

**CABINET: THURSDAY, 21 JANUARY 2021 at 2.00 PM**

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A Cabinet Meeting will be held as a remote meeting on Thursday 21 January at 2.00 pm

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**A G E N D A**

- 1 Minutes of the Cabinet Meeting held on 17 December 2020 (*Pages 3 - 12*)

**Education, Employment & Skills**

- 2 Child Friendly City Programme (*Pages 13 - 22*)

**Social Care, Health & Wellbeing**

- 3 Arrangements for making Care Home placements for Older People (*Pages 23 - 142*)

**Strategic Planning and Transport**

- 4 Bus Emergency Scheme (BES) - Request to all Councils to Sign Up to BES 2 Scheme (*Pages 143 - 222*)

**PAUL ORDERS**

Chief Executive

**This document is available in Welsh / Mae'r ddogfen hon ar gael yn Gymraeg**

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**CARDIFF COUNCIL  
CYNGOR CAERDYDD**



**MINUTES**

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CABINET MEETING: 17 DECEMBER 2020

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- Cabinet Members Present: Councillor Huw Thomas (Leader)  
Councillor Peter Bradbury  
Councillor Susan Elsmore  
Councillor Russell Goodway  
Councillor Graham Hinchey  
Councillor Sarah Merry  
Councillor Michael Michael  
Councillor Lynda Thorne  
Councillor Chris Weaver  
Councillor Caro Wild
- Observers: Councillor Rhys Taylor  
Councillor Keith Parry  
Councillor Mike Jones-Pritchard (for Councillor Robson)
- Officers: Paul Orders, Chief Executive  
Chris Lee, Section 151 Officer  
Davina Fiore, Monitoring Officer  
Joanne Watkins, Cabinet Office

**2 MINUTES OF THE CABINET MEETINGS HELD ON 19 AND 26 NOVEMBER 2020**

**RESOLVED:** that the minutes of the Cabinet meetings held on 19 and 26 November 2020 be approved.

**3 CABINET RESPONSE TO POLICY REVIEW & PERFORMANCE SCRUTINY COMMITTEE REPORT ENTITLED SCRUTINY IMPACT ASSESSMENTS**

The Cabinet received the draft response to the recommendation of the Policy Review and Performance Scrutiny Committee report entitled 'Scrutiny Impact Assessment'. It was proposed that all the recommendations be fully or partially accepted.

**RESOLVED:** that the draft response to the recommendations of the Policy Review and Performance Scrutiny Committee report, entitled 'Scrutiny

Impact Assessment Model' as set out in Appendix A to this report be approved.

#### **4 WELSH GOVERNMENT CONSULTATIONS ON DRAFT REGULATIONS FOR CORPORATE JOINT COMMITTEES AND STRATEGIC DEVELOPMENT PLANS**

The Cabinet considered a report which set out the Council's response to the Welsh Government's consultation on Regulations to establish Corporate Joint Committee's and the procedures for Strategic Development Plans. The report set out the Council's commitment to establishing a regional approach to enhance the success of the city-region whilst noting some areas of concern, including the 'One Local Authority, One Vote' system which would require safeguards to be established.

**RESOLVED:** that

1. the Welsh Government consultation documents on Regulations to establish Corporate Joint Committees (CJCs) and to establish the procedure for Strategic Development Plans (SDPs) to be prepared Wales by CJCs be noted
2. the draft responses to the two Welsh Government consultations, which are attached as Appendices A and B to the report be approved; and
3. authority be delegated to the Chief Executive, in consultation with the Leader of the Council, Cabinet Member for Investment & Development and Cabinet Member for Strategic Planning & Transport, to make any further amendments as necessary to the Council's draft responses to the consultations prior to submission in advance of the closing date of 4 January 2021.

#### **5 CARDIFF HEAT NETWORK SPECIAL PURPOSE VEHICLE - FULL BUSINESS CASE APPROVAL**

***APPENDIX 1, 2 AND 4 TO THIS REPORT ARE NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPHS 14 OF SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972 AS IT CONTAINS INFORMATION CLASSIFIED AS EXEMPT UNDER SCHEDULE 12A THAT IT CONTAINS INFORMATION RELATING TO THE FINANCIAL OR BUSINESS AFFAIRS OF ANY PARTICULAR PERSON (INCLUDING THE AUTHORITY HOLDING THAT INFORMATION). IN ALL THE CIRCUMSTANCES OF THE CASE, THE PUBLIC INTEREST IN MAINTAINING THE EXEMPTION OUTWEIGHS THE PUBLIC INTEREST IN DISCLOSING THE INFORMATION***

***APPENDIX 3 TO THIS REPORT IS NOT FOR PUBLICATION BY VIRTUE OF THE PROVISIONS OF SCHEDULE 12A PARAGRAPH [16] (INFORMATION IN RESPECT OF WHICH A CLAIM TO LEGAL PROFESSIONAL PRIVILEGE COULD BE MAINTAINED IN LEGAL PROCEEDINGS) TO THE LOCAL GOVERNMENT ACT 1972***

The Cabinet received the Final Business Case for phase 1 of the Cardiff Heat network. This set out the financial viability of the scheme taking into account updated capital costs, projected revenues and operating costs.

The report also set out a proposal to establish a Heat Network Special Purpose Vehicle which would be the operating company for the heat network and would own the infrastructure assets. It was proposed that the HNIP grant and WG interest free loan would be passed on to the special purpose vehicle. The report also contained details of the proposed governance arrangements.

**RESOLVED:** that

1. the Final Business Case for the Cardiff Heat Network (including the project's Special Purpose Vehicle) attached to this report be approved subject to the capital costs affordability envelope arising from the design, build, operate and maintain (DBOM) procurement not exceeding the total capital cost stated in Table 2 of the confidential FBC.
2. Approval be given to the Shareholder Agreement between the Council and the Special Purpose Vehicle, and authority delegated to the Director of Planning, Transport and Environment to make minor amendments to this.
3. Approval be given to the establishment of the Council's wholly owned Special Purpose Vehicle, to be known as the Cardiff Heat Network, under the terms of the Shareholder Agreement which contains the formal Governance Arrangements as generally described in the report.
4. the on-granting of the HNIP grant to the SPV be agreed and authority be delegated to the Director of Planning, Transport and Environment to agree and execute the on-granting agreement between the Council and the SPV
5. the on-lending of the WG loan to the SPV be agreed and Authority delegated to the Director of Planning, Transport and Environment to agree and execute the loan agreement between the Council and WG and the on-lending agreement between the Council and the SPV.
6. Authority be delegated to the Director of Planning, Transport and Environment to agree on behalf of the Council, as the sole shareholder, the SPV entering in to all necessary agreements to implement the project, including but not limited to:
  - The design, build, operate and maintain (DBOM) contracts for construction and operation of the network
  - The bulk heat supply agreement with Viridor
  - The Heat Supply Agreements with customers
  - Utility agreements for gas and electricity at the back up energy centre
  - Easements to cross private land
  - Lease agreement for land for back-up energy centre
7. Authority be delegated to the Director of Planning, Transport and

Environment , in consultation with the Cabinet Member for Clean Streets, Recycling and Environment and the Council's S151 Officer, to agree on behalf of the Council, as the sole shareholder, updates to the SPV Business Plan and consent to any Reserved Matters as required by the Shareholder's Agreement (subject to any matter referable to Full Council).

8. It be noted that the Director of Planning, Transport and Environment already has delegated Authority under the April 2018 OBC approval to award the DBOM contract after Cabinet has approved the Final Business Case.
9. Authority be delegated to the Director of Planning, Transport and Environment to agree all other documents required relating to the constitution and governance and operations of the Special Purpose Vehicle and its relations with the Council.
10. It be noted that a further report will be taken to Council in due course to approve the appointment of the external non-executive director of the SPV.

**6 SCHOOL ORGANISATION PLANNING: PRIMARY SCHOOL PLACES TO SERVE CATHAYS AND PARTS OF GABALFA, HEATH, LLANDAFF NORTH AND PLASNEWYDD**

*Councillor Chris Weaver declared a personal interest as LEA appointed governor at Gladstone and local Member for area served by Mynydd Buchan school*

The Cabinet received a report detailing plans to hold a public consultation into proposals for primary school provision to serve Cathays, parts of Gabalfa, Heath, Llandaff North and Plasnewydd. Consultation on the following proposals was proposed:

- Increase the capacity of Ysgol Mynydd Bychan from c0.9 Forms of Entry (FE) (192 places) to 1.5 FE (315 places) from September 2022 and locate the additional school places at Allensbank Primary School in the first instance;
- Consolidate Allensbank Primary School at 1FE (210 places), retaining nursery and Additional Learning Needs early intervention provision, from September 2022.

Further it was proposed that there be a temporary increase to the Admission Number of Ysgol Mynydd Bychan, from 30 places to 45 places at entry to Reception Year for the 2021/2022 intake if it was not possible to accommodate children in the area within local Welsh-medium primary schools.

The intention of the proposals was to create a balanced provision of welsh-medium and English-medium provision to serve the area.

**RESOLVED:** that

1. officers be authorised
  - to consult on proposals to increase the capacity of Ysgol Mynydd Bychan from c0.9FE (192 places) to 1.5FE (up to 315 pupils) from September 2022.
  - to undertake a stakeholder engagement exercise to shape proposals that would be taken forward to provide an appropriate balance of Welsh-medium and English-medium primary school places to serve the area.
2. it be noted that consultation on the Admission Arrangements for the 2022/23 academic year will include a proposal to reduce the admission number of Allensbank Primary School from 45 to 30 places.
3. It be noted that officers will bring a report on the outcome of the consultation and engagement exercise to a future meeting to seek authorisation as to whether to proceed to publish proposals in accordance with section 48 of The School Standards and Organisation (Wales) Act 2013.

## 7 **SCHOOL ORGANISATION PLANNING: 21ST CENTURY SCHOOLS (BAND B): REDEVELOPMENT AND EXPANSION OF CATHAYS HIGH SCHOOL**

*Councillor Chris Weaver declared a personal interest in this item as an LEA appointed governor at Cathays High and local member for area served*

A report outlining proposals to hold a consultation on the expansion and redevelopment of Cathays High school was received. It was proposed that consultation take place on the following proposals:

- Expand Cathays High School from 1,072 places (5.5 Forms of Entry with 247 sixth form places) to 1,450 places (8 Forms of Entry with 250 sixth form places), from September 2023;
- Replace the Cathays High School buildings with new build accommodation on the Maindy Centre site adjacent to Crown Way and North Road;
- Expand the current Specialist Resource Base (SRB) for learners with Autism Spectrum Condition from 16 to 50 places in purpose-built accommodation in the new school buildings;
- Upgrade community facilities in Cathays and Gabalfa through the significantly enhanced school facilities being made available for shared use with the wider local community.
- Provide space for the local community to continue to have access to off-road open spaces for informal leisure use, recognising this is the current use at the Maindy site.

It was reported that the school had been expanded on a temporary basis to take additional forms of entry to provide for larger cohorts currently promoting to year 7. The school was rated category c for condition and a significant proportion of accommodation was within demountable accommodation.

**RESOLVED:** that

1. officers be authorised to consult on proposals to:
  - Expand the school from 1,072 places (5.5 Forms of Entry with 247 sixth form places) to 1,450 places (8 Forms of Entry with 250 sixth form places) from September 2023;
  - Replace the Cathays High School buildings with new build accommodation on the Maindy Centre site adjacent to Crown Way and North Road;
  - Expand the current Specialist Resource Base (SRB) for learners with Autism Spectrum Condition from 16 to 50 places in purpose-built accommodation in the new school buildings;
  - Upgrade community facilities in Cathays and Gabalfa through the significantly enhanced school facilities being made available for shared use with the wider local community.
  - Provide space for the local community to continue to have access to off-road open spaces for informal leisure use.
2. it be noted that officers will bring a report on the outcome of the consultation to a future meeting to seek authorisation as to whether to proceed to publish proposals in accordance with section 48 of The School Standards and Organisation (Wales) Act 2013.

## 8 **ANTI MONEY LAUNDERING POLICY**

The Cabinet considered an updated Anti Money Laundering Policy which incorporated the requirements of the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and the Money Laundering and Terrorist Financing (amendment) Regulations 2019*, as well as other relevant legislation. The main changes to the policy related to a strengthening of both the processes for client verification checks, and to the mechanisms for internal referral. The policy would be supported by targeted training for those working in high-risk areas.

**RESOLVED:** that

1. the Anti-Money Laundering Policy be approved; and
2. authority be delegated to the Audit Manager to amend the procedure and supplementary forms (Appendix A) as may be necessary from time to time, in light of operational experience.

## 9 **CORPORATE RISK MANAGEMENT - QUARTER 2 2020/21**

The Cabinet received an update on the risk management position at quarter 2 for 2020/21. It was noted that the impact of COVID-19 on existing risks had been considered as part of the reporting arrangements for quarter 2.

**RESOLVED:** that the content of the Corporate Risk Register be noted.



## 10 CALCULATION OF COUNCIL TAX BASE 2021/22

A report containing the calculation of the Council Tax base for 2021/22 was considered. The Information was required to be submitted to Welsh Government.

**RESOLVED:** that

- (1) the calculation of the Council's tax base for the year 2021/22 be approved;
- (2) that pursuant to this report and in accordance with the Local Authorities (Calculation of Tax Base) (Wales) Regulations 1995, as amended, the amount calculated by Cardiff Council as its Council Tax Base for the year 2021/22 shall be 147,794;
- (2) that pursuant to this report and in accordance with the Local Authorities (Calculation of Tax Base) (Wales) Regulations 1995, as amended, the amounts calculated by the Council as the Council Tax Base for the year 2021/22 in the community areas subject to a precept shall be as follows:

Lisvane	2,513
Pentyrch	3,369
Radyr	3,847
St. Fagans	1,746
Old St. Mellons	2,192
Tongwynlais	822
- (4) that the arrangements for the payment of precepts in 2021/22 to the Police and Crime Commissioner for South Wales to be by equal instalments on the last working day of each month from April 2021 to March 2022 and the Community Councils be by one payment on 1 April 2021, be on the same basis as that used in 2020/21 and the precepting authorities be advised accordingly.

## 11 PERFORMANCE MID YEAR ASSESSMENT

Cabinet received the mid year performance assessment as compared to the Corporate Plan 2020-23. It provided a performance update for each of the Council's seven Well-Being Objectives, including progress made, challenges and risks, and next steps. The assessment drew on a range of data sources including performance against Corporate Plan Steps and Key Performance Indicators, Risk, Budget and Assurance work. It was noted the first quarter of 2020/21 had been focused on pandemic management and responding to the challenges of lockdown, whilst Quarter 2 involved the safe restart of many Council services.

**RESOLVED:** that Cabinet note the half-year assessment of the Council's performance as set out in the report and Appendix A, including the delivery of

key commitments and priorities at the end of Quarter 2 of 2020/21, and the actions being taken to ensure the effective delivery of Capital Ambition and the Corporate Plan 2020-23.

## 12 ATLANTIC WHARF MASTERPLAN

**Appendices 2 - 6 of this report are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of part 4 and paragraph 21 of part 5 of Schedule 12A of the Local Government Act 1972.**

The Cabinet received a report containing details of the Atlantic Wharf Masterplan which aimed to regenerate around 25 acres of Council owned land in Cardiff Bay. A major extension to Cardiff Bay's Inner Harbour area was proposed for an area which encompassed the existing County Hall site and the recently acquired Red Dragon Centre site, as well as land in the ownership of Welsh Government on Lloyd George Avenue and an area of privately owned land on Pierhead Street. It was intended that this would provide long term sustainable footing for the businesses that have already invested in the area, as well providing the necessary footfall uplift to attract the next phase of new investment. It would also address the Council priority to improve the link between the city-centre and Cardiff Bay through redesigning parts of Lloyd George Avenue and by supporting the delivery of new public transport infrastructure and active travel links along the key Lloyd George Avenue route.

**RESOLVED:** that

- 1) the masterplan set out at Confidential Appendix 2 for the re-development of Atlantic Wharf site illustrated by the site plan at Appendix 1 be approved and the commencement of a consultation process be authorised
- 2) authorisation be given to the preparation of a planning application to secure outline planning permission for the masterplan to be submitted as part of a hybrid planning application with the detailed application for the new Indoor Arena.
- 3) the preparation of an Outline Business Case to consider options for bringing forward the redevelopment of the Red Dragon Centre be authorised

## 13 ANNUAL PROPERTY PLAN

The Cabinet considered the Annual Property Plan which set out the implementation plan for the Corporate Property Strategy 'Fewer but Better Buildings' adopted in 2015. The Annual Property Plan provided an update on priority projects, reinforced overarching principles for the strategy of the estate, outlined what is planned for the year ahead, and provided explicit targets relating to the reduction in the size and cost of the estate.

**RESOLVED:** that

1. the 2020/21 Annual Property Plan attached at Appendix 1 to the report be approved
2. the property transaction programme set out in Tables 1 to 5 of the report be noted
3. authority be delegated to the Director of Economic Development in consultation with the Cabinet Member for Investment and Development to develop detailed proposals relating to opportunities for the disposal of Council land to be presented back to Cabinet for authority to proceed.

#### 14 **LLANDAFF CONSERVATION AREA REVIEW**

Cabinet considered a proposal to extend the Llandaff Conservation area boundary and adopt an updated Conservation Area Appraisal. The revisions had been developed in consultation with the local Llandaff Conservation Advisory Group, which included local member representation and members of the Llandaff Society. It had also been subject to a public consultation and comments received as part of that consultation had shaped the final proposals.

**RESOLVED:** that

- (1) the area shown on Appendix 1 to the report be designated as the Llandaff Conservation Area in accordance with Section 69 of the Planning [Listed Buildings and Conservation Areas] Act 1990.
- (2) the Llandaff Conservation Area Appraisal shown in Appendix 2 be adopted, in accordance with Section 71 of the Planning [Listed Buildings and Conservation Areas] Act 1990;
- (3) the making and service of an Article 4 Direction for the conservation area be authorised

#### 15 **LOCAL AIR QUALITY MANAGEMENT - ANNUAL AIR QUALITY PROGRESS REPORT**

The Local Air Quality Management Annual Progress Report (based upon on air quality datasets obtained in 2019) was received. It provided details of the air quality monitoring at the four Air Quality Management Areas as well as the three automatic air quality monitoring sites.

**RESOLVED:** that

1. the monitored results gathered in 2019 be noted and accepted
2. approval be given to the review of the non-automated monitoring network for NO<sub>2</sub>, whereby those monitoring sites displaying continued compliance with limit values are decommissioned.
3. the 2020 Annual Progress Report (as attached as Appendix 1) be approved for submission to Welsh Government for approval.

16     **ENDORSEMENT OF SECOND REVIEW OF SOUTH WALES  
AGGREGATES REGIONAL TECHNICAL STATEMENT**

Cabinet received a report containing the recommendations of the Second Review of the South Wales Aggregates Regional Technical Statement (RTS) and the Statement of Sub-Regional Collaboration.

**RESOLVED:** that the recommendations contained in the Second Review of the South Wales Aggregates Regional Technical Statement (RTS) be endorsed and the progression of the Statement of Sub-Regional Collaboration as part of the evidence base for the proposed Replacement LDP be agreed

**CABINET MEETING: 21 JANUARY 2021**

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**CHILD FRIENDLY CITY PROGRAMME****EDUCATION, EMPLOYMENT & SKILLS (COUNCILLOR SARAH MERRY)****AGENDA ITEM: 2**

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**Reason for this Report**

1. To provide the Cabinet with an update on the progress to date in working towards global recognition for Cardiff as a Unicef Child Friendly City.
2. To seek Cabinet support to ensure continuity of commitment to our Child Friendly Cardiff vision, within and beyond the Council.
3. To advise Cabinet of the next steps in preparing for potential recognition as a Child Friendly City in Autumn 2021.

**Background**

4. The Child Friendly City and Communities initiative is a global programme that brings together Unicef and local government to put children's rights at the heart of communities and public services. It supports Local Authorities and partners in developing a child rights-based approach, when designing, delivering, monitoring and evaluating local services and strategies for children.
5. Cardiff Council launched its Child Friendly Cardiff Strategy on World Children's Day, 20<sup>th</sup> November 2018. A detailed multi agency delivery plan was submitted to UNICEF UK in April 2019, triggering a 2 year implementation phase.
6. Cardiff's Child Friendly Vision is at the core of our Capital ambition to make Cardiff 'a great place to grow up'. Specifically it sets out the aim for Cardiff to be:

- A city with children and young people at its heart, where the voices, needs and rights of all children and young people are respected.
  - A city where all children and young people, regardless of belief, ethnicity, background or wealth are safe, healthy, happy and able to share in the city's success
7. The vision will be delivered through the Child Friendly City Strategy, which outlines five goals and a series of commitments to action.
  8. The five key goals are:
    - Every Child and Young person is valued, respected and treated fairly.
    - Every Child and Young Person has their voice, needs and priorities heard and taken into account.
    - All children and young people grow up in a safe and supportive home.
    - All Children and Young people access high quality education that promotes their rights and helps them develop their skills and talents to the full.
    - Children and Young people have good physical, mental and emotional health and know how to stay healthy.

## **Progress update**

### **Unicef Monitoring Visit**

9. Unicef UK held a monitoring visit in Cardiff in January 2020 and a report was received in early spring providing an update on progress and recommended areas for action for 2020/21.
10. Within the report Unicef UK recognised that Cardiff Council has played a pioneering role in establishing the Child Friendly City Programme in the UK; stating that there is clear evidence that the Council has made significant progress in establishing, prioritising and implementing a child rights-based approach in the Council's culture and commitments.
11. In recognition of this and emerging areas of particularly good practice, Unicef has recommended that the Council should submit for Child Friendly City recognition in the Autumn of 2021. This would entail Unicef convening a panel of rights based experts to assess progress to embed children's rights.
12. The points of note in each goal of Cardiff's Child Friendly City strategy are indicated below.

### **Culture, Cooperation & Leadership**

13. **Unicef progress note:** Building the capacity of decision-makers in a child rights-based approach is a fundamental building block of the CFC programme and Cardiff have led the way with an impressively high attendance of elected members at child rights training. There is also significant commitment from senior leaders within the council, with the

programme being championed at the director level and the programme being supported by a full-time coordinator.

**14. Key areas of focus to progress to recognition:**

- Collate qualitative evidence to show cross-agency cooperation.
- Obtain perspectives of partner agencies and the third sector on the city's realisation of child rights.
- Work with Unicef to conduct an ethnographic study that aims to understand the impact of taking a child rights approach in identified areas of work through qualitative research.
- Incorporate child rights principles and planning into the Covid-19 recovery and response.
- Work with Unicef to embed Child Rights Impact Assessments in policy development.

## **Communication**

**15. Unicef progress note:** The Council has made tangible efforts to establish a local brand and digital presence and have worked with children and young people to achieve this. Cardiff's Communication Plan includes a wide range of engagement across key stakeholders including real world and digital platforms. Unicef understands that these plans have been delayed somewhat by the Covid-19 crisis.

An excellent response to a staff perception survey conducted in 2019 demonstrated significantly increased awareness of child rights among staff.

**16. Key areas of focus to progress to recognition:**

- Revisit the staff perception survey to map progress.
- Adapt the planned communication activities in response to the Covid-19 crisis and beyond.
- Consider a child friendly annual 'state of children's rights in the city' report.

## **Family & Belonging**

**17. Unicef progress note:** The establishment of the Cardiff Family Advice and Support service in a short space of time is an impressive achievement. It responds to a need observed across several cities and communities and the importance of a single point of comprehensive information and support for children and families. The incorporation of a child rights-based approach into the organisation's stated approach is a particular strength.

**18. Key areas of focus to progress to recognition:**

- Ethnographic study to be conducted by Unicef UK in collaboration with the Family Advice and Support Service.

- Focused training with the Family Advice and Support Service Team to understand how the child rights-based approach is being embedded in practice.
- Focused training for corporate parenting members and personnel.
- Revisit the 'belonging' element of the badge, considering whether marginalised or discriminated groups of children and young people are actively included in the life of the city.

## Education

19. **Unicef progress note:**In establishing a child rights-based approach to education across the city, Cardiff has accelerated the growth of the Rights Respecting Schools Award (RRSA), establishing a firm child rights knowledge base and network in the city's schools. In addition, Cardiff has launched some key initiatives, including one focusing on widening career aspirations and pathways for disadvantaged children and young people.
20. **Key areas of focus to progress to recognition:**
- Evaluate the impact of the RRSA programme.
  - Consider non-formal education settings – how can these be supported through the programme and benefit from a rights-based approach.

## Healthy

21. **Unicef progress note:**The City has started to put some strong ideas into practice in this area, including the establishment of a young people's health board, a child-focused health charter, child friendly streets, a symposium on child rights and health and a focus on young people's use of and treatment within A&E.
22. **Key areas of focus to progress to recognition:**
- Work with Unicef UK to identify projects to track for the purposes of recognition, including ethnographic study and additional focused training. These will include participation at local and strategic levels, role of the Youth Health Board, impact of Elected Member training programme and the Rights Respecting Schools programme.

## COVID-19 Recovery Planning

23. Child and young people have been involved throughout the pandemic in webinars and engagement sessions with the Director of Education, the Leader and Deputy Leader of the Council to support approaches to COVID-19 management.
24. This engagement needs to extend to involving children and young people in citywide recovery planning, to ensure that the needs and interests of children and young people are taken into account at all stages.



## **Pathway to recognition – Next Steps**

### **Addressing the recommendations in the Unicef Progress Report**

25. There are a number of key recommendations that we need to address prior to the recognition evaluation next autumn as outlined within each goal above. In particular, we need to demonstrate a sustainable approach to embedding children's rights in Cardiff that signals a long term commitment to children and young people. In particular we should work towards:
- Integrating the Children's rights impact assessment into the policy framework; with equal stature to other policy and decision making impact assessments.
  - Continued implementation of the Rights Respecting Schools programme model which will further embed children's rights into school communities.
  - Developing a 'train the trainer model' to maintain capacity in relation to workforce development and mandating child rights training for senior managers.
  - Clear demonstration of a focus on better outcomes for our most vulnerable children and young people, for example in fulfilling our corporate parenting responsibilities.
  - Maintaining a meaningful approach to the participation of children and young people in policy, strategy and decision making where changes will impact upon their lives.
  - Producing an annual Child's Rights Report to capture progress and areas for improvement annually alongside the Council's Wellbeing report.
  - Establishing the Child Rights Unit within existing budgets, in Education, to provide a 'centre of excellence' for this work.

### **Monitoring and Evidence**

25. Good progress has been made across all the Child Friendly Cardiff goals. However, as we enter the assessment and recognition phase, monitoring and evaluation activity will need to be enhanced to strengthen the evidence base and clearly celebrate areas of progress, whilst identifying any areas of concern. To ensure visibility of progress at a Corporate level, this reporting will continue to feature in Education's quarterly reports against Capital Ambition and Corporate Plan priorities.

### **Governance**

26. Programme governance arrangements will be reviewed to ensure robust oversight of the programme in this critical phase against the programme goals and identified areas for improvement. This will entail the establishment of a renewed Operational Steering Group, a Strategic multi agency Board and termly update reports to the Public Services Board.

## **Sustainability**

27. Sustainability of commitment to children's rights is key to attaining Unicef recognition in 2021 and the establishment of a Child Rights Unit and embedding Child Rights Impact Assessments are critical. If Cardiff successfully attains the accreditation as a Unicef Child Friendly City this status is in place for three years where another assessment then takes place. However if during this time any statutory inspections of council services report areas of inadequate practice, Unicef can review this status.

## **Meaningful Participation of Young People**

28. Meaningfully involving children and young people in the decisions that affect them is more important now, than ever before.

Examples include:

- Covid-19 recovery and response planning.
- One Planet Cardiff
- Votes at 16
- 21<sup>st</sup> Century Schools Programme
- Corporate Parenting Strategy
- Children's Service's Participation Framework
- Local Development Plan
- Transport White Paper
- Staff Recruitment Process
- Representation on strategic boards and Scrutiny Committees.

This needs to continue with the rigour and enthusiasm seen to date which is extremely positive across most areas.

## **Reason for Recommendations**

29. The following recommendations are made to enable progression towards UNICEF UK recognition of Cardiff as a Child Friendly City during 2021. Also, to ensure a continued and shared commitment to making rights a reality for all children and young people in the city.

## **Financial Implications**

30. The report outlines progress made to date in embedding a Child Rights approach across the Council and working towards recognition as a Unicef Child Friendly City. The activities and initiatives that have formed part of this work have been funded from within base budget allocations and it is anticipated that this will continue to be the case in future years. Should there be a need for additional resources or if there are any indirect financial pressures arising from the work undertaken, it will be necessary to consider these as part of the Council's annual budget setting process.

## **Legal Implications**

31. In agreeing to these recommendations consideration must be given, amongst other matters, to:

- a) the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.
- b) public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: a. age; b. gender reassignment; c. sex; d. race – including ethnic or national origin, colour or nationality; e. disability; f. pregnancy and maternity; g. marriage and civil partnership; h. sexual orientation; i. religion or belief – including lack of belief, and;
- c) the Well-being of Future Generations (Wales) Act 2015. The Well-being of Future Generations (Wales) Act 2015 ('the Act') is about improving the social, economic, environmental and cultural well-being of Wales. The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language and is globally responsible. In discharging their respective duties under the Act, each public body listed in the Act must set and published wellbeing objectives. These objectives will show how each public body will work to achieve the vision for Wales set out in the national wellbeing goals. When exercising its functions, Cabinet should consider how the proposed decision will contribute towards meeting the wellbeing objectives and in so doing achieve the national wellbeing goals. The wellbeing duty also requires Councils to act in accordance with a 'sustainable development principle'. This principle requires Councils to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This means that Cabinet must take account of the impact of their decisions on people living their lives in Wales in the future.

There are no other legal implications for this report.

### **HR Implications**

- 32. This report sets out a number of actions that relate to employees within the Council. It is therefore important that trade unions are briefed on the contents of the report and a process of regular communication is in place to update on progress against the actions, in particular those that relate to employees.
- 33. One of the key actions is to consider how young people can be meaningfully involved in employee recruitment processes. This will build on the arrangements already in place for recruitment to key senior officer positions and positions within areas such as Children's services and will require the development of a policy and process that supports

meaningful engagement. The trade unions will need to be fully consulted on any proposals.

34. HR People Services will work closely with the Education Directorate on proposals for employees to access training to ensure that this is embedded in the Cardiff Academy offer to employees across the Council. Consideration will need to be given to how such training can be accessed by those employees who do not have access to digital resources.
35. The development of the Child Right's Unit will be subject to the usual procedures for the evaluation and creation of posts on the Council's establishment.

### **Property Implications**

36. There are no specific property implications in respect of this report. The Strategic Estates Department will assist where necessary in working towards global recognition for Cardiff as a Unicef Child Friendly City. Where there are property transactions required to deliver any proposals, they should be done so in accordance with the Council's Asset Management process and in consultation with Strategic Estates and relevant service areas.

## **RECOMMENDATIONS**

Cabinet is recommended to agree that Cardiff Council will:

1. Continue to sponsor a Council wide commitment to action to embed a child rights approach across all Council services.
2. Commit to the meaningful involvement of children and young people in COVID-19 city-wide recovery planning.
3. Work towards embedding the Child Rights Impact Assessment into the Policy framework.
4. Receive an Annual Child's Rights Report at Council, to capture progress and areas for improvement annually alongside the Council's Wellbeing report.
5. Develop a sustainable approach to rights based training including mandating child rights training for senior managers.
6. Maintain a meaningful approach to the participation of children and young people in all policy, strategy and decision making where changes will impact upon their lives.
7. Support the evaluation of progress towards the Child Friendly Vision for Cardiff as we embark upon the recognition phase with Unicef in 2021.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>Melanie Godfrey</b> Director of Education & Lifelong Learning
	15 January 2020

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**ARRANGEMENTS FOR MAKING CARE HOME PLACEMENTS  
FOR OLDER PEOPLE****SOCIAL CARE, HEALTH and WELL-BEING (COUNCILLOR  
SUSAN ELSMORE)****AGENDA ITEM: 3**

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**Reasons For This Report**

1. This report seeks Cabinet agreement to implement a new Dynamic Approved Provider List (DAPL) for residential and nursing home placements for Older People and Older People with Dementia from 1st April 2021. Cabinet is requested to delegate authority to the Corporate Director for People and Communities in consultation with the Cabinet Member for Social Care, Health & Well-being, the Section 151 Officer and the Director of Governance and Legal Services for all future procurement decisions pertaining to the new arrangements.
2. This report also seeks to update Cabinet on progress in relation to the development of a new regional service specification and contract for care home placements for Older People & Older People with Dementia. Cabinet is asked to note the intention to implement the new contracts and specification with effect from 1<sup>st</sup> April 2021.
3. In order to support the implementation, Cabinet is asked to agree a minor amendment to the Charging Policy (previously approved by Cabinet in January 2020) in order to explicitly clarify the Local Authority's role in relation to facilitation of Third Party Agreements in line with its responsibilities set out in the Social Services and Well-being (Wales) Act 2014. The amendment will be in line with the requirements of the Act and will mirror the arrangements set out in the new specification and contract for Older People and Older People with Dementia.

**Background**

4. The Social Services & Well-Being (Wales) Act 2014 (the Act) came in to force on 1st April 2016. The Act imposes various duties on local authorities and health boards that require them to work to promote the well-being of those who need care and support, or carers who need support, working on a regional basis wherever possible

5. In response to the Act, in August 2014 Cardiff Council established a Dynamic Approved Provider List to secure Residential & Nursing Care placements for Older People & Older People with Dementia. This DAPL is managed via the Council's e-procurement portal PROACTIS. The move to an electronic sourcing system was identified as a way to;
  - increase choice for service users
  - increase transparency for providers
  - reduce case manager workload
6. The Council currently issues opportunities for placements via the DAPL in relation to the following four categories of care:
  - Residential Care for Older People
  - Residential Care for Older People with Dementia
  - Nursing Care for Older People
  - Nursing Care for Older People with Dementia
7. There are currently 74 providers accredited on the existing DAPL to deliver these services.
8. Each of the providers on the existing DAPL have committed to deliver services as detailed under the terms outlined within the existing current contract for services for Older People and Older People with dementia, often referred to as the 'Heads of Agreement'
9. These are open ended contracts and have no expiry date for the existing arrangements.

## Issues

### The Dynamic Approved Provider List (DAPL)

10. The existing DAPL is delivered via the Council's e-procurement portal PROACTIS. Whilst Opportunities are issued and secured via that portal, payment made for those placements is now made via *adam* (sproc.net).
11. *adam* is an e-tendering system which has been used by Cardiff Council since 2014 to facilitate an end to end process for the awarding, management and payment for all packages of Domiciliary Care funded by the Council.
12. Whilst the existing arrangements with PROACTIS has succeeded in providing improved transparency to the market and choice for service users, as payments are not made via the system it does not provide the full 'end to end process' that is offered via *adam*.
13. It is proposed that under the new arrangements, PROACTIS will cease to be used for sourcing Residential & Nursing Care placements for Older People and Older People with dementia and that the full end to end process will be delivered via *adam*. Specifically, the system will be used for the following:



- a. Accreditation & Enrolment of Suitably Qualified providers
- b. Management of Providers Contract Documentation including Insurances & Certifications
- c. Issue of packages to Accredited Providers on the DAPL
- d. Receipt of Expressions Of Interest to support individuals from Accredited Providers on the DAPL
- e. Award of placements for individuals
- f. Certification of Delivery of Care to individuals
- g. Provider Service Receipting (invoicing)& Payment

These are some of the main benefits of moving to use *adam* as the end to end process for procuring these services over the current arrangements through PROACTIS.

14. Over recent months, a project group has been established to develop the requirements for the DAPL in consultation with a group of Care Home Provider representatives.
15. In addition to this, a number of supplier engagement events have been held to outline the process & requirements of the new arrangements that will be in place from April 1<sup>st</sup> 2021.
16. *adam* have a dedicated supplier on boarding team who will support providers through the on boarding process. It is proposed that the New DAPL will be in place with effect from 1st April 2021.
17. All suppliers of Residential & Nursing Care Services in Cardiff (including those on the existing DAPL) will be invited to enrol onto the new DAPL, which is intended to be available for enrolment from 1st February 2021.
18. A Supplier Engagement Session is planned for February 2021 to support providers through the Accreditation & Enrolment process and will be facilitated by Cardiff Council & representatives from *adam*.

### **Regional Service Specification & Care Contract**

19. It has been identified that the current contract for Residential & Nursing Care for Older People and Older People with Dementia has not been updated for a significant amount of time and there is a need to ensure that the contract reflects the requirements of various pieces of legislation and corporate policies that have come in to effect in recent years.
20. In addition to the Act, these include, but are not limited to:
  - the Regulation and Inspection of Social Care (Wales) Act 2016,
  - the Data Protection Act 2018
  - the Welsh Language (Wales) Measure 2011; and
  - the Welsh Language Standards
21. In 2019, a regional working group was established to undertake work on developing a new regional service specification and contract for delivery

of Residential & Nursing Care for Older People and Older People with Dementia.

22. The group consisted of Social Care and Health Board Commissioners with legal representatives from Cardiff Council & the Vale of Glamorgan, Care Home providers from the Vale of Glamorgan and Cardiff, and legal representatives for the Care Home Forum.
23. A set of contract documentation was drafted, including the terms and conditions of contract, service specification and individual service contract. A consultation exercise took place whereby all providers for residential and nursing care provision for older people, commissioned by the Councils and Health Board, and commissioners were asked for their comments on the structure and content of the documentation. This feedback was considered by the working group and final comments were requested in December 2019. No further feedback was received, and the working group agreed the final documentation in January 2020. These are attached as Appendices 1, 2 and 3 of this report.
24. The contract for Care Home Services strengthens the existing requirement for providers and commissioners to work together in order to provide services that meet the care and support needs of individual services users with the ability to provide a choice of care homes for the service user and their family.
25. Although the contract has been designed for use by both the Vale of Glamorgan and Cardiff, each local authority commissions care individually; therefore, each Council will enter in to a separate agreement with residential and nursing home providers. Nursing care provision is jointly commissioned by Social Services and the Health Board. The contract agreement for these services will be signed by the individual local authority, Cardiff and Vale University Health Board, and the nursing care home provider.
26. The documentation allows for a programme of quality assurance inspections to be developed, which will evidence the outcomes being achieved for service users and maintain the integrity of service provision both on a regional footing and incorporating a local perspective in order to align with the corporate performance framework for Cardiff Council.
27. As part of the implementation of the Regional Contract and Specification, work will be undertaken via the Regional Health and Social Care Partnership to ensure an agreed quality framework is in place for these services. The Partnership will consist of Cardiff and the Vale of Glamorgan officers, providers across Cardiff and the Vale of Glamorgan and University Health Board officers. It is anticipated that this work will commence in January 2021.
28. This work will link directly with Cardiff Councils' Corporate Performance Monitoring Framework Commissioned Services which evaluates delivery of services in line with the following 6 Key Performance Themes:

- a. Supplier Performance
  - b. Quality Compliance
  - c. Cost Compliance & Value for money
  - d. User Experience
  - e. Risk Management
  - f. Social Value & Community Benefits
29. The implementation of the new DAPL will offer an opportunity for both Council and Providers to sign up to the new Regional Service Specification & Care Contract at the same time that the accreditation for the new DAPL is undertaken.

### **The Charging Policy**

30. Cardiff Council's Cabinet approved its Social Services Charging Policy for Residential and Nursing care services in January 2020, with implementation from 1st April 2020. This is located at Appendix 4 for information.
31. In its current form, this Charging Policy does not clearly state that the LA will facilitate the third party agreement in line with its responsibilities set out in the Social Services & Well-being (Wales) Act 2014
32. For clarity, the wording in the Charging Policy therefore needs to be aligned with narrative around third party arrangements set out in the new regional contract and service specification and the Local Authority's responsibilities set out in the Social Services & Well-being (Wales) Act 2014.

### **Reason for Recommendations**

33. The existing DAPL arrangements in PROACTIS do not offer a full end to end process from identification of need through to payment for delivery. The implementation of a new DAPL via *adam* will enable this full end to end process, whilst potentially streamlining back office processes for the in house Finance Team. It will also reduce the need for training and development of staff within the Finance Team on two systems. It is intended that the new DAPL will include a quality award criteria through the implementation of the new contracts and quality framework.
34. Under the existing DAPL in PROACTIS, there is still the requirement for some contract documentation to be produced manually, outside the system. Through *adam* it is intended that all documentation in relation to individual placements (namely the individual care contract) will be generated and issued electronically by the system.
35. The current contract documentation used for Residential and Nursing Care provision for Older People and Older People with Dementia is no longer reflective of current legislative and corporate requirements.

36. Furthermore, the new contract documentation requires both providers and commissioners to work towards achieving identified outcomes for individual residents.
37. The amendment to the Charging Policy, previously agreed by Cabinet Jan 2020 will provide clarity that the LA will facilitate the third party agreement in line with its responsibilities set out in the Social Services & Well-being (Wales) Act, 2014 and the regional contract for Older People and Older People with dementia.
38. The delegated authority to the Corporate Director around all matters pertaining to the procurement decisions will allow the details of the new DAPL and procurement exercise to be finalised, agreements to be entered in to and varied in a timely manner, whilst maintaining the requirements of the Council's Contract Standing Orders & Procurement Rules.

### **Financial Implications**

39. The report recommends the agreement of a new DAPL for Residential and Nursing placements, to be effected via an extension of existing licensing arrangements with *adam*. In summary, it is anticipated that one-off implementation costs will be met from the Carefirst Reserve whilst ongoing annual costs associated with the extension will be met from existing budgets. Full financial advice will be provided in respect of the procurement process, all aspects of which have been delegated to the Corporate Director People and Communities, in consultation with the Cabinet Member for Social Care, Health & Well-being, the Section 151 Officer and the Director of Governance and Legal Services. It is anticipated that the end-to-end process via the new DAPL will provide an opportunity to streamline existing back office functions. It will be important to ensure that efficiency savings resulting from the revised arrangements are fully captured.
40. The report also notes progress towards the development of a new regional service specification, and seeks agreement for a minor amendment to the Charging Policy that was approved by Cabinet in January 2020. There are no direct financial implications arising from these recommendations.

### **Legal Implications**

41. The recommendations include proposals for the procurement of new arrangements, DAPL, for Residential and Nursing placements and seeks that delegated authority be granted to the Director to deal with all aspects of the procurement. Legal advice should be sought on the procurement process to ensure it accords with all legal requirements. The body of the report refers to use of an e procurement and contract management system, 'adam'. Legal services are instructed that a separate officer decision report will address the decisions required as regards the acquisition and contractual arrangements for adam and the relevant legal advice will be set out in that separate report .

42. The recommendations further provide for amendment to the Council's Social Services Charging Policy for Residential and Nursing care (the "Charging Policy"), concerning third party payments for care home accommodation.
43. The Charging Policy notes (at page 3) that it needs to be read in conjunction with the relevant legislation. In considering this matter, the decision maker must have regard to the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") and associated regulations and guidance. The 2014 Act provides the statutory framework for social services in Wales. In brief, the 2014 Act places a responsibility on local authorities, and other public bodies, exercising functions under the 2014 Act to meet any eligible needs of people who need care and support, and carers who need support, and delivering outcomes. Failure to have due regard to such statutory guidance could itself be a ground for a judicial review challenge.
44. The Care and Support (Choice of Accommodation) (Wales) Regulations 2015 ("the Regulations") provide that if a person expresses a preference for a particular care home and the cost to the local authority of providing the preferred accommodation is greater than the cost that the local authority would usually expect to incur in providing care home accommodation to meet the needs of the person concerned, the payer can enter into a written agreement with the local authority in which a third party payer agrees to pay the additional cost.
45. A Code of Practice on charging for social care services (Part 4 and 5 Code of Practice, April 2020), also supports the Regulations. The Code of Practice provides that the Council must have more than one available care home within the cost it would usually expect to pay and must only seek a third party payment when a person chooses another care home that is more expensive. The Code is clear that a person must genuinely choose a more expensive care home for there to be a third party payment and "never as a result of a shortfall in the funding a local authority is providing to a care home to meet a person's assessed care needs". (at paragraph 4.2, page 48)
46. The Local Authority must follow the Charging Regulations when undertaking financial assessments and determining any charges and when exercising its other functions in relation to charging.
47. The relevant Charging Regulations are:
  - The Care and Support (Financial Assessment) (Wales) Regulations 2015;
  - The Care and Support (Charging) (Wales) Regulations 2015;
  - The Care and Support (Choice of Accommodation) (Wales) Regulations 2015;
  - The Care and Support (Deferred Payment) (Wales) Regulations 2015;
  - The Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015.

Legal services should be instructed again should there be any further consideration of areas where the Local Authority has discretion to charge and these matters may be subject to formal, public consultation.

#### *Other factors*

#### 48. *Equalities & Welsh Language*

In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a). Age, ( b ) Gender reassignment( c ) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h)Sexual orientation (i)Religion or belief – including lack of belief.

An equalities impact assessment is attached to this report and the decision maker should have regard to the same in reaching its decision.

The decision maker should be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

#### 49. *Social Services and Well-Being (Wales) Act 2014*

In considering this matter, the decision maker must have regard to the Council's duties pursuant to the Social Services and Well-Being (Wales) Act 2014. In brief, the Act provides the legal framework for improving the well-being of people who need care and support, and carers who need support, and for transforming social services in Wales.

#### 50. *The Well-being of Future Generations (Wales) Act 2015*

The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2018-21: <http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202018-21.pdf>

When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the

decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

51. The decision maker must be satisfied that the proposal is within the Policy and Budget Framework, if it is not then the matter must be referred to Council.

### **HR Implications**

52. There are no HR implications to this report

### **RECOMMENDATIONS**

Cabinet is recommend to:

1. agree the procurement of a new Dynamic Approved Provider List (DAPL) to source residential and nursing home placements for Older People and Older People with Dementia with the intended implementation with effect from 1 April 2021.
2. delegate authority to the Corporate Director People and Communities, in consultation with the Cabinet Member for Social Care, Health & Well-being, the Section 151 Officer and the Director of Governance and Legal Services to deal with all aspects of and make all future procurement decisions relating to the new DAPL arrangements and any necessary details of the model of the new DAPL.

3. note the progress in relation to the development of a new regional service specification and contract for care home placements for older people, and the intention to implement the new contracts and specification with effect from 1 April 2021.
4. agree minor amendments to the Charging Policy, approved by Cabinet in January 2020, (which amendments are shown as tracked changes in appendix 4 to this report ) in order that it explicitly sets out the Local Authority's role in relation to the facilitation of Third Party Agreements in line with its responsibilities set out in the Social Services and Well-being (Wales) Act 2014 and as specified in the new contract for Older People and Older People with Dementia.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>SARAH McGILL</b> <b>Corporate Director People &amp; Communities</b>
	15 January 2021

*The following appendices are attached:*

- Appendix 1 – Care Home Contract
- Appendix 2 – Service specification
- Appendix 3 – Individual Service Contract
- Appendix 4 – Charging Policy
- Appendix 5 – Equalities Impact Assessment



# Appendix 1



GIG  
CYMRU  
NHS  
WALES | Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board



## CONTRACT AGREEMENT

### For Care Home Services

**(April 2020)**

#### FOR THE PLACEMENT OF ADULTS IN A CARE HOME OR CARE HOME WITH NURSING

This contract has been developed by the Care Home Contract Executive Liaison Group Working Group ("the Working Group") on behalf of the Cardiff and Vale of Glamorgan Regional Partnership, which comprises Cardiff and Vale University Health Board, Vale of Glamorgan Council and Cardiff Council.

The contract will be reviewed annually (and amended if appropriate) through the Working Group and in consultation with the wider care home provider sector in Cardiff and the Vale of Glamorgan, to reflect ongoing work by the Partnership to implement the Social Services and Well-Being (Wales) Act 2014.

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***NB Clause and page numbers to be included on final document.***

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<b>SCHEDULES</b>		
Schedule 1	Service Specification	
Schedule 2	Individual Service Contract Template	
Schedule 3	Third Party Contribution Agreement	
Schedule 4	Equipment Protocol – to follow by April 2021	

**The Definitions within this Contract are set out as below:-**

	<b>Definitions</b>
<b>Abuse</b>	<p>Abuse means physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place). Financial abuse includes: -</p> <ul style="list-style-type: none"> <li>• Having money or other property stolen.</li> <li>• Being defrauded.</li> <li>• Being put under pressure in relation to money or other property.</li> </ul> <p>Having money or other property misused.</p>
<b>Adult at Risk</b>	<p>An adult at risk is an adult who: -</p> <ul style="list-style-type: none"> <li>• Is experiencing or is at risk of abuse or neglect.</li> <li>• Has a need for care and support (whether or not the Authority is meeting any of those needs).</li> <li>• As a result of those needs, is unable to protect himself or herself against the abuse or neglect or the risk of it.</li> </ul>
<b>Assessment and Review</b>	<p>A process of monitoring the progress of the Care Plan on a systematic basis throughout the contract period and in conjunction with the Service Provider and the Service User.</p>
<b>Care Plan</b>	<p>The detailed programme of care and support (including any nursing care) drawn up by the Service Purchaser(s) for a Service User following an assessment of their needs.</p>
<b>Continuing NHS Healthcare</b>	<p>A complete package of ongoing care arranged and solely funded by the NHS where it has been identified that the Service User's primary need is a health need.</p>
<b>Challenging Behaviour</b>	<p>In this contract means: "Behaviour ... of such intensity, frequency and duration as to threaten the quality of life and / or the physical safety of the Service User or others and is likely to lead to responses that are aversive or result in exclusion".</p> <p>The Royal College of Psychiatry, Psychology and Speech &amp; Language (June 2007):</p>

<b>Choice Conditions</b>	<p>These conditions provide that when an individual has been assessed as requiring residential accommodation under the Social Services and Well-being (Wales) Act, 2014, the individual can take up a placement in the accommodation of his / her choice provided that: -</p> <ul style="list-style-type: none"> <li>• The Care Plan specifies that the person's needs can be met by the provision of care home accommodation.</li> <li>• The preferred accommodation is suitable to the person's needs.</li> <li>• The preferred accommodation is available.</li> <li>• The Service Provider agrees to contract on the Local Authority's terms.</li> <li>• If the cost to the Local Authority of providing or arranging for the provision of the preferred accommodation is greater than the cost that the Local Authority would usually expect to incur in providing or arranging the provision of care home accommodation to meet the needs of the person concerned, the additional cost condition must be met i.e. a Third Party is willing and able to pay the additional cost and enters in to a written agreement with the Local Authority.</li> </ul>
<b>Commencement Date</b>	1 April 2020 or date of signature, whichever is the later
<b>Contract</b>	The complete Agreement and all the conditions, sub conditions and Schedules contained therein.
<b>CIW</b>	Care Inspectorate for Wales, the body authorised to register and inspect care homes in accordance with the Care Standards Act 2000 and the Regulation and Inspection of Social Care (Wales) Act 2016.
<b>Disclosure and Barring Service (DBS)</b>	The service available to employers when recruiting staff in order to check whether a potential staff member or volunteer is included on the adults' or children's barred lists for regulated activities.
<b>Designated Officer</b>	The Social Care Assessor in the case of the Council or the Care Coordinator in the case of the Health Board, or such other person as the Service Purchaser may nominate.
<b>Emergency Admission</b>	An unplanned admission of an urgent nature to a care home, at a time of crisis, in order to alleviate a situation or risk.
<b>Force Majeure</b>	Means one or more of the following to the extent that it is not attributable to the Parties or the Parties' staff: war, civil war, terrorism, riot or civil commotion and acts of government under emergency powers, explosion, fire, flood, extraordinary weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the provision of the service but which is not confined to the work force of the Service Provider or is site specific.
<b>Fixed Term Individual Placement Contract</b>	An Individual Service Contract (ISC) where a placement has been made for a fixed period of time (either days or weeks) e.g. for purposes such as respite care or a short stay for assessment purposes.
<b>Health Care Co-ordinator</b>	An NHS Health Care Professional that coordinates patients care if solely health-related.

<b>Home</b>	The registered Home (residential care / care with nursing) in which a Service User is to be accommodated in accordance with the provisions of this Contract.
<b>Individual Service Contract (ISC)</b>	The written agreement between the Service Purchaser and the Service Provider completed in respect of a Service User which specifies the rate, the Service User's contribution where applicable, the existence of any third-party contribution and the date of Service commencement a template of which is included at Schedule 2
<b>Joint Packages of Health and Social Care</b>	Packages of health and social care services to meet assessed needs of the Service User and funded jointly (in agreed proportions) by the Council and the NHS / Health Board.
<b>Local Arrangements</b>	Administrative arrangements concerning care homes that are particular to a Service Purchaser(s) and which have been agreed with Service Providers and notified in writing.
<b>Minimum Income Amount ('MIA')</b>	The net weekly income a Service User must be left with after financial assessment for the Service User's use (provided for under Regulation 13 of the Care and Support (Charging) (Wales) Regulations 2015.
<b>Neglect</b>	'Neglect' means a failure to meet a person's basic physical, emotional, social and / or psychological needs which is likely to result in an impairment of the person's wellbeing (for example, an impairment of the person's health or, in the case of a child, an impairment of the child's development.
<b>NHS Funded Nursing Care</b>	Nursing care provided or delegated by a registered Nurse
<b>Nominated Representative</b>	The person appointed by each of the Service Purchaser/s and the Service Provider in accordance with Clause 3 (Contacts) of this Contract.
<b>Personal Plan</b>	Means a document produced by the Service Provider which shall describe in detail how the Service Purchaser(s)'s Care Plan will be implemented in the Care Home / how the Service will be provided in the Care Home.
<b>Rate</b>	The weekly amount that the Service Purchaser(s) is liable to pay the Service Provider for the Service. The Rate includes any Service User Contribution and Third Party Contribution (where applicable).
<b>Regulatory Authority / Body</b>	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 Service Purchaser(s) or Service Provider and 'Regulatory Authority / Body' shall be construed accordingly. However, this does not include any body or organisation of which membership is voluntary.
<b>Review of Service Meeting</b>	A meeting between the Service Purchaser(s), Service Provider and Service User (and / or Representative) to review the Service. Review of Service Meetings shall be in accordance with the conditions and sub conditions contained within this Contract.

<b>Serious Misconduct</b>	Unacceptable or improper behaviour, mis-management or neglect of duties.
<b>Service User Contribution</b>	The sum of money which the Service User pays towards the Rate following financial assessment of the Service User.
<b>Service</b>	The whole of the services to be provided by the Service Provider (including the Accommodation) in accordance with the Contract, the ISC and Service Specification (including any amendments hereto) to achieve the objectives set out in the current Care Plan.
<b>Service Provider</b>	The Registered Provider named in this Agreement.
<b>Service Purchaser(s)</b>	The Council named in this Agreement or its successor in title and / or the Health Board named in this Agreement.
<b>Service Specification</b>	The outcomes to be achieved by the Service, set out at Schedule 1
<b>Service User</b>	A person identified by the Service Purchaser(s) as being: <ul style="list-style-type: none"> <li>• In need of care and support which is not otherwise available to them; and</li> <li>• Eligible to be accommodated in accordance with the Service Provider's Registration Certificate and the Home's Statement of Purpose.</li> </ul>
<b>Service User's Representative</b>	The relative, friend, carer or other (for example solicitor) nominated from time to time by the Service User to represent him / her and may include the Service User's Attorney or Deputy where the Attorney or Deputy has the authority to make the decisions in question.  Where the Service User lacks the mental capacity to nominate a Representative, the Parties shall proceed in accordance with the principles of the Mental Capacity Act 2005.
<b>Social Care Assessor</b>	The Council Officer identified as such in the Care Plan or such other person as the Council may nominate.
<b>Staff</b>	Any person(s) engaged by the Service Provider to be involved in any way in providing or facilitating care to the Service User.
<b>Statement of Purpose</b>	A written statement under the relevant Registration Act which sets out the vision for the service and aspirations for meeting the needs of the people the Service Provider cares for.
<b>Third Party</b>	An individual, other than the Service Purchaser or Service User, i.e. relative, friend, or organisation, who is contributing to the weekly care costs.
<b>Third Party Contribution Agreement / Additional Cost</b>	An Agreement entered into by the Third Party with the Service Purchaser(s) (the Council or the Health Board) that details the Additional Cost/Third Party Contribution, of both the Service Purchasers and Third Parties obligations. An agreement entered into by the Third Party with the Service Purchaser(s) (the Council) so as to detail the Third Party Contribution.



<b>Trial Period</b>	The period of up to of 6 weeks from the date of commencement of an Individual Service Contract (ISC) other than a Fixed Term Individual Service Contract (ISC).
<b>Weekly Care Home Fee</b>	This is the weekly fee set and charged by the Home; it may not be the same amount as the Rate.
<b>Working Day</b>	Means the Service Provider's working days including Saturday and Sunday and includes Bank Holidays.
<b>Working Group</b>	Representatives of commissioners and providers across both Cardiff and The Vale of Glamorgan areas, and across both residential and nursing sectors.

## 1. PARTIES

1.1

<b>This contract is dated [       ] and is made between:-</b>
---

<b>Cardiff and Vale University Health Board ("the Health Board") And/Or [Vale of Glamorgan Council] or [Cardiff Council] ("the Council")</b>
--

<b>Details of HB / Local Authority:</b> "the Service Purchaser"	
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<b>Service Purchaser's Nominated Representative:</b>	
--	--

**AND**

<b>Name of Registered Provider:</b> "the Service Provider"	
---	--

Business/registered Office Address:	
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<b>Service Provider's Nominated Representative</b>	
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This contract relates to the Care Home referred to as the '**Home**' as:-

Home Name:	
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Address: (If different from above)	
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Postcode:	
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Telephone number:	
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E-mail address:	
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1.2 This Contract relates to the provision of one or a combination of the following: residential care, NHS Funded Nursing Care, Joint packages of health and social care, and Continuing NHS Healthcare in the above named Home.

**WHEREAS: -**

- (i) The Council is responsible for carrying out an assessment of person(s) who may be in need of services in accordance with the Social Services and Well-being (Wales) Act 2014 and determining the person(s) eligibility for care and support.
- (ii) The Health Board is responsible for meeting the health needs in accordance with relevant legislation, guidance and policies current at the time of this Contract.
- (iii) In accordance with those requirements of the aforementioned statutory responsibilities, the Council and the Health Board are required to arrange provision ('the Service') for Service Users. In the event of a conflict between an express term of this Contract and any directly relevant statutory duty of the Health Board, the Parties agree that the Health Board's compliance with that express term may be modified to the minimum extent required to ensure compliance with that statutory duty.
- (iv) The Service Provider has agreed to provide the Service in accordance with the terms and conditions set out in this Contract
- (v) In consideration of the provision of the Service, the Service Purchaser(s) shall pay the Rate in respect of any agreed ISC made in accordance with the provisions of this Contract.
- (vi) The conditions below and the attached Schedules shall have effect.

**IT IS AGREED AS FOLLOWS: -**

**2 DEFINITIONS**

2.1 In this Contract and its Schedules words and phrases have the meanings set out in the definitions at the start of this document.

**3 CONTACTS**

- 3.1. Upon the commencement of this Contract, the Provider and the Council shall each appoint a person to act as its Nominated Representative in connection with this Contract as detailed in Clause 1 (Parties) of this Contract. Each of the parties shall notify the other in writing of the name, address and telephone number of its Nominated Representative within fourteen days of the appointment, unless already named in Schedule 1 of this Contract. Any change of the Nominated Representative shall be notified in writing to the other party from time to time as appropriate.
- 3.2. The Nominated Representative will be entitled to appoint another person or persons to exercise some or all of the Nominated Representative's functions (each a deputy Nominated Representative) but if the Nominated Representative does so they must give at least five (5) Working Days' written notice.

- 3.3. The Designated Officer for individual Service Users shall be the Social Care Assessor or the Health Board's Care Co-ordinator or such other person as the Service Purchaser(s) may nominate.
- 3.4. Day to day matters relating to the Care Plan / Personal Plan should be addressed to the Social Care Assessor or, for Service Users who are in receipt of nursing care, to the Health Care Co-ordinator in the first instance.
- 3.5. Procedural matters or matters relating to the provision of this Contract will be referred to (or in the case of giving notice to terminate either this Contract or an ISC), to be dealt with by the Council's Contracts Officer or the Health Board's Continuing NHS Healthcare Contracts Officer in the first instance.
- 3.6. The Home's contact shall be the Service Provider's Responsible Individual or the Home Manager as notified by the Home. A change to the above-named Service Provider shall be notified to the Service Purchaser(s) without delay by forwarding a copy of the notification submitted to CIW (or equivalent body).

#### **4 DURATION OF CONTRACT / ENTIRE AGREEMENT**

This Contract shall commence on the **Commencement Date** and shall continue until it is terminated in accordance with the provisions of the Contract.

- 4.2 This Contract sets out all the terms and conditions that the Parties have agreed regarding the provision of the Service. It supersedes any representations, documents, negotiations or understandings about the Service whether written or oral, made, carried out or entered into before the date of this Contract. What is set out in this Contract and / or an ISC shall take precedence if there is any inconsistency or conflict between them and what is set out in the Service Provider's terms and conditions of occupancy for Service Users.
- 4.3 The parties agree that upon the signing of this Contract any previous pre-placement contract for the provision of the Service shall be governed by this Contract and that the previous contract shall be deemed to have been terminated by mutual consent but that any ISCs in force shall continue to be effective but shall be henceforth be governed by the terms of this Contract.

#### **5 THE SERVICE AND SERVICE USERS**

##### **5.1 The Service**

The Service to be provided is a care home service as defined in the "Regulation and Inspection of Social Care (Wales) Act 2016", namely, the provision of accommodation, together with residential and / or nursing care to Service Users who are assessed as requiring this due to their vulnerability or need.

For a Home outside Wales, the Service will be provided in line with regulations and standards enforced by the independent Regulatory Authority/Body of all health and social care services in that area of the United Kingdom.

Entering into this Contract does not imply a guarantee of placements by the Service Purchaser. The Service User is entitled to exercise choice as to which

placement they would prefer subject to the Choice Conditions. Subject to Service User choice, the bedroom to be provided as part of the Service will comprise a single room.

## 5.2 **Observance of Statutory Requirements**

The parties to this Contract shall comply with all statutory and other provisions to be observed and performed in connection with the commissioning and provision / delivery of the Service under this Contract and any relevant nationally recognised Codes of Practice, Codes of Conduct, Regulations, Standards and Guidance.

## 5.3 **Fundamental Principle**

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

## 5.4 **Registration**

5.4.1 The Service Provider shall maintain a valid registration of the Home pursuant to the Care Standards Act 2000 or the Regulation and Inspection of Social Care (Wales) Act 2016 if the Home is within Wales, the Health and Social Care Act 2008 if the Home is in England, or the equivalent legislation in the relevant area of the United Kingdom ("the relevant Registration Act") where applicable, or any statutory modification or re-enactment thereof.

5.4.2 The Service Provider shall undertake reasonable checks to ensure that staff have and maintain any professional registration they require in order to carry out their role.

## 5.5 **Service User's Mental Capacity**

5.5.1 The Mental Capacity Act 2005 (as amended) makes provision to empower people to make decisions for themselves wherever possible and protects people who lack 'capacity' by providing a framework that places individuals at the heart of the decision-making process. The Code of Practice provides guidance and both must be referred to when issues relating to a Service User's capacity arise. The Service Purchaser(s) and the Service Provider will always assume the Service User has the capacity to make the day to day decisions, unless there is clear evidence otherwise. The Service Purchaser(s) and the Service Provider are not legally permitted to take the wishes of the Service User's Representative as being the Service User's wishes unless the Representative has evidenced legal authority to make the decision in question.

5.5.2 The Service User's Care Plan, Personal Plan and ISC shall indicate whether or not the Service User has, at the start date of the ISC, legal capacity to enter the ISC and whether the Service User has granted any form of lawful authority (such as a form of Lasting Power of Attorney) to another person in accordance with the provisions of the Mental Capacity Act 2005.

- 5.5.3 If, at any time, the Service User lacks capacity to make a particular routine decision about day-to-day life in the Home (for instance, what to wear, what to eat, where to sit), the Service Provider will use its best endeavours to assist the Service User to make the decision himself / herself but if that fails, the Service Provider may make the decision on the Service User's behalf in accordance with the principles set out in the Mental Capacity Act 2005, an important principle being that the decision will be made in the Service User's best interests.
- 5.5.4 If, at any time, the Service User appears to lack capacity to make a significant decision, the Service Purchaser(s) and / or Service Provider may organise a multi-agency meeting to include the Service User and his / her Representative to review the Service User's capacity and, convene a best interest meeting if appropriate, to make the relevant decision in the Service User's best interests and/or make an application to the Court of Protection.
- 5.5.5 If at any stage during the term of an ISC it appears that the Service User has lost capacity to manage his / her financial affairs or property, the Service Provider shall promptly notify the Representative(s) and the Service Purchaser(s) in writing and it shall be the responsibility of either the Representative(s) or the Service Purchaser(s) to organise an assessment of capacity and to make an application to the Court of Protection, if appropriate.
- 5.5.6 Before an admission to the Home in circumstances that may amount to a deprivation of the Service User's liberty, the Service Purchaser(s) and the Service Provider shall (a) consider whether the Service User's needs can be met in a less restrictive way and (b) where appropriate and practical, the authorisation shall be sought as part of the care / discharge from hospital planning process.

The Council Service Purchaser in its capacity as Managing Authority or Responsible Body under the provisions of the Mental Capacity Act 2005 (as amended) (Deprivation of Liberty Safeguards / Liberty Protection Safeguards) shall have in place a policy and procedure that identifies: -

- Whether deprivation of liberty is or may be necessary in a particular case.
- What steps should be taken to assess whether to seek an urgent or standard authorisation.
- Whether all practical and reasonable steps have been taken to avoid a deprivation of liberty.
- What action should be taken if a request for authorisation is needed.
- How cases should be reviewed where authorisation is or may be necessary.
- Who should take these steps.

## **6 PROCESS FOR AN ADMISSION**

### **6.1 Vacancies**

The Service Provider shall inform the Service Purchaser as far as is reasonably practicable of any vacancies in the Home and shall use its best endeavours to keep the information up to date and accurate.

### **6.2 Assessment**

- 6.2.1 Each potential Service User shall be assessed prior to admission by or on behalf of the Service Purchaser in accordance with statutory requirements. The Service Provider shall also undertake an assessment prior to the Service User's admission or re-admission, except in the case of an Emergency Admission when the assessment shall be undertaken within seventy-two (72) hours of admission. In the case of planned periodic admissions for respite, it will not be necessary to undertake an assessment for each admission in a twelve (12) month period unless there is a change in the Service User's circumstances.
- 6.2.2 Where the potential Service User presents with Continuing NHS Healthcare assessed needs (including the need for NHS Funded Nursing Care), these needs shall be assessed by or on behalf of the Health Board in accordance with guidance current at the time.
- 6.2.3 Funding shall only be available if assessment establishes that the Service User meets the criteria for admission to the Home and the placement represents an appropriate balance between meeting the potential Service User's assessed and eligible needs, his / her ascertained and reasonable wishes and the cost to the public purse as a whole.
- 6.2.4 In respect of NHS Funded Nursing Care and Continuing NHS Healthcare, all individuals must be assessed based on clinical need.
- 6.2.5 The assessment shall be completed prior to admission to ensure the appropriate placement of individuals who make their own arrangements for residential care home or care home with nursing accommodation and do not require financial support from the Council. The Council is not obliged to provide financial support for such placements where there has been a change in the financial circumstances of the individual. With the Service User's consent, the Service Provider shall notify the Service Purchaser(s) of the name, date of birth and date of admission of any self-funding resident, prior to or at the time of his / her admission.
- 6.2.6 Where a self-funding resident subsequently requires financial support from the Council, the Service Purchaser/s assessment must include an assessment of the risk posed to the individual's care and wellbeing by a move to alternative accommodation and must take into account a Service User's right to choose accommodation (subject to the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 (see definition of Choice Conditions)).
- 6.3 **Information Provided on Admission**
- 6.3.1 If, following assessment and consultation with a potential Service User, the Service Purchaser wishes to purchase the Service in the Service Provider's Home and the Service Provider agrees to provide the Service, the Service Purchaser will complete and forward to the Service Provider no later than the date of admission, or, in the case of a Fixed Term ISC, at least one working day before the Service User's admission:
- (i) A Care Plan.
  - (ii) A Risk Assessment.
  - (iii) A completed Integrated Assessment.
  - (iv) Care and Treatment Plan (Part 2 Mental Health (Wales) Measure 2010).

6.3.2 The Service Purchaser must make the Service Provider aware of any known factors relating to the Service User which may result in disruptive or Challenging Behaviour or any other factors which may otherwise impact on the Service Provider's ability to provide the Service to that Service User in the Home. Whenever possible, information should be shared with the consent of the Service User. Where the Service User lacks the capacity to consent in relation to the decision in question, a decision will be made by the Service Purchaser involving the Service User's Representative(s) (if any) and in accordance with the principles in the Mental Capacity Act 2005.

#### 6.4 **Individual Service Contract (ISC)**

6.4.1 As soon as possible and in any event within seven (7) days from the date of admission the Service Purchaser shall supply to the Service Provider an ISC. The ISC shall contain details of the Service, the Rate and whether the Service User is self-funding. The Service Purchaser shall as soon as practicable inform the Service Provider in writing of the amount of any Service User Contribution and / or Third Party Contribution.

6.4.2 Where the Service User has been assessed as requiring NHS Funded Nursing Care or a joint package or Continuing NHS Healthcare, the Health Board will prepare and provide for the Service Provider and Service User within the same timescale as in Clause 6.4.1 above, a Nursing Care Plan ('the Nursing Care Plan') which will be based on the recommendations of the multidisciplinary team.

#### 6.5 **Trial Period**

6.5.1 **Up to** the first six (6) weeks of a placement of a Service User in a Home under an ISC (except a Fixed Term ISC) shall be a Trial Period to ensure that the placement is satisfactory for the Service User and in meeting the assessed needs. Where assessed as liable to pay a Service User Contribution, the Service User shall pay that Contribution during the Trial Period.

### **7 MINIMUM INCOME AMOUNT AND EXTRAS**

#### **7.1 It is agreed by the parties that clauses 7.2 to 7.5 inclusive shall not apply to NHS Continuing Healthcare Service Users**

7.2 When undertaking a financial assessment in accordance with assessment of resources regulations in force at the time, the Service Purchaser(s) shall ensure a Service User is left with the full value of the Minimum Income Amount ('MIA'). The amount of the 'MIA' is prescribed in regulations from year to year and the Service Purchaser(s) shall inform the Service User of the amount at the time of the financial assessment.

7.3 The Service Provider, the Service User's Representative or other, shall ensure that the Service User has his / her 'MIA' to spend as he / she wishes.

7.4 The Service User's 'MIA' must not be used for payment of any part of the Service provided under an ISC. The exception is that a Service User who is subject to the twelve (12) week property disregard or has a deferred payments agreement with the Service Purchaser(s) may make the Third Party Contribution (referred to in Clause 8.1 below) from his / her own resources on his / her own behalf.



- 7.5 The Service User may choose to use his / her 'MIA' (and any other resources) to purchase extras that may be offered by the Service Provider. Where this is the case, any additional charges made by the Service Provider for the provision of the extras must be agreed between the Service User and the Service Provider.
- 7.6 The extras may include (the following list is not exhaustive) hairdressing, newspapers, dry-cleaning service or chiropody or physiotherapy (where not provided by the Health Board). A Service Provider who offers grades of Service User accommodation that differ only as to the quality of the décor, view or size, but not as to the standard of care, may elect to charge the difference in grade as an extra, with the agreement of the Service User.
- 7.7 The Service Provider shall produce a written record / invoice for each Service User giving a breakdown of extras received on a fortnightly basis or such other frequency as agreed with the Service User.
- 7.8 The Service Provider shall take all possible steps to ensure that the Service User is clearly informed and understands what extras are being purchased and the cost involved. Where the Service User lacks capacity, the Service Provider shall inform the Service User Representative (if any). The Service User shall be liable for the cost of the extras and the Service Provider shall be responsible for recovering any such costs direct from the Service User.
- 7.9 Any extras offered by a Service Provider must not be made compulsory on admission. The Service User shall be offered a choice as to whether or not he / she wishes to purchase any extras.
- 7.10 If a Service Provider is found to be charging a Service User for an extra that the Service User does not receive, has no need for, has not agreed to and no written evidence can be provided to demonstrate otherwise, the Service Purchaser(s) shall make a referral to the Safeguarding Adults at Risk Co-ordinator and shall expect the Service Provider to follow its disciplinary procedure.
- 7.11 The Service Provider must review any extras being received by the Service User on a regular basis but at least when reviewing the Personal Plan and at other times as necessary.

## **8 THE THIRD PARTY CONTRIBUTION**

### **8.1 It is agreed by the parties that this clause does not apply to Continuing Healthcare Service Users and for the purpose of this clause the Service Purchaser shall mean the Council**

- 8.2 The Service Purchaser acknowledges that a Service User should be able to exercise genuine choice over where he / she / she lives and has the right to enter into more expensive accommodation than he / she / she would otherwise have been placed in provided that a Third Party is willing and able to pay the Third Party Contribution, being the difference between the Weekly Care Home Fee for the place in the Home and the amount the Service Purchaser would usually expect to pay for someone with the Service User's assessed needs.

In instances where the Service User exercises choice and wishes to make use of a placement that is more expensive than that which the Service Purchaser would

normally purchase, or wishes to purchase services additional to those specified in the Care Plan, and the Service Purchaser is in agreement, then a Third Party shall be responsible for the difference between the amount the Service Purchaser would normally pay and the Weekly Care Home Fee.

- 8.3 The Service User cannot pay the Third Party Contribution themselves, even though they may have sufficient capital or income to do so. The exceptions are that a Service User who is subject to the 12 week property disregard or has a deferred payments agreement with the Service Purchaser may make top ups from his / her own resources on his / her own behalf (refer also to Clause 7.4 to 7.6 above).
- 8.4 Where a Service Provider intends to charge a potential Service User a Third Party Contribution for the Service, the Service Provider shall inform the Service User in writing prior to admission.
- 8.5 The Service Provider shall explain to all parties the reason(s) why a Third Party Contribution is required.
- 8.6 After admission, except where a Service User has chosen to move to a more expensive room within the Home, a Third Party Contribution shall not be introduced unless the Service Provider has given the Service Purchaser(s) and the Service User or the Service User's Representative not less than six (6) weeks' notice in writing of the intention to do so together with an explanation of the reason(s). In circumstances where neither the Service User nor a Third party is able to pay the Third Party Contribution, the Service Purchaser(s) shall undertake or arrange for assessments to be undertaken and shall notify the outcome to the Service Provider at or before the end of the six (6) weeks' notice period.
- 8.7 Prior to the Service Provider requiring a Third Party Contribution in relation to an existing Service User the Service Provider shall discuss the proposed requirement with the Service Purchaser(s) and the Service User and / or Representative(s).
- 8.8 The Third-Party Contribution shall be recorded in the Third Party Contribution Agreement and in the ISC, where appropriate.
- 8.9 The amount of the Third Party Contribution shall have no effect on the financial assessment or the Service User's Contribution. The Third Party Contribution shall be payable to the Service Provider or the Service Purchaser from the date of the Service User's admission or from the date notified by the Service Provider under Clause 8.6 (whichever date is the later).
- 8.10 The Service Provider shall give the Service User, the Third Party and the Service Purchaser, not less than twenty eight (28) working days' notice of any change in the amount of the Third Party Contribution and it shall be the responsibility of the Service Provider to obtain the agreement in writing of the Third Party to the change and to provide a copy to the Service User and the Service Purchaser(s).
- 8.11 Where the Third Party Contribution is paid direct to the Service Provider and in the event the Third Party is in arrears with the Third Party Contribution the Service Provider shall first use best endeavours (short of litigation) to obtain payment and shall refer the matter to the Service Purchaser(s)'s Nominated Representative. The Service Provider shall not permit the Third Party Contribution

to be unpaid for more than four (4) weeks before notifying the Service Purchaser(s) in writing.

- 8.12 Where the Third Party ceases to pay the Third Party Contribution for any reason, the Service Purchaser(s) shall not be obliged to maintain the Service User in a Home more expensive than the Service Purchaser(s) would usually expect to pay and the Service User may be required to move to alternative accommodation on reasonable notice unless, following re-assessment and a Review of Service meeting, it is concluded that the Service User's assessed needs (to include his / her rights under the European Convention on Human Rights) can only be met in the current Home. In such circumstances the Service Purchaser(s) shall make up the difference between the Weekly Care Home Fee and the current respective contributions paid by the Service User and the Service Purchaser(s).
- 8.13 A Third Party Contribution shall not be required where the Service Purchaser(s) decides, following assessment, to offer to place a Service User in a more expensive Home to meet the Service User's assessed needs or for other reasons.

## **9 SERVICE USER CONTRIBUTION**

- 9.1 Where the Service User Contribution is paid direct to the Service Provider and in the event the Service User is in arrears with the Service User Contribution the Service Provider shall first use best endeavours (short of litigation) to obtain payment and shall refer the matter to the Service Purchaser(s)'s Nominated Representative in writing. The Service Provider shall not permit the Service User Contribution to be unpaid for more than four (4) weeks before notifying the Service Purchaser(s).
- 9.2 The Service Purchaser shall pay the outstanding Service User Contribution(s) to the Service Provider within 14 days of receipt of written notification.

## **10. THE RATE**

- 10.1 In relation to a placement made out of its administrative area the Council shall pay the host Authority's rate unless otherwise agreed at the time of placement.
- 10.2 In relation to a Continuing NHS Healthcare placement funded by Cardiff and Vale UHB the Health Board shall pay the agreed rate. In respect of Continuing NHS Healthcare placements outside Cardiff and the Vale of Glamorgan the Health Board will agree the rate with the Service Provider.
- 10.3 The Service Purchaser(s) is responsible for ensuring the Service User receives care as specified in the ISC and in accordance with the terms and conditions of this Contract.
- 10.4 The Rate shall be reviewed and set annually by the Service Purchaser(s) and, at its absolute discretion at additional times of the year, in all instances in consultation with Service Providers. The Rate shall be effective and payable from the date each year on which national welfare benefit rates are implemented in the April of the first year and subsequent years of this Contract. When reviewing and setting the Rate each year, the Service Purchaser(s) shall follow the relevant legislation, guidance and any arrangements agreed locally with Service Providers.

## **11 PAYMENT PROCESS**

- 11.1 The Service Purchaser(s) shall consult the Service Provider when changing and implementing the payment process.
- 11.2 Where the Health Board is responsible for funding the total cost of the placement, payment to the Service Provider shall be made four (4) weekly in arrears.
- 11.3 Acceptance by the Service Provider of payment as set out in the ISC shall be deemed acceptance of the Contract terms and conditions prevailing at the time of such acceptance.
- 11.4 All payments need to be claimed on a timely basis.
- 11.5 Each party shall pay interest on any sum due under this agreement, calculated as follows:
- a) the Bank of England's base rate from time to time but at 4% a year for any period when that base rate is below 0%.
  - b) Period: from the 29<sup>th</sup> day after notification in writing from the Service Provider if the Rate has not been paid by the Service Purchaser to the Service Provider, or after 30 days after notification in writing by the Service Purchaser to the Service Provider in relation to overpayment/s of the Rate.

## **12 SERVICE USER'S TEMPORARY ABSENCE**

- 12.1 For the purpose of this Clause, a temporary absence from the Home is: -
- (i) Hospitalisation – whether planned or unplanned up to four (4) weeks.
  - (ii) Service User / Representative etc. discharges Service User from the Home without notice.
  - (iii) A pre-planned absence expected to be longer than two (2) weeks.
- 12.2 The Service Provider shall notify the Service Purchaser(s) of any temporary absence in writing within two working days of occurrence, or as agreed in Local Arrangements.
- 12.3 On receipt of such notification the Service Purchaser(s) shall decide whether or not a Review of Service Meeting is required.
- 12.4 Where Clause 12.1(ii) applies and the Service User is unwilling to return to the Home, the Service Purchaser(s) shall terminate the ISC in accordance with Clause 17.4.

## **13 RETAINER FOR TEMPORARY ABSENCE**

- 13.1 In the event of a Service User's temporary absence from the Home, the Service Purchaser(s) shall continue to pay the Rate and the Service Provider shall retain the room for the sole use of the Service User - Clause 17 (Termination) applies.

#### **14 DEATH OF A SERVICE USER**

- 14.1 The Service Provider shall notify the Service Purchaser(s) of a Service User's death in writing within two (2) working days of the death or, where a Service User dies in hospital, within two (2) working days of notification by the hospital, or as agreed in Local Arrangements.
- 14.2 An ISC shall automatically terminate at the end of the fourth day after the Service User's death, unless:
- (a) a longer period is agreed in the ISC; or
  - (b) the Service User's room is occupied by another resident, with the agreement of the Service User's Representative(s), before the end of the period above, in which case only the unoccupied days following death will be paid for by the Service Purchaser(s).
- 14.3 The Service Provider shall have in place a policy and procedure for all required communications with HM Coroner's Service.
- 14.4 The Service Provider shall liaise with the Service User's Representative(s) in a sensitive manner concerning the death and the removal of personal belongings and shall, where necessary, assist the Representative(s) with the necessary arrangements for vacating the room in a respectful, dignified manner.
- 14.5 The Service Provider shall, if required, prompt the Service User's Representative(s) to remove the Service User's possessions from the room. Where there is a delay on the part of the Representative (s), the Service Provider shall make an inventory of the possessions and, where space is available, store them until collection and in any case, write to the Representative(s) to remind them to collect the possessions within a timescale to be set by the Service Provider and of alternative remedies available to the Service Provider.
- 14.6 The provisions in Clause 14.5 shall also apply when a Service User is discharged / discharges himself / herself from a Home.
- 14.7 The Service User's Representative(s) shall be responsible for all the funeral expenses. However, where there is no Representative(s) and the Service User has died in the Home, then the Council's Environmental Health Department shall be responsible for the funeral expenses and may recover the same from the Service User's estate.
- 14.8 The Service Purchaser shall use its best endeavours to assist the Service Provider where necessary in contacting the Service User Representative (s) with regard to the removal of belongings and vacating the room. Whether the Service User has died in the Home or in hospital, the Service Provider shall be responsible for recovering any monies due to the Service Provider in connection with Clause 14.7 above.

## **15 PERSONAL PLAN**

- 15.1 The Personal Plan, subject to ongoing review, shall be commenced by the Service Provider on the Service User's admission, with the full involvement of the Service User / Representative(s) and the Service Purchaser(s)' Nominated Representative.
- 15.2 The Service Provider shall: -
- a) Where a Service User has been placed by the Service Purchaser(s), ensure that the Personal Plan is consistent with the Care Plan.
  - b) Ensure that a copy of the Personal Plan is available for the Service User / Representatives(s).
  - c) Keep the Personal Plan under review.
  - d) Where appropriate, after review and consultation with the Service Purchaser(s) and Service User / Representative(s), revise the Personal Plan.
  - e) Notify the Service Purchaser(s), Service User / Representative(s) of any significant change.
  - f) Take all practical steps to ensure that the Personal Plan is recorded in a style accessible to the Service User / Representative(s) recognising that this may not be possible if a Service User lacks capacity in this regard.
  - g) Ensure that the Personal Plan is signed by the Service User / Representative(s) recognising that this may not be possible if the Service User lacks capacity in this regard.
  - h) Where, after revision of the Personal Plan it is found to be inconsistent with the Care Plan or Nursing Care Plan, the Service Provider will notify the Service Purchaser immediately and attend to a Review of Service Meeting if required to do so.

Further to Clause 15.2.(c) above, the Service Provider shall retain a copy of the up to date Personal Plan and make available a copy to the Service Purchaser(s) upon request. If the Service Purchaser(s) is dissatisfied with the Personal Plan in relation to Care Plan or Nursing Care Plan, the Service Purchaser(s) may convene a Review of Service Meeting in accordance with Clause 16 below.

## **16 REVIEW OF SERVICE MEETING AND AMENDING AN ISC**

- 16.1 A Service review meeting shall be convened by the Service Purchaser(s) to consider the provision of the Service and the terms of the ISC.

A Review of Service Meeting shall include: -

- The Social Care Assessor.
- The Service User, wherever possible.
- The Service User's Representative(s), subject to the Service User's consent unless he / she / she lacks capacity to do so, in which case the decision whether the Service User's representative(s) should attend shall be subject to the principles in the Mental Capacity Act 2005 and the guidance in the Code of Practice.

- Independent advocate / Independent Mental Capacity Advocate (IMCA) if appointed.
- Health Board Care Co-ordinator (where nursing care is provided)
- Care Co-ordinator (Part 2 of the Mental Health (Wales) Measure 2010).

16.2 A Review of Service Meeting shall be convened within three (3) months of a Service User's admission.

Where a Trial Period is agreed for a Service User, a Review of Service Meeting shall take place within six (6) weeks.

16.3 A Review of Service Meeting shall be convened at least annually.

16.4 However, if at any time any Party is of the view that an Individual Service Contract is not meeting the needs of the Service User, that Party may ask the Service Purchaser(s) for a Review of Service Meeting to be convened and reasonable notice of the meeting will be given of not less than one (1) working day and not more than seven (7) working days.

16.5 The Service Purchaser(s) shall arrange for the Review of Service to be recorded in writing, the minutes to be agreed by all parties or any disagreements noted and shall record the decisions of the meeting including a decision to end an ISC.

16.6 In a Review of Service Meeting the parties shall consider whether or not an ISC requires amendment resulting in 'more or less' services being provided in order to meet the Service User's assessed needs.

16.7 Where the Service Provider or the Service Purchaser(s) is of the opinion that the Service User's needs require one to one care, the Service Provider shall inform the Service Purchaser within one (1) working day and shall follow any Local Arrangements for making a request for the additional care and for evidencing / validating the Service User's continuing need.

16.8 Where it is the decision to amend an ISC so that different services are provided, a new ISC must record: -

- The change in services.
- The period or periods of the change for which the more or less services are to be provided.
- By whom the services are to be provided.
- Any resulting payment increase or decrease.
- Which party or parties, that are responsible for any resulting payment increase.

16.9 The new ISC, shall be effective from the date the variation in the Service is agreed by the Service Purchaser(s) and implemented by the Service Provider which may be a date before the Review of Service Meeting takes place. Clause 6.5 (Trial Period) shall not apply when an ISC is amended in this way even where there is a change of category of care provided the Service Provider can continue to meet the re-assessed needs of the Service User in the same Home.

16.10 If the conclusion of a Review of Service Meeting is that the Service User requires an assessment to establish eligibility for Continuing NHS Healthcare then any

Party may request the further assessments in accordance with Continuing NHS Healthcare guidance in force at the time.

- 16.11 The Service Provider shall have the relevant and appropriate equipment to safely deliver the Service as described in the Home's Statement of Purpose.
- 16.12 The Service Purchaser(s) may loan equipment following an appropriate assessment in situations where: -
- (i) The Service User's needs have changed whilst in the Home and the Home can only continue to meet that Service User's needs with additional equipment.
  - (ii) A Service User can be admitted into a Home provided specific items of equipment are made available solely for the use of that Service User.
- 16.13 Any issue about who should provide equipment required by a Service User is to be resolved in accordance with the principles and agreement between the parties set out in Schedule 4 (which is not yet in effect).

## **17 TERMINATION**

- 17.1 Subject to Clause 34, this Contract or the ISC may be terminated by any one of the parties giving the other party: -
- (i) In the case of this Contract, three (3) calendar months' notice in writing, or
  - (ii) In the case of an ISC, 28 days' minimum notice in writing.

The parties may agree a lesser or other period of notice provided it is agreed in writing. During the period of notice all parties shall cooperate to ensure that the interests of the Service User(s) continue to be met.

- 17.2 Subject to Clause 34 (Dispute Resolution) the Service Purchaser(s) may terminate this Contract immediately without notice in the following circumstances: -
- 17.2.1 If the Service Provider or a member of staff working in the Home is found, following a proper and fair investigation, to have engaged in any serious misconduct which, in the reasonable opinion of the Service Purchaser(s), was substantially prejudicial to the Service and the Service Provider failed to take prompt and reasonable steps to protect the Service User.
- 17.2.2 Upon the Home ceasing for whatever reason to be registered pursuant to the provisions of the relevant Registration Act or any statutory modification or re-enactment thereof.
- 17.2.3 If the Service Provider has committed a fundamental breach of this Contract or repeatedly breached the terms, conditions and obligations imposed by this Contract.



- 17.2.4 If the Service Provider has repeatedly breached the terms and conditions of this Contract, the Service Purchaser(s) having served a written notice specifying the breach and the time in which it is to be corrected and the Service Provider having failed to comply with the notice.
- 17.2.5 If the Service Provider or a person on the Service Provider's behalf with its knowledge and authority offers any improper inducements or exerts unreasonable pressure on potential Service User(s), the Service User's(s') Representative(s) or other interested parties in attempting to procure improperly potential Service Users into using the Home or any other Home run by the Service Provider, or takes unreasonable financial advantage of the relationship with a Service User.
- 17.2.6 If the Service Provider shall have given any financial inducement or reward to an elected Member or Officer of the Council or the Health Board 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 or the Bribery Act 2010.
- 17.2.7 If the Service Provider or any of its staff shall have been convicted of an offence which has put at significant risk the health, safety and well-being of the Service User(s).
- 17.2.8 If the Service Provider becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for the voluntary arrangements for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986.
- 17.2.9 If the Service Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or the making of an administration order.
- 17.2.10 If the Service Provider has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed.
- 17.2.11 If the Service Provider has a provisional liquidator receiver or manager of its business or undertaking duly appointed.
- 17.2.12 If the Service Provider has an administrative receiver as defined in the Insolvency Act 1986 appointed.
- 17.2.13 If the Service Provider has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge.
- 17.2.14 Where the Court or a Creditor are entitled to appoint or have appointed a receiver, a manager, or administrative receiver or which entitle the Court to make a winding-up order.
- 17.2.15 If any material change in the management of the Home is likely to be substantially prejudicial to the Service User.
- 17.3 In the event of termination under Clauses 17.2.1, 17.2.3, 17.2.4, 17.2.7 and 17.2.15 above the Service Purchaser(s) shall provide reason(s) for the termination in writing within two (2) working days of the notice of termination

unless the Service Provider has previously been notified of the reason(s) and within fourteen (14) days of the date of the notice of termination the Service Provider shall be entitled to make written representations to the Service Purchaser's Nominated Representative and shall be notified not later than twenty eight (28) working days after the date of the notice of termination whether or not the decision to terminate stands or otherwise. Nothing in this Clause shall affect the validity of the notice to terminate.

#### 17.4 **Termination of an ISC**

##### 17.4.1 **Ending of a Trial Period**

Any party to the ISC may, following a Review of Service Meeting, end the ISC by giving a minimum of seven (7) days' notice in writing to the other parties unless the parties have agreed a different period of notice.

##### 17.4.2 **Ending an ISC**

17.4.2.1 Where an ISC cannot be satisfactorily amended to meet the needs of the Service User, any party may, following a Review of Service Meeting, end the ISC by giving a minimum of twenty eight (28) days' notice in writing to the other parties unless the parties have agreed a different period of notice, except where Clause 12 (Temporary Absence / Discharge) or clause 17.5 (Immediate Termination) applies. Where clause 12.1 applies and the Home can no longer meet the Service User's needs, a minimum of seven (7) days' notice shall be given in writing by either party.

17.4.2.2 In the case of termination under Clause 17.4.2.1 or as above, the Service Provider will receive payment for the period of the notice.

#### 17.5 **Immediate Termination of an ISC or Emergency Admission**

17.5.1 An ISC or emergency admission may be terminated by either party with immediate effect or other period of notice agreed between the parties where: -

- The Service Provider and or the Service Purchaser(s) decide that the Service User represents a risk to himself, staff or other residents, and no other intervention is reasonably possible or practicable; or
- Following a Review of Service Meeting, the Service Provider is unable to provide the care and / or meet the needs the Service User is now assessed as needing and failure to do so with immediate effect would lead to a detrimental effect or a life-threatening situation for the Service User.

#### 17.6 **Ending a Fixed Term ISC**

17.6.1 A Fixed Term ISC shall end on the expiry of the period shown in the ISC unless terminated at an earlier date in accordance with Clause 14 (Death of a Service User) or Clause 17.4.2 or Clause 17.5.

17.6.2 The Service Purchaser(s), the Service Provider and the Service User may agree to enter into a further ISC whether Fixed Term or otherwise but the provisions in Clause 6.5 (Trial Period) shall not apply.

- 17.7 If for any reason the Service User does not leave the Home at the end of the period referred to in 17.6.1, and no further ISC has been agreed under Clause 17.6.2, then a long term placement shall be deemed to arise, commencing on the day after the expiry of the Fixed Term ISC.
- 17.8 If for any reason, and prior to the commencement of the Service the Service User becomes permanently unable to receive the Service, any agreement in respect of that Service User shall be deemed frustrated and consequently void.
- 17.9 On termination of an ISC all personal aids, medicines, monies, property, clothing and other possessions shall be returned by the Service Provider to the Service User or Service User Representative(s). The Service Provider shall use best endeavours to ensure the Service User or Representative(s) clears the room(s) of all possessions by the date of termination but in the event that is not achieved / achievable the Service Provider shall follow the provision of Clause 14.5 above.
- 17.10 The Service Provider shall inform the Service Purchaser immediately should the vacant room be re-let during the notice period. In these circumstances, the ISC shall terminate at the end of the day before the new resident moves into the room.
- 17.11 For the avoidance of doubt, there is no automatic termination of an ISC where a Service User's funding arrangements or eligibility change. This is the case whether the placement is funded by either or both Service Purchaser(s).

## **18 TERMINATION CONSEQUENCES**

- 18.1 On the expiry or other termination of this Contract, the Service Provider shall cease to provide the Service pursuant to this Contract and shall, subject to Clause 18.2 below, cease to be entitled to receive payment pursuant to Clauses 8 to 10 above.
- 18.2 The expiry or termination of this Contract shall be without prejudice to any rights which have already accrued to the parties under this Contract.
- 18.3 If the Contract is terminated in accordance with the terms of this Contract, the Service Purchaser(s) shall be entitled to deduct any sum or sums owing from any sum or sums due to the Service Provider under this Contract.

## **19 RECORDS**

### **19.1 Personal Records**

- 19.1.1 The Service Provider shall maintain a personal file for the Service User which shall comply with the requirements of the standards and legislation in force at the time including data protection law.
- 19.1.2 The file shall be kept in a secure place and access shall be limited to those staff with responsibility for the day to day care of the Service User.
- 19.1.3 The Service Provider shall ensure that anyone authorised to have access to the contents of the file is instructed in the proper handling of confidential information.

- 19.1.4 Subject to the Service Provider's data protection obligations, the file shall be open to inspection by the Service Purchaser(s)'s Designated Officers.
- 19.1.5 The Service User's reasonable rights of access to his / her personal file shall be allowed by the Service Provider.
- 19.1.6 Personal files and related Service User records shall be held by the Service Provider for a minimum of six (6) years after the last entry.

Subject to the retention periods referred to in this Clause, the Service Provider shall dispose of personal files and related Service User records safely and in the event of the Home closing for whatever reason, the Service Provider shall ensure that personal files and related Service User records are kept securely elsewhere or, where appropriate, disposed of safely.

- 19.1.7 When a Service User transfers to an alternative Home, with the Service User's or the Service User Representative's(s') permission, the Service Provider shall summarise the file and forward to the alternative Home the summary together with a copy of the up to date Personal Plan.
- 19.1.8 Information relating to the Service User shall be treated as confidential and shall not be disclosed to anyone except the appropriate staff, the Service User, the Service Purchaser(s) Designated Officers, the Service User Representative(s) or any other person or organisation authorised by law or by the Service User if capable.

## 19.2 **Records in Relation to the Administration of Medication**

- 19.2.1 The Service Provider shall maintain records in relation to the receipt, storage, handling, administration and disposal of medicines which shall comply with the regulations and standards in force at the time.

## 19.3 **Records in Relation to the Employment of Staff in the Care Home**

- 19.3.1 The Service Provider shall maintain records in relation to the recruitment, employment and training of staff to comply with the provisions of Clause 23 and 24 below.

## **20 NOTIFICATION TO THE SERVICE PURCHASER**

- 20.1 The Service Provider shall copy to the Service Purchaser(s) as soon as practicable any notification made to CIW.
- 20.4 The Service Provider shall operate a procedure for examining any complaint made by or on behalf of the Service User and the Service User and his / her Representative shall be informed in writing by the Service Provider of the means of registering a complaint including the Service Purchaser(s)' respective complaints procedures, how the complaint will be dealt with, and informed of the outcome.

## **21 SERVICE USER'S MONETARY AFFAIRS**

- 21.1 The Service Provider shall enable the Service User (where he / she has sufficient mental capacity to do so) to decide whether he / she wants to keep and control his own monies and valuables and provide him / her with a lockable drawer. The Service Provider shall have a system in place for recording sums of money for the Service User kept in safe keeping and shall nominate who shall have access to storage facilities when such are requested by the Service User. The Service Provider's Designated Officer and the Service User's Representative(s), with the consent of the Service User or under some form of lawful authority, shall have access to the records.
- 21.2 The Service Provider shall request a Review of Service Meeting if the Service User is becoming incapable of managing his / her financial affairs and there is no representative with lawful authority to do so on the Service User's behalf.
- 21.3 Staff in the Home shall not manage any money belonging to the Service User unless this has been identified as an appropriate activity by the Service Provider and the Service Purchaser(s) and the Service User and included in the Service User's Care Plan and Personal Plan.
- 21.4 Staff shall not keep in their possession the Service User's pension credit / debit cards, savings accounts pass books or other benefit cards or any other means of accessing the Service User's monies other than when the collection of the Service User's pension / benefits / savings has been identified as an appropriate activity by the parties. The Staff shall only have the pension card when actually engaged in collecting the pension. The Staff must return the card to the Service User or to the person identified in the Care Plan / Personal Plan as the person with responsibility for the Service User's monetary affairs.
- 21.5 If the Service Provider becomes aware that the Service User proposes to make a Will, or if asked by the Service User for advice, the Service Provider shall advise the Service User to obtain advice from an independent organisation or from an independent solicitor (with an advocate if necessary) before making a Will.
- 21.6 The Service Provider and staff shall not act as witnesses to the Service User's Will and shall not become an executor of a Will.
- 21.7 The Service Provider and staff shall not accept gifts from the Service User or Service User's Representative except small token presents where refusal to accept would cause offence. The member of staff shall report details of the gift to the Service Provider and it shall be recorded in the Service User's personal file.
- 21.8 If the Service User or Service User's Representative insists on making a larger gift to a member of staff, then the Service User or Service User's Representative will be advised to seek independent advice and the Service Provider shall inform the Service Purchaser(s). A record shall be kept in the Service User's personal file.

## **22 MEDICATION**

22.1 In addition to the requirement in Clause 19.2, the Service Provider shall ensure that there is a care home medicines policy, which is reviewed, based on current legislation and best available evidence.

The policy should include written processes for

- sharing information about a service user's medicines, including when they transfer between care settings
- ensuring that records are accurate and up to date
- identifying, reporting and reviewing medicines-related problems
- keeping service users safe (safeguarding)
- accurately listing a service user's medicines (medicines reconciliation)
- reviewing medicines (medication review)
- ordering medicines
- receiving, storing and disposing of medicines
- helping service users to look after and take their medicines themselves (self-administration)
- care home staff administering medicines to service users, including staff training and competence requirements
- care home staff giving medicines to service users without their knowledge (covert administration)
- care home staff giving non-prescription and over-the-counter products to service users (homely remedies), if appropriate.

22.2 In addition, the Service Provider shall observe the requirements in the Service User's Care Plan when administering medication to the Service User.

## **23 SERVICE PROVIDER'S STAFF**

23.1 The Service Provider shall provide sufficient trained and competent staff who have adequate skills to provide good standards of care and are able to provide the Service in accordance with the ISC, the Care Plan and Personal Plan as reviewed from time to time and the Regulatory Authority's requirements. The Service Provider shall ensure that the staff have the appropriate competencies and must be able to demonstrate that these competencies have been specifically set out in job descriptions, person specifications and development plans. In Care Homes with Nursing the qualifications of the nursing staff shall comply with the requirements of the Regulatory Authority i.e. The Nursing and Midwifery Council (NMC).

23.2 In the Home the Service Provider shall maintain an organisational chart outlining the staffing structure, staffing levels, staff duties and areas of

responsibility which shall be reviewed annually, or when deemed necessary due to organisational change.

- 23.3 The Service Provider shall ensure that there are sufficient staff to cover staff holidays or absences for any reason.
- 23.4 The Service Provider shall inform the Service Purchaser(s) without delay if the Service Provider is experiencing difficulty in adequately staffing the Home.
- 23.5 The Service Provider shall use best endeavours to maintain continuity of staff for individual Service Users. The Service Provider shall involve the Service User in the recruitment of staff where appropriate. For the avoidance of doubt, it is not expected that Service Users with significant cognitive impairment could be involved in formal interviewing or assessment of candidates.
- 23.6 In providing the Service the Service Provider shall comply with legislation, regulations and guidance in force or applicable at the time including any Local Arrangements relating to the recruitment, appointment and employment of sufficient, trained, competent and registered staff, equality, diversity and equal opportunities. The Service Provider shall keep records in relation to these processes for each member of staff and, where the member of staff consents or where the law requires, shall provide information to the Service Purchaser(s). The Service Provider shall ensure that policies are in place to guide and support staff.
- 23.7 The Service Provider shall ensure that every DBS check is satisfactory in relation to an individual's employment and shall carry out risk assessments in relation to any disclosure (whether as a result of a DBS check or from an employee or a potential employee) and shall confirm to the Service Purchaser(s), when asked to do so, that the DBS checks are satisfactory.
- 23.8 If an incident or concern is referred to the Service Purchaser(s) relating to a member of the Service Provider's staff, the Service Purchaser(s) shall notify the Service Provider and the Service Purchaser(s) Safeguarding Adults at Risk Co-ordinator for the incident or concern to be dealt with within that process or shall convene a Review of Service meeting.

## **24 TRAINING**

### **24.1 Induction**

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

- 24.2 The Service Provider shall provide an induction programme from the first day of employment and which will comply with legislation, standards and guidance in force at the time.
- 24.3 In relation to training in moving and handling, the Service Provider shall ensure that staff are trained to the All Wales Passport level or equivalent.

#### 24.4 **Ongoing Training and Supervision**

The Service Provider shall ensure that appropriate education, training, development and supervision is provided for all staff involved in policy development or care / service delivery to Service Users. This must include awareness of equalities, including age discrimination and specialist training appropriate to the Home's Statement of Purpose. Ongoing training must be provided, or made available, by Service Providers for all Staff commensurate with the tasks and duties they are required to perform. The Social Care Passport has been designed to provide guidance on core training for the workforce in the social care sector in Wales.

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

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

### **25 QUALITY ASSURANCE**

25.1 The Service Provider shall, throughout the term of this Contract, implement and adhere to an appropriate quality assurance system. The system shall include the provision of clear documentation relating to the following areas:

- Annual Development Plan.
- Feedback from Service Users (audited annually).
- Views of family, friends and other stakeholders.
- Access for Service Users to CIW inspectors.
- Regular review of policies, procedures and practices.
- Action is taken within agreed timescales to implement any requirements identified in the CIW inspection reports or Service Purchaser(s) monitoring reports.

25.2 The Service Provider shall establish and adhere to clear systems for monitoring the quality assurance system.

### **26 MONITORING AND REVIEW**

26.1 The Service Provider shall, at all times, co-operate with the Service Purchaser(s)'s processes for monitoring, evaluation and quality audit in whatever way is reasonably requested by the Service Purchaser(s) including, but not limited to, access to premises, staff and records.



- 26.2 The Service Purchaser(s) shall monitor the quality of the service(s) it has purchased by various methods including:
- An assessment of outcomes for Service Users in accordance with the Specification (Schedule 1).
  - Feedback from Service Users and their relatives on the standards of service they are receiving. This will include a comparison with the standards they can reasonably expect to receive. This may be done through questionnaires, sampling and so on.
  - An examination of written records, reports or logs which the Service Provider is required to provide.
  - The review of the Service User's Personal Plan.
  - Feedback from Social Care Assessors and Health Board Nurse Reviewers and other relevant staff on the standards of service(s) being supplied.
  - The right to request a complete list of all Policies and Procedures held by the Service Provider including dates when these were updated.
  - The Service Provider must be able to demonstrate evidence of business continuity planning.
  - Review of copies of procedures and forms, e.g., specimen supervision forms used by the Service Provider.
  - Any outcomes and recommendations made by the Older Person's Commissioner.
- 26.3 The Contract will be reviewed where appropriate by the Service Purchaser(s) Contracts Team or NHS Continuing Healthcare to include, where appropriate, the Service Provider, Social Care Assessors, Service Users, Significant Carers / Representatives etc. The purpose will be to review all aspects of the Contract including staffing information subject to the provisions of data protection legislation.

## **27 SAFEGUARDING**

- 27.1 The Service Provider is required to ensure that the Service Users and other residents in the Home are protected from abuse. All agencies and bodies, both statutory and independent caring for adults at risk, are responsible for making sure the requirements of the Social Services and Well-being (Wales) Act 2014 are met, ensuring that all their staff are aware of the definition of adults at risk and what constitutes abuse and neglect.
- 27.2 The Service Provider must ensure that their staff know that they have a legal and professional duty to report any concern, suspicion or information about abuse, or if they have reason to believe someone is being abused or at risk of abuse.
- 27.3 The Service Provider must have a policy which states how it will meet all its legal obligations to protect adults at risk from abuse and which acknowledges the 'duty to report' a reasonable cause to suspect that any Service User is being, has been or is at risk of abuse, to the Local Authority Safeguarding team. The Service Provider must have clear policy that demonstrates how adults at risk are protected from verbal, physical, psychological, financial and sexual abuse and neglect and state the Service Provider's commitment to preventing such incidents and that allegations will be treated very seriously. The policy must have a statement that the Service Provider will comply with the Social Services and

Well-being (Wales) Act 2014 and any related statutory guidance/procedures and must describe to staff how they will ensure that their legal obligations are met.

- 27.4 The Service Provider is responsible for ensuring they comply with safer recruitment and that their recruitment and selection procedures for paid staff and volunteers are robust and safeguard adults at risk from those who may harm, exploit or abuse them.
- 27.5 The Service Provider must ensure that all staff (whether providing direct care or not) have adult safeguarding training which must be evidenced, and that their staff are able to demonstrate their understanding on what constitutes abuse, who is an adult at risk what is considered abuse/neglect, what the indicators are and know how to report concerns appropriately.
- 27.6 The Service Provider shall support and encourage its staff to participate in Adult Practice Reviews where appropriate.

## **28 ESCALATING CONCERNS**

- 28.1 Escalating Concerns / Provider Performance issues arise where there are accumulating issues relating to the operation of, or quality of care provided in a Home.
- 28.2 In accordance with statutory guidance, the Service Purchaser(s) shall have in place an 'Escalating Concerns' / Provider Performance policy and procedure, and a copy will be made available to the Parties.
- 28.3 The Parties hereto acknowledge that the safety and well-being of the Service User is paramount.
- 28.4 The Parties hereto acknowledge that Escalating Concerns / Provider Performance will require proactive or reactive intervention from the Service Purchaser(s), and possibly other agencies, designed to improve the quality of services and, where possible, prevent avoidable home closures or embargos.
- 28.5 Where abuse is suspected, the Safeguarding Adults at Risk policy and procedures shall take precedence.

## **29 CONTRACT SUSPENSION**

- 29.1 In accordance with Statutory Guidance the Service Purchaser(s) may apply a suspension on placements with a Home, i.e. choose not to place new Service Users there for a specified reason, but only if the suspension is applied in accordance with the Service Purchaser(s) policy on embargos and the policy is applied consistently. The use and removal of suspensions must be linked to thorough risk assessments undertaken by the Service Purchaser(s). Risk assessments must be undertaken within a reasonable time and shared with the Service Provider.

29.2 If the Service Purchaser(s) apply the suspension because new Service Users may not be safe in a Home, the Service Purchaser(s) will make arrangements for all existing Service Users in the Home to be reviewed individually.

### **30 CONFIDENTIALITY**

30.1 The Parties acknowledge that where the Service Purchaser(s) has serious concerns about the Home it may have a duty to share information about vulnerable adults / adults at risk with the Regulatory Authority, the Health Board and any other involved statutory bodies and that this may mean disclosing personal information about the Service User.

30.2 The disclosure of personal information should be considered under various legal frameworks. These are: -

- The common law duty of confidentiality, which still applies where the issue is not determined by other legislation.
- Data protection legislation.
- Article 8 of the European Convention on Human Rights, the right to respect for privacy.
- And section 124 Police Act 1997.
- Access to Personal Files Act 1997

30.3 When considering disclosure of personal information, the Service Purchaser(s) and the Service Provider shall always secure the consent of the Service User concerned. Alternatively, the consent of a Service User's Representative should be sought where the Service User is unable to give informed consent and where the Service User's Representative has a Lasting Power of Attorney (or other lawful authority) and that clearly covers such circumstances.

30.4 Where consent is not available or has been withheld, data protection legislation provides for disclosure to safeguard the vital interests of the Service User or to safeguard the vital interests of someone else.

30.5 All documents and information received by the Service Purchaser(s) and / or Service Provider during or in connection with the performance of this Contract shall be treated as confidential.

30.6 The Service Provider acknowledges that in the performance of its obligations under the Contract, it will be processing personal data as defined by the data protection legislation and shall comply with its obligations.

30.7 The Service Provider shall ensure that all employees who may be required in the course of their duties to have access to personal data have undergone instruction relating to the care and handling of personal data and are honest, reliable and competent.

30.8 The Service Provider confirms that all information and data including personal data obtained and used in connection with the Service shall: -

- (i) As between the Service Provider and the Service Purchaser(s) be the property of the Service Purchaser.
- (ii) Be processed for the sole purpose of undertaking the Service Provider's obligations under the Contract and for no other purpose.
- (iii) Be held in accordance with the provisions of Clause 22 upon termination or early determination of the Contract or ISC.

30.9 The Service 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 unlawful processing of any data. The Service Provider shall provide to the Service Purchaser(s) such information as may be required to confirm that the Service Provider is complying with such obligations.

30.10 The Service Provider shall ensure that nothing is done which places the Service Purchaser(s) in breach of the data protection legislation and shall have or establish appropriate systems, policies and procedures to ensure compliance. The Service Purchaser(s) shall have appropriate systems, policies and procedures in place to ensure their respective compliance.

30.11 This Clause 30 shall survive termination of the Contract.

### **31 EFFECT OF STATUTORY PROCEEDINGS**

31.1 The Service Provider must inform the Service Purchaser(s) as soon as possible, and in any event within twenty four (24) hours, such notice to be confirmed in writing within three (3) working days, if any notice under the relevant Registration Act has been issued in connection with the Home by the CIW or a Regulatory Authority or there has been a decision by a Magistrates' Court to cancel registration or in respect of action taken by the Regulator.

31.2 In the event of the circumstances in Clause 31 above occurring, the Service Provider shall not enter into a new ISC with / for a Service User not already accommodated in the Home unless and until the Service Provider has undertaken a risk assessment in relation to the subject matter of the notice and its effect on the Service Users and / or staff in the Home and has informed the Service Purchaser(s) of the outcome.

### **32 CONTRACT COMPLIANCE (DEFAULT)**

32.1 If any party is in default of their respective obligations under this Agreement, 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.

32.2 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 within a reasonable time not exceeding twenty (20) working days. Failure to comply with such a notice may constitute a fundamental breach of Contract which shall entitle the Service Purchaser(s), if the Service Provider is the defaulting party, to suspend full or part payment from the date of service of the notice to terminate the Contract in accordance with Clause 17.

32.3 In the event of the Service Provider being in fundamental breach of this Contract to the extent that the safety and well-being of the Service User is endangered, the Service Purchaser(s) shall be entitled to employ and pay other persons, at reasonable expense to the Service Provider, to provide and complete the provision of the Service or any part thereof and to use the Service Provider's facilities to secure the safety and well-being of the Service User where no other satisfactory arrangement which is consistent with the well-being of the Service User can achieve this.

### **33 INSURANCE AND INDEMNITY**

33.1 The Service Provider shall maintain insurance policies with reputable insurance companies to include: -

- (i) Employer's liability insurance (£10million in respect of any one claim).
- (ii) Public Liability (£5million in respect of any one claim).
- (iii) Professional Indemnity / Medical Malpractice cover (£5million in respect of any one claim).
- (iv) Contents Insurance for individual possessions up to £1000
- (v) Insurance to transport service users, where the Home provides transport.

33.2 The Service Provider shall produce such evidence as the Service Purchaser may reasonably require within seven (7) working days of making the request that the insurance referred to in Clause 33.1 has been taken out, and is and has been, in force at all times.

### **34 RESOLUTION OF DISPUTES**

34.1 The Service Purchaser and the Service Provider shall use their best endeavours to resolve, by agreement any dispute between them with respect to any matter relating to this Contract.

34.2 Either the Service Purchaser or the Service Provider may request: -

- (i) A meeting between representatives to be held within 14 days.
- (ii) If the matter is unresolved, a further meeting of senior representatives of the Service Purchaser and Service Provider within a further agreed period. The parties may invite an independent representative to this further meeting.

34.3 Any dispute that has not been resolved under Clauses 34.1 or 34.2 shall, unless the parties agree otherwise, be referred by any of the Parties to this Contract to an independent arbitrator to be appointed by agreement between the parties or in default of agreement by the President for the time being of the Chartered Institute of Arbitrators. If an independent arbitrator is appointed the Parties agree to be bound by the decision of the arbitrator.

34.4 The dispute resolution procedure shall not delay or take precedence over the provisions for termination set out in Clause 17 of the Contract.

## **35 MISCELLANEOUS**

35.1 **Whole Agreement:** The Service Provider acknowledges that this Contract and its Schedules and the ISCs contain the whole agreement between the parties.

35.2 **In Writing:** Any decision, exercise of discretion, judgement or opinion or approval of any matter mentioned in this Contract or arising from it shall only be binding upon the parties if in writing and shall be at its sole discretion unless otherwise expressly provided in the Contract.

35.3 **Notice:** Any notice to be served on any of the parties in relation to the Contract by the other shall be addressed to those persons named in Clause 1 (Parties).

35.4 **No Agency:** The Service Provider or its staff is not and shall in no circumstances:-

35.4.1 Hold themselves out as being the servant or agent of the Service Purchaser.

35.4.2 Hold themselves out as being authorised to enter into any Contract on behalf of the Service Purchaser or in any way bind the Service Purchaser to the performance, variation, release or discharge of any obligation under this Contract.

35.5 **Assignment:** This Contract and all rights under it may be assigned or transferred by the Service Purchaser.

35.5.1 The Service Provider shall not assign or sub-let or Contract part or whole of the Services to be provided under this Contract without the written consent of the Service Purchaser where such consent is not to be unreasonably withheld.

35.6 **Jurisdiction:** This Contract is made in Wales and shall be governed by the laws of England and Wales and in accordance with secondary legislation issued by the Welsh Government, as it applies in Wales. All disputes arising under or in connection with it shall be submitted in the first instance to the non-exclusive jurisdiction of the Courts in Cardiff.

35.7 **Suspected Fraud:** The Health Board will refer all instances of Suspected Fraud and Corruption to the Head of Counter Fraud and the NHS Counter Fraud Service for investigation.

35.8 **Misrepresentation:** Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in entering into this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.

- 35.9 **Cumulative Rights:** The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by the general law of England and Wales or by any other Contract or documents.
- 35.10 **Third Parties:** Nothing in this Contract shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of a Third Party which exists or is available apart from that Act.
- 35.11 **No Partnership:** Nothing in this Contract shall constitute or be construed as constituting a legal partnership, joint venture or a relationship of principal and agent between the Parties.
- 35.12 **Dewis Cymru:** the Service Provider shall ensure that their organisation's information is included and kept up to date on Dewis Cymru.

## **36 WAIVER**

- 36.1 No failure by any of the parties to insist upon the strict performance of any condition of this Contract or to exercise any right or remedy upon breach of any provision of this Contract shall constitute waiver of any condition or any subsequent breach or default in performance of the Contract.

## **37 BUSINESS CONTINUITY AND FORCE MAJEURE**

- 37.1 The Service Provider shall maintain an up to date business continuity plan.
- 37.2 None of the Parties shall be in breach of this Contract nor liable for any failure or delay in performance of any obligation under this Contract to the extent arising from or attributable to Force Majeure.
- 37.3 If the party is prevented from performance of its obligations for a continuous period in excess of twenty eight (28) working days the other party may terminate this Contract forthwith by written notice in which case no party shall have any liability to the other(s) except that rights and liabilities which accrued prior to such termination shall continue to subsist.

## **38 FREEDOM OF INFORMATION ACT 2000**

- 38.1 The Service Purchaser is a public body for the purposes of the Freedom of Information Act 2000. In the event that a request for information is made under the Freedom of Information Act 2000 to the Service Purchaser which requires disclosure of information relating to the Contract and / or related correspondence, the Service Purchaser will inform the Service Provider before the disclosure is made and the Service Provider will co-operate with the Service Purchaser to ensure compliance with the request.

## **39 HUMAN RIGHTS ACT 1998**

- 39.1 The Service 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.
- 39.2 The Service Provider agrees that it will take such action as the Service Purchaser may reasonably require for the purpose of ensuring compliance with the said Convention and Act.

#### **40 SEVERABILITY**

- 40.1 If any term or provision in this Contract shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision shall be to that extent deemed not to form part of this Contract and the enforceability of the remainder of this Contract shall not be affected.

#### **41 AMENDMENTS**

- 41.1 This Agreement may only be amended by agreement in writing and signed by the authorised representatives of the Parties.

#### **42 EQUALITIES AND EQUAL OPPORTUNITIES**

- 42.1 In making any decision in relation to a Service User, the Service Provider and its staff shall give due and proper consideration and respect to the Service User's religion, racial origin, cultural and linguistic background, health status, mental capacity, offending background, sensory or physical ability, political beliefs, age, sex, sexual orientation, social standing.

#### **43 LANGUAGE**

- 43.1 The Service Provider shall comply with the Welsh Language (Wales) Measure 2011, the 'More than Just Words Strategic Framework' and related Welsh Language Standards as operated by the Service Purchaser, (as amended from time to time), a copy of which will be provided by the Service Purchaser, to the extent that the same relate to the provision of the Service, and shall as a minimum: -
- (i) Ensure the Service is provided in the preferred language of the Service User and his / her family.
  - (ii) Record the preferred language of the Service User and his / her family.
- 43.2 The Service Provider shall have in place and operate an up to date Welsh Language Policy and, when requested by the Service Purchaser, shall provide details of the percentage of bilingual staff employed in the Home and the



number of Service Users who choose Welsh as their preferred language but whose preference could not be accommodated.

43.3 The Service Provider shall take all reasonable and practicable steps to deliver the Service to the Service User in the language of the Service User's choice. It is acknowledged that languages other than Welsh and English may be the preferred language.

43.4 The Service Purchaser is committed to offering support and guidance to the Service Provider on the planning and provision of bilingual services.

#### **44 WARRANTIES**

43.1 Each Party warrants its power to enter into this Contract and has obtained all the necessary approvals and authorisations to do so and be bound by the terms of the Contract.

#### **45 PROHIBITED ACTS**

45.1 The Service Provider warrants and represents that:

45.1.1 It has not committed any offence under the Bribery Act 2010 or done any of the following ('**Prohibited Acts**'): -

- (i) Offered, given or agreed to give any officer or employee of the Service Purchaser any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Service Purchaser or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Service Purchaser; or
- (ii) In connection with this Contract or any ISC made under the terms and conditions of this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Service Purchaser; and

45.1.2 It has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

45.2 If the Service Provider or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Service Provider in relation to this or any other agreement with the Service Purchaser: -

45.2.1 The Service Purchaser shall be entitled: -

- (i) To terminate this Contract and recover from the Service Provider the amount of any direct loss resulting from the termination.

- (ii) To recover from the Service Provider the amount or value of any gift, consideration or commission concerned; and
- (iii) To recover from the Service Provider any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010.

45.2.2 Any termination under Clause 45.2.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Service Purchaser; and

45.2.3 Notwithstanding Clause 40 any dispute relating to: -

- (i) The interpretation of Clause 45; or
- (ii) The amount or value of any gift, consideration or commission,

Shall be determined by the Service Purchaser, acting reasonably, and the decision shall be final and conclusive.

## **46. DATA PROTECTION**

46.1 The parties acknowledge that they are individually responsible for personal information processed under this contract as Data Controllers, and in particular they shall each:

- (i) ensure that their staff processing personal data have a good working knowledge of the principles and procedures set out in the Data Protection Act 2018, and adhere to these at all times;
- (ii) copy to the other party without delay any breach notified to the ICO and / or data subjects in connection with data processed for the purposes of this Contract; and
- (iii) ensure appropriate security for personal information.

46.2 The parties acknowledge that for the purposes of the Data Protection Act 2018, the parties are joint data controllers.

**SIGNATURES**

IN WITNESS whereof the parties hereto have executed this document as their deed the day and year first before written

The SEAL of **Insert Partner Name**  
Was hereunto affixed in the presence of

.....  
The Head of Law and Regulation

Executed as a DEED by

The Common Seal of .....

Name of Company \_\_\_\_\_

Was hereunto affixed in the presence of:

.....  
Director

and

.....  
Director / Company Secretary

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**SCHEDULE 1 - SERVICE SPECIFICATION**

**1. Introduction & Overview**

This Service Specification relates to the provision of Care Homes for Older People [aged 55 and over] who need Residential, NHS Funded Nursing Care or Continuing Healthcare and support across the Cardiff and Vale of Glamorgan region.

1.2 It describes the key features of the Service being purchased, and is subject to the Contract Agreement for Care Home Accommodation Functions (“the Contract”).

1.3 The purpose of the Service is to provide accommodation, care, support and stimulation to those people who can no longer live in their own homes or who require short term care. The Service Purchaser wishes to work in partnership with the Service Provider to deliver high quality, safe and sustainable care and accommodation that maximises the use of available resources via effective relationships.

1.4 The Service Purchaser, in partnership with the people supported in care homes, their family / informal carers, and wishes to move toward an outcome based approach to the purchase and provision of the Service and this Specification reflects that direction of travel. This Specification sets out Outcomes at a service and individual level, which the Service Purchaser requires (and is itself held accountable for) under the Contract. The Outcomes are intended to be consistent with the statutory requirements that the Service Provider has to meet. Each Outcome has one or more Indicators or inputs that are not contractual requirements (except where the Contract elsewhere requires this, for instance under Regulations).

1.5 These Indicators, and the respective contributions from the Service Provider, Service Purchaser and the person (or their family, or representatives, as appropriate) – are set out to show providers which areas and evidence the Service Purchaser will consider during the contract monitoring process

**Autonomy, Choice, Control, Dignity and Respect.**

Required Outcome	Provider	Commissioner	Person/Family or Person's Representative	
<p><b>OUTCOME 1</b></p> <ul style="list-style-type: none"> <li><b>Service Outcome:</b> A person's care is planned to promote independence as far as their physical and emotional health and wellbeing enables them.</li> <li><b>Individual Outcome:</b> Each person can be confident that they will be treated with dignity and respect and supported to make informed choices in relation to their lifestyle, care and support.</li> </ul>				
<p><b>1.1</b></p>	<p>People, or the person who has responsibility for making decisions are given information and appropriate support that enables them to choose their care home, and to have assurances that their choices and preferences can be supported as far as practical.</p>	<p>Copy of the statement of purpose and information on advocacy services is made available to the person or representative where applicable.</p> <p>Carry out a pre admission assessment, together with the person identifying healthcare and social/personal needs.</p> <p>Confirm overall needs can be met for the person.</p>	<p>Provide the person with information of care homes.</p> <p>Provider receives a copy of the care plan.</p>	<p>Chose a care home and where possible visit the care home prior to admission.</p> <p>Share information about themselves with the provider.</p> <p>Review information about the home, including collated information from family feedback questionnaires.</p>
<p><b>1.2</b></p>	<p>People who lack capacity to make a decision about their place of care have had a Mental Capacity Assessment (MCA) and Best Interest (BI) decision specific to a care home placement.</p>	<p>DoLS application is made on admission and confirmed to the commissioner.</p> <p>Timely reapplications are made prior to expiry of an existing authorisation.</p> <p>Compliance with DoLS conditions.</p>	<p>Commissioners make care home aware of the requirement for DoLS.</p> <p>Ensure MCA and BI have been carried out prior to agreeing placement.</p>	<p>Family/representative involvement in the MCA and BI decisions.</p>

			<p>Ensure DoLS authorisation is in place/applied for prior to transfer to a care home.</p> <p>Nurse Assessor/Social Worker reviews compliance when undertaking a review.</p>	
<b>1.3</b>	<p>People are treated with the understanding that they have the right to be who they are, and protect their characteristics in line with the Equality Act, to be understood, considered and recognized as an individual, and are therefore supported to be involved in their assessment and how they would like their needs provided.</p>	<p>Personal profiles, including social history in place and agreed by the person/family/representative.</p> <p>People, are involved in decisions about their care.</p> <p>Care plans and risk assessments are monitored and reviewed.</p>	<p>Review according to all appropriate legislation and guidance.</p>	<p>Provide information about what matters to me and 'who I am'.</p> <p>Included in assessment and review process.</p>
<b>1.4</b>	<p>People have access to appropriate advocacy services that may include the following –</p> <ul style="list-style-type: none"> <li>• Independent Professional paid Advocacy</li> <li>• Peer advocacy</li> <li>• IMCA/IMHA</li> <li>• Citizens advocacy</li> </ul>	<p>Provide information, and facilitate access to independent professional advocacy and have discussion with appropriate professional about referral</p>	<p>Advocacy services are readily available and delivered in confidence</p> <p>IMCA for decisions defined in the MCA</p> <p>Provide information on advocacy services to the provider</p>	<p>Families/friends to support where requested and appropriate</p>

**OUTCOME 2**

- **Service Outcome:** People are supported in the transition and adjustment to living in a care home environment.
- **Individual Outcome:** People have a well-planned transition into the Care Home.

Required Outcome		Provider	Commissioner	Person/Family or Person's Representative
2.1	People have a planned, seamless transition between their home or hospital and the Care Home.	<p>All service users receive a Guide and/or Welcome Pack</p> <p>Information e.g. care plans are provided in formats accessible to individuals with different communication needs and clearly identifies what matters to them.</p>	An agreement detailing what the service provides, any payable charges and their rights and responsibilities	Agree to the care home terms and conditions
2.2	People have personal items in their rooms.	Facilitate at admission where appropriate.		Own personal belongings chosen for own room.
2.3	Practical support is provided to enable people to be supported to maintain personal community links.	<p>Understand a person's choices to access community activities, supporting group activities where practicable.</p> <p>Support people to make their own arrangements.</p> <p>Recognition of the spiritual and religious dimensions of care.</p>		<p>Express their choices</p> <p>Families/representatives support the person to optimise control</p> <p>Families/representative support activities outside the care home.</p>



		Risk assessments in place where appropriate.  Expectations are managed.		Personal arrangements made to access community activities.  Limitations acknowledged.
2.4	People are supported to optimise control over their lives by being able to make choices; their voices are heard and their rights upheld.	People's experience is one where everyone is treated with dignity, respect, compassion and kindness and which recognises and addresses individual physical, emotional and general wellbeing needs.  Provider will use observations and experience to make decisions that support choice		Residents are involved in decisions and are able to make their own choices e.g. refurbishment and décor; television programmes.
<b>OUTCOME 3</b>				
<ul style="list-style-type: none"> <li>• <b>Service Outcome:</b> People are empowered to describe their experiences to those who provide their care.</li> <li>• <b>Individual Outcome:</b> People can be confident that they will be supported and encouraged to make decisions about their care delivery and the care home environment and share those with care staff.</li> </ul>				
<b>Required Outcome</b>		<b>Provider</b>	<b>Commissioner</b>	<b>Person/Family or Person's Representative</b>
3.1	People are enabled to express their experiences of living in the care home. Where people have cognitive or sensory deficits	Collate information as a customer satisfaction report from Feedback questionnaires.	Record experiences through direct observation, reviews and monitoring processes.	Providing feedback of experiences.

	<p>different ways of communication are used to assist them to share experiences.</p>	<p>Resident/family meetings.</p> <p>Alternative communication approaches used for people with difficulty communicating.</p> <p>Demonstrate how responses to experiences improves services.</p> <p>Regularly enable access to advocates.</p> <p>Use of the persons chosen language or interpreters.</p>	<p>Support with advocacy or interpreter's</p>	
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**OUTCOME 4**

- **Service Outcome:** People are treated with dignity, respect, compassion and kindness and individual choice is protected at all times.
- **Individual Outcome:** People can be confident that they will be listened to and be supported by a service that values diversity and has a genuine focus on person centred care, support and review.

	<b>Required Outcome</b>	<b>Provider</b>	<b>Commissioner</b>	<b>Person/Family or Person's Representative</b>
<p><b>4.1</b></p>	<p>People are addressed by their preferred name.</p>	<p>Evidence that people are asked how they wish to be addressed.</p>	<p>Persons preferred name identified in care and support plan</p>	<p>To be fully involved in the care planning process wherever possible</p>

		Person Centred documentation available which reflects the person's choice and explains who the person is.		
4.2	People's self-esteem is promoted by being assisted to be clean, wear their own clothing and be well presented at all times. People live in a clean environment are listened to and given choices.	<p>Provider can demonstrate systems in place to support this outcome</p> <p>Personal choices are incorporated into planning documents and care.</p>		<p>To be fully involved in the care planning process wherever possible</p> <p>Making use of independent advocacy to access funds in difficulty</p> <p>The person or family or representative maintain provision of appropriate clothing</p>
4.3	People summoning help have their care responded to in a timely way to prevent risk of incidents that impact upon their dignity.	<p>People are assessed on their ability to use a call bell where appropriate and other assisted technology where they cannot.</p> <p>Alarms are accessible to people who can call for assistance at all times.</p> <p>Call bell response times to be monitored.</p>		People aware of how to call for assistance.
4.4	People are assisted to be comfortable and have pain managed as far as their condition allows.	Comfortable environment and equipment is available.		

		<p>Staff continually assess pain assessments and interventions support people to be comfortable and/or refer to GP for assessment.</p> <p>Staff are supported to recognise signs of pain with appropriate pain tool assessments</p>		
<b>4.5</b>	<p>People are supported with continence care that is appropriate, discreet and promptly provided as necessary to take account of people's specific needs.</p>	<p>Support plans enable people to access toilet facilities in order to remain continent.</p> <p>Competent workforce to manage all types of catheters and other continence products.</p> <p>A continence nurse referral will be done for any resident with continence issues</p>	<p>Specialist support to share best practice in continence care that is underpinned by national guidance.</p> <p>Provide training and assess competence to insert catheters – male, female, and suprapubic.</p> <p>Assess and advise on specific continence support plans within care planning documents.</p> <p>Assess and provide incontinence products.</p>	<p>Person or family should satisfy themselves that appropriate continence care is in place</p>
<b>4.6</b>	<p>People's choices in how their care is provided must be respected</p>	<p>Residents requiring intimate personal care have this agreed and recorded in their individual care plan and provided</p>	<p>To ensure reflection in care and support plan</p>	<p>To be fully involved in the care planning process</p>

		<p>in a dignified way with their personal preferences respected.</p> <p>Care, treatment and decision making reflects best (evidence based) practice to ensure that people receive the right care and support to meet their individual needs.</p>		
<b>4.7</b>	<p>People are supported to spend their last days of life at the Home if that is their wish unless there is a medical reason why this should not happen.</p>	<p>Individual's wishes and preferences regarding end of life care and support are established as part of their assessment.</p> <p>Provider works closely and jointly with other agencies to provide end of life care and any palliative intervention.</p> <p>Residents' personal plan reflects advance statements and advance decision making including details of any legal lasting power of attorney for health and welfare.</p>		<p>Person or family encouraged to be involved in expressing their preferences</p>
<b>4.8</b>	<p>CCTV cameras must not be used in areas of the home used by people living there e.g. own rooms; bathrooms etc., except where there has been prior written multidisciplinary and lawful authorization.</p>	<p>If and when CCTV cameras are used in other areas of the home, residents and families' staff, and visitors are to be made aware of their use through signage and the Service Guide.</p>		

**OUTCOME 5**

- **Service Outcome:** Personal information is handled appropriately and personal confidences are respected.
- **Individual Outcome:** People are confident that personal information will not be disclosed or shared without consent or lawful authority.

Required Outcome		Provider	Commissioner	Person/Family or Person's Representative
5.1	People receive personal information/correspondence in an appropriate manner and appropriate format as requested.	People receive their mail unopened unless otherwise requested (or in accordance with Best Interest Decision)	GDPR training is offered.	People confirm their preferred way to receive correspondence.

**OUTCOME 6**

- **Service Outcome:** People know how to safely make a complaint or comment, with confidence that it will be addressed appropriately.
- **Individual Outcome:** People are confident that they are aware of how to make a complaint or raise a concern and be reassured that it will be taken seriously and resolved with no adverse effect on the care they receive.

Required Outcome		Provider	Commissioner	Person/Family or Person's Representative
6.1	People are freely able to make a comment or complaint with the assurance that the issues will be managed in an appropriate manner	Complaints policy is freely available to people and their families.  All complaints are fully investigated with outcomes clearly recorded within an audit document.		People are provided with a copy of the complaints procedure.

		Complaints audit available to inform the QA process.  Provide information on advocacy services		
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**Staying Healthy - Protecting and Improving Health.**

**OUTCOME 7**

- **Service Outcome:** People are supported to have access to NHS and other services to maintain or improve their health and wellbeing
- **Individual Outcome:** People can be confident that any existing or deteriorating health conditions or support requirements will be quickly recognised with the appropriate intervention provided and necessary referrals made in a timely way.

	<b>Required Outcome</b>	<b>Provider</b>	<b>Commissioner</b>	<b>Person/Family or Person's Representative</b>
	<b>7.1</b> People are registered with a GP and are seen when there is an identified need.	Arrange registration and/or support person to register with GP.	Provide GP & enhanced service to care homes.	Choose GP where there is a choice.
	<b>7.2</b> People have timely referrals to healthcare professionals to address their health needs.	Evaluate care needs, identify risk and refer to GP or appropriate specialist service.  The provider has an agreed process in place describing how to facilitate appointments.	Commissioner provides timely response to referral.  Support the person to access essential services in situations of exceptional difficulty	Person is aware when a referral is made to a healthcare professional
	<b>7.3</b> People receive timely hospital admissions, and appointments according to need.	Assess on an individual basis whether an escort to hospital is required.	Ambulance or patient transport.	Families/representative support routine appointments or admissions where possible.
	<b>7.4</b> People have regular and immediate access, and support to access advocacy services and appropriate Adult and Healthcare Services.	The Provider works in partnership with other relevant professionals, families and agencies to assess and manage risk to residents.	Commissioners will support providers if necessary to facilitate or intervene when an issue requires escalation.	Families/representative support routine appointments.



7.5	People have access to public health, medication and immunisation programs.	Support programs, including carrying out vaccinations.	Implementation of immunisation programs.  Ensure BI decisions are adhered to	The person can consent or decline if able, or a personal welfare LPA has the appropriate authority can consent or decline on their behalf  If person is unable to consent, and no LPA is in place a BI decision is to be made
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#### OUTCOME 8

- **Service Outcome:** People are supported to be healthy, safe, and happy and to have as active a life as possible taking into account all relevant circumstances.
- **Individual Outcome:** People can be confident that they will be supported to have a happy, safe and healthy lifestyle that take account of their interests, skills and abilities.

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	Required Outcome	Provider	Commissioner	Person/Family or Person's Representative
8.1	People are encouraged to be active by taking appropriate exercise or recreational activity as far as their circumstances and resources allows.	Provision of activities based on the individual abilities of people.	Sharing Knowledge	Families/representatives to assist where possible and practicable.
8.2	Provision is made to support people access community functions and have their spiritual needs met.	Staff are aware of what is important to a person, support arrangements to be made.	Sharing knowledge	Families/representatives to assist where possible and practicable.
8.3	Risks are identified, monitored and where possible, reduced or prevented.	Positive risk enablement is evident.		Support positive risk taking

**OUTCOME 9**

- **Service Outcome:** Medication - People receive medication for the correct reason, the right medication at the right time, right dose and right route.
- **Individual Outcome:** People can be confident that their health conditions are supported appropriately and safely with the right medication at the right time.

	Required Outcome	Provider	Commissioner	Person/Family or Person's Representative
9.1	There is compliance with legislation, regulatory and professional guidance and local guidance for all aspects of medicines management.	<p>Medication policy is compliant with NICE SC1.</p> <p>Audit of medication practice.</p> <p>Process for checking medication stock.</p>	<p>Prescribing &amp; dispensing of medication.</p> <p>DATIX serious omissions and errors</p>	
9.2	Staff administering medication are skilled, competent and fit to practice the safe administration of medicines, this includes services where non registrants have received training to administer medication.	<p>Competent workforce to administer medication safely.</p> <p>The workforce has up to date training in medicines administration.</p> <p>Medication policy and procedures describes parameters for non-registrants to administer medication.</p> <p>Medication policy and procedures describes parameters for Covert Medication in line with UHB and NICE quality standards.</p>	Provide advice and guidance as requested.	<p>Engage with trained staff to support safe administration of medication.</p> <p>Consent to vaccination if the person is able; refusal must be respected.</p> <p>If the person lacks capacity to make this decision, only an attorney of a Lasting Power of Attorney (LPA)/Deputy with the appropriate authority:- consent to care or treatment on persons behalf, or if a valid and applicable</p>

		<p>Training programme and competency framework conforms to legislation and All Wales Pharmacy Society guidelines.</p> <p>Registered Nurses adherence to their role in delegation medications administration.</p>		<p>Advance Decision to Refuse Treatment it must be complied with. If there is no applicable LPA/Deputy or ADRT, undertake a best interest's decision.</p>
9.3	Adverse medication reactions are reported	Reporting, actions and learning.	Review and learning outcomes report.	
9.4	Medication related incidents are reported and investigated	Incident reporting, actions and learning.	Review incidents and learning outcomes	
9.5	People have medications reviewed to ensure that medications prescribed are appropriate.	Referrals to GP for medication reviews as required.	<p>Appropriate and timely medication reviews by GPs as required. If there is a pharmacy enhanced service, reviews will independently be carried out as part of the agreement.</p> <p>Review of antipsychotic medication.</p>	

**OUTCOME 10**

- **Service Outcome:** Evidence based professional recommendations are followed for the prevention and treatment of pressure ulcers.
- **Individual Outcome:** People can be confident that any pressure areas or skin integrity issues they have will be managed appropriately and effectively.

	Required Outcome	Provider	Commissioner	Person/Family or Person's Representative
10.1	People are assessed for risk of pressure and tissue damage. Treatment plans are in place, consistent with best practice guidelines, and are regularly reviewed.	Policy and procedure in place.  QA in place to monitor adherence to best practice standards for prevention.  Implementation of identified actions.  Skilled and competent workforce understand factors that affect healthy skin.	Disseminate Patient information leaflet  Provide training to homes	Read and understand Patient information leaflet  Understand interventions to prevent damage to skin and have an awareness of any risk factors for developing a pressure area.
10.2	People are provided with appropriate pressure relieving equipment to reduce risks of pressure and tissue damage.	Inventory of equipment available detailing the specification of risk.  Processes in place to monitor appropriate use of equipment.  Regularly review assessed need.	Guidance of specialist equipment for people at high risk.  Audit practice and performance.	
10.3	People who have the ability to understand their risk factors for developing a pressure	Make information available.	Review evidence of risk factors	People receive information to make informed decisions.

	ulcer are provided with information that advises the appropriate care required.	Record incidents where a person declines preventative intervention.		
<b>10.4</b>	Deteriorating wounds or wounds difficult to heal are referred to a Tissue Viability Nurse (TVN), heels to a TV Podiatrist for advice.	<p>Timely referrals to tissue viability specialists.</p> <p>Timely reporting to commissioners.</p> <p>Body maps and wound describes the wound state.</p> <p>Wounds are photographed (with consent of the person).</p> <p>Skin assessment tool of choice is used.</p>	Monitoring of incidents and trends.	
<b>10.5</b>	All pressure ulcers are reported. Root Cause Analysis (RCA) for a category 3, 4 and unstageable to identify if the pressure ulcer is avoidable/ unavoidable. Lessons learnt identified and quality improvement plan evidenced.	<p>Pressure ulcers of all categories are reported.</p> <p>For FNC or CHC residents :-complete Root Cause Analysis investigation for a category 3, 4 and unstageable to identify if the pressure ulcer is avoidable/ unavoidable.</p>	<p>Review RCA with provider.</p> <p>SI reports to Welsh Government in line with recommendations of Flynn Report: In Search of Accountability.</p>	

Required Outcome	Provider	Commissioner	Person/Family or Person's Representative	
<p><b>OUTCOME 11</b></p> <ul style="list-style-type: none"> <li><b>Service Outcome:</b> Effective infection prevention and control (IPC) is part of daily practice and based on the best available evidence so that people are protected from contracting preventable infections</li> <li><b>Individual Outcome:</b> People can be confident that they will not unnecessarily contract a preventable infection whilst being provided with their care and support</li> </ul>				
<p><b>11.1</b></p>	<p>A process is in place to minimize the risk of harm and infection.</p>	<p>Infection, Prevention and Control Policy and procedures are in place that are compliant with legislation and guidance on IPC. All staff have received the relevant training and understand the procedures.</p> <p>Staff are trained in ANTT</p> <p>Hand care policy is in place.</p> <p>Alcohol hand sanitisers are available.</p> <p>Support people to maintain high standards of hygiene.</p>	<p>Advice and guidance from Infection, Prevention and Control Teams and Public Health.</p> <p>Review of audits and trends of infection.</p> <p>Provide ANTT training</p>	
<p><b>11.2</b></p>	<p>Outbreaks of reportable conditions are made to public and environmental health, and isolation procedures initiated where it is required.</p>	<p>Adherence to the organization's policy and procedure for infection control.</p>	<p>Review of audits and trends of infection.</p>	<p>Aware of any outbreaks and infection control procedures that are necessary to prevent transmission of infection.</p>

		<p>Staff understanding of basic infection, prevention and control principles and infection control procedures for any specific outbreaks.</p> <p>Staff compliant with up to date training.</p> <p>Provision of PPE.</p>		
<b>11.3</b>	<p>Environments are clean at all times and high standards of hygiene are in place. Proper arrangement are in place for the segregation, handling, transportation and disposal of bodily waste.</p>	<p>Staff actively follow infection control procedures during transmissions, interventions, transporting and disposing contaminated products.</p> <p>Adherence to infection, prevention and control procedures.</p> <p>Disposal agreement is in place</p>	<p>Observations.</p> <p>Share best practice and changes to Infection, Prevention and Control procedures</p>	
<b>11.4</b>	<p>Appropriate arrangements are in place following standard precautions for cleaning and decontamination of equipment.</p>	<p>Cleaning policy and schedule in place.</p> <p>Audit record of cleaning schedule</p> <p>Suitable and sustainable process of decontamination of equipment.</p>		

**Individual Wellbeing**

**OUTCOME 12**

- **Service Outcome:** Safeguarding – People are safe and protected from abuse, neglect and inappropriate care.
- **Individual Outcome:** People are confident that their care and support needs are met and they are safe within their care home environment.

	<b>Required Outcome</b>	<b>Provider</b>	<b>Commissioner</b>	<b>Person/Family or Person's Representative</b>
12.1	Safeguarding policy and procedures are in place and the workforce understands their roles and responsibilities to protect people from harm and report incidents of abuse as a Duty to Report (DTR) to the local safeguarding team.	<p>Conforms to legislation and guidance.</p> <p>Demonstrates knowledge of safeguarding and identification of risk.</p> <p>Reporting incidents, working in partnership with multi agencies.</p> <p>Timely reporting of concerns.</p> <p>Effective multiagency working and co-operation between provider and commissioners.</p> <p>Participate and provide evidence/documentation as requested including participation in Adult Practice reviews.</p>	<p>Monitoring incidents, trends and actions taken to safeguard.</p> <p>Provide advice, guidance and support.</p> <p>Review safeguarding referrals and engagement in safeguarding strategy meetings and undertaking investigations.</p> <p>Adhere to Safeguarding Vulnerable Adults Policy and procedures to ensure and promote effective multi-agency working.</p>	Understanding how to make concerns known.



		Facilitate access to independent advocacy/support where appropriate		
<b>12.2</b>	The workforce has received up to date training in safeguarding adults at risk of abuse and understand their individual roles and responsibilities for reporting abuse.	Training and support for staff.  Whistleblowing policy in place.	Routine Safeguarding training arranged and provided	Understand safeguarding and how to make a referral.
<b>12.3</b>	Arrangements are in place to assess people at risk to themselves or others to prevent, or minimize unnecessary or potential harm.	Identify risk and actions through audit processes.  Arrangements in place to respond effectively to a person/s, changing circumstances and regularly review to maintain safety.  Maintain records to evidence risk, supporting the need for 1:1 care and referrals to the HB.	Respond to provider referral where 1:1 has been initiated. Review evidence.  Regular review of 1:1.  Audit QA processes of practice and performance.	Involvement in assessment and decisions taken.
<b>12.4</b>	Concordance with the application of the Mental Capacity Act (MCA) (2005) and Deprivation of Liberty Safeguards (DOLS) statutory frameworks to deliver care and protect people from being deprived of their rights.	Processes in place to comply with frameworks to ensure people are not deprived of their liberty.  For those who are subject to DOLS the least restrictive care plan is supported  Training provided for the workforce to understand the MCA and DOLS frameworks.	Audit and monitoring of adherence to the frameworks.  Note revision of practice to be implemented with new Liberty Protection Standards	People understand their rights.  Fulfil RPR role if appointed.

		Conditions attached to DOLS authorisations are addressed in a person's care plans.		
12.5	The use of assistive technology is used to facilitate the safety, health and wellbeing of the residents as well as promote independence where appropriate.	Assistive technology such as sensor mats be used to assist in care and support for residents where appropriate		
12.6	The home is a vibrant and engaging environment that provides the opportunity for individual residents to become part of a community which promotes a purpose in life	<p>Person centered approach to care and support that encourages residents to be an active part of their home.</p> <p>Home environment is inviting and supportive to the need of the residents who live there</p> <p>The home promotes a supportive approach that enables residents to feel they are valued and have some purpose in life</p>	Shares information	Families to provide personal items such as photos and soft furnishings which may be important to their loved ones.
<b>OUTCOME 13</b>				
<ul style="list-style-type: none"> <li>• <b>Service Outcome:</b> People are safe and protected in the environment in which they live.</li> <li>• <b>Individual Outcome:</b> People can be confident that their personal and communal environment is homely and safe.</li> </ul>				
<b>Required Outcome</b>		<b>Provider</b>	<b>Commissioner</b>	<b>Person/Family or Person's Representative</b>
13.1	The environment is free from hazards, clean, properly maintained, safe and	Well maintained environment.	Audit and monitoring.	

	properly equipped to protect from avoidable harm.	<p>Environmental audit to identify equipment, fixtures, services that are defective.</p> <p>Damaged/unfit equipment is removed from the environment, and replaced as appropriate.</p> <p>Prompt referral to equipment provider if repair required.</p>	Timely response to referrals.	
<b>13.2</b>	Safe keeping of medication and/or other valuables/personal items in individual's rooms.	<p>Lockable cabinets are provided in individual's rooms.</p> <p>The Provider's public liability insurance will cover people's property for theft or damage</p>		Residents will not be required to sign a waiver of liability.
<b>13.3</b>	Equipment is cleaned, properly maintained and stored safely.	<p>Cleaning regime in place.</p> <p>Walkways and emergency exits are clear of furnishing/ equipment.</p> <p>Equipment is stored safely and securely.</p> <p>Equipment is serviced according to recommendation of manufacturer.</p>	Audit and monitoring.	

13.4	Equipment not fit for purpose is safely disposed of (or returned to the commissioning authority that provided it, if applicable).	The provider makes appropriate arrangements for the safe and quick disposal (or return) of equipment that is no longer fit to be used or that is no longer required	Audit and monitoring	
<b>OUTCOME 14</b> <ul style="list-style-type: none"> <li><b>Service Outcome:</b> People have their risks of falls assessed and every effort is made to reduce the risk of a fall, reduce avoidable harm and disability.</li> <li><b>Individual Outcome:</b> People are confident that all necessary action is taken to ensure their risk of falling is minimized.</li> </ul>				
<b>Required Outcome</b>		<b>Provider</b>	<b>Commissioner</b>	<b>Person/Family or Person's Representative</b>
14.1	Falls history in place at the point of admission and regularly reviewed. (indicator of risk as indicated in NICE 2013 guidelines).	<p>Staff have been provided with training to understand factors that predispose a person to falls.</p> <p>Referral to Falls Team, via GP if criteria met.</p>	<p>Support training programmes.</p> <p>Ensures referral process and contact details are disseminated</p> <p>Falls team to publish criteria.</p>	
14.2	People's risk to safety are assessed in accordance with NICE guidelines and they have an individual plan which takes into account appropriate risk taking, e.g. to promote independence, dignity and choice.	<p>People will have their risks assessed and interventions tailored to the individual management plan to minimize the risk to a person.</p> <p>Appropriate management strategies in place.</p> <p>People are reviewed following a fall and have an updated plan in place.</p>	<p>Falls rates monitored.</p> <p>Provision of training – falls strategy is being developed and falls support is under review.</p>	

		Audit of falls, trends and action plans.  Sensor alarms in place as assessed.		
14.3	Staff able to identify a non-injurious fall using an appropriate tool, e.g. I Stumble protocol.	Submit I Stumble data.  Assesses appropriate equipment to assist a person from the floor.	Share Information  Monitor use and compliance.	
14.4	People who have an unexplained or recurrent fall are referred to the falls services for a multifactorial assessment through the GP.	Identification of people who meet the criteria for referral to the localised falls service.	Professional refers to the falls service if considered appropriate.	

#### OUTCOME 15

**Service Outcome:** People are supported with their nutrition and hydration needs to maintain a healthy intake for their wellbeing.

**Individual Outcome:** People are confident that they are supported to eat and drink healthily, taking appropriate account of preferences and dietary needs.

	Required Outcome	Provider	Commissioner	Person/Family or Person's Representative
15.1	All staff have a good understanding of the importance of hydration and nutrition.	All staff are trained to understand the importance of hydration and nutrition and the implications of associated health conditions.	Support with training.  Ensure compliance with agreed assessment tool	

15.2	People have their nutrition screened to identify if they are at risk or potentially at risk, using an accredited nutritional screening tool such as MUST.	QA process and audits for weight changes, correct calculation of MUST and its evaluation.	Support with training.  Monitor and audit	
15.3	People have care plans, where appropriate, to meet their hydration and nutritional needs, including swallow difficulties.	QA process and audits of documentation including risk assessments for choking.  Referrals to SLT/dietetic based on risk.	SLT /dietetic assessment and advice.	
15.4	Staff identify when people are at risk of malnutrition and dehydration and have care assessed and regularly reviewed.	Food first pathway and fortification of food.  GP / Community Resource Team requested to make dietetic referral where nutrition is compromised.  Administration of prescribed supplements.	Dietetic support and advice.  Prescription of supplements.	

**OUTCOME 16**

- **Service Outcome:** People are provided with assistance and choice with meals and snacks.
- **Individual Outcome:** People can be confident that they have a choice of food they enjoy and are supported to eat and drink in a timely manner.

	<b>Required Outcome</b>	<b>Provider</b>	<b>Commissioner</b>	<b>Person/Family or Person's Representative</b>
<b>16.1</b>	There is a choice of beverages and food that meets the nutritional, therapeutic, religious and cultural needs of all to meet preferences as far as this is practical. A choice of beverages are available to people throughout the day and not confined to times that are task related.	<p>Menus available people that encourages choice. Staff enable people to make choices.</p> <p>People are provided with alternative food choices and snacks where these are missed.</p> <p>Demonstrate fluids are available throughout the 24 hour period.</p>		Express likes and dislikes.
<b>16.2</b>	People are supported to eat and drink where they have lost independence or require support and encouragement.	<p>Staff identify people requiring support and are proactive in assisting.</p> <p>Specific needs related to eating and drinking are identified within care plans and risk assessments.</p>		

		<p>People are given a choice of where they eat.</p> <p>People are provided with alternative food choices and snacks where these are missed.</p>		
16.3	<p>People who receive diet and hydration through enteral routes have their needs carried out as prescribed and have their weight monitored.</p>	<p>Staff adhere to dietetic nutrition plans.</p> <p>Staff are trained to deliver enteral feeding if required in care home plans</p>	<p>Enteral feeds and equipment.</p>	



<b>OUTCOME 17</b>				
<ul style="list-style-type: none"> <li>• <b>Service Outcome:</b> Equipment used within the care home environment or for the delivery of care is safe and effective.</li> <li>• <b>Individual Outcome:</b> People can be confident that all equipment used to support their care is safe and well maintained.</li> </ul>				
<b>Required Outcome</b>		<b>Provider</b>	<b>Commissioner</b>	<b>Person/Family or Person's Representative</b>
<b>17.1</b>	Services ensure the safe and effective procurement, use and maintenance of equipment.	<p>Arrangements are in place to purchase, service, maintain, renew and replace equipment where appropriate.</p> <p>All equipment is: -</p> <ul style="list-style-type: none"> <li>• used, stored and maintained in line with the manufacturers' instructions;</li> <li>• Used for its intended purpose and solely for the resident it has been provided for</li> </ul>	Advice from Occupational Therapists and other appropriate professionals on correct equipment and procedures.	
<b>17.2</b>	There is an inventory of equipment purchases that it is compliant with legislation guidance. Equipment has been serviced and is fit for use.	<p>Range of hoisting equipment and slings.</p> <p>Non specialist equipment such as beds, bed rails, bed rail protectors, seating, wheelchairs, aids for mobility, sterilization machines, range of mattresses, including</p>	Specialist beds for example bariatric, where indicated specialist mattresses, seating, airflow cushions, ceiling track hoists, person specific specialist slings, medical devices such as oxygen and concentrators, enteral feeding equipment.	

		<p>airflow mattresses, airflow cushions.</p> <p>Servicing certificates available.</p>	<p>HB organises servicing for NHS funded equipment.</p>	
<b>17.3</b>	<p>Staff have been trained and are competent to use equipment required to provide care.</p>	<p>Evidence of a trained workforce and assessment of competence where required.</p>	<p>Demonstrate use of equipment provided for an individual person's use.</p>	

**Workforce, Leadership and Management**

**OUTCOME 18**

- **Service Outcome:** The home will be effectively and consistently managed by the responsible individual and suitably qualified managers in accordance with legislation, and any requirements made by the relevant regulator, SCW and/or the NMC.
- **Individual Outcome:** People can be confident that their needs can be met by appropriately qualified, competent and experienced staff.

Required Outcome		Provider	Commissioner	Person/Family or Person's Representative
18.1	Pre admission/initial assessments identify that the totality of an individual's needs can be met.	Comprehensive pre admission assessments completed.	Review case notes.	
18.2	There is a skilled and competent workforce able to undertake assessments and identify needs for care planning.	Appropriate competent staff are responsible for assessment and care planning. Where this becomes a delegated function, appropriate training has been made available.	Review case notes.	
18.3	Care Records are accurate, up to date, complete, understandable and contemporaneous in accordance with the relevant and appropriate standards.	Appropriate competent staff evidence they have oversight of the delivery of care.  All is reviewed and evaluated on a regular basis, taking into account any changing care needs.	Visiting professionals document visit outcomes in care home records where appropriate.  In certain circumstances for example where safeguarding issues are raised or complex health	

			needs exist the commissioner may request additional support plan reviews.	
<b>18.4</b>	Documentation is person centered and outcome based.	<p>A copy of the residents personal plan is readily available and in a format and language appropriate to the person's needs.</p> <p>All records are secure, up to date and in good order.</p>		
<b>18.5</b>	Recommendations relating to care delivery or health and safety within the home are addressed in a timely manner.	Quality audits and action plans address identified areas for quality improvement.		
<b>18.6</b>	The workforce are appropriately recruited, trained, qualified and competent for the work they undertake.	<p>Robust recruitment practices are in place.</p> <p>Induction process evidences that competency to deliver care has been assessed.</p> <p>Training needs analysis to take place in conjunction with supervisions.</p>		
<b>18.7</b>	Staff understand their roles and responsibilities and to who they are accountable.	All staff have job descriptions.		

		Staff have training relevant to their role.		
18.8	Clarity of roles and responsibilities and lines of accountability between the Responsible Individual (RI) and Manager that is understood by staff.	Evidence of staff meetings where roles and responsibilities of the management team is discussed.		
18.9	Quality assurance processes are in place to audit the quality of the service delivered. Action plans are in place for areas requiring improvement.	QA report to be completed twice a year under RISCA and an annual review by the RI.	Review during monitoring period.	

#### OUTCOME 19

**Service Outcome:** There are sufficient and appropriately trained staff to deliver care for people's assessed needs.

**Individual Outcome:** People can be confident that they are supported by staff who are able to meet their needs in a person centered way.

	Required Outcome	Provider	Commissioner	Person/Family or Person's Representative
19.1	Staffing levels meet the needs of the people living in the care home.	People's dependency levels are assessed and evaluated on a regular basis.	Prepare for the implementation of the Nurse Staffing (Wales) Act 2016	
19.2	Staff are supervised and supported in the delivery of their role to ensure that they possess the appropriate skills, equipment and support to enable them to meet their responsibilities to a consistently high standard.	There is a robust structure to demonstrate that care delivery is overseen by the appropriate competent staff.		

**OUTCOME 20**

- **Service Outcome:** The quality of service provided is regularly assessed and monitored.
- **Individual Outcome:** People can be confident that the RI and managers of the home are appropriately aware of the quality of the service being provided and are able to determine any deficits during their quality audits.

Required Outcome		Provider	Commissioner	Person/Family or Person's Representative
20.1	Audit processes are in place to assess adherence to the required standards of practice to maintain wellbeing and safety of people being cared for.	Robust audits are available to inform the QA process.	Review of audits.	

**OUTCOME 21**

**Service Outcome** – documentation relating to all residents is suitable for the provision of safe and effective care and support

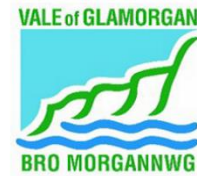
- **Individual Outcome** – People can be confident that documentation and record keeping that relates to their care and support will ensure their health, safety and well-being is maintained.

Required Outcome		Provider	Commissioner	Person/Family or Person's Representative
21.1	Each individual has documentation that is person centered and supports their needs and requirements.	Providers to ensure that appropriate and timely completion of all documentation with dates and signatures included.	Commissioners to ensure the provider has all the necessary assessments to ensure the completion of effective support and management plans.	

21.2	All documentation must be current and reviewed in line with any changes in the residents health and social care need.	Providers internal QA process to audit the completion of all documentation on a regular basis and identify and address and gaps/issues that become apparent.	Audit and monitoring	
21.3	All documentation and support plans must be reflective of any pertinent assessments and updated appropriately.			
21.4	All documentation must be signed and dated by the person completing it.			

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## INDIVIDUAL SERVICE CONTRACT FOR CARE HOME SERVICES

1. Date of Individual Service Contract ("ISC"):
  
2. This ISC is made under the terms and conditions of the Contract Agreement for Care Home Services (April 2020) ("the Contract"), which includes the Service Specification ("the Service Specification") and the Care and Support Plan of the Contract made between City and County of Cardiff County Council/ the Vale of Glamorgan Council ("the Council") and/or the Cardiff and Vale University Health Board ("the UHB") if applicable and *Insert name of TPP*.
  
3. Name of Service User:
  
4. Client No:
  
5. Date of Birth of Service User: Click or tap to enter a date.
  
6. Category (s) of Care:
 

Respite (Social Care)	<input type="checkbox"/>
Respite (Healthcare)	<input type="checkbox"/>
Temporary Placement (Social Care)	<input type="checkbox"/>
Temporary Placement (Healthcare)	<input type="checkbox"/>
Permanent Residential Care (Social Care)	<input type="checkbox"/>
Permanent Nursing Care	<input type="checkbox"/>
Continuing Health Care	<input type="checkbox"/>
  
7. Period of Care (please stipulate if known)    From Click or tap to enter a date.  
 Until Click or tap to enter a date.
  
8. Has this service user been assessed as self-funding?
  - Yes
  - No
  - Not applicable (e.g. CHC/FNC)
  - Finance assessment not yet complete
  - Service user withheld consent

9. Financial Arrangements:

The Rate                      £                      until (insert date) *20/12/2019*

Less Resident's Contribution	£		£	thereafter
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Third Party Payment	£	£
UHB Payment	£	£
Council Payment	£	£

**Any element of funded nursing care will be paid directly by the Local Health Board**

10. Any Third Party Payment will be paid directly to the Provider by:

11. The Provider agrees to provide care to the Service User in accordance with the Contract including the Service Specification and Care and Support Plan.

12. This ISC will terminate on the Expiry Date and may be terminated in any of the circumstances set out in the Contract.

13. This ISC may be amended by agreement and upon the issue of a revised Care and Support Plan, and such revised Care and Support Plan shall be deemed to form part of this ISC.

14. The ISC will be reviewed on an annual basis as a minimum.

**SIGNATURE for  
and on behalf**

**of Provider: ..... Print Name :.....**

**Position :..... Date:.....**

**SIGNATURE for and  
on behalf of**

**the Council :..... Print Name :**

**Position : ..... Date .....**

**SIGNATURE for and  
on behalf of the**

**University Health Board :..... Print Name:.....**

**Position: ..... Date:.....**

**SIGNATURE of, or  
on behalf of the**

**Citizen :..... Print Name:.....**

**Role: ..... Date:.....**

# Residential Charging Policy

Social Services and Well-Being (Wales) Act 2014

Cardiff Council  
Adult Social Services



A policy in relation to charging for  
residential care and support services

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## Document Control

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## Previous versions

Version	Status	Description	Sign off
1	Updated	Amendments made to meet with the agreed Regional Contract regarding care home placements	Louise Barry

*Please note policies that are printed or downloaded may be out of date. It is your responsibility to ensure that you access the most recent and up-to-date policy which is available on the intranet.*

## 1. Introduction

This policy sets out the responsibilities of Cardiff Council concerning charging for costs incurred when providing care and support in residential or nursing accommodation.

This policy is part of a suite of policies and procedures around charging for care and support.

Details of practice and specific processes are to be found in the procedure documents, which sit underneath this policy. This policy **must** always be read in conjunction with those procedures, the Social Services and Well-being (Wales) Act 2014, associated Regulations and Codes of Practice.

The references in this policy 'we', 'our' or 'us' mean 'Cardiff Council'.

## 2. Legislative Context – Summary

The Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') is the legal framework that brings together and modernises social services law in Wales. The 2014 Act sets out the requirements for local authorities in relation to charging and financial assessment under Part 5 of the 2014 Act on those who are to receive care and support, or support in the case of carers.

This policy and its related procedures are written with particular reference to the following documents, which, in addition to the 2014 Act itself, should be the principle points of reference for those in need of further information:

The 2014 Act:	<a href="#">The Social Services and Well-being (Wales) Act 2014</a>
Regulations:	<a href="#">The Care and Support (Financial Assessment) (Wales) Regulations 2015</a> <a href="#">The Care and Support (Charging) (Wales) Regulations 2015</a> <a href="#">The Care and Support (Deferred Payments) (Wales) Regulations 2015</a> <a href="#">The Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015</a> <a href="#">The Care and Support (Choice of Accommodation) (Wales) Regulations 2015</a>

	<a href="#">The Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017</a>  <a href="#">The Care and Support (Charging) (Wales) (Amendment) Regulations 2018</a>  <a href="#">The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019</a>
Codes of Practice:	<a href="#">Part 4 and 5 Code of Practice (Charging and Financial Assessment)</a>
Other legislation:	<a href="#">Mental Capacity Act 2005</a> <a href="#">United Nations Principles for Older Persons</a> <a href="#">United Nations Convention on the Rights of Disabled People</a> <a href="#">Human Rights Act 1998</a>

Individuals who require care and support will be financially assessed in line with the above legislation and guidance as to their ability to pay towards the residential or nursing care services they receive.

### 3. Principles

We are committed to giving people a stronger voice and real control over the support they need, to remove barriers to their well-being.

The 2014 Act places responsibility on individuals exercising functions under the 2014 Act, Local Authorities, and other public bodies for meeting needs and delivering outcomes, with the Local Authority being obliged to meet any eligible need, and/or help deliver any relevant outcome, which would not otherwise (i.e. without intervention) be met.

We will ensure that charging, where it occurs, is consistent, fair and clearly understood. Individuals who are asked to pay a charge will only be required to pay what they can afford.

We will take into account the principles set out in the charging and financial assessment framework introduced by the 2014 Act.

We will ensure there is information and advice about charging available in appropriate formats, which take account individual communication needs, in particular for those with a sensory impairment, learning disability or for whom Welsh



or English is not their first language. This is to ensure that individuals are able to understand why they are being charged and how charges have been calculated.

Where an individual lacks capacity they will still be subject to a financial assessment in order to determine if they are required to contribute towards the cost of their care and support. We will use appropriately skilled staff to communicate with an individual, taking into consideration their capacity as well as any medical condition or impairment they might have. Where possible we will consult with family members who may have the legal authority to make financial decisions on behalf of an individual who lacks capacity. If there is no such person, then an approach to the Court of Protection may be required.

#### **4. Summary of Key Duties and Requirements**

##### **Choice of Accommodation and Additional Costs**

Sections 35 to 38 of the 2014 Act requires us to support an individual to find a suitable placement of their choice once they have been assessed as requiring accommodation in a care home. The individual has the right to express a preference for a care home of their choosing provided that:

- the care home is suitable to meet their assessed needs;
- to do so would not cost us more than we would usually expect to pay for accommodation of that type;
- a place in the care home is available; and
- the provider of the care home is willing to enter into a contract with our terms and conditions.

We have an agreed set rate which we pay care home providers which can be found in our Residential Charging Procedure. We will work with the individual to identify the best accommodation for their care and support needs.

In some cases, an individual may choose a care home where charges are in excess of our set rate. In those cases, the individual or a third party such as a family member or representative will be required to enter into a written agreement with the Council to pay the additional cost directly to the relevant care provider. We will facilitate this arrangement. This will also apply if the request is for a care home in another county. Further details can be found in our Choice of Accommodation protocol.

If an individual chooses to be placed outside Cardiff, we will still arrange for their preferred accommodation provided the above conditions are met. We will subsequently follow guidance in Section 194 of the 2014 Act on ordinary residence (see Ordinary Residence Policy).

## **Charging for Care and Support in a Care Home**

We will support the individual to identify how best to pay their assessed charge. This will include offering the individual a deferred payment agreement against the value of a property taken into account in the financial assessment (see Deferred Payments below and our Residential Charging procedure).

Individuals in a care home with capital at or below the capital limit (as set by the Welsh Government) will contribute most of their income, excluding their minimum income amount, towards the cost of their care and support.

Respite care, as detailed in a care and support plan, up to eight weeks will not be subject to this charging policy as individuals will be charged in line with our Non-residential Charging Policy.

An individual who is self-funding their care and support because they have capital at or above the capital limit can choose to ask us to arrange their care and support to meet their eligible care and support needs. Individuals in this position will be required to pay the full cost of their care and support.

In the cases of an individual who is self-funding their care and support, if there is a change of financial circumstances and the individual no longer has capital at or above the capital limit and still has eligible care and support needs that require accommodation in a care home we will complete a new financial reassessment. If the care home provider charges more than our agreed set rate and an additional cost will be incurred, we will agree to the placement at that accommodation if there is a third party willing to accept responsibility for the additional payment and enter into an agreement with us and the care home provider. Further details can be found in our Choice of Accommodation protocol.

## **Deferred Payments**

If an individual will be entering a care home to meet their care and support needs and their property is included in their financial assessment, we can defer or delay some of their costs.

We are required to enter into a deferred payment agreement if an individual is in or is entering care home accommodation as long as they meet the eligibility criteria set out in the Care and Support (Deferred Payment) (Wales) Regulations 2015. We must ensure there is sufficient security for the amount being deferred.

We are required to enter into a deferred payment agreement if:

- We have assessed the individual's care and support needs and their care and support plan specifies that we are going to meet those needs through care home accommodation.
- We have completed a financial assessment with the individual and they are required to pay a charge.

We will charge administration costs for setting up the agreement. Any administration costs will not be more than the costs we incur and we will make the breakdown of costs available to the individual (see Residential Charging Procedure).

We will charge compound interest on the amount deferred, including administration costs and interest will be charged at 0.15% of the relevant rate. The relevant rate changes on 1 January and 1 July and is the weighted average interest rate on conventional gilts specified for the financial year in which the relevant period starts in the recent report published before the start of the relevant period by the Office of Budget Responsibility under section 4(3) of the Budget Responsibility and National Audit Act 2011. Interest will continue to accrue until the debt is settled.

More details on deferred payments can be found in our Residential Charging procedure.

### **Chargeable Services**

We will make a charge to an individual who receives care and support provided and/or arranged by us to meet their eligible needs when that care and support is:

- Temporary and permanent residential care
- Temporary and permanent nursing care
- Direct Payments

### **Non-Chargeable Services**

The following adult social care services are provided free of charge:

- Assessment of needs, care planning and reviews
- Information and advice provided under the 2014 Act.
- Independent professional advocacy provided in accordance with the 2014 Act.

### **Exemptions**

We have discretion to charge an individual for care and support provided to meet their needs. We will not charge for care and support provided or arranged in the following circumstances:

- To meet the needs of a child;
- For an individual who has Creutzfeldt-Jakob Disease which has been diagnosed by a registered medical practitioner;
- For an individual who has been offered or is receiving a service as part of a package of after-care services under Section 117 of the Mental Health Act 1983; or
- For a carer for support services provided directly to them as a carer. If the service is provided to the person with care and support needs (eg respite) it would form part of any charge for care and support provided to that person.

If services are delivered jointly with a Local Health Board the individual will only be charged for the social care element of each service.

### **Financial Assessment**

For chargeable services, we have a duty to carry out a financial assessment to determine how much an individual will be charged. The financial assessment will consider an individual's:

- Income
- Capital, including savings and property.

The financial assessment will make sure that all individuals receiving residential care and support retain the relevant minimum income amount (MIA) which is specified by the Welsh Government each year. This income will allow individuals money to spend on personal items such as clothes and other items that are not part of their care and support.

We have discretion to apply a higher MIA in individual circumstances, for example where the individual needs to contribute towards the cost of maintaining their former home or the individual has additional disability related expenditure. These additional expenses will be considered as part of a review requested by the individual following notification of their assessed charge.

Where an individual will be charged for a service, we will send them a written statement of the charge. The individual will be liable to pay the charge from the date care and support was first provided. The individual is not required to make payment until after the date on which the statement is sent to them.

An individual will be financially assessed in their own right. Only the individual's income will be counted, not that of their partner, spouse or carer. It may be beneficial for some individuals who are married or live with a partner to tell us about their joint income as it may result in a lower charge. We will always use the assessed charge that is best for the individual.

### **Treatment of Capital**

Capital in general refers to financial resources held by an individual which are available for use and tend to be from sources considered more durable than income in the sense that they can generate a return. In most cases capital will involve financial resources held by an individual in the form of savings, investment and property. The capital limit is set by Welsh Government each year and is outlined in our Residential Charging Procedure.

An individual will not be charged on the same resources twice. Resources will only be treated as income or capital but not both.

A capital asset is normally defined as belonging to the individual in whose name it is held; the legal owner. However, there may be cases where the individual is the

beneficial owner, even though the title of the asset is held by someone else, and such assets or a share of such assets may also be considered a capital asset held by the individual.

We will determine the value of the capital asset before it is taken into account in the financial assessment. Other than National Savings Certificates, valuation must be the current market or surrender value of the capital asset, less any outstanding debt such as a mortgage and 10% of the value if there are expenses involved in selling the asset.

Following the financial assessment, if we estimate the value of the asset is more than the capital limit, then the individual is liable for the full cost of their care and support.

Any capital an individual holds at or below the capital limit, will be disregarded from their financial assessment and can be retained by the individual to use as they wish.

In some circumstances an individual may be treated as possessing capital even where they do not actually possess it. This is called notional capital and may be:

- available to the individual if they applied for it
- is paid to a third party in respect of the individual
- the individual has deprived themselves of it in order to reduce the amount of charge that they have to pay for their care and support

### **Capital Disregards**

If appropriate, we will apply additional capital disregards as listed in Part 4 and 5 Codes of Practice (Charging and Financial Assessments) an example of which, would be capital derived from an award of damages for personal injury. Any potential disregards would be discussed with the individual as part of the assessment process.

During discussions we will also advise anyone with an interest in the property that we also have an interest in, they will need to consider how they plan to use, maintain and insure their property if they take out a deferred payment agreement; that is whether they wish to rent it out, prepare it for sale, or leave it vacant for a period. The individual should be advised if we intend to place conditions on how the property is maintained or used whilst any agreement is in place.

### **Property Disregards**

In the following circumstances the value of the individual's main or only home must be disregarded where capital is taken account of in a financial assessment:

- Where the individual is temporarily receiving care and support in a care home and they intend to return to that property and that property is still

available to them **or** are taking reasonable steps to dispose of the property in order to acquire another more suitable property to which to return.

- Where the individual is receiving care and support in a care home and no longer occupies their main and only home, but it is occupied in part or whole as their main or only home by any of the people listed below, its value must be disregarded in a financial assessment where capital is taken into account. This only applies where that property has been continuously occupied since before the individual went into a care home:
  - The individual's partner, former partner or civil partner, except where they are estranged or divorced
  - A lone parent with a dependent child who is the individual's estranged or divorced partner
  - A relative of the individual or member of the individual's family who is:
    - Aged 60 or over, or
    - Is a child of the resident aged under 18, or
    - Is incapacitated.

For the purposes of this disregard:

- the meaning of "occupy" is not closely defined. In most cases it will be obvious whether or not the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear and we will undertake a 'factual inquiry' weighing up all relevant factors in order to reach a decision. An emotional attachment to the property alone is not sufficient for the disregard to apply.

Circumstances where it may be unclear might include where a qualifying relative has to live elsewhere for a particular reason; for example for the purposes of their employment or due to them serving a prison sentence. Whilst they live elsewhere in order to undertake their employment, or serve their sentence, the property remains their main or only home. It would not be reasonable to regard their temporary accommodation as the individual's main or only home as they may well intend to return to the property in question in the future. Essentially in such circumstances the qualifying relative is occupying the property but is not physically present.

- a "relative" is defined as including any of the following:

Parent (including an adoptive parent)	Parent-in-law	Step-parent
Son (including an adoptive son)	Son-in-law	Step-son
Daughter (including an adoptive daughter)	Daughter-in-law	Step-daughter
Brother	Sister	Grandparent

Cardiff Council  
Residential Charging Policy

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Spouse	Unmarried partner	Civil Partner
Grandchild	Uncle	Aunt
Nephew	Niece	

- a member of the individual's "family" is defined as someone who is living with the qualifying relative as part of an unmarried couple, married to or in a civil partnership.
- the meaning of "incapacitated" is not closely defined. However, it will be reasonable to conclude that a relative is incapacitated if either of the following conditions applies:

a) The relative is receiving one (or more) of the following welfare benefits:

- incapacity benefit
- severe disablement allowance
- disability living allowance
- personal independence payments
- armed forces independence payments
- attendance allowance
- constant attendance allowance, or a similar benefit; or

b) The relative does not receive any disability related benefit but their degree of incapacity is equivalent to that required to qualify for such a benefit. Medical or other evidence may be needed on this before a decision is reached on whether to apply this.

### **Discretionary Disregard**

We have discretion to apply a property disregard in other circumstances, however, we will balance this discretion with ensuring an individual's assets are not maintained at public expense. An example where it may be appropriate to apply a discretionary disregard is where it is the sole residence of someone who has given up their own home in order to become a carer for the person who is now in a care home.

Where this happens we will consider all the relevant factors before deciding whether the property should be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property is the relative's main or only home. The purpose of the disregard in these circumstances is to safeguard certain categories of people from the risk of homelessness.

We will consider if the principle reason for the move is that it is necessary to ensure the relative has somewhere to live as their main or only home, rather solely to protect the family inheritance.

### **12-week Property Disregard**

We will disregard the value of the individual's main or only home for the first 12 weeks, where the property is taken into account in the financial assessment and the value of their savings etc, is below the capital limit. This disregard will be applied:

- When the individual first enters a care home as a permanent resident (or subsequently enters after a stay of less than 12 weeks so that they would receive the balance of the 12 weeks as a further disregard).
- When a property disregard based on a qualifying relative unexpectedly ends because the qualifying relative has died or moved into a care home.

### **26-week Disregard**

Where capital (excluding property) is taken into account in a financial assessment we will disregard the following capital assets for at least 26 weeks:

- Assets of any business owned or part-owned by the individual in which they were a self-employed worker and has stopped work due to some medical condition or impairment but intends to take up work again when they are fit to do so. Where the individual is in a care home, this should apply from the date they first took up residence.
- Money acquired specifically for repairs to, or replacement of, the individual's home or personal possessions provided it is used for that purpose. This should apply from the date the funds were received.
- Premises which the individual intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced.
- Premises which the individual intends to occupy as their home where essential repairs or alterations are required. This should apply from the date the individual takes action to affect the repairs.
- Capital received from the sale of a former home where the capital is to be used by the individual to buy another home. This should apply from the date of completion of the sale.
- Money deposited with a Housing Association which is to be used by the individual to purchase another home. This should apply from the date on which the money was deposited or grant was made under a Housing Act which is to be used by the individual to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received.



We may consider, if appropriate, to apply the disregard for longer. For example: where an individual is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.

### **52-week Disregard**

We will disregard the following payments of capital received by an individual, for a maximum of 52 weeks from the date they are received, the balance of any arrears of, or any compensation due to non-payment of:

- Mobility supplement
- Attendance Allowance
- Constant Attendance Allowance
- Disability Living Allowance / Personal Independence Payment
- Exceptionally Severe Disablement Allowance
- Severe Disablement Occupational Allowance
- Armed forces service pension based on need for attendance
- Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance
- Income Support/Pension Credit
- Minimum Income Guarantee
- Working Tax Credit
- Child Tax Credit
- Housing Benefit
- Special payments to pre-1973 war widows

Payments or refunds for:

- NHS glasses, dental treatment or patient's travelling expenses
- Cash equivalent of free milk and vitamins
- Expenses in connection with prison visits
- Personal Injury Payments.

We will also disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:

- A member of the victim's family for two years from the date of death of the victim (or from the date of payment from the trust if later); **or**
- A dependent child or young person until they turn 18.

### **Calculation of Income**

Any money an individual receives in benefits will be included as income in the financial assessment (see Residential Charging Procedures).

Where any welfare benefit payment has been reduced (other than a reduction because of voluntary unemployment), for example because of an earlier

overpayment, any amount taken into account should be the gross amount of the benefit before reduction.

We also consider any private pension, annuity income, or other regular income from investments. An annuity is a type of pension product that provides a regular income for a number of years in return for an investment. Such products are usually purchased at retirement in order to provide a regular income. While the capital is disregarded, any income from an annuity may be taken fully into account except where it is:

- purchased with a loan secured on the person's main or only home; or
- a gallantry award such as the Victoria Cross Annuity or George Cross Annuity.

Where an individual in a care home is paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner who is still resident in the property, the Council will disregard 50% of the value of the annuity where it takes it into account.

We will not take into account certain income or benefits in the financial assessment. These can change and further details can be found in our Residential Charging Procedure.

We will take into account the individual circumstances of the payment before making a decision on whether to disregard such payments. In general, a charitable or voluntary payment which is not made regularly is treated as capital, whilst regular payments will be disregarded.

### **Expenditure Allowances**

We will consider taking into account if an individual requires an increase in their minimum income allowance to cover any disability related expenditure or household commitments, especially if they are a temporary resident in a care home. Where an individual believes they have additional expenditure over and above the minimum income allowance, they have the right to seek a review and a more detailed consideration of their disability related costs may then be undertaken.

### **The Maximum Charge Payable**

The maximum charge for residential adult social care services will need to be determined on an individual basis, according to an individual's means and cost of placement.

Individuals will only be charged what they have been financially assessed they can reasonably afford to pay and after any service charges are made they will be guaranteed to still retain a level of income equivalent to the minimum income amount.

### **Decline to Provide Financial Details**

All individuals have the right to choose not to provide their financial details to us. In such cases we are unable to undertake a financial assessment and the individual will be charged the full amount for the care they receive at our agreed rate for the type of residential care and support they receive.

### **Financial Representatives**

In circumstances where an individual lacks capacity but has a third party acting formally on their behalf we will contact the representative for information on financial matters and should they take responsibility for making payments, the representative will be billed directly for the care contributions.

### **Completing the Financial Assessment**

Where an individual has been assessed as requiring a service covered under this policy we will offer each individual a financial assessment. Individuals will be contacted to arrange a visit. If a visit is not possible, individuals will be advised of the information that is required which must be posted or e-mailed to us. The financial assessment is based on the information provided by the individual.

If an individual delays completing the financial assessment by more than 15 working days after the request is made they may be required to pay the subsidised cost of the service until a financial assessment is completed. We may extend this period if a request for an extension of time with reasons for the delay is made. If the financial assessment, when completed results in a lower charge than this, consideration will be given to refunding the difference depending on the circumstances of each case. The Director of Social Services will hold discretion in this matter, in consultation with the other Senior Officers of the Council.

### **Change of Financial Circumstances**

If an individual's financial circumstance changes they must advise us as soon as possible as this may affect their assessed charge. Changes which should be notified include, but are not limited, to:

- Receipt of a new benefit
- Changes in capital
- Changes to income or allowable expenditure
- Changes to living arrangements

At any time, individuals may inform us of any other changes to their financial circumstances if they would like a financial assessment to be undertaken. After an individual has told us about changes in their financial circumstances a new financial assessment will be completed using the most up to date information that is provided. If the revised financial assessment results in a decrease in the weekly charge this

will usually be backdated to the date that the individual's circumstances changed.

This will be explained in writing to the individual. If it results in an increased charge the individual will be informed of the outcome of their financial assessment in writing. This correspondence will state the date from which their charge commences.

We will consider an individual's financial assessment on at least an annual basis. The periodic re-assessment ensures that an individual's financial circumstances are correct when assessing charges for services and that they are only asked to pay what they can reasonably afford.

### **The Charging Period and Charge Payable**

Charges will be raised for each four-week period.

All individuals will be informed of the outcome of their financial assessment in writing. This correspondence will state the date from which their charge commences. If for any reason the individual overpays a charge, they will be notified and we will reimburse them or credit the overpayment against future charges for service.

### **Methods of Payment**

There are a range of methods to pay charging invoices. Details of these methods are included on the back of the bill sent to out each month.

### **Debt Recovery**

Where an individual accrues a debt we will take all reasonable steps to ascertain the reasons why this has occurred and only when it is clear that it is as a result of an individual's deliberate non-payment will debt recovery be considered, in line with the requirements of the 2014 Act.

### **Review and Complaints**

An individual may request a review of their financial assessment where they feel an inappropriate decision has been made, either in the level of the charge or in relation to the basis upon which the decision to impose a charge was made. If they wish the individual may provide additional information that may be considered, for example, additional disability related expenditure. We will set up a Review Panel headed by the Social Services Director to consider these requests.

If an individual is unhappy with the Review Panel's decision they will be able to make a formal complaint about this to us in accordance with the Council's Complaints policy.

## 5. Putting Policy into Practice

This policy outlines the key duties and requirements in relation to charging for residential care and support services in Cardiff. More detailed guidance notes and procedures will be available to support and assist practitioners with the interpretation of this policy and the relevant sections of the 2014 Act.

## 6. Policy Approval and Review

Policy Approved By:	
Date Approved:	
Review Frequency:	
Date Policy To Be Reviewed:	
Responsible Officer(s):	

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## EQUALITY IMPACT ASSESSMENT

<b>Project Title: Older People Care Home-Regional Contract &amp; Service Specification</b>
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<b>New.</b>
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<b>Who is responsible for developing and implementing the Project?</b>	
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Name: Angela Bourge	Job Title: Operational Manager -Strategy, Performance and Resources
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Central Business Support - Strategy, Performance & Resources	Service Area: Social Services
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Assessment Date:
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**1. What are the objectives of the ~~Policy / Strategy / Project / Procedure / Service / Function?~~**

The Council has a statutory duty under the Social Services and Wellbeing (Wales) Act 2014, to commission services to meet the assessed needs for its customers. This equalities impact assessment is for the uplift proposed for the provision of:

- Residential and nursing care service for older people and older people with dementia

The beneficiaries of the above services, commissioned by the Council are the service users of Cardiff, the Council places great importance in the meeting of people's assessed needs.

The Council is seeking authorisation to agree the New Regional contract and Service specification for the care hoes services for older people this includes:

- General Residential
- Residential Dementia
- General Nursing
- Nursing Dementia

**2. Please provide background information on the Project and any research done [e.g. service users data against demographic statistics, similar EIAs done etc.]**

**Background**

**The Residential and Nursing Care service for older people in Cardiff include:**

The Social Services & Well-Being (Wales) Act 2014 (the Act) came in to force on 1st April 2016. The Act imposes various duties on local authorities and health boards that require them to work to promote the well-being of those who need care and support, or carers who need support, working on a regional basis wherever possible

In response to the Act, in August 2014 Cardiff Council established a Dynamic Approved Provider List to secure Residential & Nursing Care placements for Older People & Older People with Dementia.

The Council currently issues opportunities for placements via the DAPL in relation to the following four categories of care:

- Residential Care for Older People
- Residential Care for Older People with Dementia

- Nursing Care for Older People
- Nursing Care for Older People with Dementia

There are currently 76 providers accredited on the existing DAPL to deliver these services.

The current Contract for Residential & Nursing Care for Older People and Older People with Dementia has not been updated for a significant amount of years, and was no longer fit for purpose as such does not meet the requirements of various pieces of legislation and corporate policies that have come in to effect in recent years. In addition to the Act, these include, but are not limited to:

- the Regulation and Inspection of Social Care (Wales) Act 2016,
- the Data Protection Act 2018
- the Welsh Language (Wales) Measure 2011; and
- the Welsh Language Standards

The contract for Care Home Services strengthens the existing requirement for providers and commissioners to work together in order to provide services that meet the care and support needs of individual services users with the ability to provide a choice of care homes for the service user and their family.

Although the contract has been designed for use by both the Vale of Glamorgan and Cardiff, each local authority commissions care individually; therefore, each Council will enter in to a separate agreement with residential and nursing home providers. Nursing care provision is jointly commissioned by Social Services and the Health Board. The contract agreement for these services will be signed by the individual local authority, Cardiff and Vale University Health Board, and the nursing care provider.

Various engagement and consultation workshops by council and adam officers will continue to take place to support providers to enrol on to the new dynamic approved provider list.

Various work streams are taking place to support the contract this includes:

- enrolment and accreditation process
- local and regional quality monitoring and quality scoring which links to Cardiff councils' corporate
- contract monitoring
- amendments to the third party policy for oversight

### 3 Assess Impact on the Protected Characteristics

#### 3.1 Age

**Will this Project have a differential impact [positive / negative] on younger / older people?**

	Yes	No	N/A
Up to 18 years		✓	
18 - 65 years		✓	
Over 65 years	✓		

**Please give details/consequences of the differential impact, and provide supporting evidence, if any.**

It is expected to have a positive impact on older people because the specification is focused on outcomes and quality. The access to older people care homes is from those aged 50 years and over only.



<b>What action(s) can you take to address the differential impact?</b>
No differential impact

**3.2 Disability**

**Will this Project have a differential impact [positive / negative] on disabled people?**

	Yes	No	N/A
Hearing Impairment		✓	
Physical Impairment		✓	
Visual Impairment		✓	
Learning Disability		✓	
Long-Standing Illness or Health Condition		✓	
Mental Health		✓	
Substance Misuse		✓	
Other			

<b>Please give details/consequences of the differential impact, and provide supporting evidence, if any.</b>
There will be no differential impact, regardless of disability.
<b>What action(s) can you take to address the differential impact?</b>
To implement a new contract and service specification there will be no impact on disability.

**3.3 Gender Reassignment**

**Will this Project have a differential impact [positive / negative] on transgender people?**

	Yes	No	N/A
<b>Transgender People</b>		✓	
To implement a new service contract and service specification will have no negative impact on gender assignment			

<b>Please give details/consequences of the differential impact, and provide supporting evidence, if any.</b>
<b>What action(s) can you take to address the differential impact?</b>
To implement a new service contract and service specification will have no impact on transgender or gender reassignment.

**3.4. Marriage and Civil Partnership**

**Will this Project have a differential impact [positive / negative] on marriage and civil partnership?**

	Yes	No	N/A
Marriage		✓	
Civil Partnership		✓	

<b>Please give details/consequences of the differential impact, and provide supporting evidence, if any.</b>
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There will be no differential impact, regardless of Marriage and Civil partnership.
<b>What action(s) can you take to address the differential impact?</b>
To implement a new contract and service specification will have no impact on marriage and or Civil partnership.

### 3.5 Pregnancy and Maternity

**Will this Project have a differential impact [positive/negative] on pregnancy and maternity?**

	Yes	No	N/A
Pregnancy		✓	
Maternity		✓	

<b>Please give details/consequences of the differential impact, and provide supporting evidence, if any.</b>
There will be no differential impact, regardless of pregnancy and maternity
<b>What action(s) can you take to address the differential impact?</b>
To implement a new contract and service specification will have no impact on pregnancy and maternity.

### 3.6 Race

**Will this Project have a differential impact [positive / negative] on the following groups?**

	Yes	No	N/A
White		✓	
Mixed / Multiple Ethnic Groups		✓	
Asian / Asian British		✓	
Black / African / Caribbean / Black British		✓	
Other Ethnic Groups		✓	

<b>Please give details/consequences of the differential impact, and provide supporting evidence, if any.</b>
There will be no differential impact, regardless of race.
<b>What action(s) can you take to address the differential impact?</b>
To implement a new contract and service specification will have no impact on of race.

### 3.7 Religion, Belief or Non-Belief

**Will this Project have a differential impact [positive / negative] on people with different religions, beliefs or non-beliefs?**

	Yes	No	N/A
Buddhist		✓	
Christian		✓	
Hindu		✓	
Humanist		✓	
Jewish		✓	
Muslim		✓	
Sikh		✓	
Other		✓	

<b>Please give details/consequences of the differential impact, and provide supporting evidence, if any.</b>
There will be no differential impact, regardless of religion, belief or non-belief.
<b>What action(s) can you take to address the differential impact?</b>

To implement a new contract and service specification will have no impact on religion, belief or non-belief.

### 3.8 Sex

Will this Project have a differential impact [positive / negative] on men and/or women?

	Yes	No	N/A
Men		✓	
Women		✓	

**Please give details/consequences of the differential impact, and provide supporting evidence, if any.**

There will be no differential impact, regardless of gender.

**What action(s) can you take to address the differential impact?**

To implement a new contract and service specification will have no impact on gender.

### 3.9 Sexual Orientation

Will this Policy / Strategy / Project / Procedure / Service / Function have a differential impact [positive / negative] on the following groups?

	Yes	No	N/A
Bisexual		✓	
Gay Men		✓	
Gay Women/Lesbians		✓	
Heterosexual/Straight		✓	

**Please give details/consequences of the differential impact, and provide supporting evidence, if any.**

There will be no differential impact, regardless of sexual orientation.

**What action(s) can you take to address the differential impact?**

To implement a new contract and service specification will have no impact on sexual orientation.

### 3.10 Welsh Language

Will this Project have a differential impact [positive / negative] on Welsh Language?

	Yes	No	N/A
Welsh Language		✓	

**Please give details/consequences of the differential impact, and provide supporting evidence, if any.**

There will be no differential impact, regardless welsh language.

**What action(s) can you take to address the differential impact?**

To implement a new contract and service specification will have no impact on the Welsh language.

## 4. Consultation and Engagement

What arrangements have been made to consult/engage with the various Equalities Groups?

In 2019, a regional working group was established to undertake work on developing a new regional service specification and contract for delivery of Residential & Nursing Care for Older People and Older People with Dementia.

The group was formed of Social Care and Health Board Commissioners with legal representatives from Cardiff Council & The Vale of Glamorgan, Care Home providers from the Vale of Glamorgan and Cardiff, and legal representatives for the Care Home Forum.

A set of contract documentation was drafted, including the terms and conditions of contract, service specification and individual service contract. A consultation exercise took place whereby all providers for residential and nursing care provision for older people, commissioned by the Councils (Cardiff and the Vale of Glamorgan) and Health Board, and commissioners were asked for their comments on the structure and content of the documentation. This feedback was considered by the working group and final comments were requested in December 2019. No further feedback was received, and the working group agreed the final documentation in January 2020.

Communication and engagement workshops for providers have been put on via adam regarding the process for enrolment and accreditation so that providers are aware of what they need to do in order to enrol on the new dynamic approval provider list. Further engagement will take place throughout December and the new year to get providers up to speed with what they need to do and how to complete the enrolment process.

Providers will be sent the new contract and service specification for care homes for older people, whereby providers who wish to continue getting packages from Cardiff Council will be required to sign and agree to the new contract terms and conditions will be enrolled on the new DAPL for services going forward in April 2021.

During December further engagement with Council officers, Health boards and providers will engage via the regional working group to explore and develop a regional performance framework to support the service specification. Cardiff will also align with its corporate performance framework priorities.

## 5. Summary of Actions [Listed in the Sections above]

Groups	Actions
Age	To implement a new contract and service specification for all older peoples care homes services is based on access to the service being aged 50 years and over who require residential, nursing or dementia care in a care homes setting.
Disability	To implement a new contract and service specification for all older peoples care homes services regardless of disability.
Gender Reassignment	To implement a new contract and service specification regardless of gender reassignment.
Marriage & Civil Partnership	To implement a new contract and service specification for all older peoples care homes regardless of marriage and civil partnerships.
Pregnancy & Maternity	To implement a new contract and service specification for all older peoples care homes services regardless of pregnancy and maternity.
Race	To implement a new contract and service specification for all older peoples care homes services regardless of race.
Religion/Belief	To implement a new contract and service specification for all older peoples care homes services regardless of religion or belief.
Sex	To implement a new contract and service specification for all older peoples care homes services regardless of sex.
Sexual Orientation	To implement a new contract and service specification for all older peoples care homes services regardless of sexual orientation.
Welsh Language	To implement a new contract and service specification for all older peoples care homes services regardless of the welsh language.
Generic Over-Arching [applicable to all the above]	To implement a new contract and service specification for all older peoples care homes services

groups]	
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**6. Further Action**

Any recommendations for action that you plan to take as a result of this Equality Impact Assessment (listed in Summary of Actions) should be included as part of your Service Area's Business Plan to be monitored on a regular basis.

**7. Authorisation**

The Template should be completed by the Lead Officer of the identified Project and approved by the appropriate Manager in each Service Area.

Completed By : Amina Begum	30/11/20
Designation: Interim OM	
Approved By: Angela Bourge	
Designation: Operational Manager, Resources	
Service Area: Social Services	

- 7.1 On completion of this Assessment, please ensure that the Form is posted on your Directorate's Page on CIS - *Council Wide/Management Systems/Equality Impact Assessments* - so that there is a record of all assessments undertaken in the Council.

For further information or assistance, please contact the Citizen Focus Team on 029 2087 3059 or email [citizenfocus@cardiff.gov.uk](mailto:citizenfocus@cardiff.gov.uk)

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**BUS EMERGENCY SCHEME (BES) – REQUEST TO ALL  
COUNCILS TO SIGN UP TO BES 2 SCHEME****STRATEGIC PLANNING & TRANSPORT (COUNCILLOR CARO  
WILD)****AGENDA ITEM: 4**

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**Reason for this Report**

1. This report sets out the wider context, the background to, and reasons for the Bus Emergency Scheme (BES) and seeks the agreement of Cardiff Council to sign up to BES2.

**Wider Context**

2. Bus travel has been severely affected by the Covid-19 pandemic. Passenger numbers have plummeted, whilst social distancing and additional cleansing requirements have placed added burdens and costs on operators.
3. Welsh Government (WG) and local authorities (LAs) have stepped in to support the sector with substantial financial assistance. There has also been an excellent, ongoing dialogue between all parties to discuss and agree on support arrangements.
4. Prior to the pandemic, WG had consulted on a range of proposed changes to the way bus services are delivered in Wales. A Bus Bill was due to have been brought forward during the current Senedd term. Pressures associated with not only Covid but also the large volume of legal work generated by Brexit and the transition period forced WG to postpone the planned legislation.
5. Due to the large amount of public funding that goes into bus services from WG and LAs, WG would like to see the public sector having greater influence over areas such as the networks of services provided, ticketing and integration with rail services. It also sees a greater role for Transport for Wales, which is now responsible for rail services in Wales.
6. This raises two issues: (i) short term survival of operators and (ii) longer term reform of the sector. WG believes that these two can be linked. In the short term, the funding being provided to keep operators afloat is therefore being provided with a number of conditions attached. These

are to incentivise operators to engage in planned changes that are in line with their longer-term ambitions for reform.

7. The Minister of Economy and Transport and North Wales, Ken Skates MS, has met with Leaders of all 22 LAs, along with his officials, to outline Welsh Government's direction of travel. Further details have been included in the Wales Transport Strategy (WTS) which has been the subject of consultation. More recently, the Deputy Minister, Lee Waters MS, met with all Leaders to discuss the WTS but also to encourage LAs to sign up to the Bus Emergency Scheme 2 (BES2). This is the latest phase of financial support to help operators through the period of the pandemic (more details on BES 2 below).
8. Leaders have agreed to establish a WLGA Bus Member Group, with a focus on the longer-term proposals to reform the sector's operations. That group includes the WLGA Leader (who is also the WLGA's Transport Spokesperson), the deputy Transport Spokesperson, the chairs of the four regional transport bodies and the co-chairs of the WLGA Rural Forum. That Member Group is due to meet with Lee Waters on 18<sup>th</sup> January 2021.

## **Background**

9. The problems facing operators were recognised at an early stage of the pandemic. Looking ahead, to secure their services for the future, local authorities agreed to continue making payments for contracted services even though many services were initially suspended.
10. Alongside this, WG stepped in to help operators deal with reduced income on commercially operated routes and the additional costs being incurred. Initially, WG made £29m available from a Hardship Fund, which operated from April 2020 for three months. This Fund was assembled from monies that would otherwise have been paid via Bus Services Support Grant (BSSG), Mandatory Concessionary Fare reimbursement and the 'My Travel Pass' scheme.
11. The Bus Emergency Scheme was then introduced in July to provide ongoing support. This became known as 'BES 1' and it continued to maintain operators' income at historic levels, based on what was being paid to them under previous grant schemes. In return for this financial support Welsh Government signalled that it expected operators to contribute to a reshaping of bus services in Wales – to include improved regional networks with greater integration with rail services, smart ticketing and timetabling.
12. BES 1.5' was introduced in August, administered by the lead Authorities, through whom BSSG had been paid since 2013<sup>1</sup>. It provided £10m of

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<sup>1</sup> The lead authority acts as a conduit for BSSG funding from Welsh Government to operators. Current lead authorities are Monmouthshire (for South East Wales); Flintshire (for North Wales); Swansea (for South West Wales), Ceredigion and Powys. Within each LA, transport staff play an important role liaising with operators on a range of issues to meet local Members' requirements. The roles include



so-called 'ramp up funding' to support the reopening of schools and economic activity. This funding helped to cover the cost of reinstating services suspended when travel restrictions associated with the pandemic were introduced, and which were needed to meet increasing demand, given capacity constraints of social distancing. BES 1.5 was then extended to the end of March 2021 following the announcement of a further support package in September 2020<sup>2</sup>. Operators were once again asked to sign up to a range of terms and conditions to access the BES funding.

13. WG, working with Transport for Wales (TfW), are now proposing to enter into a longer-term BES 2 agreement with operators and local authorities to protect services. It will operate for an initial maximum term of up to 2 years from the date BES 1.5 commenced (i.e. up until 31 July 2022), unless market conditions recover sufficiently for an operator to no longer require BES support for any of its services whether they be contracted or commercial.

### Key Features of BES2

14. BES 2 will continue to address the loss of farebox revenue and the additional costs associated with responding to the pandemic. Under BES 2 the WG funding will sit alongside local authority funding provided through the Concessionary Travel Scheme and via Revenue Support Grant and the Bus Services Support Grant to make up the shortfall.
15. Welsh Government will be a co-signatory to the BES 2 agreement with bus operators, along with Transport for Wales<sup>3</sup>. Local authorities retain legal responsibilities for bus services and therefore remain central to determining which local services receive this support. They need to sign up to the principle of the agreement and the relationship with their Lead Authority, in ensuring that the ongoing emergency funding meets their priorities and is delivered on their behalf. This will provide the legal basis for WG to make payments to the operators. **In this way, WG can use its powers to support operators, whereas the additional funding would breach local authorities' de minimis limits for direct award contracts** (further details in the briefing note in Appendix 1 and the full proposed Agreement is in Appendix 2). Local Authorities will remain responsible for those services which they currently contract directly with bus operators. Local Authorities will need to consider planning for contingencies, such as if the BES2 agreement is not signed or the level of funding for BES2 is reduced during the period of the agreement.
16. Key features of BES 2 will be as follows:

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administration of Concessionary Fares reimbursement and provision of support for contracted journeys on non-profitable routes.

<sup>2</sup> Overall, an additional £45m has been provided by WG to support the bus sector this financial year including the £10m ramp up funding an extra £35m from September to the end of the year.

<sup>3</sup> Given that the agreement is under discussion between Welsh Government, operators and Transport for Wales as well as local authorities, and must be approved by all parties, it may be subject to some changes before it is finalised.

- Maximum term until 31<sup>st</sup> July 2022 or until operators enter into an embedded partnership agreement;
- development and delivery of a Reference Network, intended to provide a range of benefits to communities; multi-operator ticketing; and operator sign-up to an Economic Contract at the heart of WG's Economic Action Plan (and its principles of fair work, health, decarbonisation, skills and learning etc);
- long term co-operation and co-ordination across TfW, LAs and operators by entering into partnerships with a clear set of obligations and shared standards;
- one agreement per operator in each of the regions that they work in, signed by Welsh Government, TfW, a lead authority and the operator; and
- operators will be allowed to make a (capped) profit on services that has not been possible under emergency funding to date.

## **Beyond BES2**

17. Discussions are starting to take place in relation to the planning of future networks<sup>4</sup> and the respective roles of WG, TfW, LAs and operators. It is important to note that these are not the prime focus of the BES2 agreement. It will be vitally important for further detailed discussions to take place with Members on these matters. However, this is not a reason to delay the signing of the BES 2 agreement. WG does believe that the BES2 offer will help to engage operators in the discussions about the future at a time when their income is more dependent than ever on public sector support. In signing up to BES 2, though, LAs are agreeing to financial support being provided to the sector. They are not committing themselves to any specific, future model of bus service management as that will be the subject of further debate.

## **Issues**

18. In relation to paragraph 15 above, it states “the Council may need to implement contingencies if the BES2 agreement is not signed or the level of funding for BES2 is reduced during the period of the agreement.” Local Authorities do not have the powers to instruct Bus Operators and there is no contingency funding available that Cardiff Council could use to make up the difference. Therefore, bus operators would need to consider what services they can continue to operate. The awarded s63 supported services contracts will be reviewed to ensure that any shortfall in funding is kept within existing budgets. Notice periods will also be given consideration particularly if there are any financial gaps arising from any notice periods the Welsh Government are able to provide and statutory or contractual obligations.
19. Paragraph 16 above refers to an ‘Economic Contract’ from the WG, “Prosperity for All: Economic Action Plan”. Economic contracts are a

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<sup>4</sup> The reference network will need to be designed and agreed collectively by WG, TfW and LAs and discussed with operators. An All-Wales Bus Network officer group has been established to progress the thinking around this.

‘something for something’ approach with a social purpose to increase the availability of fair - and rewarding - work, which creates more and better jobs closer to home, that meets decarbonisation ambitions and ensures businesses are optimising the potential of new and emerging technologies. Opportunities will be explored through the BES 2 agreement.

20. Paragraph 16 above refers to a ‘capped profit’. Bus operators have not been permitted to make a profit during the emergency arrangements up to now. The Operator will be required in the BES 2 Agreement to participate in an open book reconciliation process with TfW and the Lead Authority to allow assessment of costs to ensure that the Operator has not been overcompensated and that payments reflect the reasonable cost of providing the Services with no more than a reasonable profit earned. The reconciliation process will not take into account any capital expenditure, exceptional (non-operating) payments or dividend payments in determining whether the Operator has generated a profit before tax, or a loss at the end of each Reconciliation Period.
21. Clause 5 of the BES2 Agreement in Appendix 2 of this report refers to a partnership arrangement where, “The Operator shall use reasonable endeavours to agree the terms of an Umbrella Partnership Agreement...” The definition in the agreement of the Umbrella Partnership Agreement, “means the framework voluntary partnership agreement agreed in accordance with clause 5.” The voluntary partnership agreement (VPA) is as described in Section 46 of the Local Transport Act 2008 2008, amending section 153(2) of the Transport Act 2000. VPA’s give local authorities and bus operators the opportunity to work together voluntarily to improve local bus services. The Umbrella Partnership Agreement is in the process of being drafted and will require detailed technical and legal consideration by Bus Operators and Officers in the Welsh Government, Transport for Wales and Local Authorities before it is finally agreed.
22. The scope of what bus transport models/bus reform proposals would be appropriate post-BES 2 will be a consideration for future discussion and debate between the key stakeholders. Further reports and any related decisions will be presented to Cabinet at the appropriate time.

#### **Local Member consultation (where appropriate)**

23. There has not been Local Member consultation on the BES 2 agreement. However, any need for significant changes to the design of the bus network will involve Local Member consultation.

#### **Reason for Recommendations**

24. To ask that Cabinet notes the principles of the BES 2 agreement.
25. To seek Cabinet approval to grant the Director of Planning, Transport and Environment delegated authority to (a) determine and approve the final terms of the BES 2 Agreement and the Umbrella Partnership Agreement, (b) give the Lead Local Authority (currently proposed to be Monmouthshire County Council) approval to sign the BES 2 agreement

on Cardiff Council's behalf and (c) conclude all ancillary matters including any back to back agreements that may be required with the Lead Local Authority.

26. To ask that Cabinet notes that there will be further reports on bus reform proposals relating to the future management of bus services in the Region and Wales.

### **Financial Implications**

27. The Bus Emergency Support Grant (BES) provides financial support directly to bus operators as a result of lost income as a result of the impact of Covid 19. The Council will need to ensure that it works closely with all operators to undertake its role in directing the provision of services as part of BES, working with all national and regional partners in the process to manage and implement the requirements of the scheme. Where routes operated in the City are supported by the Council, it will need to consider the ongoing impact of continuing to do so as part of current and future revenue budgets.
28. The Council is the sole shareholder of Cardiff City Transport Services Limited, who will be a recipient of funds from BES to support its ongoing viability. In the absence of such funds and in order to continue to continue key routes, the only recourse for the company would be support from its shareholder, subject to legal and financial due diligence. The performance of the Council's shareholding, impact of BES2 grant on operators in the short term and longer term measures to support and change the bus industry will need to be monitored closely as part of the Council's role, with potential financial risks and implications identified at any early stage. This is essential in the event that market conditions do not improve by 31 July 2022, the currently assumed end date of BES.
29. In October 2020, Council agreed a range of measures to support the viability of Cardiff Bus. Welsh Government have confirmed that these measures are separate and the BES 2 grant does not result in any reduction of resources receivable by Cardiff Bus as result of the implementation of the agreed actions.

### **Legal Implications**

30. The report sets out the principles of the BES 2 agreement, which agreement formalises Welsh Government's commitment to supporting recovery of bus services following the impact of COVID-19. The briefing note attached at Appendix 1 (Bus emergency scheme phase 2 (BES 2) - briefing note for local authorities) sets out details of the proposed BES 2 arrangements. The BES 2 agreement is in a form provided by Welsh Government and provides for a further agreement referred to as an Umbrella Partnership Agreement. Both Agreements have yet to be finalised and may be subject to further amendment. The BES agreement has four parties namely Welsh Government, Transport for Wales, The Lead Regional Transport Authority and the relevant operator. As such, Cardiff Council will not be a direct party to the BES 2 agreement. The

lead authority would be entering the Agreement on behalf of Cardiff Council and the other local authorities in the region. The recommendations, if approved, will provide delegated authority to the Director, in consultation with those listed, to approve the final terms of both agreements and to authorise the Lead Authority to enter the BES 2 Agreement on the Council's behalf.

31. Whenever considering financial support to third parties, consideration should be given, amongst other things, as to whether the proposed funding arrangements comply with competition law, the UK Subsidy Control regime ( previously state aid ) and procurement law requirements ('the Constraints'). The Council's Legal Service has not undertaken such analysis given that Welsh Government has prepared the BES 2 proposals and the draft BES 2 Agreement. Legal Services are advised that Welsh Government has considered such Constraints. It is noted that the briefing note, under the paragraph headed, 'What risks exist with the proposed approach?' considers State Aid and Procurement Constraints and notes, 'Mitigation – working with lawyers to ensure that the terms are compliant with the law'. Further, the draft agreement contains provision ( for example, see clause 19.2 and 19.3 ) to the effect that the Lead Authority shall not be required to fund or deliver anything pursuant to this Agreement which would be in breach of such legal requirements.
32. Cardiff Council 'owns' Cardiff Bus. Accordingly, when considering any funding requests, via the BES 2 agreement or otherwise, that involve Cardiff Bus, it is important that the Council has regard to any competition, subsidy and procurement law issues raised. Further that it considers, if any potential conflict of interest arises in its roles as a local authority and owner of a bus operator, in terms of any wider bus operating issues considered under the BES 2 agreement and if so takes appropriate measures.
33. Generic legal advice

(a) Equalities & Welsh Language

In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a). Age, ( b ) Gender reassignment ( c ) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation (i) Religion or belief – including lack of belief.

The decision maker should be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

(b) The Well-being of Future Generations (Wales) Act 2015

The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2020 -23.

When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

(c) The decision maker must be satisfied that the proposal is within the Policy and Budget Framework, if it is not then the matter must be referred to Council.

### **HR Implications**

34. There are no HR implications arising from this report.

### **Property Implications**

35. There are no property implications associated with this report.

## RECOMMENDATIONS

Cabinet is recommended to:

1. note the principles of the BES 2 agreement (Appendix 2) to secure (conditional) financial support for the bus sector and to establish a relationship with their regional lead authority and signatory, that ensures that the ongoing emergency funding meets the authority's priorities and is delivered on its behalf.
2. delegate authority to the Director of Planning, Transport and Environment, subject to consultation with the Cabinet Member Strategic Planning and Transport, Cabinet Member Finance, Modernisation & Performance, s.151 Officer and Director Governance and Legal Services to determine and approve the final terms of the BES 2 Agreement and the Umbrella Partnership Agreement (as both are currently in draft form), give the Lead Local Authority (currently proposed to be Monmouthshire County Council) approval to sign the BES 2 agreement on Cardiff Council's behalf and to deal with all ancillary matters relating thereto including any back to back agreement that may be required with the Lead Local Authority.
3. note that there will be further reports on bus reform proposals relating to the future management of bus services in the Region and Wales.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>Andrew Gregory</b> <b>Director of Planning, Transport &amp; Environment</b>
	15 January 2021

*The following appendices are attached:*

Appendix 1: BES 2 Briefing Document for Local Authorities.

Appendix 2: Proposed BES 2 Agreement.

*The following background papers have been taken into account*

- Letter to Local Authority Transport Lead Members from Lee Waters AS/MS, Deputy Minister for Economy and Transport, dated 18<sup>th</sup> Dec 2020 (electronic document reference: "BES –S.pdf")
- Letter to Local Authority Chief Executives from Simon Jones, Director, Economic Infrastructure, dated 18<sup>th</sup> Dec 2020 (electronic document reference: "SJ Letter to LA Chief Execs Dec 2020.pdf").
- BES 2 Agreements: Local Authority legal briefing, 18<sup>th</sup> Dec 2020 (electronic document reference: "BES 2 Agreements LA legal briefing.pdf").
- Welsh Government, "Prosperity for All: economic action plan" (source: <https://gov.wales/prosperity-all-economic-action-plan>)

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## **BUS EMERGENCY SCHEME PHASE 2 (BES 2) - BRIEFING NOTE FOR LOCAL AUTHORITIES**

This summary sets out details of the proposed BES 2 arrangements.

### **Journey to Date and Plans for BES 2**

Since the start of the COVID 19 pandemic Welsh Government, Local Authorities, TfW and operators have worked together to make bus services available to Welsh citizens in spite of the significant reduction in passenger numbers and associated fare income. Money is still being provided to operators on an emergency basis under the terms and conditions in the BES 1.5 agreement which expires at the end of March 2021.

With the BES 2 agreement the public sector is planning to enter into longer term arrangements with operators, ideally by the end of January 2021, which will replace BES 1.5 from the point of signature.

### **What does BES 2 Mean for Local Authorities?**

#### **Actively managing recovery from the impact of COVID-19 on local bus services**

The BES 2 agreement formalises Welsh Government's commitment to supporting recovery of bus services following the impact of COVID-19. BES 2 funding will be used to address the loss of farebox revenue and the additional costs associated with responding to the COVID 19 pandemic. Welsh Government will be a co-signatory to the proposed BES2 agreement with bus operators

Under the terms of the BES2 agreement, operators will be required to provide bus services that meet local needs under the direction of the Lead Authority for each region, working with and on behalf of its constituent local authorities.

The end date for the BES2 contract is 31 July 2022. This should allow enough time for revenues to recover. The contract may be terminated earlier if market conditions mean that additional Government funding is no longer required to address the impact of COVID-19.

#### **Funding responsibilities**

The BES 2 agreement exists to provide a legal basis for funding the costs associated with the impact of COVID 19. These include the loss of farebox, duplication of buses to take account of social distancing or providing alternative services where operators give them up and the services are still needed. This applies to services that were commercial pre-COVID and to tendered services.

The BES2 agreement does not change local authorities' ability to determine where and how they spend the Revenue Services Grant (RSG). The RSG funding is not hypothecated and most local authorities spend an element of this grant on local bus service provision to fill gaps in the commercial network. BSSG (roughly £8m across Wales) is also used to secure the delivery of services to a specified standard.

The BES2 funding for COVID19 related costs sits alongside this local authority funding for local bus services and does not remove or amend local authority powers and responsibilities with regard to local bus services. The two funding streams serve different purposes. Local authorities will still need to prioritise and fund local bus services where they see fit.

Specifically:

- if a local authority chooses to cease to fund a supported contract, BES 2 funding cannot be applied to backfill that loss of funding
- local authorities remain responsible for their existing contracts and may need to vary these contracts to scale back services if BES 2 funding were to cease before fare box takings return to pre-COVID levels, unless additional sources of funding are available.

### **Directing the provision of services**

Working with the Lead Authority in each region, local authorities will need to jointly prioritise the routes that BES 2 funding should be applied to, taking into account the work already undertaken under BES 1.5 and using these priorities for spend:

- supporting learners' journeys to school or college on registered local bus services;
- increasing frequencies where demand exceeds capacity;
- improving accessibility to jobs and services across our regions and communities;
- supporting economic recovery; and
- ensuring social inclusion,

Under the terms of the BES2 contract, subject to the Lead Authority acting reasonably within the bounds of available funding, the bus operators will be required to provide services that meet local priorities as directed by the Lead Authority.

The BES 2 arrangements include the collaborative development of regional Reference Networks by local authorities, operators, Welsh Government and TfW. The Reference Networks will reflect local, regional and national priorities and will help to guide investment in bus services for the future. BES2 ensures local authorities have an influence over the development of a coherent Reference Network which will ultimately be delivered by a mix of tendered and commercial services.

### **Implications for local bus contracts**

The BES 2 agreements do not supersede the existing supported contracts (e.g. section 63 contracts) that are in place between each local authority and bus operators. The BES 2 agreements sit alongside existing contracts and provide a legal basis for the additional funding that operators are receiving in respect of their supported contracts to cover the loss of farebox and additional costs incurred, for example, with respect to complying with social distancing and cleaning requirements. The BES 2 agreements also set out the basis on which operators will exit the BES arrangements and return to the original terms of contract.

The additional funding that is being paid to operators to address the impact of the COVID 19 pandemic would breach local authorities' de minimis limits for direct

award contracts. Welsh Government is a signatory to the existing BES 1.5 agreement and to the proposed BES 2 agreement in order to use its powers to support continued provision of the operators' services without breaching the de minimis cap. Welsh Government powers in this regard can be exercised for a two year term and date from the start of the BES 1.5 agreement on 1 August 2020 to 31 July 2022.

BES can impact on local contract procurement. Where a local authority wishes to tender for a new or time expired supported contract the risks associated with predicting farebox revenue, during and immediately after the pandemic, will affect tender prices. In these circumstances, bidders will be required to offer a price that they will charge while BES funding is in place and alternative prices for when BES funding is no longer available, with their tenders covering both before and after the farebox has returned to pre-COVID levels.

### **Regional Working**

BES2 supports the move to improve regional co-ordination and oversight of delivery of local bus services. Under BES 1.5, the funding was distributed to the Lead Authority in each region. Each operator signed one agreement with the Lead Authority in each region where it operates, with Welsh Government and Transport for Wales as co-signatories. The Lead Authority is then responsible for distributing the BES funding to the operators in its region. It is proposed that this model is retained for the BES 2 agreement. The responsibilities of each party will be clearly set out in the grant letter to the Lead Authority and in the BES 2 agreement, and measures are being taken to minimise the risk to the Lead Authority relating to funding and termination of the BES2 agreement.

### **Why move to BES 2?**

The benefit for operators is that they will be able to make a profit under the terms of BES 2. No profit has been allowed in the emergency arrangements up to now.

The benefit for the public sector is that we can jointly better manage the recovery of bus services. The alternative is that, as recovery begins, operators will shrink their networks to the routes and services that are commercially viable for them leaving government to support an even larger subsidised network. The BES 2 arrangements are seeking to ensure that operators are incentivised to support the recovery of the whole network and not just a limited number of commercial routes.

The public sector is taking farebox risk under BES 2 and, as farebox levels rise, this revenue will augment the funding available to work with operators to support the recovery of services. This will benefit us all in the long term by building passenger confidence in a reliable and comprehensive public transport network.

Although recovery from the impact of the COVID 19 on patronage is likely to be slow, we do not expect operators to stay within the BES 2 arrangements forever. As passenger confidence returns and farebox recovers, we expect operators to exit the BES 2 arrangements and work with us under partnership agreements. The partnership agreements will be based on agreed core set of principles and behaviours that will be developed with operators as part of the BES 2 arrangements.

### **What results are we trying to achieve with BES 2?**

BES 2 provides a mechanism for managing the recovery and reshaping of bus services to respond to the impact of the COVID 19 pandemic. Specifically:

- Address areas of high demand where social distancing has reduced available capacity
- Ensure that communities are not cut off due to low fare box revenues.
- Offer new options for meeting demand such as demand responsive transport which may be more cost effective as patterns of travel change.
- Offer better value for money for passengers by working with operators to rationalise their fare structures and develop multi operator ticketing, to the extent permitted by competition law.
- Build a better working relationship with operators to develop a robust and viable network of services for the future.
- Gain a better understanding of the costs of delivering bus services in Wales to inform future policy and funding decisions
- Reduce pollution by introducing measures to attract people out of their cars and onto public transport and by working with the industry to upgrade their fleet.

### **What does BES 2 mean for operators?**

Where an operator signs up to the BES arrangements (whether BES 1, 1.5 or BES 2), all the services that the operator runs – whether they are supported or formerly commercial – are included in the contract.

Each operator is expected to continue to operate routes that are largely similar to those which they operated pre-COVID, amended as necessary to respond to the crisis. This helps to maintain stability in the short term and provides a framework for decision making e.g. if an operator chooses not to run services that they used to run before COVID a decision can be made to let a tender for those services if they are still required.

Funding for the regional BES contracts will be a mix of existing sources and additional funding from Welsh Government, with operators being funded to cover all their allowable costs across all their services less their earnings from the fare box, concessionary fares, BSSG and YPT.

### **What risks exist with the proposed approach?**

Operators choose not to sign the BES 2 agreements and instead shrink their networks to the minimum required and/or reduce the quality of their services to make a commercial return. *Mitigation – working with operators to address their concerns and ensure that all parties see this as a beneficial arrangement.*

The BES 2 arrangements breach competition, state aid or procurement law and are rendered invalid. *Mitigation – working with lawyers to ensure that the terms are compliant with the law.*

Operators challenge the local authority's ability to let new contracts on routes where the operator has registered a commercial service. *Mitigation – the standards that will be specified as part of BES2 provide an objective way to defend the local authority's right to let a supported contract where the service offered by the operator does not meet the specified standard. Legal advice and guidance will be provided to local authorities to support this statement.*

Additional funding from Welsh Government beyond the end of March 2021 is yet to be confirmed. *Mitigation – WG have committed additional funding from September 2020 to support local bus services and officials are working to secure further funding to support these key services beyond the 2020/21 budget horizon.*

Funding operators in this way is not cost effective and/or operators are not incentivised to be efficient. *Mitigation – use the data from operators to assess the cost effectiveness of the spend and shape contract terms to incentivise efficiency.*

## What changes from BES 1.5 to BES 2 and Beyond?

<b>Activity</b>	<b>BES 1.5</b>	<b>BES 2</b>	<b>Beyond BES 2 - Partnership</b>
<b>Services</b>			
Routes and frequencies operated	Operators offer routes of their choice together with ramp up services agreed with the Lead Authority following discussion with local authorities.	All services (supported and formerly commercial) to be formally specified by the Lead Authority, working with and on behalf their constituent local authorities.	Services to return to either being commercially run by operators or under supported contracts subject to the Reference Network commitments below.
Reference Network	Not defined.	Parties to develop a target Reference Network, including routes and service frequencies, that reflects long term local, regional and national ambitions.	All parties to work together to deliver target Reference Network where financially viable Government to use target Reference Network to prioritise capital investment.
Data provision	Operators providing financial and operational data to support passengers, payment and delivery	No change	No change to operational data requirements. Reduced financial data requirements for commercial services.
<b>Finance</b>			
Funding principles	Additional BES funding (over and above historic BSSG, MCF and YPT) was distributed to each Lead Authority as a WG grant.	Any additional BES funding (over and above historic BSSG, MCF and YPT) to be distributed to each Lead Authority as a WG grant.	No additional BES funding. Funding will be required to support investment, e.g. in infrastructure, to meet partnership obligations.
Payments and Reconciliation	BES funding supports the cost of all services – both formerly commercial and tendered – less farebox and other revenue. 0% margin.	One change from BES 1.5 - 2% margin offered. Subject to ongoing review.	Operators earn margin from commercial services and through tendered services.

<b>Activity</b>	<b>BES 1.5</b>	<b>BES 2</b>	<b>Beyond BES 2 - Partnership</b>
<b>Contract</b>			
Signatories	Contracts signed by the operator, the Lead Authority in each region, Welsh Government and TfW.	Same as BES 1.5.	Same as BES 1.5.
Term	Terminate on signature of BES 2 agreement or end March 2021	Contract to be terminated if additional BES funding is not available or upon exit to BES 3 or, at the latest, by 31 July 2022.	Term for partnerships to be agreed.
Existing supported contracts	Operators receive a fixed percentage of original contract price plus BES top up funding via cost reconciliation	Contracts varied as required to reflect actual delivery and receipt or BES payments or terminated if no longer required.	All local contracts return to operating under original terms.
Letting new supported contracts	No action taken	Guidance provided to ensure all bidders are given consistent information about available BES funding and that tenders are structured to manage current farebox risk.	BES no longer a factor in letting new supported contracts
Former commercial services	Contracted as part of the BES 1.5 arrangements using Welsh Government powers.	Same as BES 1.5	Either become commercial or supported services or are no longer required.
Commercial services	Assumption that receipt of BES funding means that the operator's services are not commercial.	Services can start to become commercial under BES 2 but farebox and other revenue continues to be included in overall reconciliation under BES 2.	Commercial services to earn BSSG and MCF in accordance with prevailing regime but no BES payments. Commercial services to meet target Service Standards subject to viability.

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**DATED**

**2021**

**(1) WELSH MINISTERS**

**- and -**

**(2) TRANSPORT FOR WALES**

**- and –**

**(3) [*LEAD REGIONAL TRANSPORT AUTHORITY*]**

**- and –**

**(4) [*OPERATOR*]**

**AGREEMENT**

relating to

Bus Emergency Scheme 2 in respect of the  
areas of the following [*insert all Local  
Authorities in the Region*]

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**BETWEEN:**

- (1) **WELSH MINISTERS** ("Welsh Government");
- (2) **TRANSPORT FOR WALES** of 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("**TfW**");
- (3) [**LEAD REGIONAL TRANSPORT AUTHORITY**] of [address] acting for and on behalf of [List names of Constituent Local Authorities] ("**Lead Authority**"); and
- (4) [**OPERATOR**] of [address] registered in England and Wales with company number [number] ("**Operator**"),

(together the "**Parties**").

**BACKGROUND:**

- A Welsh Government has been taking action to help bus operators in Wales, including the Operator, get through the inevitable uncertainty of the COVID-19 affected operating conditions, and that such action has enabled the Operator to continue provision of services which could not have been provided by the Operator without this financial support since March 2020. The Operator further acknowledges that the provision of this support has enabled the Operator to retain customers and a network of services which may otherwise have been lost or reduced significantly, and that this will support the Operator's business in recovering following relaxation of rules on social distancing and other factors which affect bus travel at the date of this Agreement.
- B Funding has been provided by the Welsh Government to bus operators in Wales pursuant to the Bus Hardship Funding letter dated 2 April 2020, the Bus Emergency Scheme 1 letter ("**BES 1**") and Bus Emergency Scheme 1.5 letter ("**BES 1.5**") which provided money to bus operators (including the Operator) through the Lead Authority on behalf of its Constituent Local Authorities. Those letters set out conditions to the Operator receiving such funding (together the "**Previous BES Funding Arrangements**").
- C In continuing to provide Bus Emergency Scheme funding, Welsh Government wish to move to a lasting partnership between bus operators and the public sector. Working together will enable a fundamental reshaping of Wales' local bus services, through a new approach to managing services, sharing data and information and establishing standards for routes, services, fares and tickets to meet the needs of passengers in a world affected by COVID-19, climate change, new transport choices and changes to working patterns.
- D It is intended that funding provided under this new BES 2 agreement ("**Agreement**") will ensure that support provided to bus operators is more directly aligned with the provision of bus services that meet with the aim of supporting the management and interaction across transport modes including smart ticketing, unified routing, integrated timetabling and will do this both by Welsh Government funding pursuant to section 7 Transport (Wales) Act 2006 to support the provision of public service obligations by operators reflecting the services agreed by the public sector to continue to be provided by the operators (including both supported and formerly commercial services) and the parties also agreeing a framework for long term partnership which will continue to cover both supported and commercial bus services into the future.
- E Welsh Government and Transport for Wales have agreed to: (i) consult with bus operators before making policy changes which affect or are impacted by local bus services and give full

consideration to the views expressed, consistent with their duties under the Well-being of Future Generations (Wales) Act 2015; (ii) ensure funding arrangements are clear, communicated and executed in a timely fashion; (iii) recognise and take account, wherever possible in designing policy for bus regulation of the real costs of operating services, bus provision and employee matters; and (iv) ensure requests for information to bus operators are targeted, minimise unnecessary burdens on operators and involve no more work than is required to achieve the relevant purposes.

- F This Agreement is intended to provide a step in ensuring that services and funding are aligned, whilst providing a framework for development of future partnership working between the public sector and bus operators, which can be built upon over the coming years, including to secure co-production in the design and delivery of bus transport services. In particular: (i) Welsh Government and TfW shall engage fully and openly with bus operators in the development of the National Transport Delivery Plan, including policies for the delivery of zero carbon bus fleets and for the development of interventions to improve bus journey times through tackling congestion; and (ii) the Constituent Local Authorities shall take action to enhance highways infrastructure, bus facilities and service information, subject to the availability of funding.
- G The Parties acknowledge that the contribution of the Welsh Government, TfW and local government to delivering quicker, more reliable and predictable services through traffic and congestion reduction and the introduction and improvement of bus priority is crucial to the successful delivery of bus services.
- H As a result this Agreement includes specific requirements in respect of the continued funding and provision of services including specifying the terms of an umbrella partnership arrangement between the Parties, other bus operators and the Lead Authority (on behalf of Constituent Local Authorities in the Region and other Local Authorities affected by the partnership) to support Welsh Government's wider objectives.
- I The Parties acknowledge that this Agreement includes a reconciliation process which shall take into account the costs and revenues from all Local Services provided by the Operator, including Supported Services, Formerly Commercial Services and Commercial Services. For the avoidance of doubt, the assessment of whether the Operator has been over or under compensated and the calculation of any margin due shall be based on the net position on costs and revenues across all the Operator's Local Services.
- J It is acknowledged that this Agreement is not intended to amend the basis of payments of BSSG and Concessionary Travel Scheme which shall continue to be paid in accordance with their terms subject to any future reform of such payments with Welsh Government may undertake.

## **IT IS AGREED:**

### **1. DEFINITIONS AND INTERPRETATION**

In this Agreement:

- 1.1 Unless the context otherwise requires, the following expressions shall have the meanings set out below:

<b>"ADR Notice"</b>	has the meaning given to it in clause 25.4;
<b>"Agreement"</b>	has the meaning given to it in Recital D;

<b>"Alternate Lead Authority"</b>	means each of [Flintshire County Council], [Monmouthshire County Council], [Swansea Council], [Ceredigion County Council], and [Powys County Council] which may be appointed to assist with disputes in accordance with clause 6.7; <b>[Note: delete Lead Authority from this list.]</b>
<b>"BES 1"</b>	has the meaning given to it in Recital B;
<b>"BES 1.5"</b>	has the meaning given to it in Recital B;
<b>"BES 2 Funding"</b>	means funding provided by the Welsh Government to the operators in Wales pursuant to the terms of this Agreement;
<b>"BES Funding Period"</b>	means the period of the BES Previous Funding and the BES 2 Funding;
<b>"BES Previous Funding"</b>	means funding provided by the Welsh Government to operators in Wales pursuant to the Previous BES Funding Arrangements;
<b>"BSSG"</b>	means Bus Services Support Grant awarded to a Lead Authority by Welsh Government to support and maintain the core strategic bus network, improve connectivity and quality, provide certain bus and other local transport services, and develop close and effective partnership working;
<b>"Change in Covid-19 Impact Event"</b>	means any new event or circumstances (or change to event or circumstances) which occurs following the Effective Date which arise as a direct result of the COVID-19 Virus and which adversely impacts the Operator's ability to perform its obligations under this Agreement including but not limited to the introduction of lockdown measures, travel restrictions or amended social distancing measures in the United Kingdom;
<b>"CMA"</b>	means the Competition and Markets Authority of Victoria House, Southampton Row, London WC1B 4AD;
<b>"Commercially Sensitive"</b>	means in relation to a Disclosing Party that the disclosure of such information is either a trade secret or if disclosed would prejudice the commercial interests of that Party, and shall include any Operator Information identified as Commercially Sensitive in Part 4 of Schedule 4;
<b>"Commercial Service"</b>	means a Local Service which a bus operator provides on a commercial basis and not pursuant to any Existing Supported Services Contract or New Supported Services Contract;
<b>"Confidential Information"</b>	means, in relation to a Disclosing Party: <ul style="list-style-type: none"> <li>(a) information of whatever nature concerning the business, assets, liabilities, dealings, transactions, policies or affairs of the Disclosing Party including all trade secrets, financial, marketing and technical information, ideas, concepts, technology, processes,</li> </ul>

knowledge and know-how, together with all details of a Disclosing Party's, customers, suppliers, prices, discounts, margins, information relating to research and development, current trading performance and future policy or business strategy and all other information of a like nature; and

- (b) any information which is expressly indicated to be confidential or commercially sensitive or which, due to the nature and circumstances of its disclosure or its content might reasonably be considered to be confidential (whether or not marked as such),

in each case in whatever form or medium (including written, electronic, visual and oral) such information is recorded or kept and whether or not created for the purpose of entering into this Agreement or otherwise, and shall include, for the avoidance of doubt, any Operator Data identified as Confidential Information in Part 4 of Schedule 4;

**"Constituent Local Authorities"**

means a group of local authorities in Wales who are working together and are represented by the Lead Authority (and **"Constituent Local Authority"** shall be construed accordingly);

**"COVID-19"**

means the virus identified and named "COVID-19 virus" by the World Health Organisation which was characterised as a pandemic by the World Health Organisation on 11 March 2020;

**"Data Protection Laws"**

means the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("**GDPR**") and the Data Protection Act 2018, together with the Privacy and Electronic Communication Regulations 2003 and all codes of practice issued by the Information Commissioner;

**"Defaulting Party"**

means a Party who commits a material breach of its obligations under this Agreement;

**"de minimis contracts"**

means Local Services contracts entered into pursuant to section 63 of the Transport Act 1985 which have been procured on a direct award basis to secure the provision of such public transport services as are considered appropriate to meet any public transport requirements which would not otherwise be met, pursuant to the exceptions allowed under section 91 Transport Act 1985 by the Service Subsidy Agreements (Tendering) Regulations 1985 as amended;

**"Disclosing Party"**

means a Party that discloses Confidential Information to one or more Receiving Parties under this Agreement;

<b>"Dispute"</b>	means a dispute or difference arising out of or in connection with this Agreement or any such matter which a Party deems (acting reasonably) to constitute a dispute;
<b>"Economic Contract"</b>	has the meaning given to it in the Welsh Government "Prosperity for All - Economic Action Plan";
<b>"Effective Date"</b>	means the date of this Agreement;
<b>"EIR"</b>	means the Environmental Information Regulations 2004;
<b>"Existing Supported Services"</b>	means any Local Services operated pursuant to the terms of an Existing Supported Services Contract;
<b>"Existing Supported Services Contracts"</b>	means contracts for the provision of Local Services in Wales by the Operator that were entered into before the Effective Date pursuant to: <ul style="list-style-type: none"> <li>a) terms let by or on behalf of the Welsh Government pursuant to section 7 of the Transport (Wales) Act 2000;</li> <li>b) contract terms let by one or more local transport authority pursuant to section 63 of the Transport Act 1985 (including, for the avoidance of doubt, any de minimis contracts); or</li> <li>c) any other contract let by one or more local transport authorities in accordance with sections 89 – 92 of the Transport Act 1985;</li> </ul>
<b>"FOIA"</b>	means the Freedom of Information Act 2000;
<b>"Force Majeure Event"</b>	means any event or occurrence (including fire, flood, violent storm, pestilence, explosion, malicious damage, act of terrorism, epidemic, pandemic, any industrial action by the workforce of an affected Party or by the workforce of a critical or key supplier, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made) which: <ul style="list-style-type: none"> <li>a) without prejudice to the operation of clause 11.6, the affected Party could not reasonably have provided against before entering into this Agreement;</li> <li>b) materially adversely affects the ability of a Party to perform its obligations (in whole or in part) under this Agreement;</li> <li>c) which is outside the reasonable control of an affected Party;</li> <li>d) having arisen, could not reasonably be avoided or overcome by the affected Party;</li> </ul>



- e) occurs in the United Kingdom; and
- f) is not attributable to any act or failure to take reasonable preventative action by an affected Party;

<b>"Former Commercial Services"</b>	has the meaning given to it in clause 15.1;
<b>"Funding Review(s)"</b>	means the review carried out in accordance with Schedule 5;
<b>"Good and Efficient Operator"</b>	has the meaning given to it in Section 1 to Schedule 3;
<b>"Gross Cost Contract"</b>	means a contract whereby the procuring authority retains the right to receipt of passenger revenue and therefore carries the financial risk in respect of the level of passenger revenue received in respect of services provided under such contract;
<b>"Historic"</b>	means up to 1 March 2019;
<b>"Insolvent Party"</b>	has the meaning given to it in clause 11.3;
<b>"Intellectual Property Rights"</b>	means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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>"Lead Authority"</b>	means a local authority in Wales acting as the Lead Regional Transport Authority for one or more of its Constituent Local Authorities;
<b>"Lead Authority Dispute"</b>	means a Dispute which involves the Lead Authority and may therefore be resolved in accordance with clause 25.3;
<b>"Legislation"</b>	means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any Welsh law within the meaning given to it in section 1(3) of the Legislation (Wales) Act 2019, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972 (as amended), in each case in the United Kingdom;

<b>"Local Service"</b>	has the meaning given to it in the section 2 of the Transport Act 1985 and for the avoidance of doubt, this shall not include: services which are not registrable pursuant to section 6 of the Transport Act 1985, including any services which are provided where a railway service is temporarily interrupted under section 40 Railways Act 2005;
<b>"Net Cost Contract"</b>	means a contract whereby the operator retains all passenger revenue and takes the risk in respect of the level of passenger revenue received in respect of services provided under such contract;
<b>"New Supported Services"</b>	means any Local Service operated pursuant to the terms of a New Supported Services Contract;
<b>"New Supported Services Contract"</b>	means contracts for the provision of Local Services in Wales by the Operator that were entered into after the Effective Date pursuant to: <ul style="list-style-type: none"> <li>a) terms let by or on behalf of the Welsh Government pursuant to section 7 of the Transport (Wales) Act 2000;</li> <li>b) contract terms let by one or more local transport authority pursuant to section 63 of the Transport Act 1985 (including, for the avoidance of doubt, any de minimis contracts); or</li> <li>c) any other contract let by one or more local transport authorities in accordance with sections 89 – 92 of the Transport Act 1985;</li> </ul>
<b>"New Supported Services Contract Tendering Assumptions"</b>	has the meaning given to it in clause 17.3;
<b>"Operator Data"</b>	means Operator data required to be provided under this Agreement which are confidential or commercially sensitive to the Operator as identified in Part 4 of Schedule 4;
<b>"Operator Companies"</b>	<b>Group</b> means the Operator and any subsidiary, holding company or subsidiary of any holding company of the Operator or any other company or structure established by the owners of the Operator and <b>"Operator Group Company"</b> shall be construed accordingly;
<b>"Part 1 Competition Test"</b>	means the test for making and varying quality partnership schemes, making and varying ticketing schemes, and inviting and accepting tenders under section 89 or 91 of the Transport Act 1985 (subsidised services) as set out in Schedule 10, Part 1 to the Transport Act 2000 as modified;

<b>"Part 2 Competition Test"</b>	means the test for certain agreements, decisions and practices as set out in Schedule 10, Part 2 to the Transport Act 2000 as modified;
<b>"Permitted Use"</b>	means the use of data for any purpose specified in Part 3 of Schedule 4;
<b>"Personal Data Disclosing Party"</b>	has the meaning given to it in clause 22.3;
<b>"Personal Data Receiving Party"</b>	has the meaning given to it in clause 22.3;
<b>"Previous BES Funding Arrangements"</b>	has the meaning given to is in Recital B;
<b>"Priorities"</b>	has the meaning given to it in clause 6.2;
<b>"Procurement Programme"</b>	has the meaning given to it in clause 17.2;
<b>"Public Sector Parties"</b>	means Welsh Government, TFW and each Lead Authority acting for its Constituent Local Authorities and <b>"Public Sector Party"</b> shall be construed accordingly;
<b>"Quality Partnership Schemes" or "QPS"</b>	means a quality partnership scheme as specified in section 114(1) Transport Act 2000;
<b>"Receiving Party"</b>	means a Party which receives Confidential Information from a Disclosing Party;
<b>"Reconciliation Payment"</b>	has the meaning given to it in clause 9.5;
<b>"Reference Network"</b>	means: <ul style="list-style-type: none"> <li>a) the initial reference network in accordance with clause 8.1; and</li> <li>b) the developed reference network, developed in accordance with the provisions of clauses 8.2 to 8.6 as it may be varied from time to time;</li> </ul>
<b>"Region"</b>	means the geographical area for which the Lead Authority and its Constituent Local Authorities are responsible;
<b>"Register of Variations"</b>	means a register for each Region, specific to the Operator, detailing each service contract, the agreed variation to the specific service, which has been reviewed and signed by the relevant Constituent Local Authority, the form appended at Schedule 7;
<b>"Regulation 1370/2007"</b>	means Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road as amended,

including, but not limited to, by the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020;

<b>"Request for Information"</b>	shall have the meaning set out in the FOIA or any apparent request for information under the FOIA;
<b>"Service Failure Points" or "SFPs"</b>	has the meaning given to it in Part 4 of Schedule 3;
<b>"Services"</b>	has the meaning given to it in clause 2.1;
<b>"Service Payment"</b>	has the meaning given to it in clause 9.1;
<b>"Service Specification"</b>	means the specification to which the Operator agrees to provide Local Services as determined in accordance with clause 6, including but not limited to, compliance with the requirements of Schedule 1;
<b>"Service Standards"</b>	means the service standards which will apply to different classifications of routes across Wales, developed in accordance with clause 8.6;
<b>"State Aid and Procurement Constraints"</b>	has the meaning given to it in clause 19.2;
<b>"Subsidised Network"</b>	has the meaning given to it in clause 8.3;
<b>"Term"</b>	has the meaning given to it in clause 3.1;
<b>"Umbrella Partnership Agreement"</b>	means the framework voluntary partnership agreement agreed in accordance with clause 5;
<b>"VPA"</b>	means a voluntary partnership agreement as described in section 46 of the Local Transport Act 2008, amending section 153(2) of the Transport Act 2000;
<b>"Wales Transport Strategy"</b>	means the draft strategy for the future of transport in Wales, setting out Welsh Government's ambitions for the next twenty (20) years and their priorities for the next five (5) years in the form of the consultation document published here: <a href="https://gov.wales/llwybr-newydd">https://gov.wales/llwybr-newydd</a> and developed during the Term;
<b>"Welsh Bus Open Data Agreement"</b>	means the agreement to be entered into between (1) TfW and (2) the Operator in relation to the Operator providing certain data to TfW which will enable TfW to build a consistent data set for all services in Wales to improve services for passengers; and
<b>"Working Days"</b>	means any day of the week other than a Saturday, Sunday or Bank Holiday.

- 1.2 the Schedule(s) form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement shall include the Schedule(s);
- 1.3 references to clauses or paragraphs appearing in the main body of this Agreement are, except where expressly stated to the contrary, references to clauses and paragraphs of this Agreement;
- 1.4 references to any part or paragraph appearing within a Schedule are, except where expressly stated to the contrary, references to such part or paragraph of that Schedule;
- 1.5 references to this Agreement are references to this Agreement as varied, assigned and/or novated in accordance with the provisions of this Agreement from time to time;
- 1.6 references to any other agreement or document are to such agreement or document as varied, assigned or novated from time to time; and
- 1.7 any reference to any Legislation will include any subordinate legislation made under it and will be construed as a reference to such Legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

## **2. SCOPE OF AGREEMENT**

- 2.1 This Agreement shall apply in respect of all Local Services provided by the Operator in the Region, including:
  - 2.1.1 Existing Supported Services; and
  - 2.1.2 Former Commercial Services;
  - 2.1.3 Commercial Services; and
  - 2.1.4 New Supported Services,(together the "**Services**").
- 2.2 Where and to the extent any Existing Supported Services are provided by the Operator pursuant to an Existing Supported Services Contract which is a Gross Cost Contract, clause 12 shall apply.
- 2.3 Where and to the extent any Existing Supported Services are provided by the Operator pursuant to an Existing Supported Services Contract which is a Net Cost Contract, clause 13 shall apply.
- 2.4 Where and to the extent any Local Service provided by the Operator is a Former Commercial Service the provisions of clause 15 shall apply in respect of Former Commercial Services.
- 2.5 Where and to the extent any Local Service provided by the Operator is a Commercial Service, clause 16 shall apply to the Operator in respect of the provision of those services.
- 2.6 Where and to the extent any Local Service provided by the Operator is provided pursuant to a New Supported Services Contract let by a Lead Authority or one of its Constituent Local Authorities after the date of this Agreement the provisions of clause 17 shall apply.
- 2.7 Where any provision of this Agreement is specified as being carried out by one Public Sector Party pursuant to this Agreement, the Public Sector Parties may agree that a representative of

another Public Sector shall be able to exercise such rights or may be required to carry out such function or obligation, provided that prior to such exercise, the Public Sector Parties shall jointly notify the Operator of such change of responsibility, and the party originally subject to such obligation shall notify the Operator of the basis upon which the new Public Sector Party is entitled to exercise the relevant powers. To the extent that this clause relates to the discharge of a statutory duty, the performance of such duty shall not be carried out by another Public Sector Party pursuant to this clause 2.7, save to the extent expressly agreed by such Public Sector Parties or in the event where TfW is performing such duties on behalf of the Welsh Government.

- 2.8 It is acknowledged that the Operator and Operator Group Companies may choose to change the way that they provide Local Services. Notwithstanding this, it is acknowledged by the Operator that this Agreement is entered into in respect of all Local Services provided by the Operator in the Region, and the Operator shall procure that, where there is any change in the operation of such services, that any alternative Operator Group Company providing such Local Services shall enter into an agreement on equivalent terms with the Public Sector Parties, and where and to the extent that they do not, or where any other action is taken by the Operator or any Operator Group Company to seek to provide services which are the same or similar to Local Services provided by the Operator in the Region outside the terms of this Agreement, the Operator shall indemnify the Public Sector Parties against all costs, losses, expenses and claims arising from the Local Services or services similar to the Local Services (including Commercial Services) being provided by the Operator or an Operator Group Company in a manner not subject to the provisions of this Agreement or an agreement on equivalent terms.

### **3. TERM**

- 3.1 This Agreement shall commence on the Effective Date and shall continue until 31 July 2022 (being the date falling two (2) years after the start date of BES 1.5), unless terminated earlier in accordance with the terms of this Agreement ("**Term**").

### **4. WELSH GOVERNMENT REQUIREMENTS**

- 4.1 As a condition of receipt of BES 2 Funding, the Operator shall comply with Welsh Government's minimum funding requirements as specified in Schedule 1.
- 4.2 Where the Operator is in material breach of any condition contained in Schedule 1 and the Operator fails to remedy such material breach (such remedy to include taking all reasonable steps to ensure that such breach is not repeated) within ten (10) Working Days of notification (or such other period of time as is reasonable given the nature of the breach and the steps required to remedy such breach), then the Operator shall pay compensation to the Lead Authority, pursuant to the process and calculated in accordance with Schedule 3.
- 4.3 The Operator shall maintain adequate insurances to cover against the risks which may be expected to arise in connection with the delivery of their obligations under this Agreement, including, but not limited to, insuring all property required to perform such obligations. The Operator shall provide the Lead Authority with proof of such insurances promptly upon request.

### **5. PARTNERSHIP**

- 5.1 The Operator shall use reasonable endeavours to agree the terms of an Umbrella Partnership Agreement, within three (3) months from the Effective Date and in the form of the draft agreement included at Section 1 of Schedule 1 with:

- 5.1.1 the Lead Authority (on behalf of Constituent Local Authorities in the Region and other Local Authorities affected by the partnership);
  - 5.1.2 TfW;
  - 5.1.3 Welsh Government; and
  - 5.1.4 other bus operators in the Region.
- 5.2 The Lead Authority, Welsh Government and TfW shall use reasonable endeavours to agree the terms of the Umbrella Partnership Agreement with the Operator and other bus operators in the Region.
- 5.3 The Parties acknowledge that that Umbrella Partnership Agreement shall provide a framework for development of detailed partnerships in the Region including, where appropriate, VPAs and QPS, and shall include as a minimum terms which:
- 5.3.1 establish a partnership board which shall govern the partnership, set strategy and objectives of the partnership, monitor and report on the performance of the partnership and resolve disputes;
  - 5.3.2 define the parties' obligations in respect of the continued delivery of the Wales Transport Strategy which may be in the form of transport plans which set out implementation dates, or processes to agree such plans, including, but not limited to those matters specified in Schedule 2;
  - 5.3.3 define obligations with respect to the Reference Network in accordance with clause 8;
  - 5.3.4 establish key performance indicators;
  - 5.3.5 invest in provision of Local Services;
  - 5.3.6 confirm review processes for the partnership using annual reviews and/or change procedures;
  - 5.3.7 rectify a breach of the terms of the Umbrella Partnership Agreement; and
  - 5.3.8 terminate the Umbrella Partnership Agreement.

## **6. SERVICE SPECIFICATION**

- 6.1 From the Effective Date, the Operator shall operate its Local Services as it did under the terms of the BES 1.5, unless agreed otherwise with the Lead Authority prior to the Effective Date.
- 6.2 The Operator shall consult and agree with the Lead Authority and each Constituent Local Authority in whose area a Local Service operates by the Effective Date or by no later than thirty (30) days of the Effective Date, the specification of the services (including routes, frequencies and hours of operation) that the Operator shall provide. In determining the specification of the services the Parties shall have regard to:
- 6.2.1 supporting learners' journeys to school or college on registered local bus services;
  - 6.2.2 increasing frequencies where demand exceeds capacity;

- 6.2.3 improving accessibility to jobs and services across our regions and communities;
  - 6.2.4 supporting economic recovery; and
  - 6.2.5 ensuring social inclusion,
- (together the "**Priorities**"),

provided that the services shall be affordable within the BES 2 Funding allocated to the Operator in accordance with the terms of this Agreement.

- 6.3 The agreed Service Specification will be recorded in the form appended at Schedule 6 and shall be updated with any changes, agreed from time to time and subject to being deliverable within the BES 2 Funding provided to the Operator pursuant to the terms of this Agreement.
- 6.4 The Operator shall act in good faith to discuss and agree with the Lead Authority and the relevant Constituent Local Authorities any changes in the Local Services required at regular intervals as agreed by the Parties, to ensure that the Local Services continue to meet local needs.
- 6.5 The Operator shall take all reasonable steps to respond and comply promptly with reasonable requests from the Lead Authority to amend the Local Services operated including:
  - 6.5.1 the routes used by those services;
  - 6.5.2 the hours of operation;
  - 6.5.3 the vehicles used or levels of provision; and
  - 6.5.4 the timetables of such services.
- 6.6 If, in exceptional circumstances, the Operator cannot reach agreement with the Lead Authority and any Constituent Local Authority on the Local Services to be operated in accordance with clause 6.4, then the Operator shall seek to agree the reasonable level of services to be provided with the Lead Authority who shall act reasonably to determine an appropriate service requirement in the context of the BES 2 Funding available and the requirements of the Lead Authority and the relevant Constituent Local Authority, and where such agreement is reached, these service requirements shall apply.
- 6.7 Where following discussion with the Lead Authority in accordance with clause 6.6, agreement can still not be reached with the Operator then either party may refer the matter as a Dispute, save that where the Lead Authority has a reasonable belief that the Operator has not engaged in good faith with any Constituent Local Authority covered by their operations and this forms part of the Dispute then such Dispute shall be referred as a Lead Authority Dispute in accordance with clause 25.3.

## **7. DATA PROVISION**

- 7.1 The Operator shall provide:
  - 7.1.1 the data specific in Section 1 of Part 4 of Schedule 3 in accordance with Part 3 of Schedule 3;
  - 7.1.2 the data specified in Part 1 of Schedule 4, in accordance with Part 3 of Schedule 3; and



- 7.1.3 the data specified in Part 2 of Schedule 4, in accordance with Part 3 of Schedule 3.
- 7.2 The data provided pursuant to this Agreement (including, but not limited to that provided pursuant to clause 7.1) may be used by the Welsh Government, TfW, the Lead Authority and Constituent Local Authorities in the Region solely for the Permitted Uses specified in Part 3 (Permitted Uses) of Schedule 4. Where such data is identified as Confidential or Commercially Sensitive as specified in Part 4 of Schedule 4, the relevant Public Sector Parties shall manage such data as Confidential Information in accordance with clause 21 and clause 23 and Commercially Sensitive in accordance with clause 23.
- 7.3 Where any Public Sector Party wishes to use any data provided by the Operator pursuant to this Agreement for any use which is not a Permitted Use they shall only do so having obtained the consent of the Operator, such consent not to be unreasonably withheld.
- 7.4 Where any data is identified as being Commercially Sensitive pursuant to Part 4 of Schedule 4 then each Public Sector Party shall ensure that, even where such data is being utilised in accordance with the Permitted Use that such data is only disclosed in accordance with clauses 21 to 23, and that where the output from the use of such data is disclosed in any manner which could be accessed by any other operator or prospective operator of Local Services, that such data or outputs are aggregated or presented in such a way that no Commercially Sensitive information is published (for example, where information in respect of crowding on buses is presented through using a traffic light system).
- 7.5 The Parties acknowledge and agree that the data provided pursuant to this clause 7 shall not be used by any Party for:
- 7.5.1 the purposes of monitoring and/or reporting to the Traffic Commissioner or the DVSA in respect of the Operator's service performance in respect of reliability and timekeeping for any local services operated by that Operator; or
- 7.5.2 any purpose relating to the potential introduction of a Quality Contract Scheme pursuant to the Transport Act 2000 by any Local Authority or the introduction by any Local Authority of any similar form of franchising arrangement under subsequent legislation,
- without the Operator's prior written consent.
- 7.6 Where any Public Sector Party analyses Operator Data for a Permitted Use with the intention to use that analysis for policy or decision making processes which may materially affect the Operator, such Public Sector Party shall use reasonable endeavours to engage with the Operator prior to use, to allow the Operator to inform such analysis. The Operator acknowledges that compliance with this obligation may not always be practicable, and in particular that a Public Sector Party shall not be obliged to comply with this obligation to the extent that it would breach clause 7.4.
- 7.7 The Operator shall keep and maintain full and accurate records and accounts on everything to do with this Agreement throughout and for seven (7) years after the date of expiry or termination of this Agreement.
- 7.8 Where a Public Sector Party is required to audit any information provided by the Operator pursuant to this Agreement, including where Welsh Government has reasonable grounds to believe that any information provided is materially incorrect, then they may appoint an auditor. The Operator shall allow such appointed auditor access to their premises, upon reasonable notice, to verify all accounts and records of everything to do with this Agreement (which is

relevant to the issue identified) and provide copies for the audit upon request, subject to clause 21.

- 7.9 The Operator shall provide information to the auditor and reasonable co-operation at their request.
- 7.10 Where any auditor identifies that any information provided by the Operator to any Public Sector Party is materially false or incomplete the relevant Public Sector Party shall be entitled to assess the impact of such false or incomplete information and where this has led to an under-payment to any Public Sector Party or over-payment from any Public Sector Party of the Service Payment, such Party shall be entitled to recover the difference between the amount originally calculated and the amount calculated following correction of the information found to be false or incomplete, and such amount shall be immediately payable by the Operator to such Public Sector Party.
- 7.11 The Operator agrees to use all reasonable endeavours to enter into the Welsh Bus Open Data Agreement within three (3) months of signing this Agreement, and shall, in any case, enter into such agreement within six (6) months of signing this Agreement. In the event of a conflict between the terms of the Welsh Bus Open Data Agreement and this Agreement, the Parties agree that this Agreement shall take priority during the Term of this Agreement and upon termination or expiry of this Agreement, the Welsh Bus Open Data Agreement shall take priority.
- 7.12 The Parties acknowledge that TfW use third party suppliers to extract/receive and process data and that clauses 21 and 22 shall apply to the use and processing of such data by such third parties.

## **8. REFERENCE NETWORK**

- 8.1 The Parties agree that the initial Reference Network reflects the routes, frequencies and hours of operation of local bus services in Wales prior to COVID-19, specifically as at 29 February 2020 modified by:
- 8.1.1 any key seasonal variations as demonstrated in the preceding year e.g. a summer tourist timetable; and
- 8.1.2 any changes to services implemented by agreement with a Local Authority or the Lead Authority prior to the Effective Date.
- 8.2 The Parties agree that for the purposes of continued improvement in the provision of local bus services in Wales, it will be necessary to develop a revised Reference Network which sets out the target requirements for routes and services to be provided across Wales. The Reference Network shall be developed in accordance with this Agreement, including the provision of services in accordance with clauses 12 to 17 below, as well as any changes to services agreed pursuant to Schedule 1. The Parties agree that the Reference Network shall be developed in respect of each Region in line with the local and regional rankings of the Priorities and in support of a coherent Wales wide Reference Network.
- 8.3 The Parties, together with other operators in the Region, shall work together to develop a revised Reference Network by 30 June 2021. This network will supersede the initial Reference Network and reflect Regional priorities. As part of developing the revised Reference Network, historical and current passenger demand data will be used to objectively identify the elements of the Reference Network which will require long term Government support. These elements of the Reference Network will be referred to as the "**Subsidised Network**".

- 8.4 The development of the Reference Network shall include:
- 8.4.1 use of data provided by all parties with an interest in the provision of bus services within the Region, including operators, Lead Authorities, Local Authorities, TFW and Welsh Government;
  - 8.4.2 consideration of regional strategic Priorities for the provision of Local Services;
  - 8.4.3 examination of existing routes;
  - 8.4.4 exploration of options for new routes;
  - 8.4.5 the viability and affordability of the proposed routes; and
  - 8.4.6 consideration of investment or other measures that may be required to support any revised Reference Network.
- 8.5 The Lead Authority shall manage compliance with the Reference Network in accordance with the requirements set out in Schedule 1.
- 8.6 As part of the development of the Reference Network, the Operator shall use all reasonable endeavours to agree a set of Service Standards pursuant to Schedule 1 with the Lead Authority and TFW which will apply to different classifications of routes across Wales. The Operator, the Lead Authority and TFW shall use all reasonable endeavours to complete this classification by 30 June 2021.

## **9. PAYMENTS AND RECONCILIATION PROCESSES**

- 9.1 The Lead Authority shall pay the Operator a service payment calculated in accordance with Part 2 of Schedule 3 ("**Service Payment**"), in relation to the Services provided pursuant to and in accordance with this Agreement. If the Operator disputes the amount of the Service Payment then such dispute shall be resolved in accordance with clause 25.
- 9.2 For the avoidance of doubt, the Operator shall not be entitled to recover more than once in respect of the same amount, including that the Operator shall not be entitled to recover any amount payable pursuant to the Previous BES Funding Arrangements pursuant to this Agreement.
- 9.3 In the event that the Operator is successful in obtaining any other governmental support or support from any Lead Authority or one of its Constituent Local Authorities or other such body that is offered in relation to the impact of and/or recovery from the impacts of COVID-19, this shall be taken into account in relation to the relevant Service Payment such that the Operator does not benefit from double recovery or double counting.
- 9.4 The Operator shall comply with the reconciliation process detailed in Part 3 of Schedule 3. The Parties acknowledge that Schedule 3 assesses the basis on which the Operator is paid, and includes provisions to ensure that such payments, following reconciliation, do not lead to over-compensation or illegal state aid. Notwithstanding any other remedies that the Lead Authority, TFW or Welsh Government may have pursuant to this Agreement or otherwise for provision by the Operator of false or misleading information, it shall be a material breach of this Agreement for the Operator to fail to accurately provide the information specified in Schedule 3. For the avoidance of doubt, it will be necessary to provide information in respect of all Local Services provided by the Operator, including any Commercial Services, to ensure transparency of costs and revenues and to ensure that the calculation of the Assumed Margin pursuant to Schedule 3

shall take into account the costs and revenues from all Local Services provided by an Operator (including Former Commercial Services and Commercial Services).

- 9.5 Where following any reconciliation process carried out pursuant to Part 3 of Schedule 3, the Lead Authority identifies that an overpayment or an underpayment has been made, the Lead Authority shall be entitled to require either clawback of such amount or pay such amount ("**Reconciliation Payment**"), calculated in accordance with Part 3 of Schedule 3. The Lead Authority shall provide the Operator with detailed calculations confirming the Reconciliation Payment to be returned to the Lead Authority or paid to the Operator.
- 9.6 The Parties acknowledge and agree that TfW, working with the Lead Authority, may carry out Funding Reviews on behalf of Welsh Government in accordance with the provisions of Schedule 5 and the Parties shall agree, acting reasonably, such amendments to this Agreement, as may be reasonably required to reflect the outcomes of each Funding Review.

## **10. EXIT FROM BES 2**

- 10.1 The Parties agree and acknowledge that by no later than 1 August 2022, it is all Parties' intention that all of the Operator's Local Services which operate in Wales shall either be:

10.1.1 operated as a Commercial Service; or

10.1.2 operated pursuant to a New Supported Services Contract or the original terms and conditions of an Existing Supported Services Contract (including in each case any such contract which is let as a *de minimis* contract).

- 10.2 Where all Local Services operated by the Operator in Wales are operated in accordance with clause 10.1 then the Parties acknowledge that:

10.2.1 no further payments shall be made pursuant to this Agreement; and

10.2.2 provided that any Umbrella Partnership Agreement and any associated partnership arrangements shall not be terminated as a result of the termination of this Agreement,

any Party shall otherwise be entitled to terminate this Agreement by agreement with the other Parties (all acting reasonably).

## **11. TERMINATION**

- 11.1 This Agreement, or a Party's participation in this Agreement, may be terminated in accordance with the provisions of this clause 11.

### **Defaulting Party Material Breach**

- 11.2 In the event of a material or persistent breach of this Agreement by a Defaulting Party, the non-Defaulting Party may give four (4) weeks' written notice of their intention to terminate this Agreement, setting out in sufficient detail the acts or omission of the relevant Defaulting Party giving rise to such breach or breaches. If the Defaulting Party does not, to the reasonable satisfaction of the non-Defaulting Party, remedy the breach or breaches and the consequences of such breach within such notice period, the non-Defaulting Party may terminate this Agreement. Where, pursuant to Part 4 of Schedule 3 Service Failure Points have been allocated for the same trigger in three (3) consecutive months this shall be deemed to be a material breach which the Operator has been unable to remedy.

## **Insolvency**

- 11.3 Any non-Defaulting Party may by written notice terminate its participation in this Agreement where another Party ("**Insolvent Party**"):
- 11.3.1 passes a resolution for its winding up or summons a meeting to pass any such resolution (other than for the purpose of and followed by a solvent reconstruction or amalgamation);
  - 11.3.2 has a petition for a winding-up order presented against it (other than for the purpose of and followed by a solvent reconstruction or amalgamation);
  - 11.3.3 has an application made to court, or an order made, for the appointment of an administrator or any step is taken to appoint an administrator in respect of the Insolvent Party;
  - 11.3.4 has a receiver, administrative receiver, receiver and manager or similar officer appointed by any person of all or any part of the Insolvent Party's property, assets or undertaking;
  - 11.3.5 makes a proposal for a voluntary arrangement as defined in Section 1 of the Insolvency Act 1986;
  - 11.3.6 enters into any other arrangement with its creditors or any of them;
  - 11.3.7 takes or suffers any other action in consequence of debt including, without limitation, giving notice to its creditors or any of them that it has suspended or is about to suspend payment; or
  - 11.3.8 has a proposal or threat to do any of the above acts or things made; or an event analogous to the aforesaid occurs in whatever jurisdiction.

## **Continuing Force Majeure**

- 11.4 No Party shall be liable to any other Party for any delay in, or failure to perform its obligations under this Agreement arising (in whole or in part) from any Force Majeure Event, provided that the affected Party shall:
- 11.4.1 as soon as reasonably practicable, send to the other Parties a written notice setting out the circumstances of the event and its anticipated effect; and
  - 11.4.2 use all reasonable endeavours to minimise the effect of any such circumstances.
- 11.5 If the affected Party's ability to perform its obligations under this Agreement is materially adversely affected (in whole or in part) due to a Force Majeure Event continuing for a period of six (6) months or more, any Party may terminate the affected Party's participation in this Agreement with immediate effect by serving written notice to the other Parties, provided that no such notice shall be served until the Parties have met in good faith to discuss and seek to agree whether this Agreement should continue in modified form (agreement to such not to be unreasonably withheld).
- 11.6 Notwithstanding any other provision under this Agreement, the Parties agree that they were aware of COVID-19 and that the existence of COVID-19 in itself shall not constitute a Force Majeure event save that a Change in COVID-19 Impact Event may be deemed to be a Force

Majeure Event provided it satisfies the criteria set out in sub-paragraphs (b) to (f) (exclusive) of the definition of Force Majeure.

### **Termination by agreement of the Parties**

- 11.7 This Agreement may be terminated in respect of all Parties or in respect of any one party at any time with immediate effect by written consent of all Parties that it be so terminated.
- 11.8 This Agreement shall be terminated in respect of any Party that disposes of its business in accordance with clause 28.2.
- 11.9 In the event that the Operator either: (i) changes the way that they provide Local Services and does not comply with clause 2.8; or (ii) disposes of its business and does not comply with clause 28.2, the Operator acknowledges and agrees that such breach shall be dealt with in accordance with clause 11.2 and the non-Defaulting Party is entitled to terminate this Agreement.

### **Exit from BES 2**

- 11.10 This Agreement may be terminated pursuant to clause 10.2.

### **Funding Reviews**

- 11.11 This Agreement may be terminated on notice provided by Welsh Government to the Operator, in accordance with paragraph 1.3.3 of Schedule 5 following a Funding Review.

### **Operator withdrawal**

- 11.12 This Agreement may be terminated on no less than fifty six (56) days' notice (or such other period of notice as the Traffic Commissioner may require in respect of de-registration of Local Services at the date the notice is given) from the Operator to the other Parties, in the event that the Operator intends to withdraw from the Welsh bus market, such termination to occur on the date of withdrawal from the Welsh bus market.
- 11.13 In the event where the Operator intends to withdraw from the Welsh bus market and terminates this Agreement in accordance with clause 11.12, the Operator shall provide Welsh Government with a reasonable opportunity to purchase any assets of the business which it intends to dispose of, on fair terms.

### **Effect of Termination**

- 11.14 The termination of this Agreement for any reason:
  - 11.14.1 shall be without prejudice to any rights or obligations which shall have accrued or become due prior to the date of termination, including, for the avoidance of doubt, any payments to be made to the operator pursuant to Part 3 of Schedule 3;
  - 11.14.2 shall not prejudice the rights or remedies which any Party may have in respect of any breach of the terms of this Agreement prior to the date of termination; and
  - 11.14.3 shall not impact upon any clawback of BES 2 Funding which is to be made (including any clawback of BES 2 Funding still to be calculated) in accordance with Schedule 3.

## **12. EXISTING SUPPORTED SERVICES: GROSS COST**

12.1 The Parties acknowledge that the Operator operates Existing Supported Services on the date of this Agreement which are contracted in whole, or in part, pursuant to Existing Supported Services Contracts.

12.2 Where an Existing Supported Services Contract is let as a Gross Cost Contract:

12.2.1 the Operator acknowledges that the relevant Constituent Local Authority (or Welsh Government where the Existing Supported Services Contract is let pursuant to section 7 Transport (Wales) Act 2006) remains at risk for passenger revenue, and that any payments made to the Operator in respect of such Local Services pursuant to this Agreement shall relate solely to additional costs incurred by the Operator in providing services in accordance with the terms of such Gross Cost Contract, as a result of the impact of COVID-19 (and related measures) on the operation of that Existing Supported Services;

12.2.2 the Operator (and the Lead Authority on behalf of the relevant Constituent Local Authority) agree that each Existing Supported Services Contract shall be varied to:

12.2.2.1 allow such additional payments to be made by the Lead Authority on behalf of the Constituent Local Authority to the Operator in accordance with the terms of this Agreement; and

12.2.2.2 revise the services provided in agreement with the Constituent Local Authority and the Lead Authority and align payment with the revised services.

It is acknowledged that the variation in such payments shall be limited to those which are required to deal with the impact of COVID-19, and that the modifications are not substantial within the meaning of Regulation 88 (1)(f) Utilities Contracts Regulations 2016 or Regulation 72(1)(f) Public Contract Regulations 2015, as the case may be;

12.2.3 the Operator agrees that more than one amendment may be made pursuant to clause 12.2.2, during the term of this Agreement, provided that those changes shall be made solely for the purposes of reflecting required changes to local bus services to reflect the impact of COVID-19, and that such changes shall not change the economic balance of the contract in favour of the bus operator nor alter the overall nature of the Existing Supported Services Contract;

12.2.4 the Operator and the Lead Authority acknowledge that the payments made pursuant to this Agreement in respect of such Gross Cost Contracts are made pursuant to a valid variation to the Existing Supported Services Contracts between the Constituent Local Authority and the Operator. The Parties agree to execute such other documents, including to update the Register of Variations at Schedule 7, as may be required to effect such variation, and the Lead Authority undertakes to obtain any variation documents executed by the Constituent Local Authority as may be required to effect such variation; and

12.2.5 on a continuing basis, the Lead Authority may carry out a further review of each Existing Supported Services Contract to assess whether any further variation is needed or determinate whether the service remains necessary to be supported in accordance with the review process under clause 6.4.

### **13. EXISTING SUPPORTED SERVICES: NET COST**

13.1 The Parties acknowledge that the Operator operates Existing Supported Services on the date of this Agreement which are contracted in whole, or in part, pursuant to Existing Supported Services Contracts.

13.2 Where such Existing Supported Services Contract is a Net Cost Contract:

13.2.1 the Parties acknowledge that the Operator is at risk for passenger revenue under the terms of the Net Cost Contract with the relevant Lead Authority or one of its Constituent Local Authorities (or Welsh Government where the Existing Supported Services Contract is let pursuant to section 7 Transport (Wales) Act 2006), and that any payments made to the Operator in respect of such Local Services pursuant to this Agreement shall relate solely to:

13.2.1.1 additional costs incurred by the Operator in providing services in accordance with the terms of such Net Cost Contract, as a result of the impact of COVID-19 (and related measures) on the operation of that Existing Supported Services; and

13.2.1.2 the impact on passenger revenue beyond that which was foreseeable by the Operator and/or the Lead Authority or one of its Constituent Local Authorities at the time that such Existing Supported Services Contract was let,

13.2.2 the Operator (and the Lead Authority on behalf of the relevant Constituent Local Authority) agree that each Existing Supported Services Contract shall be varied to:

13.2.2.1 allow such additional payments to be made by the Lead Authority on behalf of the Constituent Local Authority to the Operator in accordance with the terms of this Agreement; and

13.2.2.2 revise the services provided in agreement with the Constituent Local Authority and the Lead Authority.

It is acknowledged that the variation in such payments shall be limited to those which are required to deal with the impact of COVID-19, and that the modifications in respect of any changes to service provision are not substantial within the meaning of Regulation 88 (1)(f) Utilities Contracts Regulations 2016 or Regulation 72(1)(f) Public Contract Regulations 2015, as the case may be, and that the payments in respect of loss of passenger revenue are made due to the immediate and continuing risk of disruption of passenger services as a result of the loss of that passenger revenue,

13.2.3 the Operator agrees that more than one amendment may be made pursuant to clause 13.2.2.2, during the term of this Agreement, provided that those changes shall be made solely for the purposes of reflecting required changes to local bus services to reflect the impact of COVID-19, and that such changes shall not change the economic balance of the contract in favour of the operator nor alter the overall nature of the Existing Supported Services Contract;

13.2.4 the Operator agrees that, where payments made relate to the impact of COVID-19 on passenger numbers, the extent to which those payments relate to costs which would have been funded from passenger revenue, save for the effect of COVID-



19, that the Lead Authority shall be entitled to limit the payments made in respect of such costs for the period that the risk associated with passenger revenue loss is materially greater than that which was reasonably foreseeable at the date of the relevant agreement;

13.2.5 payments made by the Lead Authority to the Operator pursuant to this Agreement in respect of Existing Supported Services pursuant to a Net Cost Contract shall be only made for the period, and to the extent that, the provision of services under the relevant Net Cost Contract are affected by COVID-19;

13.2.6 the Operator and the Lead Authority acknowledge that the payments made pursuant to this Agreement in respect of such Net Cost Contracts are made pursuant to a valid variation to the Supported Services Existing Contract between the relevant Constituent Local Authority and the Operator. The Parties agree to execute such other documents, including to update the Register of Variations at Schedule 7, as may be required to effect such variation, and the Lead Authority undertakes to obtain any variation documents executed by the Constituent Local Authority as may be required to effect such variation; and

13.2.7 on a continuing basis, the Lead Authority may carry out a further review of each Existing Supported Services Contract to assess whether any further variation is needed or determinate whether the service remains necessary to be supported in accordance with the review process under clause 6.4.

#### **14. REVERTING TO ORIGINAL CONTRACT TERMS FOR EXISTING SUPPORTED SERVICES**

14.1 The Parties acknowledge that any Existing Supported Services Contract varied in accordance with clause 12 and 13, shall revert to the terms specified immediately prior to such variation (subject to any other variation to such contract agreed by the Parties to that contract) when all or some of the following criteria are achieved (in each case as agreed with the relevant Local Authority, acting reasonably):

14.1.1 the revenue in respect of that service returning to pre-COVID levels;

14.1.2 the service operating to a specification materially the same as that pre-COVID, subject to any other variation of such contract; and

14.1.3 the Operator choosing to return to the terms of the original Existing Supported Services Contract.

#### **15. SUPPORT FOR FORMER COMMERCIAL SERVICES**

15.1 The Parties acknowledge that the Operator has historically operated Commercial Services, but due to the effects of COVID-19, those Commercial Services were no longer commercially viable and support for the continuation of the services was required from Welsh Government. Such support was received through BES Funding provided pursuant to the Previous BES Funding Arrangements. The Parties further acknowledge that the Previous BES Funding Arrangements were implemented on the basis of payments being made under the following powers:

15.1.1 use of grant aid under section 154 Transport Act 2000; or

15.1.2 payments made pursuant to section 7 of the Transport (Wales) Act 2006,

**("Former Commercial Services").**

- 15.2 The Operator acknowledges that in the absence of Service Payments made pursuant to this Agreement the Operator would not be able to continue to operate the relevant Former Commercial Service or would not be able to operate the Former Commercial Services to the Service Standards.
- 15.3 The Lead Authority acknowledges that it would not have funded such Former Commercial Services to the Service Standards unless provided with financial support by Welsh Government.
- 15.4 The Lead Authority agrees to support the Former Commercial Services pursuant to the terms of this Agreement on the basis that the operation of the Former Commercial Service is required to meet public service obligations, with support being provided for provision of such public service obligations through the payment of Service Payments on behalf of Welsh Government in accordance with Schedule 3 (pursuant to section 7 Transport (Wales) Act 2006), provided that the Operator in operating the Former Commercial Services, shall at all times comply with the prevailing Service Specification.
- 15.5 The Parties acknowledge that the reconciliation process at Part 3 of Schedule 3 shall take into account the costs and revenues from all Local Services provided by the Operator, including Supported Services, Formerly Commercial Services and Commercial Services. For the avoidance of doubt, the assessment of whether the Operator has been over or under compensated and the calculation of any margin due shall be based on the net position on costs and revenues across all the Operator's Local Services.

**16. COMMERCIAL SERVICES**

- 16.1 Where the Operator registers a Commercial Service which does not comply with the applicable Service Standards, then save where the specification of such Commercial Service has been agreed in accordance with clause 16.2.2, the Operator acknowledges and agrees that Welsh Government or any Local Authority in the area in which such service is operated may determine that notwithstanding the operation of the Commercial Service, that the service in question is not being provided to the applicable Service Standard required, in accordance with section 7(4) Transport (Wales) Act 2006 or section 63(5) Transport Act 1985 and that Welsh Government or the relevant Local Authority may determine that a service that meets the applicable Service Standard may be let in accordance with clause 17 (subject to the application, where relevant, of the Part 1 Competition Test).

- 16.2 Where the Operator registers a Commercial Service which will operate:

16.2.1 in accordance with the applicable Service Standards; or

16.2.2 in accordance with a variation to the Service Standards as agreed by the Operator, Lead Authority and TfW on the grounds that, for example, the specified standard for the hours of operation or frequency of the service are not financially viable or required,

then the Parties acknowledge that such service shall be operated as a Commercial Service for the purposes of this Agreement, but shall for the avoidance of doubt, remain subject to the terms of this Agreement, the Umbrella Partnership Agreement and any future partnership agreement developed pursuant to the terms of the Umbrella Partnership Agreement.

- 16.3 The Parties acknowledge that the reconciliation process at Part 3 of Schedule 3 shall take into account the costs and revenues from all Local Services provided by the Operator, including

Supported Services, Formerly Commercial Services and Commercial Services. For the avoidance of doubt, the assessment of whether the Operator has been over or under compensated and the calculation of any margin due shall be based on the net position on costs and revenues across all the Operator's Local Services.

## 17. SERVICES TENDERED AFTER THE DATE OF THIS AGREEMENT

17.1 The Parties agree that the Lead Authority or one of its Constituent Local Authorities or Welsh Government may let New Supported Services Contracts including where:

- 17.1.1 an Existing Supported Service Contract expires or terminates;
- 17.1.2 the Operator chooses to cease operation of a Former Commercial Service; or
- 17.1.3 a new route is identified as part of the Reference Network which is not operated as a Commercial Service or any Commercial Service does not comply with clause 16.2,

in each case where the relevant Local Authority or Welsh Government determine that the provision of such service is appropriate for meeting public transport requirements in the relevant area.

17.2 The Operator acknowledges that, no later than 1 August 2021, the Lead Authority (working with its Constituent Local Authorities) shall set out a programme to tender key services that are otherwise at risk of not meeting the requirements of clause 10.1 prior to 1 August 2022 when this contract shall terminate ("**Procurement Programme**"). The Procurement Programme shall be developed in consultation with the Operator and other operators and plans to tender New Supported Service Contracts within the Procurement Programme shall be prioritised to take account of:

- 17.2.1 the prevailing bus market conditions including any continued impact of COVID-19 on the performance of the bus market, such as passenger levels and revenues;
- 17.2.2 the estimated time frame for meeting the requirements of clause 10.1; and
- 17.2.3 the extent to which each service is required for the purposes of operating the Reference Network and delivering its intended benefits.

The Procurement Programme shall be reviewed by the Lead Authority and its Constituent Local Authorities every month and revised as necessary in consultation with the Operator, other operators and stakeholders to take account of changes which affect the priorities detailed in clauses 17.2.1 to 17.2.3.

17.3 Where a Lead Authority, one of its Constituent Local Authorities or Welsh Government tenders a New Supported Services Contract following the date of this Agreement, the tender for such New Supported Services Contract shall specify the assumptions that are to be made by all bidders regarding payments (if any), to be made pursuant to this Agreement to the operator of services under that New Supported Services Contract, and the relevant Public Sector Party shall ensure that the same assumptions are provided to all tenderers for such Contract ("**New Supported Services Contract Tendering Assumptions**"); or

17.4 the Parties acknowledge, that where any Public Sector Party, specifies New Supported Services Contract Tendering Assumptions as part of a tender process for a New Supported Services Contract and the Operator enters into such New Supported Services Contract, the Lead

Authority shall make payments under this Agreement in respect of such New Supported Services Contract in accordance with the New Supported Services Contract Tendering Assumptions.

## 18. SURVIVAL

18.1 This clause 18 and the following provisions (and any clauses/Schedules referred to in them/and or necessary in order to give effect to them) shall survive termination of this Agreement:

18.1.1 clauses 1 (*Definitions and Interpretation*);

18.1.2 clause 20 (*Intellectual Property*),

18.1.3 clause 21 (*Confidentiality*),

18.1.4 clause 22 (*Data Protection*),

18.1.5 clause 23 (*Freedom of Information*),

18.1.6 clause 25 (*Dispute Resolution*);

18.1.7 clause 36 (*Governing Law and Jurisdiction*); and

18.1.8 Schedule 3 (*Compensation*) to the extent required for the purposes of any reconciliation of payments following the date of termination,

which shall continue in force after such termination.

## 19. FUNDING AND CONSTRAINTS

19.1 Each Party shall be responsible for funding their own obligations under this Agreement, save where the funding of any obligation is expressly specified in this Agreement, and otherwise in accordance with this clause 19. Where and to the extent any obligation of the Lead Authority pursuant to this Agreement to pay the Operator is dependent upon Welsh Government paying an equivalent amount to the Lead Authority, Welsh Government shall indemnify the Lead Authority against any claims from the Operator arising directly from any delay or failure by Welsh Government to make such payment to the Lead Authority.

19.2 It is acknowledged that funding from (or provisions of works, services or supplies which have been funded by) the Welsh Government is subject to constraints on public spending, including the application of UK and EU rules in respect of state aid and procurement ("**State Aid and Procurement Constraints**"). It is acknowledged that Welsh Government, TFW and the Lead Authority shall not be required to fund or deliver anything pursuant to this Agreement which would be in breach of such requirements.

19.3 Where any Party is unable to perform an obligation under this Agreement due to State Aid and Procurement Constraints the Parties agree to work together in good faith to determine those changes required to this Agreement whilst not breaching such requirements. It is acknowledged that this may include the Parties working together to identify exemptions which may be applicable and where necessary engaging with third parties including the CMA in order to implement the terms of this Agreement.

## **20. INTELLECTUAL PROPERTY RIGHTS**

- 20.1 To the extent that any Intellectual Property Rights are generated pursuant to the terms of this Agreement, the Parties agree that:
- 20.1.1 such Intellectual Property Rights shall remain the absolute property of the Party which generated such rights; and
  - 20.1.2 such Party shall hereby grant to the other Party a perpetual, irrevocable, non-exclusive, fully paid up and royalty free licence (with the right to sub-licence) to use such Intellectual Property Rights for any purpose relating to this Agreement or any successor agreement.

## **21. CONFIDENTIALITY**

### **General**

- 21.1 The Parties agree that the provisions of this Agreement shall not be treated as Confidential Information and may be disclosed without restriction.
- 21.2 Each Receiving Party shall:
- 21.2.1 keep the Disclosing Party's Confidential Information confidential;
  - 21.2.2 use the Confidential Information (or any part thereof) only in connection with performing its obligations under the Agreement; and
  - 21.2.3 subject to clause 21.4 and 23, not disclose the Confidential Information to anyone without the prior written consent of the Disclosing Party.
- 21.3 Data provided by the Operator pursuant to clause 7 or otherwise pursuant to the terms of this Agreement shall be deemed to be Confidential Information where it is identified as such in the table at Part 4 of Schedule 4.

### **Exceptions**

- 21.4 The consent referred to in clause 21.2.3 shall not be required for the disclosure by a Receiving Party of any Confidential Information which:
- 21.4.1 is disclosed to:
    - 21.4.1.1 the CMA; or
    - 21.4.1.2 the Department for Transport,
  - 21.4.2 at any time comes into the public domain otherwise than as a result of breach of this Agreement by the Receiving Party;
  - 21.4.3 is disclosed to the Receiving Party's officers, contractors or agents, in each case to the extent required to enable the Receiving Party to carry out its obligations under this Agreement provided that the Receiving Party makes such person aware of the Receiving Party's obligations under this Agreement and the Receiving Party requires such person to observe the same restrictions on the use of the relevant information as are contained in clause 21.2;

- 21.4.4 is disclosed to the Receiving Party's professional advisers who are bound to such Receiving Party by a duty of confidence which applies to any information disclosed;
  - 21.4.5 is disclosed to the Receiving Party's auditors (pursuant to clause 7.8) who are bound to such Receiving Party by a duty of confidence which applies to any information disclosed, to the extent that the statutory provisions under which the auditor was appointed allow for such duty of confidence to be imposed upon the auditor;
  - 21.4.6 is received from a third party who is not in breach of any relevant duty of confidence whether express or implied;
  - 21.4.7 is independently developed without access to the Confidential Information; or
  - 21.4.8 is required to be disclosed by any applicable law or regulatory requirement to which the Receiving Party is subject or pursuant to any order of the court or other competent regulatory authority or tribunal.
- 21.5 These restrictions and prohibition on use, exploitation, communication and disclosure set out in this clause 21 shall continue to apply after the expiration or termination of the Agreement in respect of any Confidential Information for such period of time as such information remains Confidential Information..

#### **Required Disclosure**

- 21.6 If the Receiving Party becomes required, in circumstances contemplated by clause 21.4.8 to disclose any Confidential Information, the Receiving Party shall (save to the extent prohibited by law) give to the Disclosing Party such notice as is practical in the circumstances of such disclosure and shall co-operate with the Disclosing Party, having due regard to the Disclosing Parties' views, and take such steps as the Disclosing Party may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

#### **Remedy**

- 21.7 The Public Sector Parties acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of this clause 21 and that a breach by any Public Sector Partner of this clause 21 may result in immediate and irreparable competitive injury. The Public Sector Parties therefore agree that in addition to any other remedies that may be available, by law or otherwise, the Operator shall be entitled to seek injunctive relief against any breach or threatened breach of this clause 21 by the Public Sector Parties.

## **22. DATA PROTECTION**

- 22.1 In this clause 22, the expressions "**Process/Processing**", "**Controller**", "**Processor**" "**Data Subject**", "**Personal Data Breach**" and "**Supervisory Authority**" shall have the same meaning as in the Data Protection Laws.
- 22.2 Each Party shall Process Personal Data under this Agreement as a separate Controller, and shall comply at all times with its respective obligations under Data Protection Laws.
- 22.3 In respect of any disclosures of Personal Data by one Party ("**Personal Data Disclosing Party**") to another Party ("**Personal Data Receiving Party**"), the Personal Data Receiving Party shall:

- 22.3.1 only Process the disclosed Personal Data where reasonably necessary for the purposes of performing its obligations, or exercising its rights, under this Agreement (including in respect of any onward disclosures to third parties);
  - 22.3.2 not transfer Personal Data outside the EEA without the prior written consent of the Personal Data Disclosing Party; and
  - 22.3.3 notify the Personal Data Disclosing Party without undue delay upon becoming aware of any Personal Data Breach involving the Personal Data.
- 22.4 Each Party shall co-operate with the other, to the extent reasonably requested, in relation to:
- 22.4.1 any requests from Data Subjects to exercise rights under the Data Protection Laws;
  - 22.4.2 any other communication from a Data Subject concerning the Processing of their Personal Data; and
  - 22.4.3 any communication from a Supervisory Authority concerning the Processing of Personal Data, or compliance with the Data Protection Laws.

### **23. FREEDOM OF INFORMATION**

- 23.1 The Operator shall cooperate to facilitate the Public Sector Parties in complying with their respective obligations under the FOIA and the EIR, together with any guidance and/or codes of practice issued from time to time by the Information Commissioner or the Secretary of State, in the manner provided for in this clause 23, which shall apply whenever any Public Sector Party receives a Request for Information which in that Public Sector Party's reasonable opinion is likely to involve the disclosure of Confidential Information.
- 23.2 Where the relevant Public Sector Party receives a Request for Information in relation to Operator Confidential Information it shall notify the Operator in writing of the Request for Information as soon as practicable after receipt and in any event within five (5) Working Days of receiving a Request for Information and shall consult in good faith with the Operator to ascertain whether disclosure of the requested information would be likely to prejudice the commercial interests of the Operator for the purposes of section 43(2) of FOIA or regulation 12(5)(e) of EIR.
- 23.3 Where the relevant Public Sector Party receives a Request for Information relating Operator Confidential Information, the relevant Public Sector Party shall keep the Operator fully informed and the Operator shall provide all necessary assistance reasonably requested by the relevant Public Sector Party to enable the Welsh Government or TFW to respond to a Request for Information in accordance with Section 1 and Section 10 of the FOIA or regulation 5 of the EIR.
- 23.4 The relevant Public Sector Party agrees that (and shall procure that the Constituent Local Authorities agree that) Operator Data shall, for the purposes of the FOIA, constitute:
- 23.4.1 exempt information pursuant to Part 2 of the FOIA which is provided to the Welsh Government, the Lead Authority and/or TFW in confidence and that disclosure of the Operator Data would constitute a breach of confidence actionable by the Operator; and/or
  - 23.4.2 exempt information pursuant to Part 2 of the FOIA in that it constitutes either a trade secret of the Operator and/or information which if disclosed to the public

would prejudice the commercial interests of the Operator and the Welsh Government, the Lead Authority and TfW will therefore treat all Operator Data as exempt for the purposes of the FOIA.

23.5 In the event that notwithstanding the provisions of clause 23.4, any Public Sector Party is bound by the FOIA to disclose any Operator Data to the public, the relevant Public Sector Party shall nonetheless provide the Operator with a minimum of 48 hours written notice prior to the disclosure of any such data.

## **24. COMPETITION AND PROCUREMENT LAW**

24.1 The Parties intend that this Agreement shall comply with competition law at the date of this Agreement.

24.2 The Parties acknowledge that the development of partnership arrangements pursuant to clause 5 of this Agreement will be subject to the application of competition law, and in particular the parties may need to apply the Part 2 Competition Test, and be satisfied (acting reasonably and by reference to the prevailing law at the time of such consideration) that any Umbrella Partnership Agreement meets the Part 2 Competition Test;

24.3 The Parties intend that:

24.3.1 this Agreement shall not breach the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016 or Regulation 1370/2007;

24.3.2 that payments in respect of, and the provision of, services by the Operator pursuant to the terms of this Agreement are consistent with the requirements of article 5 of Regulation 1370/2007.

24.4 Notwithstanding clause 24.1 to 24.3, if:

24.4.1 statements by, advice from, or decisions by competent authorities (including, but not limited to, the CMA) provides additional detail or guidance in relation to the applicability of competition law to this Agreement which may impact on the position of this Agreement or in respect of the negotiation of the Umbrella Partnership Agreement;

24.4.2 statements by, advice from, or decisions by competent authorities impact on the position of this Agreement under procurement law,

the Parties agree to:

24.4.3 meet in good faith and review the impact of such change or other developments on this Agreement; and

24.4.4 make any amendment necessary to ensure that this Agreement complies with applicable competition law or procurement law then in force in the light of such development, whilst taking account of the Parties' commercial intentions as expressed in this Agreement.

24.5 In the event that the Parties are unable to agree as to the extent and nature of such amendments within one (1) month, any party shall be entitled to refer the decision to the Dispute process in accordance with clause 25.



## 25. DISPUTE RESOLUTION

- 25.1 Where any Dispute arises between the Parties in connection with this Agreement, the Parties shall attempt to resolve the Dispute in good faith. During the period of the Dispute, the Parties shall continue to comply with their respective obligations under this Agreement.
- 25.2 Where the Parties are unable to resolve the Dispute in good faith, the dispute may be escalated to the relevant Parties' senior representatives (being a senior executive of the relevant Party with sufficient authority to bind the relevant Party in any agreement reached in respect of the Dispute) in order to try and resolve the Dispute. If the Parties' senior representatives are unable to resolve the Dispute within fifteen (15) Working Days of referral, the Dispute shall be referred to mediation in accordance with clause 25.4, save for any Lead Authority Disputes which shall be referred to resolution pursuant to clause 25.3.
- 25.3 Where a Dispute is a Lead Authority Dispute then the following shall apply:
- 25.3.1 the Lead Authority shall notify an Alternate Lead Authority (whose identity is to be agreed between the Operator and the Lead Authority or where they cannot agree the identity of the Lead Authority as determined by TfW) in writing, asking for input. Such notice shall provide background information on the issue and reasons why the Lead Authority believes the Operator has not engaged in good faith;
- 25.3.2 upon receipt of such notice, the Alternate Lead Authority shall consider the information provided in the notice and shall promptly request any additional information from the Operator that may be required to consider the dispute;
- 25.3.3 upon receipt of such additional information from the Operator, the Alternate Lead Authority shall consider all responses within fifteen (15) Working Days. The Alternate Lead Authority shall notify both the Operator and the Lead Authority of its decision; and
- 25.3.4 in the event that the Alternate Lead Authority agrees that the Operator has not engaged in good faith, then the Lead Authority may suspend or reduce BES 2 Funding paid to the Operator in respect of the disputed service or services or seek compensation in accordance with Schedule 3; or
- 25.3.5 in the event that the Alternate Lead Authority agrees that the Operator has engaged in good faith, the BES 2 Funding paid to the Operator shall continue.
- 25.4 If the Parties are unable to resolve a Dispute within two (2) months, the Parties shall attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Within ten (10) Working Days of service of referral to mediation, the mediator shall be nominated by CEDR. To initiate the mediation, one Party must serve notice in writing ("**ADR Notice**") to the other Party(s) requesting mediation. A copy of the ADR Notice should be sent to CEDR. Unless otherwise agreed between the Parties, the mediation shall start no later than ten (10) Working Days after the date of the ADR Notice.
- 25.5 If the Dispute is not resolved within ten (10) Working Days after service of the ADR Notice, any Party fails to participate or ceases to participate in the mediation before the expiry of that ten (10) Working Day period, or the mediation terminates before the expiry of that ten (10) Working Day period, the Dispute shall be finally resolved by the courts of England and Wales.
- 25.6 The Parties may by written agreement, agree to vary the time periods set out in this clause 25 to resolve a Dispute.

25.7 Any decision, judgement or settlement resulting from a Dispute determined in accordance with clause 25 shall be recorded in writing, signed by all the Parties involved, and shall be binding on the Parties. Where the Parties have submitted the Dispute to the Courts of England and Wales, the decision of the Courts of England and Wales shall be binding on the Parties.

## **26. CHANGE PROCEDURE**

26.1 The Parties acknowledge and agree that from time to time during the Term, any Party may request a change to this Agreement. A Party may present its proposal for change to the other Parties who shall consider and discuss the proposal.

26.2 Where the Parties agree to amend the Agreement to reflect the proposal, they shall as soon as reasonably practicable (and in any event within twenty (20) Working Days), evaluate the proposal to determine whether it remains in accordance with the Wales Transport Strategy and associated transport plans and propose and agree the amendments required to the Agreement.

26.3 The Parties shall take all reasonable steps to implement those amendments to the Agreement as soon as reasonably practicable. The Parties acknowledge that any changes agreed pursuant to this clause, are not subject to the general amendment clause at clause 29.

## **27. LIMITATION OF LIABILITY**

27.1 References to liability in this clause 27 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. No Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

27.2 Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:

27.2.1 death or personal injury caused by negligence; or

27.2.2 fraud or fraudulent misrepresentation.

27.3 Subject to clause 27.1 and 27.2:

27.3.1 the Public Sector Parties' total liability under and in connection to this Agreement shall in no event exceed an amount equal to the total amounts payable to the Operator up to the date that this Agreement is terminated; and

27.3.2 the Operator's total liability under and in connection to this Agreement shall in no event exceed an amount equal to the total amounts payable to the Operator under the terms of this Agreement.

## **28. ASSIGNMENT**

28.1 This Agreement is personal to the Parties and may not be assigned (whether absolutely or by way of security and whether in whole or in part), sub-contracted, transferred, mortgaged, charged, declared in trust for a third party, or otherwise disposed of in any manner whatsoever to any third party without the prior written consent of the other Parties and any such purported dealing in contravention of this clause shall be ineffective.

28.2 In the event that the Operator disposes of its business (or part of its business), the Operator shall act reasonably to:

28.2.1 ensure that the party to which its business is transferred enters into an agreement on equivalent terms to this Agreement in respect of that business (or part of the business) (including, where agreed the rights and obligations in respect of the Umbrella Partnership Agreement or any other agreement entered into to further the intent of this Agreement); and

28.2.2 terminate its participation under this Agreement in accordance with clause 11.8, to the extent that the whole of business is disposed of; and

28.2.3 amend this Agreement to reflect the remaining business where part of the business is disposed of.

## **29. AMENDMENT**

29.1 This Agreement may only be amended, modified, varied or supplemented in writing signed by or on behalf of all of the Parties to this Agreement.

29.2 The Parties shall, as soon as reasonably practicable following the coming into force of any legislation, regulations or statutory instruments (or any amendments to existing legislation, regulations or statutory instruments) which impacts the terms of this Agreement, review and, if necessary, amend the terms of this Agreement to account for such changes.

## **30. WAIVER**

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

## **31. NOTICES**

31.1 Any notice (including any approval, consent or other communication) in connection with this Agreement shall be given in writing and shall either be personally left at the address of the addressee or sent by pre-paid first class post or be sent by electronic mail. The address for service of a Party shall be its address as stated in clause 31.2 or any other address or electronic mail address notified to the other Parties in accordance with this clause 31.1.

31.2 The addresses for service of notices are:

### **The Operator**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

### **Welsh Ministers**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

**Transport for Wales**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

**Lead Authority**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

31.3 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with clause 31.4.

31.4 A notice is deemed to be received:

31.4.1 in the case of a notice personally left at the address of the addressee during normal working hours, upon delivery at that address or if not during normal working hours the next Working Day; or

31.4.2 in the case of a first class posted letter (within the United Kingdom), on the third Working Day after posting; or

31.4.3 in the case of an email, in the absence of a delivery error message, at the time of sending to the relevant addressee,

and for the purpose of deemed receipt under this clause 31.4, it shall be sufficient to prove that personal delivery was made or that the envelope containing the posted notice was properly addressed or the email contained the correct email address.

**32. SEVERABILITY**

If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect.

**33. THIRD PARTY RIGHTS**

33.1 Save as otherwise expressly provided for in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

33.2 Where a Lead Authority and/or Constituent Local Authority is stated as having a right pursuant to this Agreement the Lead Authority and/or Constituent Local Authority shall be entitled to exercise that right pursuant to the terms of this Agreement, notwithstanding that it is a third party.

33.3 The rights of the Parties to terminate, rescind or agree any variation to this Agreement are not subject to the consent of any other person.

#### **34. ENTIRE AGREEMENT**

34.1 Subject to clause 34.2, with the Previous BES Funding Arrangements, this Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

34.1.1 no Party has entered into this Agreement in reliance upon, and will have no remedy in respect of, any misrepresentation, representation or statement (whether made by any other Party or any other person and whether made to the first Party or any other person) which is not expressly set out in this Agreement; and

34.1.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement and which is expressly set out in this Agreement will be for breach of contract.

34.2 Nothing in this clause 34 shall be taken to affect the terms of any Existing Supported Services Contract or New Supported Services Contract between any of the parties to this Agreement, including any amendments to such contracts effected by the terms of this Agreement.

34.3 For the avoidance of doubt, nothing in this clause 34 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

#### **35. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and by the Parties as separate counterparts but will not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

#### **36. GOVERNING LAW AND JURISDICTION**

36.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Welsh law.

36.2 Subject to the Dispute Resolution Procedure, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement including (without limitation) in relation to any non-contractual obligations.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signed for and on behalf of **WELSH  
MINISTERS** by:

)  
)

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

Signed for and on behalf of **TRANSPORT  
FOR WALES** by:

)  
)

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

Signed for and on behalf of [**LEAD  
AUTHORITY**] by:

)  
)

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

Signed for and on behalf of [**OPERATOR**]  
by:

)  
)

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

## SCHEDULE 1: WELSH GOVERNMENT REQUIREMENTS

The Parties acknowledge and agree that in consideration of the Welsh Government providing the BES 2 Funding and other payments pursuant to this Agreement, the Operator shall comply with the following obligations. Failure to comply with these obligations will constitute a material breach under the terms of this Agreement:

### 1. Safety of passengers and staff is paramount

1.1 In providing Local Services the Operator shall comply with the Welsh Government's "Restarting public transport: guidance for operators" (<https://gov.wales/restarting-public-transport-guidance-operators-html>) and any updated guidance provided in response to emerging requirements to respond to the public health impact of the COVID 19 pandemic.

### 2. Reforming Service Delivery

2.1 The Operator shall support the introduction of new and emerging institutional arrangements between the Public Sector Parties that Welsh Government believe are reasonably required to more effectively support the management of bus services in Wales in the future.

2.2 The Operator shall, in good faith, engage with TfW, Welsh Government and the Lead Authorities on behalf of their Constituent Local Authorities to reform funding and reimbursement mechanisms such as BSSG and the Concessionary Travel Scheme to improve the quality and viability of the local services available to passengers in Wales.

2.3 The Operator shall work with TfW and Welsh Government and other operators to develop a vehicle replacement strategy which will help to inform Welsh Government's plans for a sustainable public transport fleet. Subject to the availability of funding and compliance with state aid rules, Welsh Government may fund measures to bring the national fleet up to the required minimum standard.

2.4 Welsh Government is in the process of updating the requirements for the Economic Contract Plan with which all bus operators in receipt of Government funding will be required to sign up to. Once the updated guidance has been published, the Operator shall produce an Economic Contract for approval by TfW, acting reasonably and on behalf of Welsh Government, within (6) six months of publication of the guidance.

2.5 Following the issue of the updated requirements for the Economic Contract Plan, pursuant to paragraph 2.4, TfW shall set out a timetable and process for the development, review, approval and monitoring of the Operator's Economic Contract.

2.6 The Parties acknowledge that, at the time of signing this Agreement, the Operator will not have had sight of the requirements for the Economic Contract Plan. TfW and Welsh Government shall work with the Operator and representatives of the bus industry to reach agreement on affordable and sustainable options for implementing such requirements.

2.7 In advance of the development of the new requirements for the Economic Contract Plan, the Operator shall commit to complying with the principles of the current Economic Contract ([found here](#)), specifically with respect to:

2.7.1 growth potential;

2.7.2 fair work;

- 2.7.3 promotion of health, including a special emphasis on mental health, skills and learning in the workplace; and
- 2.7.4 progress in reducing carbon footprint.
- 2.8 The Operator acknowledges that Welsh Government intends that the Operator's Economic Contract and delivery against the same may form a key part of:
  - 2.8.1 the evidence for the scoring of future competitions for grant funding or other contracts which make use of Welsh Government funding; and
  - 2.8.2 the conditions for other statutory and non-statutory schemes relating to the funding of the bus industry in Wales which Welsh Government may introduce in the future.

### **3. Improving the Passenger Experience**

The Operator shall use reasonable endeavours to work with the Lead Authority, the Constituent Local Authorities and TfW to increase patronage and social inclusion on bus services and the wider public transport network in Wales.

#### **3.1 Routes**

- 3.1.1 To the extent that reinstatement of the pre-COVID 19 network meets the Priorities and can be provided within the funding available, the Operator shall, by agreement with the Lead Authority, progressively re-instate the network of services that the Operator provided prior to the impact of COVID 19.
- 3.1.2 The Lead Authority shall work with the Operator and the Constituent Local Authorities to determine what changes may be required to the network of services provided by the Operator in response to changing passenger demand and patterns of travel and shall authorise such changes, including the use of alternative delivery modes, in line with the Reference Network. Such changes may include adjustments to the Operator's timetables and routes, where these are necessary to integrate the Operator's services, other bus services and modes of transport to provide passengers with improved journey times and a better experience of public transport.
- 3.1.3 During the term of this Agreement, and reflecting the material funding being provided by Welsh Government to support continued provision of Local Services by the Operator, the Operator shall seek permission from the Lead Authority prior to registering any new service. Such permission shall not be unreasonably withheld where the Operator demonstrates compatibility of such service with the Reference Network or justifies the change to the Reference Network based on passenger need and positive impact on value for money for the Lead Authority.

#### **3.2 Fares and Ticketing**

- 3.2.1 The Operator shall demonstrate that it has sought to improve value for money for passengers by confirming that it has considered options for capping and rationalising fares. No increase in fares will be allowed during the Term of this Agreement unless it is part of a proposal, approved by the Lead Authority, to improve overall value for money for passengers.



3.2.2 The Parties shall work together to develop and implement ticketing schemes for the benefit of passengers and the Operator, whether proposed on a statutory or non-statutory basis subject to compliance with competition law.

#### 4. **Negative Conditions**

For the Term of this Agreement the Operator shall not:

- 4.1 act in a way which is primarily intended or expected to make cost effective delivery of the Reference Network more difficult;
- 4.2 carry out their business in a manner which can be shown to, overall, have the intent or expectation of reducing passenger benefits from the bus network in Wales; and
- 4.3 register Local Services which have the primary effect of undermining the value for money of the Subsidised Network (provided that nothing in this paragraph 4 shall prohibit the Operator from replacing an Existing Supported Service or New Supported Service with a Commercial Service which provides the same or better service across all hours of operation of the Supported Service.

#### 5. **Exit from BES 2**

Where clause 10.2 applies, the Operator acknowledges that it is a condition of the payments made under this Agreement that the Operator will work with the Lead Authority, TfW and other operators to develop a set of partnership obligations which will preserve and improve the benefits to passengers embodied in the Welsh Government requirements set out in this Schedule, recognising the fact that such obligations must be compliant with competition law.

## SCHEDULE 2: PARTNERSHIP THEMES

The Parties acknowledge the following matters shall be taken into consideration when agreeing the Umbrella Partnership Agreement and may either be included within the terms of that agreement or may be included as provisions to consider in the implementation of VPAs or other partnership arrangements at a local level.

The Parties shall use the draft form of VPA appended to this Schedule at Section 1 as a template when producing the Umbrella Partnership Agreement.

In developing the Umbrella Partnership Agreement, the Parties agree to build on the Welsh Government requirements as set out in Schedule 1 and to agree a shared, enforceable set of partnership obligations to govern the partnership. Examples of such obligations include the Operators working with TfW and the Lead Authority to develop and, where agreed, implement proposals to:

1. register routes and timetables that support the journey times and interchange opportunities identified in the Reference Network;
2. consolidate core routes, including determining how passengers can benefit from services on core routes irrespective of bus operator, to the extent enabled by competition law;
3. de-duplicate and harmonise route numbering;
4. identify unserved markets and routes that could serve those markets;
5. develop and implement a code of practice on employment terms and driver standards to offer a safe and high quality service to passengers;
6. facilitate the introduction of demand responsive or other approaches to service delivery, e.g. by deregistering the existing Local Services, where it is identified that routes may be more effectively served by other means;
7. align new routes within the Reference Network where appropriate whilst allowing the Operator innovation in respect of new routes and bus services;
8. improve value and/or convenience for passengers. This shall, to the extent enabled by competition law, include working with TfW and the Constituent Local Authorities on the introduction of ticketing schemes (whether statutory or voluntary) which may:
  - 8.1 introduce pay as you go capping;
  - 8.2 rationalise fares; and/or
  - 8.3 introduce day and/or weekly tickets,
9. establish multi-operator ticketing schemes;
10. provide information to support passengers, including the prompt communication of changes to bus timetables through Traveline Cymru, Lead Authority, Constituent Local Authorities and TfW; and
11. invest in bus services alongside the Welsh Government's and Constituent Local Authorities' investment in infrastructure with the aim of improving customer experience.

**Section 1: FORM OF UMBRELLA PARTNERSHIP AGREEMENT**

## **SCHEDULE 3: COMPENSATION, PAYMENT AND RECONCILIATION**

### **Part 1: General and information provision**

The Operator shall provide such information to TFW and the Lead Authority as they may reasonably require in order to calculate support payments, reconciliation payments and compensation to be paid pursuant to this Schedule 3.

### **Part 2: Payment**

1. The Service Payment (SP) shall be calculated as follows:

$$SP = PC + AM - PR + RP - CP$$

Where:

- 1.1 Service Payment (SP): shall be calculated monthly and in accordance with the following:
  - 1.1.1 the first Service Payment under this Agreement, shall be calculated for a part month to take account of the Effective Date. Service Payments shall be paid on the same basis as BES 1.5 until the Parties agree a revised process to incorporate the provisions of this Part 1 of Schedule 3. The Parties shall use reasonable endeavours to agree the revised process by no later than sixty (60) days after the Effective Date. Once the revised process for payment has been agreed, the Parties agree that paragraphs 1.1.3 and 1.1.4 below shall be updated to reflect such agreement. Any adjustments to allow for actual costs, margin and revenue during this first period shall be taken into account as part of the reconciliation process set out in Part 3 of this Schedule;
  - 1.1.2 the Lead Authority shall on a monthly basis by no later than the [ ]th day of each month, notify the Operator of the proposed Service Payment providing reasonable detail as to how it has been calculated in accordance with this Schedule;
  - 1.1.3 the Service Payment shall be paid by the Lead Authority within [ ] days of the Operator issuing an invoice following receipt of the notice in paragraph 1.1.2 in respect of a month, in respect of provision of services for that month; and
  - 1.1.4 where this Agreement terminates or expires, other than at the end of a month, the Lead Authority shall, acting reasonably, determine the date and calculation of payment to ensure that the Operator is paid for provision of Services throughout the term of this Agreement.
- 1.2 Period Costs (PC): shall be such value as the Lead Authority may calculate in accordance with paragraph 1 of Section 1, noting that Inadmissible Costs, as set out in Section 2 to this Schedule, shall not be included in the calculation of PC;
- 1.3 Assumed Margin (AM): shall be the assumed margin payable to the Operator for provision of the Services and shall be a percentage applied to these elements of the Period Costs (PC) for the relevant period i.e. direct costs, variable costs and overhead costs. The AM shall be initially set at 2% of the value of the Periodic Cost. The Parties agree that during the Term, this assumed margin set at 2% shall be subject to ongoing review by Transport for Wales and Welsh Government to ensure that it remains an appropriate percentage to pay Operators as a margin in addition to their costs in accordance with Schedule 5;

- 1.4 Periodic Revenue (PR): shall be all revenue received by the Operator in respect of the relevant period as the Lead Authority may calculate in accordance with paragraph 1 of Section 1;
- 1.5 RP: is any reconciliation payment in accordance with Part 3, and shall be a positive figure where the Reconciliation Payment is to be made to the Operator and a negative figure where a Reconciliation Payment is to be made to the Lead Authority; and
- 1.6 CP: is any compensation payment payable pursuant to Part 4.
- 2. Where:
  - 2.1 SP is a positive figure then this amount shall be paid by the Lead Authority to the Operator, provided that the value of SP shall always be capped at a maximum at the level calculated in accordance with Section 1 (which may vary each month in line with the calculation); and
  - 2.2 SP is a negative figure then this amount shall be paid to the Lead Authority by the Operator, in each case in accordance with clause 9 and this Schedule.
- 3. The Operator shall participate in an open book reconciliation process with Tfw and the Lead Authority in accordance with Part 3 to allow assessment of costs to ensure that the Operator has not been overcompensated and that payments reflect the reasonable cost of providing the Services with no more than a reasonable profit earned. Where the reconciliation process determines that the Operator has been over-compensated in any month, the value of the Monthly Costs payable in following months shall be adjusted, at the discretion of the Lead Authority (acting reasonably), such that, the Monthly Service Payment made by the Lead Authority reflects the Lead Authority's expectation of the Operator's costs in future months.
- 4. The Operator acknowledges and agrees that where it fail to provide information in accordance with Section 1 of Schedule 3, this may result in a reduction in the Service Payment to:
  - 4.1 50% in the following month; and
  - 4.2 no payment in the month following the 50% reduction,

provided that where the operator provides such information the balance of such payment shall be made as part of the next Service Payment.

### **Part 3: Reconciliation**

- 1. The Operator shall participate in an open book reconciliation exercise with Tfw and the Lead Authority to enable them to assess compliance by the Operator with the terms of this Agreement and ensure that the Operator has not been over-compensated or under-compensated for provision of services pursuant to the terms of this Agreement. The Operator acknowledges that the support provided to the Operator pursuant to the terms of this Agreement cannot lead to:
  - 1.1 over-compensation of the Operator, and where it is determined that the Operator has been over-compensated for provision of any Local Service that the Lead Authority shall be entitled, on behalf of Welsh Government, to recover the amount of any over-compensation, in accordance with this Part 3 of Schedule 3; or
  - 1.2 under-compensation of the Operator, and where it is determined that the Operator has been under-compensated for provision of any Local Service as a result of events which were outside the reasonable control of the Operator (including the impact of exceptional weather related

events and material unforeseen variations in passenger revenues), and in such circumstances the Lead Authority shall be entitled, on behalf of Welsh Government, to add the amount of any under-compensation to the next Service Payment provided in aggregate provided that the total Service Payments made to the Operator, including any such payments, shall not exceed the maximum levels calculated in accordance with Section 1.

2. The reconciliation process shall be carried out in accordance with paragraph 2 of Section 1 to this Schedule 3.
3. TfW may determine materiality thresholds for the carrying out of the reconciliation process, and determine that it would be disproportionate to carry out a reconciliation process in respect of the Operator. Such decision shall be solely at TfW's discretion, and where TfW makes any such decision, the Operator acknowledges that this shall be without prejudice to any future requirement to examine payments made to the Operator, including where this is required for the purposes of state aid, procurement or competition assessment. It is acknowledged that TfW may determine materiality thresholds by reference to level of payments made to the Operator, or such other criteria as TfW may determine are appropriate.
4. The Operator shall provide any information reasonably required by TfW or the Lead Authority on an open book basis, including, but not limited to, information specified in Part 1 to Schedule 4.
5. Information provided for this purpose may be shared with contractors that are engaged by TfW to undertake any reconciliation exercise or other analysis of the BES 2 Funding.

## Part 4: Compensation

1. Where pursuant to the terms of this Agreement, the Lead Authority or Welsh Government are entitled to be paid compensation by the Operator for breach of the terms of this Agreement, the provisions of this Part 4 shall apply, including:
  - 1.1 where the Operator is in material breach of this Agreement;
  - 1.2 where the Operator fails to agree the terms of the Umbrella Partnership Agreement, in accordance with clause 5.1;
  - 1.3 where the Operator fails to comply with the Welsh Government's "Restarting public transport: guidance for operators" in accordance with paragraph 1.1 of Schedule 1;
  - 1.4 where the Operator fails to comply with the Reference Network and associated Service Standards in accordance with clause 8; and
  - 1.5 where the Operators fails to provide data in accordance with clause 7,

and the Lead Authority shall allocate service failure points ("**SFP**") in respect of each such breach on the following basis:

<b>Trigger</b>	<b>Service Failure Points</b>
Operator fails to agree the terms of the Umbrella Partnership Agreement, in accordance with clause 5.1.	1 SFP for each day following the date on which the Umbrella Partnership Agreement remains unagreed in accordance with clause 5.1.
Operator fails to comply with the Welsh Government's "Restarting public transport: guidance for operators" in accordance with paragraph 1.1 of Schedule 1.	20
Operator fails to comply with the Reference Network and associated Service Standards in accordance with clause 8.	30
Operators fails to provide data in accordance with clause 7	20
<b>Total:</b>	<b>100</b>

Compensation Payments shall be calculated on the following basis:

$$CP = AM \times \frac{SFP}{MSFP}$$

Where:

- 1.5.1 AM means the Assumed Margin for the relevant period as calculated in Part 2 above.
- 1.5.2 SFP means the total number of Service Failure Points allocated in respect of the relevant period.

- 1.5.3 MSFP means the maximum number of Service Failure Points which may be allocated in respect of the relevant period, which shall be 100.
- 1.6 Where SFP's have been allocated for the same trigger in three (3) consecutive months or more, the Lead Authority or Welsh Government shall be entitled to terminate this Agreement in accordance with clause 11.2.



## Section 1: INFORMATION TO BE PROVIDED BY THE OPERATOR

### Definitions

**"Good and Efficient Operator"** means in the context of all other relevant provisions of this Agreement a notional bus operator, having the same commercial, regulatory and operational arrangements as the Operator and being subject to the same operational circumstances (which, for the avoidance of doubt, shall recognise the extraordinary impact of COVID-19, the existence of this Agreement and the requirement for operators to act in the national interest in response to COVID-19) as other bus operators, which complies with its legal obligations, including pursuant to this Agreement and in a timely, efficient and economical manner and with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced bus operator so that in this context costs and revenues are optimised in combination to the greatest extent reasonably practicable;

**"Forecast Template"** means the Excel spreadsheet issued by TfW, as updated from time to time, to capture forecast revenue and costs for the purpose of calculating the Service Payment;

**"Inadmissible Costs"** means those costs which are listed in Section 2 to Schedule 3;

**"Management Accounts"** means the periodic management accounts which cover the relevant Quarter;

**"Month"** means a calendar month;

**"Operator Specific Reporting Period"** means a four-weekly, five weekly, monthly or similar cycle on which the Operator posts its accounts;

**"Quarter"** means a period of three (3) months (April to June, July to September, October to December and January to March), or such other three (3) month period as TfW may reasonably specify;

**"Reconciliation Period"** means the closest multiple of the Operator Specific Reporting Period to the Quarter, to be agreed with the Operator; and

**"Reconciliation Template"** means the Excel spreadsheet issued by TfW, as updated from time to time, to capture the actual revenue and income generated and costs incurred by the Operator for the relevant Quarter.

#### 1. Information to be provided Monthly

1.1 In order for PC and PR to be calculated in accordance with paragraph 1 of Schedule 3, for each Month, the Operator shall complete the Forecast Template which provides high level details on the forecast revenue and costs for that Month;

1.2 TfW will provide the Forecast Template for the Operator to complete and return to TfW within fourteen (14) days of the Operator issuing an invoicing following receipt of the notice from the Lead Authority notifying the Operator in reasonable detail of the proposed Service Payment or on such other date as may be agreed with TfW.

1.3 The Operator shall be required to populate the following items in the Forecast Template in respect of all Local Services that they provide, including Commercial Services, Existing Supported Services, Former Commercial Services and New Supported Services:

1.3.1 Forecast farebox revenue: based on the current month's predicted outturn plus adjustment for seasonal factors, including, but not limited to Christmas, Easter and school holidays;

1.3.2 Forecast funding: This shall reflect all funding received by the Operator, including but not limited to BSSG, Mandatory Concessionary Fare reimbursement, Young

Persons Travel payments, CJRS, Job Retention Bonus and Job Support Scheme (as amended or replaced from time to time);

- 1.3.3 Other income: This shall reflect all other income received by the Operator arising from the provision of Local Services, including but not limited to income received from advertising, maintenance and sales; and
  - 1.3.4 Forecast Cost: These shall be broken down by headings, e.g. Staff Costs, Fuel/Maintenance Costs, Overhead Costs, Interest, Depreciation etc.
- 1.4 The Forecast Template will use the information provided in line with paragraph 1.3 to calculate the value of Assumed Margin in accordance with the principles set out in paragraph 2 of Schedule 3.

## **2. Information to be provided for each Reconciliation Period**

- 2.1 In order for RP to be calculated in accordance with paragraph 1 of Schedule 3, at the end of each Reconciliation Period the Operator shall complete the Reconciliation Template which provides details on the actual revenue and income generated and costs incurred in the relevant Reconciliation Period.
- 2.2 TfW will provide the Reconciliation Template for the Operator to complete and return to TfW within fifteen (15) Working Days of the end of the relevant Reconciliation Period.
- 2.3 The Operator shall be required to populate the Reconciliation Template, which TfW may reasonably update from time to time, in respect of all Local Services that they provide, including Commercial Services, Existing Supported Services, Former Commercial Services and New Supported Services. Such information to be provided for each Month in the Reconciliation Period in question plus the figures for the same three (3) Months in the prior year (only required for submissions up to the date when the Operator has provided a full prior years' data to TfW, being data up to [31 March 2021] for most operators).
- 2.4 In the event where any of the Operator's Local Services operate across the Welsh border, the Operator shall assist with any further examination and analysis of the information provided in paragraph 2.3 above to ensure that the BES 2 Funding it receives, does not relate to the section of such Local Service which is outside of Wales.
- 2.5 Once the Operator has submitted the Reconciliation Template, this shall be evaluated by TfW to ascertain whether a Reconciliation Payment adjustment will be made to the next Service Payment following the completion of the reconciliation process in this Schedule 3.
- 2.6 In determining the level of Reconciliation Payment, TfW may request further information or evidence from the Operator as it reasonably requires, such as, but not limited to Management Accounts or receipts relating to certain transactions.
- 2.7 TfW shall use the Reconciliation Template and additional information to check whether any costs included in the template are Inadmissible Costs and may amend the Reconciliation Template to adjust the Reconciliation Payment accordingly where any costs are Inadmissible Costs.
- 2.8 Where Inadmissible Costs are identified and the Period Costs (as defined in Part 2 of this Schedule) are re-calculated, the reconciliation exercise shall include consequential adjustments and reconciliation of the Assumed Margin to reflect the change in Period Costs.

## Section 2: INADMISSABLE COSTS

The following costs shall be Inadmissible Costs for the purposes of this Agreement:

1. The Operator agrees and acknowledges that: (i) only reasonable costs incurred and evidenced as ongoing and repeat transactions shall be taken into account; and (ii) it shall operate efficiently during the Term.
2. The Operator shall seek approval from the Lead Authority prior to incurring any material costs which are not ongoing and repeat transactions and agree the basis upon which such transactions will be considered for the purposes of this Schedule 3. Material costs may include investment in vehicles, information technology, costs of depot purchase or refurbishment or major items of plant and equipment. The Lead Authority shall take the following considerations into account when determining the eligibility for BES 2 Funding such costs:
  - 2.1 evidence from the Operator to confirm that such expenditure was in their business plans and/or is required in the current COVID affected circumstances and cannot be deferred until patronage and farebox return to pre-COVID levels;
  - 2.2 confirmation from the Operator that they have explored all other routes for grants and funding such expenditure;
  - 2.3 a forecast of the net impact of the additional expense on their claims under this Agreement; and
  - 2.4 confirmation from the Operator that they will be able to sustain any ongoing payments for this following the cessation of the BES 2 Funding.
3. For the avoidance of doubt, the reconciliation process will not take into account any capital expenditure, exceptional (non-operating) payments or dividend payments in determining whether the Operator has generated a profit before tax, or a loss at the end of each Reconciliation Period. The Lead Authority shall determine whether any capital expenditure will be reimbursed in accordance with paragraph 2 above and will be paid in addition to the Service Payment as calculated pursuant to paragraph 1.1, of Part 2 of Schedule 3.
4. Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator including but not limited to:
  - 4.1 staff, director or officer costs in excess of that set out in the Forecast Template (except where evidenced by the Operator as appropriate to the satisfaction of the Lead Authority);
  - 4.2 costs that do not reflect the contracted position under Existing Supported Services Contracts unless such change has been agreed by the Lead Authority;
  - 4.3 new contracts entered in to by the Operator which have not been procured in compliance with the Operator's usual procurement procedures; and
  - 4.4 variations to existing contracts which have not been made in accordance with the Operator's usual procurement procedures or practice.
5. Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the TfW (in their absolute discretion) in writing.

6. Any expenses, disbursements or equivalent costs (to which the Operator's expenses policy would apply) which are incurred other than in compliance with the Operator's expenses policy.
7. Any cost that the Operator may incur as a result of it failing to comply with any applicable laws, to the extent this gives rise to a criminal liability.
8. Any payments, costs or other liabilities owed to affiliates save in respect of such payments costs or other liabilities which have been incurred by the Operator acting as a Good and Efficient Operator.
9. Costs of developing and protecting any Intellectual Property Rights which are not owned by the Operator or are so owned, but where the costs are not ancillary to an activity included in the Forecast Template.
10. Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of bus services.
11. Fines from government or regulatory bodies.
12. Any costs (including any legal costs and expenses) incurred by the Operator in pursuing any claim against or defending any claim from TfW or Welsh Government in respect of or in connection with the grant offer letter or otherwise.
13. Any costs incurred in relation to the period prior to the BES Funding Period which a Good and Efficient Operator would usually have discharged in the period prior to the BES Funding Period.
14. Any costs incurred in relation to the period prior to the expiry of the term of the BES Funding Period which a Good and Efficient Operator would usually have discharged in the period following the expiry of the BES Funding Period.
15. Interest paid or payable on any loan from any lender that was taken out after the Effective Date (and subject to not having been approved in accordance with paragraph 2 in this Section 2), noting that the cash from such loan will not be taken into account as income in the reconciliation process.
16. Except with the prior agreement of the Lead Authority or TfW (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Operator may incur as a result of the termination of any contract or other arrangement.
17. Except with the prior agreement of the Lead Authority or TfW, losses on disposals of fixed or non-current assets.
18. Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the BES Funding Period or where (and to the extent that) it would have been reasonable and/or prudent for the maintenance to have been carried out prior to or after the BES Funding Period.
19. Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was to be funded by third party.
20. Costs of complying with any audit by TfW or its agents pursuant to any grant offer letter or this Agreement.

21. Reasonable costs for external assistance to complete this proforma up to £1,500 are not Inadmissible Costs. Any amount in excess of £1,500 plus legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of this Agreement are Inadmissible Costs.
22. Legal, accountancy and other costs and expenses incurred in connection with any future arrangements between the Lead Authority or TfW and the Operator following the BES Funding Period.
23. Travel costs (including flight travel) of the Operator primarily relating to the business of their group, noting that TfW would expect the group to cover the cost of any such travel.
24. Any costs which relate to that part of a Local Service which operates outside of Wales which shall be calculated on a pro rata basis to the length of the Local Service or as otherwise more accurately evidenced by the Operator.

## SCHEDULE 4: DATA REQUIREMENTS

### Part 1: Financial Data Requirements

The Operator shall provide the following data in accordance with templates provided by TfW and updated from time to time, in respect of Commercial Services, Former Commercial Services and Local Services provided pursuant to Existing Supported Services Contracts and New Supported Services Contracts:

1. Operational costs and revenue from the period covered by BES (including this Agreement and BES 1.5), the Bus Hardship Fund and the 20 March Letter scheme as well as costs and revenues covering a similar period prior to the commencement of the BES, the Bus Hardship Fund and the 20 March Letter schemes. Where intra-group costs are shown, you must be able to show evidence that these are properly incurred costs of providing the services. These figures shall be disaggregated to show major cost and revenue sources, and shall include any payments received from local authorities and central Government such as:
  - 1.1 payments made under the Coronavirus Jobs Retention Scheme, Job Retention Bonus, Job Support Scheme and any replacement schemes;
  - 1.2 payments (and any reconciliation payments) made under BES including Service Payments received;
  - 1.3 payments pursuant to the terms of any Existing Supported Services Contract or New Supported Services Contract;
  - 1.4 payments under existing bus support arrangements including BSSG, Mandatory Concessionary Fare reimbursement and Young Persons travel payments and shall include any costs associated with the operation of such Local Services, including:
    - 1.4.1 direct costs, such as the costs of drivers, parts and fuel (fuel costs shall include the amounts payable or receivable on fuel related financial derivatives in respect of the relevant period, but exclude any "mark to market" gains or losses on financial derivatives);
    - 1.4.2 semi-direct costs, including but not limited to: the costs of engineering, maintenance, traffic pay, vehicle related costs and marketing;
    - 1.4.3 costs of additional holidays accrued by employees in the relevant claim period;
    - 1.4.4 overhead costs, including but not limited to: the costs of administration, pensions, fixed operating costs, insurance and claims;
    - 1.4.5 pensions expenses, including budgeted pension deficit repair costs, on the basis of the ongoing contributions payable for the relevant period, without adjustment to comply with accounting standards;
    - 1.4.6 operating lease costs on the basis of the lease rentals payable during the Term;
    - 1.4.7 depreciation and amortisation of property, plant, equipment, software and other applicable assets on a basis consistent with the Term; and
    - 1.4.8 reasonable PPE and safe operating costs.

2. Revenue sources to also include farebox revenue generated and all other income received by the Operator, including but not limited to income received from advertising and sales in relation to Local Services.
3. Commercial service kilometres covered by the operator's services per 4-week period during the period covered by BES (including this Agreement and BES 1.5), the Bus Hardship Fund and the 20 March Letter Scheme and that for a similar period prior to the commencement of the BES, the Bus Hardship Fund and the 20 March Letter Scheme.
4. Commercial services run and patronage data per 4 week period for the period covered by BES (including this Agreement and BES 1.5), the Bus Hardship Fund and the 20 March Letter Scheme and that for a similar period prior to the commencement of the BES, the Bus Hardship Fund and the 20 March Letter Scheme.
5. Evidence of the process that the Operator has undertaken with Constituent Local Authorities to agree services, including pursuant to the terms of this Agreement and that service changes have been properly communicated to the general public.
6. Evidence of the Operator's cost implications of removing staff from the furlough system early, reasonable costs to bring vehicles back into service, cost of screens around the driver's cab on buses, on bus capacity signage.
7. The same information as above for the equivalent period in the previous financial year.
8. Additional information (e.g. management accounts) to corroborate any submissions.

## **Part 2: Operational Data Requirements**

Where the data is available to the Operator or from its Electronic Ticket Machines, the following data shall be provided by it to support the prioritisation, co-ordination and design of services and to support the provision of information to passengers. The data may be provided direct from the Operator's Electronic Ticket Machine supplier with its permission, not to be unreasonably withheld, or direct from the Operator. The data shall be provided to TfW (or its nominated agent which may be Traveline Cymru or a local authority):

<b>Data</b>	<b>Format</b>	<b>Source</b>	<b>Scope</b>
Timetable	TransXchange 2.4 to include all stop level detail and full geographic routing information	Scheduling software or entry into an online portal for conversion to TransXchange 2.4	Current timetable
Patronage Data	Report from ETMs	Direct from ETM/Operator	Historic and current to support prioritisation of routes
Passenger Counting/Capacity	SIRI VM feed as amended to include occupancy and bus capacity information or report from ETMs	Direct from ETM/Operator	Historic and current to support passenger information and prioritisation of routes
Origin and Destination Data	Report from ETMs	Direct from ETM/Operator	Historic and current to support prioritisation and design of routes
Fares	Spreadsheet Files for Adult and child fares, zone or rider tickets, m-tickets and multi operator tickets. Move to NeTEx format from January 2021	Direct from ETM/Operator	Historic and current to support passenger information and development of quality partnership schemes and ticketing schemes
Real Time Information	SIRI SM (where currently available)	Direct from ETM/Operator	Every 5-30 seconds
	SIRI VM	Direct from ETM/Operator	Every 5-30 seconds
	TransXchange 2.4 (as a minimum standard) to include Service number, journey code and crew/duty number information for each track/leg for each service  Note that this will move to TransXChange 2.4 once the Department for Transport profile is finalised and adopted	Scheduling software or entry into an online portal for conversion to TransXchange 2.4	5 days advance notice where systems permit



### **Part 3: Permitted Use**

1. Permitted Uses of the Operator Data shall be the following purposes:
  - 1.1 calculation of payments to be made in accordance with Part 2 of Schedule 3;
  - 1.2 periodic reconciliation in accordance with Part 3 of Schedule 3;
  - 1.3 calculation of any additional payments to be made in respect of provision of any additional services to be provided pursuant to clauses 12 (Existing Supported Services: Gross Cost), 13 (Existing Supported Services: Net Cost) or 15 (Supported Services Contracts for Former Commercial Services).
  - 1.4 to support the calculation and payment of BSSG, Mandatory Concessionary Fare Reimbursement or My Travel Pass reimbursement;
  - 1.5 identification of any anomalous Operator costs and for the purposes of any audit of operator data or otherwise pursuant to clauses 7.7 to 7.10 of this Agreement;
  - 1.6 the assessment the viability of routes to support return to commerciality and determine the scope of the Subsidised Network in accordance with clause 8;
  - 1.7 to allow review of the BES 2 Funding mechanism specified in this Agreement by Welsh Government and Transport for Wales, including, but not limited to, pursuant to Schedule 5;
  - 1.8 to inform the reform of funding and reimbursement mechanisms (including BSSG and Mandatory Concessionary Fares) by Welsh Government and Transport for Wales including assessing the impact (or potential impact) of such funding mechanisms (and changes to such funding mechanisms) on the operators of local services in the Welsh bus market;
  - 1.9 to support the management of contracts (including Existing Supported Service Contracts as varied in accordance with the terms of this Agreement) that are being managed under this Agreement including in respect of the delivery of local services in accordance with the Service Specification or to the Service Standards;
  - 1.10 development of the Umbrella Partnership Agreement, and any VPA, QPS or ticketing scheme made pursuant to the terms of such Umbrella Partnership Agreement;
  - 1.11 development of the Reference Network in accordance with clause 8;
  - 1.12 provide of public information about the Operator's Local Services and other Local Services operated in Wales;
  - 1.13 provision of a support service to the Traffic Commissioner, including a registration service (subject always to clause 7.5.1);
  - 1.14 inform investment decisions by Welsh Government, TfW and Local Authorities (including the Lead Authority); and
  - 1.15 inform the broader Welsh Government response to the COVID-19 outbreak.

**Part 4: Public Sector Data Access and Confidentiality**

<b>Data provided</b>	<b>Confidential for the purposes of Clause 21</b>	<b>Commercially Sensitive for the purposes of Clause 23</b>
Schedule 3 Part 2 Payment	Yes	Yes
Schedule 3 Part 3 Reconciliation	Yes	Yes
Schedule 3 Part 4 Compensation	Yes	Yes
Schedule 3 Part 4 Section 1 Information to be Provided by the Operator	Yes	Yes
Schedule 4 Part 1 Financial Data Requirements	Yes	Yes
Timetable	No	No
Patronage Data	Yes	Yes
Passenger counting/capacity	Yes	Yes
Origin and destination data	Yes	Yes
Fares	No	No
SIRI SM	No	No
SIRI VM	No	No
TXC supplementary data	Yes	Yes

## SCHEDULE 5: FUNDING REVIEW

### 1. Funding Review

1.1 Welsh Government shall review the implementation of BES Funding on a periodic basis ("**Funding Review**"), at frequencies to be determined by Welsh Ministers at their sole discretion.

1.2 It is acknowledged that BES Funding has been provided on a discretionary basis by Welsh Government and that Welsh Government shall therefore be entitled to apply its own criteria to determine whether to continue the provision of BES 2 Funding, but such criteria may include:

1.2.1 Performance of the Bus Emergency Scheme (including this Agreement) against the available Funding in meeting the Priorities; and

1.2.2 The levels of Funding available.

1.3 The outcome of any Funding Review may include, but not be limited to, the following:

1.3.1 continuation of the BES 2 Funding on its existing terms;

1.3.2 changes to the BES 2 Funding terms, in which case the Agreement shall be varied in accordance with clause 29 to reflect the requirements of such change.

The Parties agree and acknowledge that the Operator may propose a reduced Service Standard to take account of any reduction in BES 2 Funding, save for where either:

1.3.2.1 BES 2 Funding is removed or reduced due to the removal of social distancing measures that previously impacted on transport capacity; or

1.3.2.2 Welsh Government provide an alternative grant or funding scheme in place of BES 2 Funding which is designed to provide continuity of service; or

1.3.3 ending the BES 2 Funding, in which case the Welsh Government shall use reasonable endeavours to provide the Lead Authority and the Operator with sufficient notice of such change in order to minimise the disruption to the Operator's delivery of Local Services. The minimum notice prior to ending the BES 2 Funding shall be the current period of notice to be provided to the Traffic Commissioner in respect of deregistration of Local Services except for where such decision arises as a result of UK government determining to terminate the financial settlement relating to the impact of COVID-19 on bus services or as a result of the Welsh Government budget setting round in which case the notice shall be a minimum of one (1) month.

1.4 Where BES 2 Funding is terminated pursuant to paragraph 1.3 above, no further payments shall be made pursuant to this Agreement, following such notice period, provided that nothing in this Schedule 5 shall be taken to remove the right of Welsh Government to recover monies paid to the Operator or the entitlement of the Operator to any additional payments calculated, in each case, pursuant to the reconciliation and compensation process specified in Schedule 3.

1.5 The Parties agree and acknowledge that as part of a Funding Review, Welsh Government may review the level of AM (as set out in Schedule 3) and make such adjustments as are reasonable

and necessary to ensure the continued viability of services. The review of the level of AM shall consider available Welsh Government budget, the levels of BES funding being provided to the bus industry and prevailing market conditions.

**SCHEDULE 6: FORM OF SERVICE SPECIFICATION**

<b>Operator</b>	<b>Service Registrati on Number</b>	<b>Service number</b>	<b>Route description</b>	<b>Peak Vehicle Requirement (PVR)</b>	<b>Typical weekly days of operation</b>	<b>Mon-Sat First outward departure</b>	<b>Mon-Sat Last return departure</b>	<b>Number of departures per day per direction (Mon-Fri / Sat / Sun)</b>	<b>Weekday Peak daytime frequency in minutes</b>

**SCHEDULE 7: TEMPLATE REGISTER OF VARIATIONS**

[Region and Operator Name]

No.	Contracting Authority	Contract Reference	Variation	Approver name	Signature and date of signature
1.					
2.					
3.					
4.					
5.					
6.					
7.					