

NOTTINGHAM CITY COUNCIL (1)

AS AUTHORITY

AND

XXXXX

AS PROVIDER (2)

**CONTRACT FOR THE
PROVISION OF PUBLIC HEALTH SERVICES
PHARMACY**

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SECTION A
THE PARTICULARS

This Contract is made on XXXXX

PARTIES

- (1) Nottingham City Council of Loxley House, Station Street, Nottingham, NG2 3NG (the **Authority**); and
- (2) XXXX who's principal or registered office address is at XXXXX (the "**Provider**").

BACKGROUND

- (A) The Authority must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations. In order to satisfy these obligations the Authority wishes to secure the provision of the Services and the Provider wishes to provide the Services.
- (B) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.
- (C) The Authority has commissioned the Services through an accreditation process. The Provider successfully completed an application form and has been awarded the Contract for the service(s) detailed at Appendix A, for the 3 year period from 1st April 2022 with potential contract extensions of a further 3+3 years.

IT IS AGREED

A1. CONTRACT

A1.1. This Contract comprises of:

- a) these Particulars (Section A);
- b) the General Terms and Conditions (the **General Conditions**) (Section B);and
- c) the Special Terms and Conditions (the **Special Conditions**) (Section C), where any such terms have been agreed,

as completed and agreed by the Parties and as varied from time to time in accordance with clause B20 (*Variations*) of the General Conditions (this **Contract**).

A2. INTERPRETATION

A2.1. This Contract shall be interpreted in accordance with Appendix K (*Definitions and Interpretation*), unless the context requires otherwise.

A2.2. If there is any conflict or inconsistency between the provisions of this Contract, such conflict or inconsistency must be resolved according to the following order of priority:

- a) Section C;

- b) Section B; and
- c) Section A.

A3. COMMENCEMENT AND DURATION

A3.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the **Commencement Date**).

A3.2. The Provider shall, subject to having satisfied the Conditions Precedent where applicable, provide the Services from 1 April 2022 (the **Service Commencement Date**).

A3.3. This Contract shall expire automatically on 31 March 2025 (the **Expiry Date**), unless it is extended or terminated earlier in accordance with the provisions of this Contract.

A4. REPRESENTATIVES

A4.1. The person set out below is authorised from the Commencement Date to act on behalf of the Authority on all matters relating to this Contract (the **Authority Representative**).

Name: XXXXX
Title: XXXXX
Contact Details: Email: XXXX_Tel. No. XXXX

A4.2. The person set out below is authorised from the Commencement Date to act on behalf of the Provider on all matters relating to this Contract (the **Provider Representative**).

Name: XXXX
Title: XXXX
Contact: XXXX

A4.3. The Provider may replace the Provider Representative and the Authority may replace the Authority Representative at any time by giving written notice to the other Party.

A5. NOTICES

A5.1. Any notices given under this Contract shall be in writing and shall be served by hand or post by sending the same to the address for the relevant Party set out in clause A5.3 or by document attached to an e-mail.

A5.2. Notices:

- a) by post and correctly addressed shall be effective upon the earlier of actual receipt, or 5 Business Days after mailing; or
- b) by hand shall be effective upon delivery
- c) by e-mail and correctly addressed shall be effective upon the earlier of actual receipt, or 5 Business Days after mailing.

A5.3. For the purposes of clause A5.2, the address for service of notices on each Party shall be as follows:

a) For the Authority:

Address: Loxley House, Station Street, Nottingham,
NG2 3NG For the attention of: Public Health Commissioning
Tel: 0115 876 5108

b) For the Provider:

Address: XXXXX
For the attention of: XXXXX
Tel: XXXXX

A5.4. Either Party may change its address for service by serving a notice in accordance with this clause A5.

A6. ENTIRE CONTRACT

This Contract constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Contract, except for any contract entered into between the Authority and the Provider which relates to the same or similar services to the Services and is designed to remain effective until the Services are provided under this Contract.

A7. COUNTERPARTS

This Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

IN WITNESS WHEREOF the Parties have signed this Contract on the date shown below

SIGNED by Steve Oakley for and on behalf of the AUTHORITY

Signature:

Title: - Head of Contracting and

Procurement Date:

.....

SIGNED by Insert Authorised Signatory's name for and on behalf of the PROVIDER

Signature:

Title:

Provider's Date:

SECTION B
GENERAL TERMS AND CONDITIONS

B1. SERVICES

- B1.1. The Provider shall provide the Services in accordance with the Service Specification(s) in Appendix A (*Service Specifications*), including any service limitations set out in them, and in accordance with the provisions of this Contract and the Law, including the provisions of Part 3 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as may be amended from time to time or substituted).
- B1.2. The Provider shall satisfy any Conditions Precedent set out in Appendix C (*Conditions Precedent*) prior to commencing provision of the Services.

B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

- B2.1. Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:
- a) who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
 - b) who displays abusive, violent or threatening behaviour unacceptable to the Provider acting reasonably and taking into account the mental health of that Service User;
 - c) in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
 - d) where expressly instructed not to do so by an emergency Provider who has authority to give such instruction, for so long as that instruction applies.
- B2.2. If the Provider proposes not to provide or to stop providing a Service to any Service User under clause B2.1:
- a) where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 2 Business Days);
 - b) the Provider must tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
 - c) the Provider must inform the Authority in writing without delay and wherever possible in advance of taking such action;

provided that nothing in this clause B2.2 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

B3. SERVICE AND QUALITY OUTCOMES INDICATORS

- B3.1. The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Authority in writing:
- a) comply, where applicable, with the registration and regulatory compliance guidance of the Care Quality Commission (CQC) and any other Regulatory Body;

- b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
- c) consider and respond to the recommendations arising from any audit, death, Serious Untoward Incident report or Quality Improvement Incident report;
- d) comply with the recommendations issued from time to time by a Competent Body;
- e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
- f) respond to any reports and recommendations made by Local HealthWatch; and
- g) comply with the milestones, activity plan (including Quality Outcomes Indicators) and Currency and set out in sections 7, 8 & 9 of the service specification contained in Appendix A.

B4. SERVICE USER INVOLVEMENT

- B4.1. The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.
- B4.2. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide evidence to the Authority of the involvement of Service Users, Carers and Staff in the development of Services.
- B4.3. The Provider must carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Authority in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in Appendix A or as otherwise agreed between the Parties in writing from time to time.
- B4.4. The Provider must review and provide a written report to the Authority on the results of each survey carried out under clause B4.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Authority, the Provider must publish the outcomes and actions taken in relation to such surveys.

B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

- B5.1. The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- B5.2. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- B5.3. In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

and for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.

- B5.4. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide the Authority with a plan detailing how it will comply with its obligations under clause B5.3.
- B5.5. The Provider must provide to the Authority as soon as reasonably practicable, any

information that the Authority reasonably requires to:

- a) monitor the equity of access to the Services; and
- b) fulfil their obligations under the Law.

B6. MANAGING ACTIVITY

B6.1. The Provider must manage Activity in accordance with any activity planning assumptions and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services.

B7. STAFF

B7.1. At all times, the Provider must ensure that:

- a) each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- b) there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;
- c) where applicable, Staff are registered with the appropriate professional regulatory body; and
- d) Staff are aware of and respect equality and human rights of colleagues and Service Users.

B7.2. If requested by the Authority, the Provider shall as soon as practicable and by no later than 10 Business Days following receipt of that request, provide the Authority with evidence of the Provider's compliance with clause B7.1.

B7.3. The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:

- a) proper and sufficient continuous professional and personal development, training and instruction; and
- b) full and detailed appraisal (in terms of performance and on-going education and training),

each in accordance with Good Clinical Practice and the standards of any applicable relevant professional body.

B7.4. Where applicable under section 1(F)(1) of the NHS Act 2006, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.

B7.5. The Provider must carry out Staff surveys in relation to the Services at intervals or as otherwise agreed in writing from time to time.

B7.6. Subject to clause B7.7, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:

- a) the Employment Checks; and
- b) such other checks as required by the DBS.

B7.7. Subject to clause B7.8, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.

B7.8. Where clause B7.7 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:

- a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and

- b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
- c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
- d) any other reasonable requirement of the Authority.

B7.9. Where the Authority has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Authority and in any event within 10 Business Days of that request (unless otherwise agreed in writing), provide the Authority with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.

B7.10. The Provider shall indemnify and keep indemnified the Authority and any Successor Provider against any Losses incurred by the Authority and/or the Successor Provider in connection with any claim or demand by any transferring employee under TUPE.

B8. CHARGES AND PAYMENT

B8.1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Authority shall pay the Provider the Charges.

B8.2. The Charges are set out within each Service Specification in Appendix A.

B8.3. The Provider shall claim for payment from the Authority at the end of each three month period and shall submit a claim in accordance with the claim process in Appendix G (or such other frequency agreed between the Parties in writing) which the Authority shall pay within 30 Business Days of receipt.

B8.4. The Charges may only be varied in accordance with the provisions of the variation procedure specified in clause B20.

B8.5. Unless otherwise set out in this Contract including the Service Specification, the Provider shall be responsible for all costs in providing premises and equipment for delivery of the Services and shall bear all responsibility and costs in ensuring that the premises and equipment are clean, safe, suitable, adequate, functional, accessible (making reasonable adjustments where required) and effective in the provision of the Services.

B8.6. The Charges are stated exclusive of VAT, all claims should be stated as a NET amount. In order to claim for VAT Providers must detail their valid VAT registration number on each claim form submitted unless the Authority shall have notified the Provider in writing that a different procedure be used.

B8.7. In its performance of this Contract the Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance or a prior written agreement with the Authority to any proposed charges).

B8.8. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:

a) the contesting Party shall within 5 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;

b) Any uncontested amount shall be paid in accordance with this Contract.

B8.9. If a Party contests a payment under clause B8.6 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.6, the contesting Party may refer the matter to dispute resolution under clause B29 (Dispute Resolution) and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.3.

B8.10. Each Party may retain or set off any sums owed to the other Party which have fallen due and payable against any sum due to the other Party under this Contract or any other

agreement between the Parties.

B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY

- B9.1. The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.
- B9.2. In addition to the Provider's obligations under clause B9.1. Where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.
- B9.3. During the term of this Contract at the reasonable request of the Authority, the Provider must:

- a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;
- b) implement such improvements; and
- c) where practicable following implementation of such improvements decrease the price to be paid by the Authority for the Services.

B9.4. If requested by the Authority, the Provider must identify the improvements that have taken place in accordance with clause B9.3, by reference to any reasonable measurable criteria notified to the Provider by the Authority.

B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

B10.1. The Provider must comply with requirements and principles in relation to the safeguarding of children, young people and adults including in relation to deprivation of liberty safeguarding, child sexual abuse and exploitation.

B10.2. The Provider shall adopt and comply with appropriate Safeguarding Policies including but not limited to policies in respect of child exploitation and modern slavery and human trafficking and such policies shall where appropriate comply with any local multi-agency policies as amended from time to time. These policies shall comply with the Authority's Safeguarding Policies, relevant legislation statutory and non-statutory guidance, as may be amended from time to time. Details of the Authority's safeguarding policies, which must be complied with, are appended at Appendix D. The Provider shall produce their safeguarding policies within 5 Business Days of any written request as may be made from time to time by the Authority.

B10.3. The Provider as part of its safeguarding duties shall have regard to any government 'Prevent programme' and in particular, in respect of identifying and providing support to vulnerable individuals who may be at risk of radicalisation.

B10.4. The Provider must ensure that all individuals are subject to DBS checks in accordance with Clause B7.7 and C10.1 and implement comprehensive programmes for safeguarding for all relevant Staff.

B10.5. At the reasonable written request of the Authority and by no later than 5 Business Days following receipt of such request, the Provider must provide evidence to the Authority that it is addressing any safeguarding concerns.

B10.6. If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

B11. INCIDENTS REQUIRING REPORTING

B11.1. If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.

B11.2. If the Provider gives a notification to the CQC or any other Regulatory Body under clause B11.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within 5 Business Days or within the timescale set out in Appendix E.

(Incidents Requiring Reporting Procedure).

- B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Untoward Incidents and Quality Improvement Incidents that are agreed between the Provider and the Authority and set out in Appendix E. (Incidents Requiring Reporting Procedure).
- B11.4. Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause B.11 and Appendix E. (Incidents Requiring Reporting Procedure).

B12. CONSENT

- B12.1. The Provider must publish, maintain and operate a Service User consent policy which complies with Good Clinical Practice and the Law.

B13. SERVICE USER HEALTH RECORDS

- B13.1. The Provider must create, maintain, store and retain Service User health records for all Service Users. The Provider must securely store and retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
- B13.2. The Provider must:
- a) use Service User health records solely for the execution of the Provider's obligations under this Contract;
 - b) give each Service User full and accurate information regarding his/her treatment and Services received and must evidence that in writing in the relevant Service User health record.
- B13.3. The Provider must at all times during the term of this Contract have a Caldicott Guardian and shall notify the Authority of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this Contract, it shall promptly notify the Authority of the identity and contact details of such replacements.
- B13.4. Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.

B14. INFORMATION

- B14.1. The Provider must provide the Authority the information specified in the reporting requirements set out in sections 7, 8 and 9 of the individual service specifications in Appendix A which will be used to measure the performance, quality, quantity or otherwise of the Services. The provider must use pharmoutcomes data management system to provide this information to record and provide the information.
- B14.2. The Provider must deliver the information required under clause B14.1 in the format, manner, frequency and timescales specified in Appendix A or as otherwise agreed between the Parties and the Provider must ensure that the information is accurate and complete.
- B14.3. If the Provider fails to comply with any of the obligations in this clause B14 and/or Appendix A the Authority may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Appendix A.
- B14.4. In addition to the information required under clause B14.1, the Authority may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

B15. EQUIPMENT

B15.1. The Provider must provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services.

B16. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS

B16.1. The Provider must comply with any Transfer of and Discharge from Care Protocols agreed by the Parties set out in Appendix F.

B17. COMPLAINTS

B17.1. The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services.

B17.2. If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in clause B26 (*Default and Failure to Supply*).

B18. CO-OPERATION

B18.1. The Parties must at all times act in good faith towards

each other. B18.2. The Provider must co-operate fully and liaise

appropriately with:

- a) the Authority;
- b) any third party provider who the Service User may be transferred to or from the Provider;
- c) any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and
- d) primary, secondary and social care

services, in order to:

- e) ensure that a consistently high standard of care for the Service User is at all times maintained;
- f) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
- g) achieve a continuation of the Services that avoids inconvenience to, or risk to the

health and safety of, Service Users, employees of the Authority's or members of the public.

B19. WARRANTIES AND REPRESENTATIONS

B19.1. The Provider warrants and represents that:

- a) It has full capacity and authority to enter into this Contract and all necessary Consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- c) in entering this Contract it has not committed any Fraud;

- d) all reasonably material information supplied by it to the Authority during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Authority which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract;
- e) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract;
- f) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract;
- g) in the 3 years prior to the Commencement Date:
 - (i) It has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) It has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) It has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract; and
- h) No proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.

B19.2. The Authority warrants and represents that:

- a) it has full power and authority to enter into this Contract and all necessary approvals and consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it;
- c) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract; and
- d) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract.

B19.3. The warranties set out in this clause B19 are given on the Commencement Date and repeated on every day during the term of this Contract.

B20. VARIATIONS

B20.1. This Contract may not be amended or varied other than in accordance with this clause B20.

B20.2. Either Party may from time to time during the term of this Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

- B20.3. If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract.
- B20.4. No Variation to this Contract will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or his nominee) in accordance with clause A5 (*Notices*). All agreed Variations shall form an addendum to this Contract and shall be recorded in

B21. ASSIGNMENT AND SUB-CONTRACTING

- B21.1. The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the Authority in writing:
- a) consenting to the appointment of the Sub-contractor (such consent not to be unreasonably withheld or delayed); and
 - b) approving the Sub-contract arrangements (such approval not to be unreasonably withheld or delayed).
- B21.2. The Authority's consent to sub-contracting under clause B21.1 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.
- B21.3. Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.
- B21.4. The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Provider.

B22. AUDIT AND INSPECTION

- B22.1. The Provider must comply with all reasonable written requests made by the CQC, the National Audit Office, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.
- B22.2. Subject to Law and notwithstanding clause B22.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.
- B22.3. Within 10 Business Days of the Authority's reasonable request, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- B22.4. The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- B22.5. During any audit undertaken under clause B22.1 or B22.2, the Provider must provide the

Authority with all reasonable co-operation and assistance in relation to that audit, including:

- a) all reasonable information requested within the scope of the audit;
- b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor;
and
- c) access to the Staff.

B23. INDEMNITIES

B23.1. The Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Contract, or breach of its statutory duty or breach of an obligation under the Data Protection Legislation, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or breach of statutory duty or breach of an obligation under the Data Protection Legislation by the Authority.

B24. LIMITATION OF LIABILITY

- B24.1. Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.
- B24.2. Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract.
- B24.3. Nothing in this Contract will exclude or limit the liability of either Party for:
- a) death or personal injury caused by its negligence; or
 - b) Fraud or fraudulent misrepresentation.
- B24.4. Subject to clause B24.3, the total aggregate liability of each Party to the other whether in contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with this Contract will be a maximum of 125% of the total Charges paid or payable under this Contract.

B25. INSURANCE

- B25.1. The Provider must, at its own cost, effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract (including its use of Equipment or other materials or products), including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- B25.2. The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.
- B25.3. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

B26. DEFAULTS AND FAILURE TO SUPPLY

- B26.1. In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Contract including under clause *B27 (Performance Reporting and Contract Management Arrangements)*, consult with the Provider and then do any of the following:
- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 10 Business Days or such other period of time as the Authority may direct;
 - b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause *B30 (Suspension and Consequences of Suspension)*;

- c) without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause B31 (*Termination*) (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.

B26.2. If the Authority exercises any of its rights under clause B26.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

B27. PERFORMANCE REPORTING AND CONTRACT MANAGEMENT ARRANGEMENTS

B27.1. The Provider must comply with the performance reporting and contract management arrangements detailed in Appendix B.

B27.2. The Provider must provide the Authority with the information specified in Appendix B. The data and information provided will be used to measure the performance, quality, quantity of the Services.

- B27.3. The Provider must ensure that the information provided is accurate and complete.
- B27.4. In addition to the information reporting requirements detailed in this Specification, the Authority may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.
- B27.5. The Provider will comply with any and all reasonable monitoring and reporting requirements as set out by the Authority in Appendix B including attending meetings, together with any additional reasonable requirements throughout the Term.
- B27.6. The Provider will comply with any and all monitoring and reporting requirements that may be imposed by any governing or accreditation body that the Provider is a member of.
- B27.7. The Authority in complying with its statutory duties, together with its monitoring of this agreement, requires the Provider to fully co-operate with the Authority and make available to the Authority such facilities and such assistance as the Authority may reasonably request provided the Authority has given the Provider reasonable notice and provided this does not incur for the Provider unreasonable cost.
- B27.8. Where reasonable requested, the Provider must allow the Authority's employees or authorised agent's (which may include auditors) access to:
- a) the Provider's Staff; and
 - b) all information, reports, financial accounts, documents, records (whether in human or machine readable form) and data which the Provider holds or has access to
- B27.9. The Provider must also allow the Authority to take copies of the information, reports etc. referred to in clause 11.4.2 and to interview the Provider's Staff as and when required in order to obtain appropriate oral explanations of documents.

B28. REVIEW

- B28.1 The Council and the Provider will jointly review and monitor the performance of the Agreement at intervals to be determined by the Parties but which will be as a minimum every quarter (a "Review Meeting"). In addition the performance of the Provider will be monitored against the Service Performance Indicators' and Information Reporting Requirements set out in Appendix A
- B28.2 Unless otherwise agreed, any issues raised in a Review Meeting will be completed by the end of the relevant Contract Year or within such other timescales which may be agreed between the Parties.
- B28.3 Each Review Meeting will be completed by the Council and the Provider signing a written review record ("Review Record") containing without limitation a summary of all the matters raised during the review, actions to be taken, and agreements reached.
- B28.4 The Parties wish to ensure continued service development and improvement and will as part of the Review Meeting agree such service delivery improvements to be implemented during the next Contract Year.
- B28.5 Notwithstanding the Review Meetings as agreed under clause B28.1, where either the Council or the Provider reasonably considers a circumstance constitutes an emergency or is

materially important, such party may request that a Review meeting be held as soon as practicable and in any event such Review meeting will be held within 5 Working Days of such request.

B.29 DISPUTE RESOLUTION

B29.1 If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix I (*Dispute Resolution*), unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.

B30. SUSPENSION AND CONSEQUENCES OF SUSPENSION

B30.1 A suspension event shall have occurred if:

- a) the Authority reasonably considers that a breach by the Provider of any obligation under this Contract:
 - (i) may create an immediate and serious threat to the health or safety of any Service User; or
 - (ii) may result in a material interruption in the provision of any one or more of the Services; or

- b) clause B30.1 does not apply, but the Authority, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of a Service or Services; or
- c) the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each a “**Suspension Event**”).

B30.2 Where a Suspension Event occurs the Authority:

- d) may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Authority that it is able to and will perform the suspended Service, to the required standard; and
- e) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

B30.3 During the suspension of any Service under clause B30.2, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority’s decision to suspend pursuant to clause B30.2 has been referred to dispute resolution under clause B29 (*Dispute Resolution*).

B30.4 During the suspension of any Service under clause B30.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B30.2; and/or
- b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B30.5.

B30.5 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.

B30.6 Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).

B30.7 Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:

- c) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
- d) at the cost of the Provider:
 - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and

- (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.

B30.8 As part of its compliance with clause B30.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.

B30.9 If it is determined, pursuant to clause B29 (*Dispute Resolution*), that the Authority acted unreasonably in suspending a Service, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.

B30.10 During any suspension of a Service the Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.

B31. TERMINATION

B31.1 Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 3 months' written notice at any time after the Service Commencement Date.

B31.2 The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:

- e) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
- f) the Provider is in persistent breach of its obligations under this Contract;
- g) the Provider:
 - (i) fails to obtain any Consent;
 - (ii) loses any Consent; or
 - (iii) has any Consent varied or restricted,
the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;
- h) the Provider has breached the terms of clause B38 (*Prohibited Acts*);
- i) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
- j) the Provider materially breaches its obligations in clause B36 (*Data Protection*);
- k) Not used
- l) the Provider breaches the terms of clause B21 (*Assignment and Sub-contracting*);
- m) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- n) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- o) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 40 Business Days following receipt of notice from the Authority identifying the breach.

B31.3 Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than 30 Business Days without the Parties agreeing alternative arrangements.

B31.4 The Provider may terminate this Contract or any Service with immediate effect by written notice to the Authority if the Authority is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate

this Contract under this clause B32.4 if the Authority has failed to remedy such breach within 40 Business Days of receipt of notice from the Provider to do so.

B32 CONSEQUENCE OF EXPIRY OR TERMINATION

B32.1 Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.

B32.2 On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.

B32.3 On the expiry or termination of this Contract or termination of any Service the Provider must reasonably co-operate with the Authority to migrate the Services in an orderly manner to the successor provider.

B32.4 In the event of termination or expiry of this Contract, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.

B32.5 If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B31.1 or B31.3 (*Termination*)), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.

B32.6 The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B21 (*Assignment and Sub-contracting*), B22 (*Audit and Inspection*), B32 (*Consequence of Expiry or Termination*), B35 (*Confidentiality*) and B37 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.

B33. BUSINESS CONTINUITY

B33.1 The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.

B33.2 The Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify the Authority as soon as reasonably practicable of its activation and in any event no later than 5 Business Days from the date of such activation.

B34. COUNTER-FRAUD AND SECURITY MANAGEMENT

B34.1 The Provider must put in place and maintain appropriate counter fraud and security management arrangements. B34.2 The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Authority.

B34.3 The Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

B34.4 If the Provider or its Staff commits Fraud in relation to this or any other contract with the Authority, the Authority may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

B35. CONFIDENTIALITY

Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.

B35.1 Subject to Clauses B35.3 and B35.4, the Receiving Party agrees:

- a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
- b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

B35.2 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- a) in connection with any dispute resolution under clause B29 (*Dispute Resolution*);
- b) in connection with any litigation between the Parties
- c) to comply with the Law;

- d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B35.2
- e) to comply with a regulatory bodies request.

B35.3 The obligations in clause B35.1 and clause B35.2 will not apply to any Confidential Information which:

- a) is in or comes into the public domain other than by breach of this Contract;
- b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
- c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

B35.4 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B35.

B35.5 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B35.

This clause B35 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

B35.6 The obligations in clause B35.1 and clause B35.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

B36. DATA PROTECTION

B36.1 Each Party shall comply with their respective duties under the Data Protection Legislation and any successor legislation and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

B36.1 The Parties agree that in relation to:

B36.1.1 Personal Data processed by the Provider in providing Services under this Agreement (for example, patient details, medical history and treatment details), the Provider shall be the sole Data Controller; and

B36.1.2 Personal Data, the processing of which is required by the Authority for the purposes of quality assurance, performance management and contract management the Authority and the Provider will be independent Data Controllers;

together the “Agreed Purpose”.

B36.2 Where the Authority requires information under clause B36.2 above, the Provider shall consider whether the requirement can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Authority, the Provider shall provide such information in pseudonymised form where possible.

B36.3 Appendix M sets out the categories of Data Subjects, types of Personal Data, Processing operations (including scope, nature and purpose of Processing) and the duration of Processing.

B36.4 Each Party shall comply with all the obligations imposed on a Data Controller under the Data Protection Laws in relation to all Personal Data that is processed by it in the course of performing its obligations under this Agreement.

B36.5 Any material breach of the Data Protection Laws by one Party shall, if not remedied within fourteen (14) days of written notice from the other Party, give grounds to the other Party to terminate this Agreement with immediate effect.

B36.6 In relation to the Processing of any Personal Data, each Party shall:

B36.6.1 ensure that it has all necessary notices and consents in place to enable lawful sharing of Personal Data to the Permitted Recipients for the Agreed Purpose;

B36.6.2 give full information to any Data Subject whose Personal Data may be processed under this Agreement of the nature of such Processing;

B36.6.3 process the Personal Data only for the Agreed Purpose;

B36.6.4 not disclose or allow access to the Personal Data to anyone other than the Permitted Recipients;

B36.6.5 ensure that all Permitted Recipients are reliable and have had sufficient training pertinent to the care and handling of Personal Data;

B36.6.6 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;

B36.6.7 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data in accordance with Article 32 UK GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 UK GDPR; or (iii) one of the derogations for specific situations in Article 49 UK GDPR applies to the transfer; and

B36.6.8 assist the other Party (at its own cost) in responding to any request from a Data Subject and in ensuring its compliance with all applicable requirements and obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or the UK’s Information Authority’s Office.

B36.7 Each Party shall notify the other Party without undue delay on becoming aware of any Personal Data Breach under this Agreement.

B37. FREEDOM OF INFORMATION AND TRANSPARENCY

B37.1 The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

B37.2 If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:

- a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
- b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
- c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within 2 Business Days) transfer the request to the Authority;

- d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
- e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within 5 Business Days of such request and without charge.

B37.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.

B37.4 Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

B37.5 In preparing a copy of this Contract for publication pursuant to clause B37.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.

B37.6 The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract. B37.7 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

B38. PROHIBITED ACTS

B38.1 Neither Party shall do any of the following:

- a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) 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 of performance of this Contract or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and
- b) in connection with this Contract, pay or agree 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 other Party,

(together "**Prohibited Acts**").

B38.2 If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:

- a) to exercise its right to terminate under clause B31.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
- b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
- c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

B38.3 Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

B38.4 The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within 5 Business Days of the Authority requesting it and enforced by the Provider where applicable.

B38.5 Should the Provider become aware of or suspect any breach of this clause B38, it will notify the Authority immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.

B39. FORCE MAJEURE

B39.1 Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.

B39.2 Subject to clause B39.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.

B39.3 The Party claiming relief as a result of an event of Force Majeure must serve an initial written notice on the other Party immediately it becomes aware of the event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief must then serve a detailed written notice within a further 15 Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform the relevant obligations under this Contract as is available, including the effect of the event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Services.

B39.4 A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.

B39.5 The Authority shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

B40. THIRD PARTY RIGHTS

B40.1 No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

B41. CAPACITY

B41.1 Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Contract, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon the Authority or in any way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability on the part of the Authority under this Contract (howsoever arising) in any capacity other than as contracting counterparty.

B42. SEVERABILITY

B42.1 If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Contract.

B43. WAIVER

B43.1 Any relaxation or delay by either Party in exercising any right under this Contract will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

B44. PUBLICITY

B44.1 Without prejudice to clause B37 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.

B44.2 The Provider must take all reasonable steps to ensure the observance of the provisions of clause B44.1 by all its staff, servants, agents, consultants and sub-contractors.

B45. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

B45.1 Nothing in this Contract creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Authority and the Provider.

B46. GOVERNING LAW AND JURISDICTION

B46.1 This Contract will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.

B46.2 Subject to the provisions of clause B29 (*Dispute Resolution*), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.

SECTION C
SPECIAL TERMS AND CONDITIONS

C1. EXTENDING THE DURATION OF CONTRACT

C1.1. If the Authority wishes to extend this Contract, it shall give the Provider at least 3 months' written notice of such intention before the Expiry Date set out in clause A3.3 (*Commencement and Duration*).

C1.2. If the Authority gives such notice and it is agreed by the Provider, the Expiry Date will be extended by the period set out in the notice.

C1.3. If the extension is to provide a change in the Charges or the Specification then such extension shall be subject to the agreement in writing of the Parties and to the following conditions that the change shall not:-

- (a) materially alter the character of the contract
- (b) extend the scope of the contract considerably
- (c) the change shall not materially alter the economic balance in favour of the Provider

C2. LIMITATION OF LIABILITY

C2.1. Subject to clauses B25.1 and B25.3, the Provider's total liability to the Authority, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to those insurance levels set out below. Subject to the terms set out in Section B (*General Terms and Conditions*)

C3. INSURANCE

C3.1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of £5 million and not less than the statutory minimum.
- (c) professional indemnity insurance with a limit of indemnity of not less than £1 million in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;

C3.2 The Authority recommends that the Provider considers potential cyber-risks and maintains an appropriate level of insurance cover to mitigate these risks.

(together the Required Insurances).

C3.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

C4. CONTRACT BINDING ON SUCCESSORS

C4.1. This Contract will be binding on and will be to the benefit of the Authority and Provider and their respective successors and permitted transferees and assigns.

C5. DATA PROTECTION

- C5.1. If Authority data is corrupted, lost or sufficiently degraded as a result of the Provider's omission or negligence so as to be unusable, the Authority may:
- (a) require the Provider (at the Provider's expense) to restore or procure the restoration of such data and the Provider must do so as soon as practicable
 - (b) Itself restore or procure the restoration of such data. The Provider must reimburse the Authority for any reasonable expenses incurred in doing so.
- C5.2. If at any time the Provider suspects or has reason to believe that Authority data has or may become corrupted, lost or degraded in any way for any reason, the Provider must notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take

C6. AGENCY

C6.1. The Provider must not in any circumstances hold itself out as being the servant or agent of the Authority. The Provider must not hold itself out as being authorised to enter into any agreement on behalf of the Authority or in any way bind the Authority to the performance, variation, release or discharge of any obligation to a third party. The Provider's staff shall not hold themselves out to be and shall not be held out by the Provider as being servants or agents of the Authority.

C7. HUMAN RIGHTS

C7.1. The Provider must not do or permit to allow anything to be done which is incompatible with the rights contained in the European Convention on Human rights and the Human Rights Act 1998. Without prejudice to the rights of the Authority under clause B23 (*Indemnities*), the Provider must indemnify the Authority against any loss, claims and expenditure resulting from the Provider's breach of this clause.

C8. SCRUTINY BOARD/EXECUTIVE BOARD ASSISTANCE

C8.1. If required or reasonably requested by the Authority to do so, the Provider must throughout the period of this Contract and for a period of six (6) years after the expiry of this Contract give all reasonable assistance to the Authority's Scrutiny Board and/or Executive Board and to any other board with a similar status, including attending the Authority's Scrutiny and/or Executive Board in order to answer questions pertaining to this Contract.

C9. HEALTH AND SAFETY

C9.1. The Provider must promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.

C9.2. The Provider must comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders regulations and codes of practice relating to health and safety which may apply to both the Provider's staff and other persons working on or visiting/using the Provider's Premises in the performance of this Contract.

C9.3. The Provider must on written request of the Authority and in any event within 5 Business Days of that request, provide the Authority with a copy of its health and safety policy statement (as required by the Health and Safety at Work Act 1974).

C10. DISCLOSURE AND BARRING SERVICE

C10.1. The Provider must have policies and procedures which acknowledge and provide for ongoing monitoring of the Staff, including undertaking further DBS disclosures every three years or as required by the relevant law statutory or non-statutory guidance to the Authorities policy all amended from time to time

C10.2. The Provider must keep and must procure that the Authority is kept advised at all times of any Staff who, subsequent to their commencement of employment, receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider (or any employee of a Sub-Contractor involved in the provision of the Services).

C11. BRANDING POLICY

C11.1. The Provider must comply with the Authority's local branding policy and guidelines, as

revised, updated or re- issued from time to time.

C12. CONFLICTS OF INTEREST

C12.1. If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on the other Party's decision whether or not to contract or continue to contract substantially on the terms of this Contract, the Party aware of the conflict must immediately declare it to the other. The other Party may then take whatever action under this Contract as it deems necessary.

C13. INTELLECTUAL PROPERTY

- C13.1. Except as set out expressly in this Contract, no Party will acquire the IPR of the other Party.
- C13.2. The Provider now grants the Authority a fully paid-up non-exclusive licence to use Provider IPR for the duration of this Contract for the purposes of the exercise of its functions and obtaining the full benefit of the Services, which will include the dissemination of best practice to other providers who have a contract with the Authority.
- C13.3. The Authority now grants the Provider a fully paid up non-exclusive licence to use Authority IPR for the duration of this Contract for the sole purpose of providing the Services.
- C13.4. In the event that the Provider or the Authority at any time devise, discover or acquire rights in any Improvement, they must promptly notify the other Party of the IPR to which that Improvement relates giving full details of the Improvement and whatever information and explanations as that Party may reasonably require to be able to use the Improvement effectively and the Provider must assign to the Authority all rights and title in any such Improvement without charge and grant the Authority a fully paid up non-exclusive licence to use the associated Provider IPR unless the Provider is despite all reasonable endeavours unable to do so and to grant such a licence to a successor Provider delivering like Services or part thereof.
- C13.5. Any IPR devised by either or both of the Parties whilst this Contract endures and for the purposes of providing the Services which is not an Improvement by shall vest absolutely in the Authority and the Authority grants a fully paid-up non-exclusive licence to the Provider to use such IPR for the duration of the Contract for the sole purpose of providing the Services.
- C13.6. For the purposes of this clause:

Authority IPR means any IPR owned by or licensed to the Authority which is relevant and necessary to the performance of the Services by the Provider, including without limitation the IPR set out herein

Improvements means any improvement, enhancement or modification to the Provider IPR which cannot be used independently of the Provider IPR or any improvement, enhancement or modification to the Authority IPR which cannot be used independently of the Authority IPR

IPR means inventions, copyright, patents, database right, trademarks, brands, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights

Provider IPR means any IPR owned by or licensed to the Provider (other than by the Authority) that will be used by the Provider in the delivery of the Services, as set out herein

C14. CHANGE IN CONTROL

- C14.1. This clause applies to any Provider Change in Control and/or any Material Sub-Contractor Change in Control, but not to a Change in Control of a company which is a Public Company.
- C14.2. The Provider must:

(a) as soon as possible on, and in any event within 5 Business Days following, a Provider

(b) Change in Control; and/or

(c) immediately on becoming aware of a Sub-contractor Change in Control,

notify the Authority of that Change in Control and submit to the Authority a completed Change in Control Notification.

C14.3. If the Provider indicates in the Change in Control Notification an intention or proposal to make any consequential changes to its operations then, to the extent that those changes require a change to the terms of this Contract in order to be effective, they will only be effective when a Variation is made in accordance with clause B20 (*Variations*). The Authority will not and will not be deemed by a failure to respond or comment on the Change in Control Notification to have agreed to or otherwise to have waived its rights under clause B20 (*Variations*) in respect of that intended or proposed change.

C14.4. The Provider must specify in the Change in Control Notification any intention or proposal to make a consequential change to its operations which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract. If the Provider does not do so it will not be entitled to propose a Variation in respect of that for a period of 6 months following the date of that Change in Control Notification, unless the Authority agrees otherwise.

C14.5. If the Provider does not specify in the Change in Control Notification an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Provider's Premises as a result of or in connection with the Change in Control then, unless the Authority provides its written consent to the relevant action, the Provider must:

(a) ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract; and

(b) continue providing the Services from the Provider's Premises,

in each case for at least 12 months following the date of that Change in Control Notification. The provisions of this clause will not apply to an assignment by way of security or the grant of any other similar rights by the Provider consequent upon a financing or re-financing of the transaction resulting in Change of Control.

C14.6. The Provider must supply (and must use its reasonable endeavours to procure that the relevant Sub-contractor supplies) to the Authority, whatever further information relating to the Change in Control the Authority may, within 20 Business Days after receiving the Change in Control Notification, reasonably request.

C14.7. The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Sub-contractor include a provision obliging the Sub-contractor to inform the Provider in writing on, and in any event within 5 Business Days following, a Sub-contractor Change in Control in respect of that Sub-contractor.

C14.8. If:

(a) there is a Sub-contractor Change in Control; and

(b) following consideration of the information provided to the Authority in the Change in Control Notification or under clause C14.6, the Authority reasonably concludes that, as a result of that Sub-contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Sub-contractor to provide Services in accordance with this Contract (and, in reaching that conclusion, the Authority may consider any factor, in its absolute discretion, that it considers relevant to the provision of Services),

then:

(c) the Authority may, by serving a written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within 10 Business Days (or other period reasonably specified by the Authority taking into account the interests of Service Users and the need for the continuity of Services); and

(d) the Provider must duly replace the relevant Sub-contractor within the period specified under clause C14.8.(c).

C14.9. Notwithstanding any other provision of this Contract:

- (a) a Restricted Person must not hold, and the Provider must not permit a Restricted Person to hold, at any time 5% or more of the total value of any Security in the Provider or in the Provider's Holding Company or any of the Provider's subsidiaries (as defined in the Companies Act 2006); and
- (b) a Restricted Person must not hold, and the Provider must not permit (and must procure that a Sub-contractor must not at any time permit) a Restricted Person to hold, at any time 5% or more of the total value of any Security in a Sub-contractor or in any Holding Company or any of the subsidiaries (as defined in the Companies Act 2006) of a Sub-contractor.

C14.10. If the Provider breaches clause C14.9.(b), the Authority may by serving written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within:

- (a) 5 Business Days; or
- (b) whatever period may be reasonably specified by the Authority (taking into account any factors which the Authority considers relevant in its absolute discretion, including the interests of Service Users and the need for the continuity of Services),

and the Provider must replace the relevant Sub-contractor within the period specified in that notice.

C14.11. Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.

C14.12. For the purposes of this clause:

Change in Control means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the ability to control the exercise of 50% or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters), provided that a Change in Control will be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation

Change in Control Notification means a notification in the form to be provided to the Provider by the Authority and to be completed as appropriate by the Provider

Holding Companies means has the definition given to it in section 1159 of the Companies Act 2006

Institutional Investor means an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pension fund, private equity firm, venture capitalist, insurance company or investment trust

Provider Change in Control means any Change in Control of the Provider or any of its Holding Companies

Public Company means:

a company which:

- (i) has shares that can be purchased by the public; and
- (ii) has an authorised share capital of at least £50,000 with each of the company's shares being paid up at least as to one quarter of the nominal value of the share and the whole of any premium on it; and
- (iii) has securities listed on a stock exchange in any jurisdiction

Restricted Person means:

- (i) any person, other than an Institutional Investor, who has a material interest in the production of tobacco products or alcoholic beverages; or
- (ii) any person who the Authority otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider or in a Sub-contractor

Security means shares, debt securities, unit trust schemes (as defined in the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing debt securities, warrants or options to subscribe or purchase securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company

Sub-contractor Change in Control means any Change in Control of a Sub-contractor or any of its

Holding Companies.

C15. TUPE

C15.1. Subject to clause B35 (Confidentiality) and Clause B36 (Data Protection and any other statutes or statutory provisions, during the 12 months preceding the expiry of the Agreement or after the Authority has given notice to terminate the Agreement or at any other time as directed by the Authority, and within one week of the date of the Authority's request to the Provider, the Provider shall fully and accurately disclose to the Authority any and all information in relation to all personnel engaged in the provision of the Services including but not limited to all relevant employees who it is envisaged by the Provider will transfer as a consequence of a transfer under TUPE as the Authority may request, in particular but not necessarily restricted to any of the following:

- (a) a list of employees employed by the Provider;

- (b) a list of agency workers, agents and independent contractors engaged by the Provider;
- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
- (d) the terms and conditions of employment of the employees of the Provider engaged in the provision of Services, their age, salary, date continuous employment commenced (for the purposes of calculating redundancy payments) and (if different) the relevant commencement date (for statutory redundancy payment calculation purposes), enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.

C15.2. The Provider shall warrant the accuracy of all the information provided to the Authority pursuant to this Clause

C.15 and authorises the Authority to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer of any Service which are substantially the same as the Service (or any part thereof).

C15.3. During the 12 months preceding the expiry of the Agreement or where notice to terminate the Agreement for whatever reason has been given, the Provider shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet all relevant employees who it is envisaged by the Provider and/or the Authority will transfer as a consequence of a transfer under TUPE and their trade union or employee representatives as the Authority may reasonably request.

C15.4. If the Provider does not apply to tender for or fails to be awarded the contract in any subsequent tendering or retendering of the Services, or not perform any subsequent delivery of the Services arising from expiry of the Agreement or termination or cancellation of the Agreement, the Provider shall transfer to any replacement provider which is successful in being awarded the subsequent contract or contracts, or to the Authority, as instructed by the Authority, all Authority property, including but not limited to, files and records, whether in the form of documents, correspondence, plans, calculations, drawings, computer data or other material in any medium to enable the performance of the Services to continue unaffected during the period of transition.

C15.5. The Provider shall co-operate with and provide assistance to any replacement provider which is successful in being awarded the subsequent contract or contracts, or to the Authority, as instructed by the Authority, to enable the performance of the Services to continue unaffected during the period of transition.

C15.6. Performance of the obligations contained in this clause C.15 will be at no cost to the Authority.

C15.7. During the 12 months preceding the expiry of this Agreement or where notice to terminate this Agreement for whatever reason has been given, the Provider shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:

- (a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);
- (b) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- (c) increase or decrease the number of employees employed in connection with the Services;
or
- (d) assign or redeploy any employee employed in connection with the Services or relevant

Service to other duties unconnected with the Services.

- (e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.

C15.8. The Provider shall indemnify and shall keep indemnified in full the Authority and at the Authority's request any new provider appointed by the Authority against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) arising from:

- (a) any claim by any party as a result of the Provider failing to provide or promptly to provide the Authority and/or any new provider appointed by the Authority where requested by the Authority with any retendering information pursuant to this clause C.15 and/or Employee Liability Information under TUPE or to provide full retendering information pursuant to this clause C.15 and/or Employee Liability Information under TUPE or as a result of any material inaccuracy in or omission from the retendering information pursuant to this clause C.15 and/or Employee Liability Information under TUPE provided that this indemnity shall not apply in respect of the retendering information pursuant to this clause C.15 to the extent that such information was originally provided to the Provider by the Authority and was materially inaccurate or incomplete when originally provided; and/or
- (b) any claim by any party as a result of the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any sub-contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any sub-contractor; and/or
- (c) any claims brought by any other person employed or engaged by the Provider and/or any sub-contractor who is found to or is alleged to transfer to the Authority or new provider under TUPE; and/or
- (d) any failure by the Provider and/or any sub-contractor to comply with its obligations under TUPE in connection with any transfer to the Authority or new provider.

C15.9. The Authority must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any sub-contractor against any Losses in respect of:

- (a) any failure by the new provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new provider; and/or
- (b) any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service; and/or
- (c) any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service.

APPENDIX A

SERVICE SPECIFICATIONS

Please refer to the individual service specifications.

XXXX have signed up to the following service(s):

A1 - Pharmacy Chlamydia Screening Treatment

A2 - Pharmacy Chlamydia Treatment

A3 - Pharmacy EHC

APPENDIX B

PERFORMANCE REPORTING AND CONTRACT MANAGEMENT ARRANGEMENTS

1. INFORMATION AND PERFORMANCE REPORTING

- 1.1 The Provider must provide the Authority with the Performance and Information Reporting Requirements” of each of the Specifications in Appendix A. The data and information provided will be used to measure the performance, quality, quantity of the Services.
- 1.2 The Provider will submit to the Authority the required information and performance data each quarter in the format requested by the Authority. Examples of the required format are given in Appendix G Claim arrangements. The required information and data will be submitted no later than 15 working days after the quarter end.
- 1.3 The Provider must ensure that the information and data provided is accurate and complete.
- 1.4 In addition to the information and data reporting requirements detailed in the Specifications in Appendix A, the Authority may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

2. SERVICE REVIEW MEETINGS

- 2.1 Either the Authority or the Provider may give notice that a Review Meeting be held if a circumstance arises, that reasonably requires discussion between the Parties. Review meetings may be called to discuss the Provider’s performance, data reporting, payment claims, or any other matter relevant to the delivery of this Contract. The Review Meeting shall be held as soon as practicable and not longer than 2 weeks after the notice has been issued.

3. CONTRACT MANAGEMENT

3.1 Contract Query/ Excusing Notice

- 3.1.1. If the Authority has a concern or query about the:

- the delivery of the specified services;
- the information and/or claims submitted by the Provider
- any other contract management issue

it may issue a Contract Query Notice to the Provider.

- 3.1.2 The Provider may issue an Excusing Notice to the Authority within 5 Business Days of the date of the Contract Query Notice. If the Authority accepts the explanation set out in the Excusing Notice, it will withdraw the Contract Query Notice in writing.

3.2 Contract Management Meeting

- 3.2.1 Unless the Contract Query Notice is withdrawn, the Authority and the Provider must meet to discuss the Contract Query and any related Excusing Notice within 15 Business Days of the date of the Contract Query Notice.

- 3.2.2. At the Contract Management Meeting the Authority and the Provider must agree either:

- that the Contract Query Notice is withdrawn; or
- to implement an appropriate Remedial Action Plan.

If the Provider fails to attend the Contract Management Meeting without providing a good reason for absence such failure shall be deemed to be a material breach of this Contract.

3.3 Remedial Action Plan

- 3.3.1 If a Remedial Action Plan (RAP) is to be implemented, the Authority and the Provider must agree the contents of the RAP within 10 Business Days following the Contract Management Meeting.

- 3.3.2 The Remedial Action Plan will include as appropriate:

- the actions to be undertaken by the Provider to remedy the performance;
- the date by which each action must be completed;
- the performance levels to be achieved by specified milestone dates
- the consequences for failing to meet each action and milestones by the specified date.
- any actions to be undertaken by the Authority, with specified completion dates

3.3.3 The Provider must complete the actions and meet the milestones set out in the Remedial Action Plan within the specified timescales.

3.3.4 The Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis.

3.3.5 If following implementation of a Remedial Action Plan the matters that gave rise to the relevant Contract Query Notice have been resolved, the Remedial Action Plan will be closed.

3.4. Failure to Agree Remedial Action Plan

3.4.1 If the Lead Authority and the Provider cannot agree a Remedial Action Plan within the period specified in clause 3.3.1. the Authority shall prepare a Remedial Action Plan within 10 Business Days which the Provider must implement.

3.5. Breach of a Remedial Action Plan

3.5.1. If the Provider breaches a Remedial Action Plan by failing to complete an action or meet a milestone within the agreed timescale or for any other reason and does not remedy the breach within 5 Business Days of its occurrence the Authority may issue a RAP Breach Notice to the Provider.

3.6. Withholding of Payment for Breach of Remedial Action Plan

3.6.1. If the Provider breaches a Remedial Action Plan and a RAP Breach Notice is issued by the Authority:

- a) the relevant Local Authorities may withhold, in respect of each action or milestone not met, up to 5% of the aggregate monthly sums payable by the Authority from the date of issuing the RAP Breach Notice and for each month the Provider's breach continues, subject to a maximum monthly withholding of 20% of the aggregate monthly sums payable by the relevant Local Authorities;
- b) the relevant Authority must pay the Provider any sums withheld under this clause within 10 Business Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. No interest will be payable in respect of those sums withheld.

3.6.2 If the breach of the Remedial Action Plan is not rectified within the timescales indicated in the RAP Breach Notice, the Authority may retain permanently any sums withheld under clause 3.6.1.

3.6.3 In the event that the Authority is of the reasonable opinion that a breach of the Remedial Action Plan is irremediable the Authority may, without prejudice to its other rights and remedies under this Contract, state such in the RAP Breach Notice and the Authority may permanently retain such sums as may otherwise be withheld.

3.6.4 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of the Contract, the Authority may retain permanently any sums withheld under clause 3.6.1.

3.7. Termination on Default

3.7.1. The Authority has the right to terminate the Agreement forthwith if there are persistent breaches of the performance standards set out in the service specifications in Appendix A.

4. QUALITY AND CONTRACT COMPLIANCE VISITS AND AUDITS

4.4. From time to time a representative of the Authority shall visit the Provider for the purposes of auditing, viewing, observing and inspecting the provision of the Services.

4.5. During such visits the Provider must provide the Authority with all reasonable co-operation and assistance, including:

- all reasonable information requested within the scope of the visit.

- all reasonable information required to audit the services provided
- reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
- access to the Staff.

4.6. The Authority shall use its reasonable endeavours to ensure that the conduct of any visit and/or audit does not unreasonably disrupt the Provider or delay the provision of the Services.

5. INCIDENT REPORTING

5.4. Appendix E sets out the arrangements for reporting Serious Untoward Incidents and Quality Improvement Incidents to the Authority.

5.5. The Provider shall also notify Serious Untoward Incidents to any Regulatory Body as applicable, in accordance with the Law.

5.6. Safeguarding incidents must also be reported in accordance with the safeguarding procedures of the relevant Authority.

APPENDIX C

CONDITIONS PRECEDENT

1. The Provider must provide the Authority with a copy of the Provider's registration with the CQC, where the Provider must be so registered under the Law upon request.
2. The Provider must provide the Authority with a copy of the Provider's certificate of insurance upon request.

APPENDIX D

SAFEGUARDING POLICIES

The Nottingham City Council Safeguarding Adults procedure can be found here:

<https://www.nottinghamcity.gov.uk/information-for-residents/children-and-families/safeguarding-adults/adult-safeguarding-procedures-and-guidance/>

The Nottingham City Council Safeguarding Children procedure can be found here:

<http://nottinghamshirescb.proceduresonline.com/>

APPENDIX E

INCIDENTS REQUIRING REPORTING PROCEDURE

Clauses B11.1 - B11.2 set out the Provider's obligations in respect of reporting incidents to the CQC and other Regulatory Body as applicable, in accordance with the Law.

This Appendix (E) sets out the arrangements for reporting Serious Untoward Incidents and Quality Improvement Incidents to the Authority.

1. Serious Untoward Incident

1.1 Definition:

A serious untoward incident (SUI) is an event or circumstance that could have resulted, or did result, in unnecessary damage, loss or harm such as physical or mental injury to a patient, staff, visitors or members of the public.

An incident investigation is a process to determine the underlying reason for an incident and to identify actions to minimise the likelihood of the event recurring. A root cause analysis investigation should be undertaken.

An SUI requiring investigation is defined as an incident that occurred in relation to services and care resulting in one of the following:

- Unexpected or avoidable death of one or more patients, staff, visitors or members of the public.
- Serious harm to one or more patients, staff, visitors or members of the public or where the outcome requires life-saving intervention, major surgical/medical intervention, permanent harm or will shorten life expectancy or result in prolonged pain or psychological harm (this includes Incidents graded under the NPSA definition of severe harm).
- A scenario that prevents or threatens to prevent a provider organisation's ability to continue to deliver healthcare services, for example, actual or potential loss of personal/organisational information, damage to property, reputation or the environment, or IT failure.
- Allegations of abuse.
- Adverse media coverage or public concern about the organisation or the wider NHS.

1.2 Reporting arrangements:

The Provider is required:

- to report any Serious Untoward Incidents to the Authority using the "SI1 – Initial Report" form included within this appendix. All Serious Untoward Incidents must be reported to the Authority within a maximum of 48 hours.
- to submit further details to the Authority, within 10 days using the "SI2 - Progress / Outcome Investigation Report" form, also included within this appendix.

1.3 Investigation

The details provided in both the SI1 and SI2 will form the basis of any investigation undertaken by the Authority.

The Provider is required to cooperate fully with any investigation undertaken by the Authority and comply with any recommendations arising from it.

2. Quality Improvement Incidents

2.1 Definition:

A Quality Improvement Incident is an event/s or circumstance/s where the quality of a service provided has fallen below an acceptable standard and remedial action is/was required.

Minor or one-off incidents do not need to be reported. (Please note, one-off incidents of a serious nature should be reported as an SUI if they meet the criteria set out above).

If a minor incident reoccurs repeatedly, this should be reported as remedial action will be required.

2.2 Reporting arrangements:

The Provider is required to report any Quality Improvement Incidents to the Authority, as shown in Appendix G.

2.3 Investigation

The Authority will review the information submitted in the Monitoring Return and reserves the right to investigate the incident further if this is deemed appropriate. The Provider is required to cooperate fully with any investigation undertaken by the Authority and comply with any recommendations arising from it.

SI (1) – INITIAL REPORT

Note: Shaded areas MUST be completed

SERIOUS INCIDENT REPORT (SI (1))

Please do not use service user/ patient / staff / public identifiable information

1. Incident Details

Provider Address

[Shaded area]

Location Where Incident Occured:

[Shaded area]

Date of Incident:

[Shaded area]

Time of Incident (If known):

[Shaded area]

Date of Report:

[Shaded area]

Responsible Service Manager: (full name)

[Shaded area]

People Directly Involved In Incident (*service users, patient, public or staff – (only initials to be used. (gender, date of birth and ethnic group of service user/patient only).*)

Is the service user/patient a City resident? Yes / No

2. Nature of incident

Team Involved

[Shaded area]

Is There Media Interest

YES

NO

3. Describe Incident (what has actually happened) including the impact on the individual involved in the incident.

[Large shaded area for incident description]

Service user's last contact with services: **Date**
.....

Service user last seen by: **Date:**
.....

4. Immediate action taken

Please include whether any support to service user/patient/ carers / staff has been undertaken, if appropriate – please describe

[Large greyed-out area for describing immediate actions taken]

Is the individual currently subject to a Child Safeguarding referral?:	Yes	No
As a consequence of this incident has a Child Safeguarding referral been made?	Yes	No
	(Please delete as appropriate)	

Is the individual currently subject to an Adult Safeguarding referral?:	Yes	No
	(Please delete as appropriate)	
As a consequence of this incident has an Adult Safeguarding referral been made?	Yes	No
	(Please delete as appropriate)	

5. Report completed by: *(print name and job title)*

Contact Tel No:

Contact E Mail Address:

6. Please confirm with whom the report has been shared within your organisation

7.
Expected Date Of SI(2) Submission:
(10 working days from the submission of this SI1)

Please confirm date form sent to Commissioners and to whom (please state name)

SI (2) – PROGRESS / OUTCOME INVESTIGATION REPORT

Note: Shaded areas MUST be completed

SERIOUS INCIDENT REPORT (SI (2))

Please do not use service user/patient / staff / public identifiable information

1. Incident Details			
Provider Address:	[Shaded]		
Location Where Incident Occurred:	[Shaded]		
Date of Incident:	[Shaded]	Time of Incident (If known):	[Shaded]
Date of Report:		Time of Report:	
People Involved (<i>Service user, patient, public or staff – provide <u>only initials, (gender date of birth and ethnic group of service user/patient only)</u></i>)			
1. Is the service user/patient a City resident? Yes / No			
2. Social context / Background of individual			
3. Brief description of incident			
4. Brief chronology of individual's contact with the service			
5. Details of latest contact (Including any actions / care plans)			
6. Details of risk assessment and risk management plan			
7. Method of investigation			
8. Immediate support offered to relatives, other service users, patients and staff, if applicable (please give details)			
9. Were there any contributory factors?			
10. What are the lessons learnt?			

11. Actions planned / undertaken

Is the individual currently subject to a child safeguarding referral?:	Yes	No
	(Please delete as appropriate)	
As a consequence of this incident has a child safeguarding referral been made?	Yes	No
	(Please delete as appropriate)	

Is the individual currently subject to an adult safeguarding referral?:	Yes	No
	(Please delete as appropriate)	
As a consequence of this incident has an adult safeguarding referral been made?	Yes	No
	(Please delete as appropriate)	

Please do not forget to complete the action plan below if any actions are identified.

12. Report Made By:	<input type="text"/>	<i>(print name and job title)</i>
Contact Tel No:	<input type="text"/>	
Contact E Mail Address:	<input type="text"/>	

ACTION PLAN: TITLE TO BE ADDED

Service User's initials:		Date of incident:	Provider incident reference number:
Lead:	Date proposed action plan agreed within your organisation:		
<u>Relevant details related to incident:</u>			

Action status: Action achieved Action on target for completion No action commenced
 Recommendation level status: I = Individual T = Team D = Directorate O = Organisation

Recommendations based on root cause / contributing factors	Action agreed	Recommendation level	Lead	Timescales		Progress comments	Status
				Planned start date	Planned end date		

APPENDIX F

NOT USED

APPENDIX G

CLAIM ARRANGEMENTS

The Provider shall claim for payment from the Authority at the end of each three-month period and shall submit a claim in accordance with the process below.

All activity must be entered on the Neo360 pharmacy online data management system. All data must be entered by the deadlines listed below.

Services Activity Provided in These Months	Deadline For Entering Activity On Pharmoutcomes
Quarter 1 April - June	10 th July
Quarter 2 July - Sept	10 th October
Quarter 3 October - December	10 th January
Quarter 4 January - March	10 th April

Monitoring Data

All claims must be supported by the required monitoring information as detailed below. These requirements are also set out in the individual service specifications. Failure to provide this information may result in payments being withheld.

- Partial postcode of each client
- Age of each client
- Ethnicity of each

APPENDIX H

NOT USED

APPENDIX I

DISPUTE RESOLUTION PROCESS

1. ESCALATED NEGOTIATION

1.1 Except to the extent that any injunction is sought relating to a matter arising out of clause B35 (*Confidentiality*), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the 15 Business Days following receipt of the first such offer (the “**Negotiation Period**”) each of the Parties shall negotiate in good faith and be represented:

1.1.1 for the first 10 Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter that led to the Dispute and has authority to settle the Dispute; and

1.1.2 for the last 5 Business Days, by its chief executive, director, or board member who has authority to settle the Dispute,

provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

2. MEDIATION

2.1 If the Parties are unable to settle the Dispute by negotiation, they must within 5 Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties.

2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.

2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

3. EXPERT DETERMINATION

3.1 If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within 10 Business Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.

3.2 If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.

- 3.3 Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.
- 3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.

- 3.5 The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within 5 Business Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.
- 3.6 The Expert must produce a written decision with reasons within 30 Business Days of receipt of the statement of case referred to in paragraph 1.9, or any longer period as is agreed by the Parties after the Dispute has been referred.
- 3.7 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 3.8 The Parties must comply with any request or direction of the Expert in relation to the expert determination.
- 3.9 The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties and the Expert agree are within the scope of the expert determination. The Expert must send his decision in writing simultaneously to the Parties. Within 5 Business Days following the date of the decision the Parties must provide the Expert and each other with any requests to correct minor clerical errors or ambiguities in the decision. The Expert must correct any minor clerical errors or ambiguities at his discretion within a further 5 Business Days and send any revised decision simultaneously to the Parties.
- 3.10 The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- 3.11 The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, or material breach of instructions on the part of the Expert at which point a Party will be permitted to apply to Court for an Order that:
- 3.11.1 the Expert reconsider his decision (either all of it or part of it); or
- 3.11.2 the Expert's decision be set aside (either all of it or part of it).
- 3.12 If a Party does not abide by the Expert's decision the other Party may apply to Court to enforce it.
- 3.13 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 3.14 The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.
- 3.15 The Expert is appointed to determine the Dispute or Disputes between the Parties and his decision may not be relied upon by third parties, to whom he shall have no duty of care.

APPENDIX J
SUCCESSION
PLAN

To be agreed in accordance with
Clause B32.2

Appendix K

Definitions and Interpretation

1. The headings in this Contract shall not affect its interpretation.
2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
4. References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.
5. References to anybody, organisation or office shall include reference to its applicable successor from time to time.
6. Any references to this Contract or any other documents includes reference to this Contract or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.
7. Use of the singular includes the plural and vice versa.
8. The following terms shall have the following meanings:

Activity means any levels of clinical services and/or Service User flows set out in a Service Specification

Authorised Person means the Authority and anybody or person concerned with the provision of the Service or care of a Service User

Authority Representative means the person identified in clause A4.1 (*Representatives*) or their replacement

Best Value Duty means the duty imposed by section 3 of the Local Government Act 1999 (the **LGA 1999**) as amended, and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to any applicable guidance issued from time to time

Board of Directors means the executive board or committee of the relevant organisation In relation to Clause B29, Board of Directors means the "Board of Directors or equivalent authorised officer

Business Continuity Plan means the Provider's plan referred to in Clause B34.2 (*Business Continuity*) relating to continuity of the Services, as agreed with the Authority and as may be amended from time to time

Business Day means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London

Caldicott Guardian means the senior health professional responsible for safeguarding the confidentiality of patient information

Care Quality Commission or CQC means the care quality commission established under the Health and Social Care Act 2008

Carer means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage

CEDR means the Centre for Effective Dispute Resolution

Charges means the charges which shall become due and payable by the Authority to the Provider in respect of the provision of the Services in accordance with the provisions of this Contract, as such charges are set out in the service specifications in Appendix A

Commencement Date means the date identified in clause A3.1 (*Commencement and Duration*)

Competent Body means anybody that has authority to issue standards or recommendations with which either Party must comply

Conditions Precedent means the conditions precedent, if any, to commencement of service delivery referred to in clause A3.2 (*Commencement and Duration*) and set out in Appendix C (*Conditions Precedent*)

Confidential Information means any information or data in whatever form disclosed, which by its nature is confidential or which the Disclosing Party acting reasonably states in writing to the Receiving Party is to be regarded as confidential, or which the Disclosing Party acting reasonably has marked 'confidential' (including, without limitation, financial information, or marketing or development or work force plans and information, and information relating to services or products) but which is not Service User Health Records or information relating to a particular Service User, or Personal Data, pursuant to an FOIA request, or information which is published as a result of government policy in relation to transparency

Consents means:

- (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or
- (ii) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract

Contract has the meaning given to it in clause A1.1 (*Contract*)

Contract Query means:

- (i) a query on the part of the Authority in relation to the performance or non-performance by the Provider of any obligation on its part under this Contract; or
- (ii) a query on the part of the Provider in relation to the performance or non-performance by the Authority of any obligation on its part under this Contract
- (iii) a Contract Query can be in the form of a question, statement, request or inquiry as appropriate

Contract Query Notice means

- (i) a Notice setting out in reasonable detail the nature of a Contract Query;

- (ii) a Contract Query Notice can also be a notice of improvement
- (iii) a Contract Query Notice shall be automatically issued by the Authority where a service's performance against their Currency falls below 80%.
- (iv) a Contract Query Notice may be issued by the Authority where a service's performance against some or all of their Quality Outcomes Indicators falls below 80%.
- (v) a Contract Query Notice may be issued where performance against either the Currency or Quality Outcome Indicator falls below 100% and the Authority is of the opinion that a material impact on the delivery of the service may occur or has occurred.

- (vi) The Authority reserves the right to interpret consistent and significant underperformance as a material breach of the Contract under clause B28 without prejudice to all its rights under clause B28.

Quality Outcomes Indicators means the agreed milestones, currency indicators, performance indicators and outcomes to be achieved as set out in sections 7, 8 and 9 of the individual service specifications

Contract Management Meeting means a meeting of the Authority and the Provider held in accordance with clause B29.8 (*Contract Management*)

CQC Regulations means the Care Quality Commission (Registration) Regulation 2009

Currency means unit of output, activity or healthcare, which is paid for by commissioners. Each service has a minimum Currency target to achieve each quarter/year.

Data Controller has the meaning set out in the Data Protection Legislation

Data Subject has the meaning set out in the Data Protection Legislation

DBS means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012

Default means any breach of the obligations of the Provider (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the Provider or the Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Provider is liable to the Authority

Disclosing Party means the Party disclosing Confidential Information

Dispute means a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Contract

Data Protection Legislation means for the periods in which they are in force in the United Kingdom, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practices)(Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, Data Protection Act 2018, the UK GDPR and all applicable laws and regulations relating to processing of personal data and privacy including all applicable guidance, codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time.

“EIR” The Environmental Information Regulations 2004.

Employment Checks means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks

Enhanced DBS & Barred List Check means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate)

Enhanced DBS & Barred List Check (child) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list

Enhanced DBS & Barred List Check (adult) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult's barred list

Enhanced DBS & Barred List Check (child & adult) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's and adult's barred list

Enhanced DBS Check means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for

Enhanced DBS Position means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted

Equipment means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under this Contract

Excusing Notice means a notice setting out in reasonable detail the Receiving Party's reasons for believing that a Contract Query is unfounded, or that the matters giving rise to the Contract Query are:

- (i) due wholly or partly to an act or omission by the Issuing Party; or
- (ii) a direct result of the Receiving Party following the instructions of the Issuing Party; or
- (iii) due to circumstances beyond the Receiving Party's reasonable control but which do not constitute an event of Force Majeure

Expert means the person designated to determine a Dispute by virtue of paragraphs 1.6 or 1.7 of Appendix J (*Dispute Resolution*)

Expert Determination Notice means a notice in writing showing an intention to refer Dispute for expert determination

Expiry Date means the date set out in clause A3.3 (*Commencement and Duration*)

First Exception Report means a report issued in accordance with clause B29.21 (*Contract Management*) notifying the relevant Party's chief executive and/or Board of Directors of that Party's breach of a Remedial Action Plan and failure to remedy that breach

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004

Force Majeure means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (i) any industrial action occurring within the Provider's or any Sub-contractor's organisation; or
- (ii) the failure by any Sub-contractor to perform its obligations under any Sub-contract

Fraud means any offence under the laws of the United Kingdom creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts or defrauding or attempting to defraud or conspiring to defraud the Authority

General Conditions has the meaning given to it in clause A1.1 (b) (*Contract*)

UK GDPR

Means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and any other and subsequent amendments

Good Clinical Practice means using standards, practices, methods and procedures conforming to the Law, the Duty of Candour (*Appendix M*) and relevant Clinical Guidelines including those set out in the Service Specifications and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider, or a person providing services the same as or similar to the Services, at the time the Services are provided, as applicable

Guidance means any applicable local authority, health or social care guidance, direction or determination which the Authority and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006

Heads of Agreement means work to be completed by the parties during the contract.

Immediate Action Plan means a plan setting out immediate actions to be undertaken by the Provider to protect the safety of Services to Service Users, the public and/or Staff

Indirect Losses means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis

Issuing Party means the Party which has issued a Contract Query Notice

JI Report means a report detailing the findings and outcomes of a Joint Investigation

Joint Investigation means an investigation by the Issuing party and the Receiving Party into the matters referred to in a Contract Query Notice

Law means:

- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (ii) any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
- (iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- (iv) National Standards;
- (v) Guidance; and
- (vi) any applicable industry code

in each case in force in England and Wales

Legal Guardian means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs

Lessons Learned means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider's provision of the Services

LIBOR means the London Interbank Offered Rate for 6 months sterling deposits in the London market

Local HealthWatch means the local independent consumer champion for health and social care in England

Losses means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses

National Institute for Health and Clinical Excellence or **NICE** means the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body)

National Standards means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time

Negotiation Period means the period of 15 Business Days following receipt of the first offer

NHS Act 2006 means the National Health Service Act 2006

Parties means the Authority and the Provider and “Party” means

either one of them **Personal Data** has the meaning set out in the

Data Protection Legislation **Prohibited Acts** has the meaning given

to it in clause B38.1 (*Prohibited Acts*)

Provider Representative means the person identified in clause A4.2 (*Representatives*) or their replacement

Provider’s Premises means premises controlled or used by the Provider for any purposes connected with the provision of the Services which may be set out or identified in a Service Specification

Public Authority means as defined in section 3 of the FOIA

Quality Improvement Incident means an event/s or circumstance/s where the quality of a service provided has fallen below an acceptable standard and remedial action is/was required.

Quality Outcomes Indicators means the agreed milestones, key performance indicators and outcomes to be achieved as set out in sections 7, 8 and 9 of the individual service specifications

Receiving Party means the Party which has received a Contract Query Notice or Confidential Information as applicable

Regulatory Body means anybody other than CQC carrying out regulatory functions in relation to the Provider and/or the Services

Remedial Action Plan means a plan to rectify a breach of or performance failure under this Contract specifying targets and timescales within which those targets must be achieved

Required Insurances means the types of policy or policies providing levels of cover as specified in Section C.

Review Meeting means a meeting to be held in accordance with clause B19 (*Review Meetings*) or as otherwise requested in accordance with clause B19.2 (*Review*

Meetings). Contract wide meetings to discuss delivery and performance on a wider level as well as any relevant contractual issues (i.e. contract variations).

Safeguarding Policies means the Provider's written policies for safeguarding children and adults, as amended from time to time, and as may be appended at Appendix D (*Safeguarding Children and Vulnerable Adults*)

Second Exception Report means a report issued in accordance with clause B29.22 (*Contract Management*) notifying the recipients of a breach of a Remedial Action Plan and the continuing failure to remedy that breach

Serious Untoward Incident means an event or circumstance that could have resulted, or did result, in unnecessary damage, loss or harm such as physical or mental injury to a patient, staff, visitor or member of the public, as defined in Appendix E.

Service Commencement Date means the date set out in clause A3.2 (*Commencement and Duration*)

Service Review Meeting means a meeting to be held in accordance with clause B18 (*Service Review Meetings*) or as otherwise requested in accordance with clause B19 (*Review Meetings*). Service level meeting to discuss individual service delivery and performance.

Service Specification means each of the service specifications defined by the Authority and set out at Appendix A (*Service Specifications*)

Service User means the person directly receiving the Services provided by the Provider as specified in the Service Specifications and includes their Carer and Legal Guardian where appropriate

Service Monitoring and Claim Form means a report as described in Appendix G (*Service Monitoring and Claim Form*)

Services means the services (and any part or parts of those services) described in each of, or, as the context admits, all of the Service Specifications, and/or as otherwise provided or to be provided by the Provider under and in accordance with this Contract

Special Conditions has the meaning given to it in clause A1.1(c) (*Contract*)

Staff means all persons employed by the Provider to perform its obligations under this Contract together with the Provider's servants, agents, suppliers and Sub-contractors used in the performance of its obligations under this Contract

Standard DBS Check means a disclosure of information which contains certain details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions

Standard DBS Position means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted

Sub-contract means a contract approved by the Authority between the Provider and a third party for the provision of part of the Services

Sub-contractor means any third party appointed by the Provider and approved by the Authority under clause B23.1 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

Succession Plan means a plan agreed by the Parties to deal with transfer of the Services to an alternative provider following expiry or termination of this Contract as set out at Appendix K (*Succession Plan*)

Successor Provider means any provider to whom a member of Staff is transferred pursuant to TUPE in relation to the Services immediately on termination or expiry of this Contract

Transfer of and Discharge from Care Protocols means the protocols set out in Appendix F (*Transfer and Discharge from Care Protocols*)

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations

2006

VAT means value added tax in accordance with the provisions of the Value Added Tax Act 1994

Variation means a variation to a provision or part of a provision of this Contract

Variation Notice means a notice to vary a provision or part of a provision of this Contract issued under clause B22.2 (*Variations*).

Appendix L

Duty of Candour

1. If a Serious Untoward Incident occurs or is suspected to have occurred the Provider must:
 - 1.1. provide to the Service User and to any other Relevant Person all necessary support and all relevant information in relation to that incident;
 - 1.2. as soon as practicable, instigate and conduct a full investigation into the Serious Untoward Incident in accordance with the Incidents Requiring Reporting Procedure and Guidance;
 - 1.3. as soon as practicable, but in any event within 10 Operational Days after reporting the Serious Untoward Incident in accordance with clause B3, notify the Relevant Person that the Serious Untoward Incident has occurred or is suspected to have occurred (as appropriate). The notification must:
 - 1.3.1 be verbal, and conducted in person by one or more representatives of the Provider, including where possible the clinician responsible for the episode of care during or as a result of which the Serious Untoward Incident occurred, unless the Service User cannot be contacted in person or declines to be contacted;
 - 1.3.2 provide all facts the Provider knows about the incident as at the date of the notification;
 - 1.3.3 include an appropriate apology;
 - 1.3.4 be accompanied by the offer of a written notification; and
 - 1.3.5 be recorded in writing for audit purposes in accordance with Guidance;
 - 1.4 as soon as practicable, offer to the Relevant Person (and, if that offer is accepted, provide) a step-by-step explanation of the events and circumstances which resulted in the Serious Untoward Incident and any other pertinent information, which must be updated regularly and promptly as the investigation proceeds;
 - 1.5 within 10 Operational Business Days following the investigation undertaken in accordance with Clause B3 being signed-off as complete by the Party or other organisation which commissioned the investigation, provide the Relevant Person with a copy of the investigation report;
 - 1.6 in determining the manner and form of and in delivering the notification, appropriate apology and explanation as referred to above, the Provider must have due regard to its obligations under clause B5 (*Equity of Access, Equality and Non-Discrimination*);
 - 1.7 record for audit purposes any refusal by the Relevant Person of a meeting or other contact or information in relation to the Serious Untoward Incident; and

1.8. maintain full written records of any meeting or other contact with the Relevant Person in relation to the Serious Untoward Incident, in accordance with Guidance.

2. If a complaint received by the Provider from or on behalf of:

2.1 a Relevant Person;

2.2 a Commissioner;

2.3 Local Healthwatch; or

2.4 any Healthcare Professional involved in the care of the relevant Service User,

relates to or includes reference to a failure to disclose a Serious Untoward Incident to that Relevant Person, the Provider must notify the Co-ordinating Commissioner accordingly in writing, providing full details of that complaint.

3. If the Provider fails to comply with any of its obligations under Duty of Candour the Co-ordinating Commissioner may:

3.1. notify the CQC of that failure; and/or

3.2. require the Provider to provide the Relevant Person with a formal, written apology and explanation for that failure, signed by the Provider's chief executive and copied to the relevant Commissioner; and/or

3.3. require the Provider to publish details of that failure prominently on the Provider's website.