

**DATED**

**15 APRIL 2013**

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**PEST CONTROL SERVICE AGREEMENT**

**between**

**CAERPHILLY COUNTY BOROUGH COUNCIL**

**and**

**BLAENAU GWENT COUNTY BOROUGH COUNCIL**

**THIS AGREEMENT** is dated **15 April 2013**

## **PARTIES**

- (1) Caerphilly County Borough Council incorporated and who is a council within the meaning of the Local Government (Wales) Act 1994 ("the 1994 Act") and enter into this Agreement as an Authority as permitted by Statute whose registered office is at Ty Penallta, Parc Tredomen, Ystrad Mynach Caerphilly CF82 7PG (**Caerphilly CBC**).
- (2) Blaenau Gwent County Borough Council incorporated and who is a council within the meaning of the Local Government (Wales) Act 1994 ("the 1994 Act") and enter into this Agreement as an Authority as permitted by Statute whose principal office is at Municipal Offices, Civic Centre, Ebbw Vale NP3 6XB (**Blaenau Gwent CBC**).

## **BACKGROUND**

- (A) Blaenau Gwent CBC is entering into a partnership with Caerphilly CBC to run the Pest Control Service across both localities on their behalf.
- (B) Blaenau Gwent CBC has selected Caerphilly CBC to provide these services and Caerphilly CBC is willing and able to provide the services in accordance with the terms and conditions of this agreement.
- (C) The Parties are entering into this Agreement in exercise of the powers referred to in Section 101, Section 113 and Section 136 of the Local Government Act 1972.

## **AGREED TERMS**

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

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

**Authorised Representatives:** the persons respectively designated as such by the Blaenau Gwent CBC and Caerphilly CBC in relation to these service, as described in clause 4.2 and clause 5.1(a).

**Costs:** the costs which shall become due and payable by the Blaenau Gwent CBC to Caerphilly CBC in respect of the Services in accordance with the provisions of this agreement.

**Base Figure:** the base figure being the index figure for the month preceeding the Commencement of the agreement.

**Retail Price Index (RPI):** all the items figure of the Retail Price Index published by the Office of National Statistics or any successor Body.

**Relevant Date:** The relevant date for review in clause 6.3 which shall be 1 April 2014 and every year thereafter. .

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

**Services:** the services to be delivered by or on behalf of Caerphilly CBC under this agreement, as more particularly described in Schedule 1 (Specification).

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement. The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules. Words in the singular shall include the plural and vice versa.

1.3 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## 2. TERM

2.1 This agreement shall take effect on 1 April 2013 and shall continue for an Initial term of **5 years** until **31<sup>st</sup> March 2018**.

2.2 The Parties may extend this agreement beyond the Initial Term. If the Parties wish to extend this agreement, they shall each give the other party at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period. If the Parties give such notice then the Term shall be extended by the period agreed by both parties. If the Parties do not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 15 shall apply.

## 3. SUPPLY OF SERVICES

3.1 Caerphilly CBC shall employ the staff of the Pest Control Service ("the Services") with effect from the 1 April 2013 and for the duration of this agreement in accordance with the provisions of this agreement.

- 3.2 Caerphilly CBC will coordinate the shared resource of pest control activities in the two localities as set out in the specification, including the Welsh Water Sewer baiting and Local Authority owned premises contracts. This agreement does not concern additional projects or grant funding for Blaenau Gwent CBC; these remain the responsibility of the original parties unless specifically agreed otherwise.
- 3.3 All policies and procedures in relation to the Pest Control Services provided under these services shall be the policies and procedures of Caerphilly CBC.
- 3.4 If Blaenau Gwent CBC makes any decision in relation to a procedure or policy which is not directly in relation to Pest Control Services, but has an impact upon the Pest Control Service, they must consult Caerphilly CBC upon the effect of the decision.

#### **4. CAERPHILLY CBC'S OBLIGATIONS**

- 4.1 Caerphilly CBC shall use reasonable endeavours to coordinate the Services for Blaenau Gwent CBC, in accordance with Schedule 1 in all material respects.
- 4.2 Caerphilly CBC shall appoint Authorised Representative who has authority to contractually bind Caerphilly CBC on all matters relating to the Services. Caerphilly CBC shall use reasonable endeavours to ensure that the same person acts as the Caerphilly CBC's Authorised Representative throughout the term of this agreement, but may replace them from time to time where reasonably necessary in the interests of Caerphilly CBC.
- 4.3 Caerphilly CBC through all of its employees, will act in accordance with all of the Caerphilly CBC policies and procedures that have been brought to their attention in all actions under this service.
- 4.4 Caerphilly CBC shall indemnify and keep indemnified the Blaenau Gwent CBC against any claims, liabilities and reasonable costs and expenses which the Blaenau Gwent CBC incurs to the extent attributable to any act or omission or breach or default by Caerphilly CBC committed at any time on or after the 1 April 2013, in respect of any of Caerphilly CBC's obligations or duties which may arise out of, or in the course of or in connection with, the Services and in connection with any external grant funding arising out of the negligent act or omission of Caerphilly CBC, its agents, contractors or sub-contractors of any tier or its or their employees, or failure to perform any of Caerphilly CBC's other obligations under this Agreement, but not so as to indemnify the Blaenau Gwent CBC in respect of any act or omission or breach or default by the Blaenau Gwent CBC or their contractors or agents.

4.5 Caerphilly CBC shall provide all Equipment for these services, including IT equipment.

## **5. BLAENAU GWENT CBC' OBLIGATIONS**

5.1 Blaenau Gwent CBC shall:

- (a) co-operate with Caerphilly CBC in all matters relating to the Services and appoint an Authorised Representative in relation to the Services who shall have the authority contractually to bind Blaenau Gwent CBC on matters relating to the Services;
- (b) provide, for Caerphilly CBC, its agents and employees, in a timely manner and at no charge, access to Blaenau Gwent CBC' premises, office accommodation, data and other facilities as reasonably required by Caerphilly CBC;
- (c) provide, in a timely manner, such information as Caerphilly CBC may reasonably require, and ensure that it is accurate in all material respects;
- (d) provide, in a timely manner, any operational equipment to Caerphilly CBC which is used prior to 1 April 2013 in relation to Pest Control Services.

5.2 If Caerphilly CBC's performance of its obligations under this agreement is prevented or delayed by any act or omission of Blaenau Gwent CBC, its agents or employees, Caerphilly CBC shall not be liable for any costs, charges or losses sustained or incurred by the Blaenau Gwent CBC that arise directly or indirectly from such prevention or delay.

5.3 Blaenau Gwent CBC shall be liable to pay to Caerphilly CBC, on demand, all reasonable costs, charges or losses sustained or incurred by Caerphilly CBC (including any direct, indirect or consequential losses, loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from Blaenau Gwent CBC' fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to Caerphilly CBC confirming such costs, charges and losses to Blaenau Gwent CBC in writing.

5.4 Blaenau Gwent CBC shall indemnify and keep indemnified Caerphilly CBC against any claims liabilities and reasonable costs and expenses to the extent attributable to any act or omission or breach or default by the Blaenau Gwent CBC or their contractors or agents prior to the 1 April 2013 in respect of any of Blaenau Gwent CBC' obligations or duties which may arise out of, or in the course of or in connection with, the Services and in connection with any external grant funding arising out of the negligent act or omission of Blaenau

Gwent CBC, its agents, contractors or sub-contractors of any tier or its or their employees, or failure to perform any of Blaenau Gwent CBC other obligations under this Agreement, but not so as to indemnify Caerphilly CBC in respect of any act or omission or breach or default by Caerphilly CBC.

## **6. COSTS**

6.1 In consideration of the provision of the Services by Caerphilly CBC as set out in Schedule 1, Blaenau Gwent CBC shall pay the charges as set out in clause 6.2, which shall be on a fixed price basis.

6.2 The total price for the Services shall be the **£60,000** per year as amended from time to time in accordance with clause 6.3. The total price, excludes VAT, which Caerphilly CBC shall add to its invoices at the appropriate rate.

6.3 The parties acknowledge that there may be changes in service demand or increase in costs. The parties therefore agree that Caerphilly CBC may review and increase or decrease the charges, provided that such charges cannot be increased more than once in any 12-month period. The increase in costs shall be determined at the relevant date by multiplying the price by the index value of the RPI for the month before the month in which the relevant Review Date falls, then dividing the product by the index value of the RPI for the Base RPI Month. Any such increase in the costs shall not exceed 3% of the costs. Caerphilly CBC shall give Blaenau Gwent CBC written notice of any such increase **3** months before the proposed date of that increase.

6.4 Blaenau Gwent CBC will also be required to contribute to any shared costs which arise including but not limited to re-organisation of staff as described at clause 8 below.

## **7. PAYMENT**

7.1 In consideration of the provision of the Services by Caerphilly CBC in accordance with the terms and conditions of this agreement, Blaenau Gwent CBC shall pay the Costs to Caerphilly CBC in accordance with this clause 7.

7.2 Caerphilly County Borough Council will invoice Blaenau Gwent CBC on a quarterly basis for costs incurred in the previous quarter. All invoices shall be directed to the Blaenau Gwent CBC's Representative.

7.3 Blaenau Gwent CBC shall pay the Costs which have become payable within 30 days of receipt of an undisputed invoice from Caerphilly CBC.

7.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 12. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.

7.5 Caerphilly CBC shall maintain complete and accurate records of, and supporting documentation for, all amounts, which may be chargeable to Blaenau Gwent CBC pursuant to this agreement.

## **8. STAFF**

8.1 Caerphilly CBC will be responsible for the employment of staff to administer the Pest Control Service. Caerphilly CBC will employ all staff throughout the duration of this agreement.

8.2 Where Blaenau Gwent CBC has staff employed or contracts with a provider solely for the purpose of delivering Pest Control Services prior to this Agreement, these staff will transfer to Caerphilly CBC in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 unless they object to the transfer. A list of these staff is contained in Schedule 2.

8.3 The costs arising as the result of any transfer or reorganisation immediately post transfer or at any time during the Pest Control Service will be paid by Blaenau Gwent CBC provided that such costs do not exceed £10,000.

8.4 Both Parties agree that if at any time there is a reorganisation of staff in the Pest Control Service that both parties will use their best endeavours to find suitable alternative employment for any staff considered at risk of redundancy so that the costs of any reorganisation are reduced for both parties.

8.5 Blaenau Gwent CBC agree to pay the costs of all Employment liabilities, including but not limited to, redundancy payments and equal pay or other tribunal claims or settlements which have accrued prior to or subsequent to the effective date of transfer of the staff to Caerphilly CBC in relation to the staff previously employed to carry out pest control services in Blaenau Gwent.

8.6 If any vacancies arise, then Caerphilly CBC will carry out the recruitment based upon their own recruitment procedures.

8.7 Blaenau Gwent CBC shall indemnify and keep indemnified Caerphilly CBC against any claims liabilities and reasonable costs and expenses to the extent

attributable to any act or omission or breach or default by the Blaenau Gwent CBC or their contractors or agents prior to the 1 April 2013 in respect of any of Blaenau Gwent CBC' obligations or duties to or in relation to any of the employees, but not so as to indemnify Caerphilly CBC in respect of any act or omission or breach or default by Caerphilly CBC.

- 8.8 Caerphilly CBC shall indemnify and keep indemnified Blaenau Gwent CBC against any claims, liabilities and reasonable costs and expenses which Blaenau Gwent CBC incurs to the extent attributable to any act or omission or breach or default by the Caerphilly CBC committed at any time on or after the 1 April 2013, in respect of any of the Caerphilly CBC's obligations or duties to or in relation to any of the employees but not so as to indemnify Blaenau Gwent CBC in respect of any act or omission or breach or default by Blaenau Gwent CBC or their contractors or agents.
- 8.9 Without prejudice to any provision in this Agreement, in the event that TUPE is determined by Parties or by a court or other tribunal of competent jurisdiction to apply to any Staff at any time before or after the whole or partial termination Agreement, upon variation of this Agreement or upon the appointment of an alternative Partner as Provider, both Parties agree to comply with their obligations under TUPE and co-operate in a manner consistent with the principles of this Agreement and TUPE.
- 8.10 Without prejudice to any other provision of this Agreement, both Parties acknowledge and agree that it is their intention that upon the termination of this Agreement for any reason, for each party to resume control and responsibility for all Employment Liabilities which arise under TUPE or otherwise, arising or payable in respect of any and all of their respective Staff who are employed on work in relation to their locality immediately prior to the termination of the Agreement, subject to Blaenau Gwent CBC's contribution being a maximum of 30% of all employment liabilities.
- 8.11 Nothing within this clause shall have effect to alter the liabilities if one party breaches or terminates the agreement. Liabilities under clause 13.4 include Employment Liabilities in this respect.

## **9. CHANGE CONTROL**

- 9.1 The Parties Authorised Representatives shall meet at least once every **6 months** to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.



- 9.2 If either party requests a change to the scope or execution of the Services, Caerphilly CBC shall, within a reasonable time, provide a written estimate to Blaenau Gwent CBC of:
- (a) the likely time required to implement the change;
  - (b) any necessary variations to Caerphilly CBC's charges arising from the change;
  - (c) any other impact of the change on this agreement.
- 9.3 If Blaenau Gwent CBC wishes Caerphilly CBC to proceed with the change, Caerphilly CBC has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this agreement to take account of the change.
- 9.4 Notwithstanding clause 9.3, Caerphilly CBC may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If Caerphilly CBC requests a change to the scope of the Services for any other reason, Blaenau Gwent CBC shall not unreasonably withhold or delay consent to it.

## **10. DISPUTE RESOLUTION**

- 10.1 If any dispute arises in connection with this agreement, the Parties' Authorised Representatives shall, within **30** days of a written request from one party to the other, meet in a good faith effort to resolve the dispute in the mutual interest of the parties.

## **11. LIMITATION OF LIABILITY**

- 11.1 This clause 11 sets out the entire financial liability of Caerphilly CBC (including any liability for the acts or omissions of its employees and agents) to Blaenau Gwent CBC in respect of:
- (a) any breach of this agreement, including any deliberate personal repudiatory breach or any deliberate breach of this agreement by Caerphilly CBC, or its employees or agents;
  - (b) any use made by Blaenau Gwent CBC of the Services or any part of them; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

- 11.3 Nothing in this agreement limits or excludes the liability of Caerphilly CBC:
- (a) for death or personal injury resulting from negligence; or
  - (b) for any damage or liability incurred by Blaenau Gwent CBC as a result of fraud or fraudulent misrepresentation by Caerphilly CBC; or
  - (c) for any liability incurred by Blaenau Gwent CBC as a result of any breach by Caerphilly CBC of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

11.4 Subject to clause 11.2 and 11.3:

- (a) Caerphilly CBC shall not be liable for:
  - (i) depletion of goodwill and/or similar losses; or
  - (ii) loss of anticipated savings; or
  - (iii) loss of goods; or
  - (iv) loss of contract; or
  - (v) loss of use; or
  - (vi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) Caerphilly CBC's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Services.

## **12. DATA PROTECTION AND INFORMATION SHARING**

12.1 Both parties agree to respect the other party's obligations in respect of Data Protection, in particular in relation to not disclosing any information, which has been disclosed to them by the other party without first referring to the other party. Both parties also acknowledge that the information which may be disclosed under this agreement is highly sensitive.

12.2 Both parties agree that information will need to be shared to ensure efficient provision of the services, and agree to comply with all obligations in this regard, including if necessary asking staff to enter into a confidentiality agreement and/or to enter into an information sharing protocol if necessary.

12.3 The Parties acknowledge that they are subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-

operate with the other Party to enable them to comply with these requirements. Such assistance shall be at the expense of the party requesting the information.

- 12.4 The Parties acknowledge that both parties have complaints policies and have to comply with the Public Service Ombudsman for Wales requirements for information and shall assist and co-operate with the other Party to enable them to comply with these requirements. Such assistance shall be at the expense of the party requesting the information.

### 13. TERMINATION

- 13.1 On termination of this agreement, Blaenau Gwent CBC shall immediately pay to Caerphilly CBC all of Caerphilly CBC's outstanding unpaid invoices and interest and, in respect of Services supplied.
- 13.2 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason Caerphilly CBC shall co-operate fully with Blaenau Gwent CBC to ensure an orderly migration of the Services to Blaenau Gwent CBC or, at Blaenau Gwent CBC' request, a Replacement Provider.
- 13.3 The provisions of clause 12 (Data Protection) and clause 13 (Termination) shall survive termination or expiry of this agreement.
- 13.4 **Breach** - where either party to this agreement commits a material breach of any of its obligations under this agreement which is not capable of remedy, the party will be considered to have withdrawn from the agreement with six months' notice and they will indemnify the other party in respect of any costs arising as a result of their breach of the agreement.
- 13.5 **Liability upon Termination** - upon termination of this agreement by its expiry on 31<sup>st</sup> March 2018, Blaenau Gwent CBC will pay the costs incurred by Caerphilly CBC which arise as a result of the migration of the service to Blaenau Gwent or a replacement provider including but not limited to the proportion of any redundancy costs and staff costs which relate to the proportion of the service provided to the County Borough of Blaenau Gwent and will not exceed 30% of the liabilities in accordance with clause 8.10.

### 14. FORCE MAJEURE

A party shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control.

**15. NON-SOLICITATION**

No party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

**16. WAIVER**

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

**17. SEVERABILITY AND VARIATION**

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**18. THIRD PARTY RIGHTS**

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

**19. NOTICES**

Notices shall be in writing, and shall be sent to the other party's Chief Legal Officer at the address set out for such party in this agreement. Notices may be sent by first-class mail, email or facsimile transmission provided that email and facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions or emails shall be deemed to have

been received instantaneously on transmission provided that they are confirmed as set out above.

**20. ENTIRE AGREEMENT**

This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

**21. GOVERNING LAW AND JURISDICTION**

21.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

This agreement has been entered into on the date stated at the beginning of it.

Signed on behalf of

**BLAENAU GWENT  
COUNTY BOROUGH COUNCIL**

Signed (Authorised Officer): Dave Thompson

Name/Position: Head of Housing and Environmental Health

Signed (Authorised Officer): Dylan John

Name/Position: Chief Legal Officer

Signed on behalf of

**CAERPHILLY COUNTY  
BOROUGH COUNCIL**

Signed (Authorised Officer): Robert Hartshorn

Name/Position: Head of Public Protection

Signed (Authorised Officer): Daniel Perkins  
Name/Position Head of Legal & Governance

### SCHEDULE 1 Specification

<b>Domestic Service</b>	<b>Cost*</b>	<b>Concession**</b>	<b>Target Response Time</b>
Rats	Free	n/a	Inside: next Working day Outside: 5 working days
Cockroaches	Free	n/a	5 working days
Bedbugs	Free	n/a	5 working days
Mice	£50 (+VAT)	50%	Inside: next Working day Outside: 5 working days
Wasps (or Bees)	£35 (+VAT)	50%	Inside (excl attic): next Working day Attic/Outside: 5 working days
Fleas	£35 (+VAT)	50%	5 working days
<b>Commercial Service</b>	All - £40 per hour + materials		

\*charges payable at the point of booking

\*\* concessions: clients in receipt of income support or guaranteed pension credit receive 50% discount

**SCHEDULE 2 Staff to be transferred at Commencement  
as known on 18 March 2013**

<b>Name</b>	<b>Position</b>
Marc Bishop	Pest Control Operator
Darryl Hillman	Pest Control Operator