claim or demand by any Transferring Employee or a trade union or other body or person representing a Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Supplier or its Sub-contractors on ,before or after the Service Transfer Date;
  - 11.2 any failure by the Supplier or its Sub-contractors to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of Social Care Wales and/or Replacement Supplier and its sub -contractors as appropriate to comply with its or their duties under regulation 13 of TUPE;
  - 11.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - 11.3.1 in relation to any Transferring Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
    - 11.3.2 in relation to any employee who is not a Transferring Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer their employment from the Supplier to Social Care Wales and/or Replacement Supplier and/or its sub-contractors, to the extent that the

proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

- 11.4 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Employee who is on the Supplier's Final Personnel List, for whom it is alleged Social Care Wales and/or the Replacement Supplier and/or its sub-contractors may be liable by virtue of this Agreement and/or TUPE;
- 12 If any person who is not a Transferring Employee claims, or it is determined in relation to any person who is not a Transferring Employee, that their contract of employment has been transferred from the Supplier or any Sub-contractor to Social Care Wales, a Replacement Supplier and/or its sub-contractors pursuant to TUPE, then:
- 12.1 Social Care Wales shall or shall procure that the Replacement Supplier shall, or its sub-contractors shall, within five Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- 12.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by Social Care Wales, the Replacement Supplier and/or any of its sub-contractors or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 13 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, Social Care Wales shall, or shall procure that the Replacement Supplier or its sub-contractors shall, immediately release or procure the release of the person from their employment or alleged employment.
- 14 If after the 15 Working Day period specified in Clause 12.2 has elapsed:
- 14.1 no such offer of employment has been made;
- 14.2 such offer has been made but not accepted; or
- 14.3 the situation has not otherwise been resolved
- Social Care Wales may or shall advise the Replacement Supplier and/or its sub-contractors, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.
- 15 Subject to Social Care Wales, the Replacement Supplier and/or its sub-contractors, as appropriate acting in accordance with the provisions of Clause 12 to Clause 14, the Supplier shall indemnify Social Care Wales, the Replacement Supplier and/or its sub-contractors, as appropriate against all Employment Liabilities arising out of the termination pursuant to the provisions of Clause 14 provided that Social Care Wales,

the Replacement Supplier, or its sub-contractors, as appropriate do not act in a discriminatory fashion when terminating the employment.

- 16 If any such person as is described in Clause 12 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by Social Care Wales, the Replacement Supplier and/or its sub-contractors within the time scales set out in Clause 12 to 14, such person shall be treated as a Transferring Employee and Social Care Wales, the Replacement Supplier and/or its sub-contractors as appropriate shall comply with such obligations as may be imposed upon it under applicable Law.
- 17 If TUPE applies to transfer the employment of any person employed by the Supplier or its Sub-contractors to Social Care Wales or any Replacement Supplier or its sub-contractors, then if Social Care Wales or such Replacement Supplier or its sub-contractors shall serve a notice terminating the employment of such person within three months after the date of such transfer, the Supplier shall indemnify Social Care Wales (for itself and Replacement Supplier or its sub-contractors as appropriate) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which Social Care Wales, a Replacement Supplier or its sub-contractors as appropriate is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.
- 18 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to Social Care Wales, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to Social Care Wales or, at the direction of Social Care Wales, to any Replacement Supplier and/or its sub-contractors (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Employee:
  - 18.1 the most recent month's copy pay slip data;
  - 18.2 details of cumulative pay for tax and pension purposes;
  - 18.3 details of cumulative tax paid;
  - 18.4 tax code;
  - 18.5 details of any voluntary deductions from pay; and
  - 18.6 bank/building society account details for payroll purposes.

### Schedule 6 Data Processing

Subject matter of the processing:	[Contract title] in accordance with Schedule 1
Nature / Purpose 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]
Duration of the processing:	[Clearly set out the duration of the processing including dates]
Types of Personal Data:	[Enter type of Personal Data. Examples here include name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject:	[Enter categories. 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]
Deletion of data	<p>The Supplier will deliver up to Social Care Wales all Personal Data in its then current format and such other format as Social Care Wales may require</p> <p>or</p> <p>The Supplier will delete all Personal Data, including without limitation, any Personal Data stored on any magnetic or optical disk or memory and confirm such deletion to Social Care Wales within ten (10) days of Social Care Wales's instruction.</p>