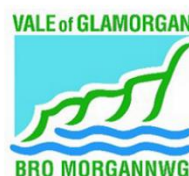


## Appendix 1



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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**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>	<p>A person identified by the Service Purchaser(s) as being:</p> <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>	<p>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.</p> <p>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.</p>
<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"	
--	--

<b>Service Purchaser's Nominated Representative:</b>	
--	--

<b>AND</b>
------------

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

Business/registered Office Address:	
-------------------------------------	--

<b>Service Provider's Nominated Representative</b>	
--	--

This contract relates to the Care Home referred to as the ' <b>Home</b> ' as:-
--

Home Name:	
------------	--

Address: (If different from above)	
---------------------------------------	--

Postcode:	
-----------	--

Telephone number:	
-------------------	--

E-mail address:	
-----------------	--

- 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 an 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