



## TORBAY COUNCIL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

### *Contract between*

#### The Authority

**Torbay Council of Town Hall, Torquay, Devon, TQ1 3DR**

### *And*

#### The Provider

**[Insert name, registered office address and, where applicable, the company number of the Provider]**

### *Date*

**[Insert the date when signed by both parties]**

### *Service Commencement Date*

**[Insert the date on which the Services shall commence]**

### *Summary of Services*

**[Insert a summary of the Services to be supplied by the Provider]**

This Contract is made on the date set out above subject to the terms set out in the schedules listed below (**Schedules**). The Authority and the Provider undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Provider shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

### **Schedules**

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Terms
<b>Schedule 3</b>	Definitions and Interpretations
<b>Schedule 4</b>	Specification
<b>Schedule 5</b>	Conditions Precedent
Error! Reference source not found.	Quality Outcomes Indicators

<b>Schedule 7</b>	Provider's Tender Response Document
<b>Schedule 8</b>	Payment Schedule
<b>Schedule 9</b>	Exit Management Schedule
<b>Schedule 10</b>	Exit Plan
<b>Schedule 11</b>	TUPE
<b>Schedule 12</b>	Evidence of Insurance
<b>Schedule 13</b>	Change Control
<b>Schedule 14</b>	Service User, Carer and Staff Surveys
Error! Reference source not found.	Authority Assets and Leases
<b>Schedule 16</b>	Incidents Requiring Reporting Procedure
Error! Reference source not found.	Performance and Contract Management
Error! Reference source not found.	Transfer of and Discharge from Care Protocols / Not Used
Error! Reference source not found.	Business Continuity Plan
<b>0</b>	Data Processing Agreement

Executed as a deed by affixing the common seal Torbay Council in the presence of:

.....

Name

Position

COMMON SEAL

**Signed by the Authorised Representative of THE SUPPLIER**

Name:		Signature	
Position:			

## Schedule 1. Key Provisions

### Background

- (A) The Authority published a contract notice with contract reference **[insert the contract notice reference that will be found on the Authority's contract notice for this Contract]** on **[insert date that the contract notice was published]** in the Official Journal of the European Union seeking expressions of interest from potential providers for **[insert a brief description of the Services to be provided by the Provider]**. **[Note: amend this background paragraph if a contract notice was not published in the OJEU or if the Authority published a PIN as a call for competition]**
- (B) The Authority has, through a competitive process, selected the Provider to provide these services and the Provider is willing and able to provide the services in accordance with the terms and conditions of this Contract.
- (C) Documents that form part of this Contract are
- (i) the completed tender documents including the Specification, Provider Tender Response Payment Schedule, and any other supporting documentation; and
  - (ii) the Front Sheet and its associated Schedules.

### Standard Key Provisions

#### 1 Application of the Key Provisions

- 1.1 The standard Key Provisions at clauses 1 to 5 of these Key Provisions shall apply to this Contract.
- 1.2 The optional Key Provisions at clauses 6 to 19 of these Key Provisions shall apply to this Contract if they are set out in the section below. The tick boxes are purely for administrative purposes and have no bearing on the terms of this Contract
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

#### 2 Term

- 2.1 This Contract shall take effect on the Commencement Date and shall continue for the Term unless terminated early or extended as appropriate in accordance with the terms conditions or clauses of this Contract.
- 2.2 The Initial Term shall be the period commencing on the Commencement Date and ending **[insert proposed end date of the Contract]** unless terminated in advance of this date.

#### 3 Authorised Representatives

- 3.1 At the commencement of this Contract:
- (a) the Authority Authorised Representative is:  
**[insert name and role of the Authority's Authorised Representative]**
  - (b) the Provider Authorised Representative is:

**[insert name and role of the Provider's Authorised Representative].**

#### **4 Names and Addresses for Notices**

4.1 Notices served under this Contract are to be delivered to:

(a) for the Authority:

**[complete name and/or role (this is normally going to be the Authorised Representative identified at 3.1(a) above) and postal address that they shall be contacted at – please note the address may be different to the registered office address of the Authority above]**

**[insert e-mail address of the person identified above]**

(b) for the Provider:

**[complete name and/or role (this is normally going to be the Authorised Representative identified at 3.1(b) above and postal address that they shall be contacted at – please note the address may be different to the registered office address of the Provider above].**

**[insert e-mail address of the person identified above]**

#### **5 Order of Precedence**

5.1 Should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

- (a) the provisions of the Front Sheet of this Contract;
- (b) Schedule 1 Key Provisions;
- (c) Schedule 4: Specification;
- (d) Schedule 8: Payment Schedule;
- (e) Schedule 2: General Terms;
- (f) Schedule 7: Provider's Tender Response Document
- (g) Schedule 11: TUPE;
- (h) Schedule 3: Definitions and Interpretations; and
- (i) the order in which all subsequent schedules, if any, appear.

#### **Optional Key Provisions**

<input type="checkbox"/>	<b>6 Not Used</b>
<input type="checkbox"/>	<b>7 Not Used</b>
<input checked="" type="checkbox"/>	<b>8 Insurance</b> 8.1 In the event that this clause applies, the following shall amend the wording of clause 15.2 of the General Terms:

	<p>(a) public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;</p> <p>(b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and</p> <p>(c) professional indemnity insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover; and</p> <p>(d) medical negligence insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and</p> <p>(e) any insurances required in relation to the sites from which the services are delivered,</p> <p>(the <b>Required Insurances</b>). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.</p> <p>8.2 Insurance requirements shall be reviewed as and when any additional service requirements are added to the Contract.</p>
<input checked="" type="checkbox"/>	<p><b>9 Termination on Notice</b></p> <p>9.1 In the event that this clause applies, the following addition shall be made to clause 22 of the General Terms as clause 22.3:</p> <p>9.2 The period of notice given in the event clauses 22.1 or 22.2 are invoked shall be appropriate to the circumstances that have led to the termination and sufficient to enable an orderly transition of provision to an alternative provider.</p>
<input checked="" type="checkbox"/>	<p><b>10 Step-in Rights</b></p> <p>10.1 The Authority may take action under this clause in the following circumstances:</p> <p>(a) an event occurs entitling the Authority to terminate in accordance with clause 21 of the General Terms;</p> <p>(b) there is a breach by the Provider of its obligations that is materially preventing or materially delaying the performance of the Services or any part of the Services;</p>

	<p>(c) there is a delay that has or the Authority reasonably anticipates will result in the Provider's failure to provide any aspect of the Services by an agreed date;</p> <p>(d) a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part of the Services;</p> <p>(e) where the Provider is not in breach of its obligations under this Contract but the Authority considers that the circumstances constitute an emergency;</p> <p>(f) because a serious risk exists to the health or safety of persons, property or the environment;</p> <p>(g) to discharge a statutory duty; and/or</p> <p>(h) on the occurrence of an Insolvency Event in respect of the Provider.</p> <p><b>Action to be taken prior to exercise of the right to step in</b></p> <p>10.2 Before the Authority exercises its right of step-in under this clause 10 it shall permit the Provider the opportunity to demonstrate to the Authority's reasonable satisfaction within 14 Working Days that the Provider is still able to provide the Services in accordance with the terms of this Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Authority to take action.</p> <p>10.3 If the Authority is not satisfied with the Provider's demonstration pursuant to clause 10.2, the Authority may:</p> <p>(a) where the Authority considers it expedient to do so, require the Provider by notice in writing to take those steps that the Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Authority's right to step-in;</p> <p>(b) appoint any person to work with the Provider in performing all or a part of the Services (including those provided by any Sub-Contractor); or</p> <p>(c) take the steps that the Authority considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-Contractor).</p> <p>10.4 The Provider shall co-operate fully and in good faith with the Authority, or any other person appointed in respect of clause 10.3(b) and shall adopt any reasonable methodology in providing the Services recommended by the Authority or that person.</p> <p><b>Exercise of the right of step in</b></p> <p>10.5 If the Provider:</p>
--	---

	<p>(a) fails to confirm within 10 Working Days of a notice served pursuant to clause 10.3(a) that it is willing to comply with that notice; or</p> <p>(b) fails to work with a person appointed in accordance with clause 10.3(b); or</p> <p>(c) fails to take the steps notified to it by the Authority pursuant to clause 10.3(c),</p> <p>then the Authority may take action under this clause either through itself or with the assistance of third party contractors, provided that the Provider may require any third parties to comply with a confidentiality undertaking equivalent to clause 18 of the General Terms.</p> <p>10.6 If the Authority takes action pursuant to clause 10.5, the Authority shall serve notice (<b>Step-in Notice</b>) on the Provider. The Step-in Notice shall set out the following:</p> <p>(a) the action the Authority wishes to take and in particular the Services it wishes to control;</p> <p>(b) the reason for and the objective of taking the action and whether the Authority reasonably believes that the primary cause of the action is due to the Provider's default;</p> <p>(c) the date it wishes to commence the action;</p> <p>(d) the time period which it believes will be necessary for the action;</p> <p>(e) whether the Authority will require access to the Provider's premises;</p> <p>(f) to the extent practicable, the effect on the Provider and its obligations to provide the Services during the period the action is being taken.</p> <p>10.7 Following service of a Step-in Notice, the Authority shall:</p> <p>(a) take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the <b>Required Action</b>);</p> <p>(b) keep records of the Required Action taken and provide information about the Required Action to the Provider;</p> <p>(c) co-operate wherever reasonable with the Provider in order to enable the Provider to continue to provide any Services in relation to which the Authority is not assuming control; and</p> <p>(d) act reasonably in mitigating the cost that the Provider will incur as a result of the exercise of the Authority's rights under this clause.</p>
--	--



	<p>10.8 For so long as and to the extent that the Required Action is continuing, then:</p> <ul style="list-style-type: none"> <li>(a) the Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;</li> <li>(b) subject to clause 10.9, the Authority shall pay to the Provider the Charges after any applicable deductions in accordance with the terms of this Contract and the Authority's costs of taking the Required Action.</li> </ul> <p>10.9 If the Required Action results in:</p> <ul style="list-style-type: none"> <li>(a) the degradation of any Services not subject to the Required Action; or</li> <li>(b) the failure for the Services to be provided by an agreed date, beyond that which would have been the case had the Authority not taken the Required Action, then the Provider shall be entitled to an agreed adjustment of the Charges, provided that the Provider can demonstrate to the reasonable satisfaction of the Authority that the Required Action has led to the degradation or non-achievement.</li> </ul> <p>10.10 Before ceasing to exercise its step in rights under this clause the Authority shall deliver a written notice to the Provider (<b>Step-Out Notice</b>), specifying:</p> <ul style="list-style-type: none"> <li>(a) the Required Action it has actually taken; and</li> <li>(b) the date on which the Authority plans to end the Required Action (<b>Step-Out Date</b>) subject to the Authority being satisfied with the Provider's ability to resume the provision of the Services and the Provider's plan developed in accordance with clause 10.11.</li> </ul> <p>10.11 The Provider shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (<b>Step-Out Plan</b>) relating to the resumption by the Provider of the Services, including any action the Provider proposes to take to ensure that the affected Services satisfy the requirements of this Contract.</p> <p>10.12 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Provider of its reasons for not approving it. The Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.</p> <p>The Provider shall bear its own costs in connection with any step-in by the Authority under this clause 10.</p>
--	---

<input checked="" type="checkbox"/>	<p><b>11 Exit Management and Consequences of Termination</b></p> <p>11.1 The parties shall comply with the provisions of Schedule 9 in relation to orderly transition of the Services to the Authority or a Replacement Provider.</p>
<input type="checkbox"/>	<p><b>12 Not Used</b></p>
<input checked="" type="checkbox"/>	<p><b>13 Extending the Initial Term</b></p> <p>13.1 The Authority may extend this Contract beyond the Initial Term by a further period or periods of up to <b>4 years (Extension Period)</b>, awarded in increments of up to <b>2 years</b>. If the Authority wishes to extend this Contract, it shall give the Provider at least <b>3 months'</b> written notice of such intention before the expiry of the Initial Term or Extension Period.</p> <p>13.2 If the Authority or any individual member of the Authority gives such notice then the Term shall be extended by the period set out in the notice.</p> <p>13.3 If the Authority does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and clause 11 of the Key Provisions shall apply.</p>
<input checked="" type="checkbox"/>	<p><b>14 Business Continuity and Disaster Recovery</b></p> <p>14.1 The Provider shall ensure there are full business continuity and disaster recovery arrangements in place for all systems in use and services provided. Such arrangements will be tested in liaison with the Authority on at least an annual basis.</p> <p>14.2 The Provider shall ensure that contingency procedures are in place for system failure to ensure both continuous service for service users and that databases are backed up and recoverable.</p> <p>14.3 The Provider shall prepare a draft business continuity plan relating to its provision of the Services and submit that plan to the Authority for its approval at least <b>10 working days</b> prior to the Commencement Date.</p> <p>14.4 The draft business continuity plan shall:</p> <ul style="list-style-type: none"> <li>(a) address how the Provider will respond to: <ul style="list-style-type: none"> <li>(i) staff illness, including epidemic/pandemics;</li> <li>(ii) adverse weather conditions affecting staff attendance, access to local provider base(s), etc.;</li> <li>(iii) strikes;</li> <li>(iv) business premises, including what alternative locations are available to continue service provision in the event any designated premises becomes unusable, what procedures are in place for transfer of service delivery to alternative premises and how the change will be communicated to service users.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>(v) telephony and email communications, including what back-up services / procedures are in place following any failures;</li> <li>(vi) ICT failures (due to fire, flood, power failure, database corruption, etc.) and destruction or loss of hardware, software or data, including back-ups, secure off-site data storage and Recovery Point Objective (RPO) alternative servers, hardware and infrastructure (Recovery of provider system(s));</li> <li>(vii) vandalism / theft to any property of the Provider, critical to the provision of the Service;</li> <li>(viii) fleet transport (if applicable), including lack of provision due to extended breakdowns, accident damage, mass vandalism, etc.;</li> <li>(ix) hazardous material spill incidents (if applicable);</li> <li>(x) acts of terrorism or civil unrest;</li> <li>(xi) Force majeure;</li> <li>(xii) Business processes, including the contingencies that are in place to ensure optimum provision of service.</li> </ul> <p>(b) clearly set out roles and responsibilities for delivery and will include a detailed and staged plan to restore services in the event of a disaster situation within an agreed timescale.</p> <p>(c) detail how and when the Provider will test its business continuity plan.</p> <p>14.5 The Authority shall within a reasonable time provide its comments on the Provider's draft business continuity plan, and if necessary, the parties shall discuss the Authority's comments and the Provider shall then promptly prepare a revised draft business continuity plan which addresses the Authority's comments and submit it to the Authority for approval within <b>30 days</b> of receipt of the Authority's comments provided under this clause 14.5. This process shall be repeated until the Authority approves the business continuity plan in writing.</p> <p>14.6 Once the Authority has approved the Provider's draft business continuity plan in writing it will form part of this Contract and the Provider shall perform its obligations under the approved business continuity plan.</p> <p>14.7 The Provider shall review its business continuity plan at least every <b>12 months</b> and update it as necessary to reflect any changes in the way the Provider carries on business or provides the Services, any changes made to any aspect of this Contract or any other changes required as a result of changes by the Authority to its business continuity requirements.</p>
<input type="checkbox"/>	<b>15 Not Used</b>

<input checked="" type="checkbox"/>	<p><b>16      Safeguarding Children and Vulnerable Adults</b></p> <p>16.1 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.</p> <p>16.2 The Provider shall:</p> <ul style="list-style-type: none"> <li>(a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;</li> <li>(a) monitor the level and validity of the checks under this clause 16 for each member of staff;</li> <li>(b) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.</li> </ul> <p>16.3 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.</p> <p>16.4 The Provider shall sign up to the Authority's internal safeguarding policies and shall ensure that the Services are carried out in accordance with these policies at all times.</p> <p>16.5 The Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 16 have been met.</p> <p>16.6 The Provider shall refer information about any person carrying out the Services to the Disclose and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children, or vulnerable adults.</p> <p>16.7 The Provider shall comply with the requirements set out in the Specification in relation to involvement and engagement with the Torbay Safeguarding Children Board.</p>
<input type="checkbox"/>	<p><b>17      Not Used</b></p>

<input checked="" type="checkbox"/>	<p><b>18 Continuous Improvement</b></p> <p>18.1 The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Provider shall identify and report to the Authority's Authorised Representative for the remainder of the Term on:</p> <ul style="list-style-type: none"> <li>(a) the emergence of new and evolving relevant technologies which could improve the Services;</li> <li>(a) new or potential improvements to the Services; and</li> <li>(b) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Authority.</li> </ul> <p>18.2 Any potential Changes highlighted as a result of the Provider's reporting in accordance with clause 18.1 shall be addressed by the parties using the Change Control Procedure.</p>
<input type="checkbox"/>	<p><b>19 Not Used</b></p>
<input checked="" type="checkbox"/>	<p><b>20 Quality Control</b></p> <p>20.1 It shall be the duty of the Provider well and properly to provide the Service to a standard which is in all respects to the reasonable satisfaction of the Authority and to comply in all respects with the Contract.</p> <p>20.2 The Provider shall ensure that neither it, nor any of its Staff or sub-contractors embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in or permitting any political activities on Authority premises or by any other act or omission relating to the performance of the Services which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Provider's obligations under this Agreement.</p> <p>20.3 The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services.</p> <p>20.4 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, Ofsted 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 34 of the Additional Key Provisions.</p>

	<p>20.5 The Provider shall deal with any complaints received (whether oral or written whether from the Authority or others) in a prompt, courteous and efficient manner and in accordance with its complaints procedure (a copy of which is available to the Authority upon demand).</p> <p>20.6 Unresolved complaints received or referred to the Authority may be investigated by the Authority, possibly making use of the Authority's own complaints procedure, which may, where it considers it appropriate, issue a Default Notice to the Provider.</p> <p>20.7 The Provider shall throughout the Contract Period institute and maintain a properly documented system of quality control designed to ensure that the Services are provided at all times and in all respects in accordance with the Contract. Such a system shall</p> <ul style="list-style-type: none"> <li>(a) include daily supervision and the carrying out of frequent inspections of buildings, sites and locations at which the Services are to be provided and equipment;</li> <li>(b) used by the Provider; and</li> <li>(c) ensure the recording of any complaints received in connection with the provision or failure to provide the Service, (whether received orally or in writing and whether from members of the public or others) detailing the nature of the complaint, the name of the complainant, the time and date it was received, the action taken by the Provider in respect of each such complaint, and the names of the Provider's staff involved in the action complained of and its remedy.</li> </ul> <p>20.8 The system maintained by the Provider in accordance with this condition shall be in addition to, and shall not prejudice:</p> <ul style="list-style-type: none"> <li>(a) any independent inspection undertaken by the Authority;</li> <li>(b) the award of any Default Notice.</li> </ul> <p>20.9 The system shall be operated by the Contract Manager on behalf of the Provider and shall be open to inspection at any time by the Authority. In the event that any reasonable recommendations concerning the improvement of the system are made by the Authority from time to time, such recommendation shall forthwith be implemented by the Provider.</p> <p>20.10 The Authority shall have the right at any time to interview any member of the Provider's staff in connection with the carrying out of all or any of the Services. 24 hours' notice will be given to the Contract Manager.</p> <p>20.11 The Authority shall also be entitled to request any information relating to the carrying out of the Services and such information shall be supplied by the Provider forthwith upon request.</p>
--	--

### **Additional Key Provisions**

<input checked="" type="checkbox"/>	<p><b>21 Service and Quality Outcomes Indicators</b></p> <p>21.1 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:</p> <ul style="list-style-type: none"> <li>(a) comply, where applicable, with the registration and regulatory compliance guidance of CQC, Ofsted and any other Regulatory Body;</li> <li>(b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC, Ofsted or any other Regulatory Body;</li> <li>(c) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;</li> <li>(d) comply with the recommendations issued from time to time by a Competent Body;</li> <li>(e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;</li> <li>(f) respond to any reports and recommendations made by Local Healthwatch; and</li> <li>(g) comply with the Quality Outcomes Indicators set out in <b>Error! Reference source not found.</b></li> </ul>
<input checked="" type="checkbox"/>	<p><b>22 Service User Involvement</b></p> <p>22.1 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.</p> <p>22.2 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.</p> <p>22.3 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 D (Service User, Carer and Staff Surveys) or as otherwise agreed between the Parties in writing from time to time.</p> <p>22.4 The Provider must review and provide a written report to the Authority on the results of each survey carried out under clause 22.3 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.</p>

<input checked="" type="checkbox"/>	<p><b>23 Managing Activity</b></p> <p>23.1 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.</p>
<input checked="" type="checkbox"/>	<p><b>24 Incidents Requiring Reporting</b></p> <p>24.1 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.</p> <p>24.2 If the Provider gives a notification to the CQC or any other Regulatory Body under clause 24.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within 5 Working Days or within the timescale set out in Schedule 16</p> <p>24.3 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Schedule 16</p> <p>24.4 Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause Schedule 16.</p>
<input checked="" type="checkbox"/>	<p><b>25 Service User Consent</b></p> <p>25.1 The Provider must publish, maintain and operate a Service User consent policy which complies with Good Clinical Practice and the Law.</p> <p>25.2 The provider must comply with NDTMS consent procedures:</p> <p><a href="https://www.gov.uk/government/publications/confidentiality-guidance-for-drug-and-alcohol-treatment-providers-and-clients">https://www.gov.uk/government/publications/confidentiality-guidance-for-drug-and-alcohol-treatment-providers-and-clients</a></p> <ul style="list-style-type: none"> <li>(a) the Provider must have a confidentiality / data handling policy</li> <li>(b) the Provider must give every person entering structured treatment the 'NDTMS information sheet'</li> <li>(c) the Provider must gain explicit consent for their information to be captured, this information will include: <ul style="list-style-type: none"> <li>(i) client/patient's initials,</li> <li>(ii) date of birth,</li> <li>(iii) gender and</li> <li>(iv) full postcode (although only part postcode is returned)</li> </ul> </li> </ul>



<input checked="" type="checkbox"/>	<p><b>26 Service User Records</b></p> <p>26.1 The Provider must have an appropriate case management system to create, maintain, store and retain Service User records, including health records where applicable, for all Service Users. The Provider must retain Service User records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.</p> <p>26.2 The Provider must:</p> <ul style="list-style-type: none"> <li>(a) use Service User records solely for the execution of the Provider's obligations under this Contract; and</li> <li>(b) give each Service User full and accurate information regarding the Services received and their treatment, if applicable.</li> </ul> <p>26.3 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.</p> <p>26.4 Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.</p>
<input checked="" type="checkbox"/>	<p><b>27 Information</b></p> <p>27.1 The Provider must provide the Authority the information specified in paragraph 2 of Schedule 17 to measure the quality, quantity or otherwise of the Services.</p> <p>27.2 The Provider must deliver the information required under clause 27.1 in the format, manner, frequency and timescales specified in paragraph 2 of Schedule 17 and must ensure that the information is accurate and complete.</p> <p>27.3 If the Provider fails to comply with any of the obligations in this clause 27 and/or paragraph 2 of Schedule 17 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 paragraph 2 of Schedule 17.</p> <p>27.4 In addition to the information required under clause 27.1, 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.</p>
<input checked="" type="checkbox"/>	<p><b>28 Equipment</b></p> <p>28.1 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</p>

	accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services.
<input type="checkbox"/>	<b>29 Not Used</b>
<input checked="" type="checkbox"/>	<p><b>30 Service Review</b></p> <p>30.1 During the first year of the Contract the Provider must at the end of each Quarter deliver to the Authority a Service Quality Performance Report against the factors set out in paragraph 1 of Schedule 17.</p> <p>30.2 The Provider must submit each Service Quality Performance Report in the form and manner specified in paragraph 1 of Schedule 17.</p>
<input checked="" type="checkbox"/>	<p><b>31 Review Meetings</b></p> <p>31.1 The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in paragraphs 3 and 4 of Schedule 17.</p> <p>31.2 Notwithstanding clause 31.1, if either the Authority or the Provider reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution, that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Working Days following that notice.</p>
<input checked="" type="checkbox"/>	<p><b>32 Co-operation</b></p> <p>32.1 The Parties must at all times act in good faith towards each other.</p> <p>32.2 The Provider must co-operate fully and liaise appropriately with:</p> <ul style="list-style-type: none"> <li>(a) the Authority;</li> <li>(b) any third party provider who the Service User may be transferred to or from the Provider;</li> <li>(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</li> <li>(d) primary, secondary and social care services, in order to: ensure that a consistently high standard of care for the Service User is at all times maintained;</li> <li>(e) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;</li> <li>(f) 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.</li> </ul>

<input checked="" type="checkbox"/>	<p><b>33     Audit</b></p> <p>In the event that this clause applies, the following addition shall be made to clause 19 of the General Terms as clauses 19.6 to 19.11:</p> <p>33.1    The Provider must comply with all reasonable written requests made by, CQC, Ofsted, the National Audit Office, the General Pharmaceutical Council, 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.</p> <p>33.2    Subject to Law and notwithstanding clause 33.1, 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.</p> <p>33.3    Within 10 Working 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.</p> <p>33.4    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.</p> <p>33.5    During any audit undertaken under clause 33.1 or 33.2 the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:</p> <ul style="list-style-type: none"> <li>(a) all reasonable information requested within the scope of the audit;</li> <li>(b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and</li> <li>(c) access to the Staff.</li> </ul>
<input checked="" type="checkbox"/>	<p><b>34     Default and Failure to Supply</b></p> <p>34.1    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</p>

	<p>may have under this Contract including under paragraph 7 of Schedule 17, consult with the Provider and then do any of the following:</p> <ul style="list-style-type: none"> <li>(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 Working Days or such other period of time as the Authority may direct;</li> <li>(b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause 35 of the Additional Key Provisions;</li> <li>(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 21 of the General Terms (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.</li> </ul> <p>34.2 If the Authority exercises any of its rights under clause 34.1, 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.</p>
☒	<p><b>35 Suspension and Consequences of Suspension</b></p> <p>35.1 A suspension event shall have occurred if:</p> <ul style="list-style-type: none"> <li>(a) the Authority reasonably considers that a breach by the Provider of any obligation under this Contract: <ul style="list-style-type: none"> <li>(i) may create an immediate and serious threat to the health or safety of any Service User; or</li> <li>(ii) may result in a material interruption in the provision of any one or more of the Services; or</li> </ul> </li> <li>(b) clause 35.1(a) 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</li> <li>(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 <b>Suspension Event</b>).</li> </ul> <p>35.2 Where a Suspension Event occurs the Authority:</p> <ul style="list-style-type: none"> <li>(a) 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</li> </ul>

	<p>(b) must where applicable promptly notify CQC, Ofsted and/or any other relevant Regulatory Body of the suspension.</p> <p>35.3 During the suspension of any Service under clause 35.2, 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 35.2 has been referred to dispute resolution under clause 12 of the General Terms.</p> <p>35.4 During the suspension of any Service under clause 35.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:</p> <p>(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 35.2; and/or</p> <p>(b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause 35.5.</p> <p>35.5 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.</p> <p>35.6 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).</p> <p>35.7 Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:</p> <p>(a) 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</p> <p>(b) at the cost of the Provider:</p> <p>(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</p> <p>(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.</p> <p>35.8 As part of its compliance with clause 35.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.</p> <p>35.9 If it is determined, pursuant to clause 12 of the General Terms that the Authority acted unreasonably in suspending a Service, the Authority must</p>
--	---

	<p>indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.</p> <p>35.10 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.</p>
<input checked="" type="checkbox"/>	<p><b>36 Termination for Breach</b></p> <p>36.1 In the event that this clause applies, the following addition shall be made to clause 21 of the General Terms as clauses 21.4 to 21.6:</p> <p>36.2 The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:</p> <ul style="list-style-type: none"> <li>(a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;</li> <li>(b) the Provider: <ul style="list-style-type: none"> <li>(i) fails to obtain any Consent;</li> <li>(ii) loses any Consent; or</li> <li>(iii) has any Consent varied or restricted,</li> </ul> </li> </ul> <p>the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;</p> <ul style="list-style-type: none"> <li>(c) any of the Provider's necessary registrations are cancelled by the CQC, Ofsted or any other Regulatory Body as applicable;</li> <li>(d) the Provider materially breaches its obligations in clause 17 of the General Terms;</li> <li>(e) the Provider breaches the terms of clause 13 of the General Terms;</li> <li>(f) 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 30 Working Days following receipt of notice from the Authority identifying the breach.</li> </ul> <p>36.3 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 Working Days without the Parties agreeing alternative arrangements.</p> <p>36.4 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 36.4 if the Authority has failed to remedy such breach within 30 Working Days of receipt of notice from the Provider to do so.</p>

<input checked="" type="checkbox"/>	<p><b>37 Counter-Fraud and Security Management</b></p> <p>37.1 The Provider must put in place and maintain appropriate counter fraud and security management arrangements.</p> <p>37.2 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.</p> <p>37.3 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.</p> <p>37.4 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.</p>
<input checked="" type="checkbox"/>	<p><b>38 Provider's Personnel Used to Provide the Service</b></p> <p>38.1 In the event that this clause applies, the following addition shall be made to clause 9 of the General Terms as clauses 9.6 to 9.22:</p> <p>38.2 The Provider will organise a staffing structure on two levels:</p> <ul style="list-style-type: none"> <li>(a) a structure for the general governance of the whole Contract identifying key personnel to be involved in the operation of the Contract, and</li> <li>(b) a structure which shall be subordinate to the central governance, to provide the Service as set out in the Specification.</li> </ul> <p>38.3 Skills and Experience</p> <ul style="list-style-type: none"> <li>(a) the Provider shall allocate to this Service sufficient staff to fully perform the Service. Those staff shall be properly trained, qualified, competent, skilled, honest and experienced and their training shall be up to date;</li> <li>(b) the Provider warrants that it has sufficient reserves of trained and competent staff within each skill level to provide the Service to the level / standard required by the Specification at all times, including sufficient reserves to provide cover for staff holidays, staff sickness and any other absence;</li> <li>(c) should any staff allocated to this Service cease to be employed by the Provider they shall be replaced forthwith with an employee having similar skill levels and experience;</li> <li>(d) the Provider shall check the employment requirements for every member of staff to ensure they are eligible to work in the UK and that they are registered with the Department for Social Security and, if appropriate the Home Office;</li> </ul>

	<p>(e) the Provider shall, applying its own criteria, check all relevant staff with the Disclosure and Barring Service (DBS) before employing them in this Service. Should the DBS check reveal any relevant convictions the Provider shall forthwith inform the Authority. The Authority may refuse to allow that employee to be retained on their Service. The Provider shall deliver to the Authority upon request a copy of its policy for safeguarding children and vulnerable adults;</p>
	<p>38.4 Complaints</p> <p>(a) should the Provider become aware of any complaint against a member of their staff, that complaint will be handled under the Provider's own complaints procedure;</p> <p>(b) where the Authority becomes aware of a complaint against any member of the Provider's staff the Authority shall notify the Provider of the complaint and provide any supporting evidence where possible;</p> <p>(c) should the Provider's complaints procedure fail to resolve the matter the Provider's Contract Manager shall meet with the Authority's Authorised Representative to agree measures to resolve the complaint and avoid future problems;</p> <p>(d) where the Contract Manager and the Authority's Authorised Representative agree the complaint justifies the removal of that member of staff from the provision of the Service, the Provider shall immediately remove or procure the removal of that person and shall provide a suitable replacement;</p> <p>(e) should it prove impossible to resolve the matter through this procedure the Parties will escalate the matter to the Managing Director (in the case of the Provider) and the relevant Director (in the case of the Authority). Should they be unable to resolve the matter it shall be dealt with under the Dispute Resolution Procedure set out in clause 12 of the General Terms.</p>
	<p>38.5 The Provider and the Authority shall liaise with the Police in relation to the abuse of a member of the Provider's staff by any member of the public, including in assisting in any prosecution that follows.</p>
	<p>38.6 The Provider shall at all times, during the life of the Contract, employ enough persons of sufficient ability and status to perform and supervise the performance of the Service in a proper and continuous manner. If in the opinion of the Authority the Provider is not employing sufficient staff or staff with the appropriate ability and status to adequately supervise the Contract then the Provider shall engage such additional staff or supervisory staff as the Authority shall reasonable deem to be necessary, and the cost will be borne by the Provider. If the Provider fails to take the required action the provision of clauses 10, 21 and 22 of the General Terms shall apply.</p>
	<p>38.7 The Provider shall nominate a person to be responsible for health and safety matters as required by the Health and Safety at Work Act 1974 and the</p>



	<p>Management of Health and Safety at Work Regulations 1992. The identity of such person will be agreed with the Authority, such agreement not be unreasonably withheld. Whilst on Authority premises including all sites and locations at or from which the Service is provided the Provider shall ensure that its staff are fully conversant with its health and safety policy and that they take all such precautions as are necessary to protect the health and safety of Authority staff and the public. The Provider shall ensure that staff are properly trained and instructed with regard to fire risks and fire precautions.</p> <p>38.8 The Provider agrees that, whilst allocated to the performance of any duty which comprises part of the Service, all staff:</p> <ul style="list-style-type: none"> <li>(a) shall not engage in behaviour or activities which could be contrary or detrimental to the Authority's interests;</li> <li>(b) shall be effective and efficient workers, competent in their particular profession or skill;</li> <li>(c) shall abide by the standards, rules and regulations established by the Provider for its own staff, including completion of time recording requirements and all safety and other regulations.</li> </ul> <p>38.9 The Authority reserves the right to require the removal from the Service of any individual(s) used by the Provider whom, in the opinion of the Authority:</p> <ul style="list-style-type: none"> <li>(a) is not performing work in strict compliance with the Contract;</li> <li>(b) is or is deemed to be guilty of misconduct or negligence;</li> <li>(c) is acting in a manner which is detrimental to the Authority's interests;</li> <li>(d) is not medically fit to perform the Service or provides a risk to the health of those with whom that may person may come into contact during work on the Contract;</li> </ul> <p>38.10 The right in 38.9 above shall not be exercised arbitrarily, vexatiously or capriciously by the Authority.</p> <p>38.11 Any such individual removed will be replaced promptly with a properly qualified replacement, in such time as acceptable to the Authority and at no extra cost to the Authority. In the case of management or other specialist staff who are employed in a senior capacity by the Provider, prior written approval of the replacement shall be required. The Authority shall not in any circumstance be liable to the Provider in respect of any such removal and any ensuing disciplinary action. The Provider shall fully and promptly indemnify the Authority against any claim made by such staff.</p> <p>38.12 The Provider will be responsible in every respect for all staff and other personnel assigned to the Contract, including that appropriate tax and national insurance arrangements are made for staff and other personnel not directly employed by the Provider.</p>
--	---

	<p>38.13 The Provider will ensure that no conflict of interests affect any of the staff assigned to the Contract and, furthermore, that the assigned staff work on behalf of the Authority whilst providing the Service.</p> <p>38.14 The Provider's contract of employment with its staff must require the staff to keep secret and secure any information relating to the work done for the Authority and prohibit the Provider's staff from making statements to the public or the media without prior consent of the Authority.</p> <p>38.15 The Provider shall operate a policy for the protection of children and vulnerable adults who come into contact with the Service staff. The policy will, as a minimum, require such staff to have enhanced checks from the DBS, which shall be kept up to date. It shall also require appropriate supervision any incidents to be reported to the Authority's appropriate Protection Team. A copy of that policy will be provided to the Authority on request.</p> <p>38.16 The Provider shall provide a means of identification to all its staff and shall require its staff to wear and keep visible such identification at all times at sites and locations at or from which the Service is provided, or on Authority premises. All staff used by the Provider shall carry such identification at all times and make it available for inspection on request by any officer(s) of the Authority who similarly discloses their identity. Entry to Authority buildings may be refused if the correct identification is not displayed. In this event the Provider shall be fully responsible for resultant delays or difficulties in the provision of the Service.</p> <p>38.17 The Provider shall be entirely responsible for the employment conditions and service of its own staff including, without limitation, the payment of wages but in making such payments shall have regard for the provisions of TUPE and to the need to attract suitably qualified and experienced staff to fulfil the Provider's obligations pursuant to this clause 38 and without prejudice to the generality of the foregoing such wages or rates of pay shall not be less than the national minimum wage or living wage.</p> <p>38.18 The Provider shall comply with any reasonable request made by the Authority for access to and information concerning the numbers, identity, functions and terms and conditions of employment of staff employed by the Provider in connection with the performance of this Contract. The Authority shall treat such information as confidential to itself and its advisers.</p>
<input checked="" type="checkbox"/>	<p><b>39 Key Personnel</b></p> <p>39.1 In the event that this clause applies, the following addition shall be made to clause 9 of the General Terms as clauses 9.23 to 9.30:</p> <p>39.2 The Provider shall ensure that at all times during the Contract Period a Contract Manager is appointed and empowered to act on behalf of the Provider and available to the Authority in person at all times during which the Service is to be provided.</p>

	<p>39.3 The Provider shall as soon as possible and in event within one month after acceptance by the Authority of its tender give written notice to the Authority the identity of the person proposed to be appointed as the Contract Manager together with details of their curriculum vitae and shall forthwith give notice of any subsequent proposed alternative appointments. Any person proposed to be appointed as Contract Manager must first be approved in writing by the Authority and the Provider shall continue to propose different persons to be appointed as Contract Manager until such approval has been given.</p> <p>39.4 The Provider shall notify the Authority in writing of the identity of any person proposed to be authorised to act for a period not exceeding three months as deputy for the Contract Manager before the start of that period. Any person so proposed must be first approved in writing by the Authority and the Authority may in its absolute discretion agree to extend the three month period in appropriate circumstances.</p> <p>39.5 The Contract Manager or authorised deputy shall be the authorised representative of the Provider for all purposes connected with this Contract. They must have authority to act on behalf of the Provider in all matters pertaining to the Service. Any notice, information, instruction or other communication, including without prejudice to the generality of the foregoing procurement of staff, materials and equipment and variation of services, given or made by the Contract Manager or deputy shall be deemed to have been given or made by the Provider.</p> <p>39.6 The Contract Manager or duly authorised deputy shall consult with the Authority as often as may be reasonably necessary for the efficient provision of the Service in accordance with the Contract.</p> <p>39.7 The Contract Manager shall inform the Authority promptly and in writing of any instances of activity or omission on the Authority which prevent or hinder or may prevent or hinder the Provider from meeting its contractual obligations.</p> <p>39.8 In the event of the Contract Manager being unable to obtain any satisfactory response to any enquiry concerning the terms of the Contract or the Service to be provided hereunder he may refer the matter to the Authority.</p>
<input checked="" type="checkbox"/>	<p><b>40 Operational Aspects</b></p> <p>40.1 The Provider shall administer the provision of the Service and shall, subject to the provisions of the Contract, perform the said Service complete and provide all labour, materials, transport to and from in or about the sites and locations at which the Service is to be performed and everything whether of a temporary or permanent nature required in and for the performance of the Service so far as the necessity for the same is specified in or reasonably to inferred from the Contract, save for such premises, facilities, equipment or other materials made available by the Authority pursuant to the Contract.</p>

	<p>40.2 All operations necessary for the performance of the Service shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the use of properties where they are in the possession of the Authority or of any other person and the Provider shall indemnify the Authority against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out or in relation to any such matters.</p> <p>40.3 The Provider shall provide the Service at all times in such a manner as shall promote and enhance the image and reputation of the Authority and in particular shall comply with all reasonable instructions of the Authority regarding the quality of the Service to be provided.</p> <p>40.4 Subject to paragraph 7 of Schedule 17, if the Provider fails to provide the Service or any part thereof with due diligence or in a proper, skilful and workmanlike manner or the requirements of the Contract and to the satisfaction of the Authority, the Authority may provide the Service or any part thereof and all costs incurred thereby may be deducted from any sums due or to become due to the Provider under the Contract or shall be recoverable from the Provider by the Authority as a debt.</p> <p>40.5 The Provider shall comply with all relevant Acts of Parliament, Statutory Regulations, Orders, Instruments and Codes of Practice Byelaws, Directives or the like, including giving of notices or payment of fees (which the Provider shall have taken into account in its Tender) to be observed and performed in connection with the Services and shall indemnify the Authority against any loss or damage caused by non-compliance with any such legal provision.</p>
<input checked="" type="checkbox"/>	<p><b>41 Premises</b></p> <p>41.1 The Provider will lease the Children's Centre premises from the Authority on the terms of the lease(s) attached at Schedule 15.</p> <p>41.2 The Provider shall be deemed to have inspected all buildings, sites and locations at which or from which the Service is to be provided and to have been satisfied before submitting a Tender as to risks and contingencies and all other circumstances influencing or affecting the Tender.</p> <p>41.3 On the Commencement Date the Authority shall have granted to the Provider any licences as may be needed in order that the Provider can occupy relevant premises until completion of any lease.</p> <p>41.4 On expiry of the Contract Term (or earlier termination) any leases granted by the Authority to the Provider shall immediately expire. The Provider shall vacate the premises immediately and shall ensure that the premises are in the same condition as they were when the lease started.</p> <p>41.5 The Authority shall give access to those parts of the sites, buildings, locations and premises required for the performance of the Service to any</p>

	<p>person employed or engaged by the Provider, provided always that the Authority may refuse admission at its absolute discretion.</p> <p>41.6 The Provider shall be responsible for the security of premises occupied by the Provider for the purposes of performance of the Service in accordance with the requirements stated in Schedule 15 in respect of each individual premises.</p> <p>41.7 The Provider shall ensure that premises are locked and secured in accordance with the terms of this Agreement and the requirements of the leases detailed within in Schedule 15.</p> <p>41.8 Where the Authority provides accommodation to the Provider for the proper provision of the Service the use of that accommodation shall be regulated by the Lease or Licence covering those premises.</p> <p>41.9 The Provider shall establish security procedures for all sites, buildings, locations and premises from which the Service is delivered.</p> <p>41.10 Where the Authority, having investigated any breach of this Condition, is of the opinion that the Provider has not used its best endeavours to avoid such breaches, has not provided adequate supervision or has failed in any other way to act responsibly, then this shall constitute a breach of contract.</p>
<input checked="" type="checkbox"/>	<p><b>42 Assistance in Legal Proceedings</b></p> <p>42.1 If requested to do so by the Authority, the Provider shall provide to the Authority any relevant information (including but not limited to documentation and statements from staff) in connection with any legal inquiry (including Ombudsman inquiry), arbitration or court proceedings in which the Authority may become involved, or any relevant disciplinary hearing internal to the Authority, arising out of the provision of the Services or the Provider's presence on Authority Premises, and the Provider shall give evidence in such inquiries, arbitrations, proceedings or hearings.</p> <p>42.2 Where the Provider or any of its staff become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Service, it shall notify the Authority immediately in writing. Such notification shall include all relevant information to enable the Authority to investigate the matter fully.</p> <p>42.3 Such information provided or assistance rendered pursuant to the obligation in Sub-Clauses 42.1 and 42.2 above, in whatever form, shall be where reasonable, at no cost to the Authority.</p>
<input checked="" type="checkbox"/>	<p><b>43 Observance of Statutory Requirements</b></p> <p>43.1 The Provider shall comply with all relevant legal provisions, whether in the form of Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice, Byelaws, Directives or the like, to be observed and performed in connection with the Services provided under the Contract, and shall</p>

	indemnify the Authority accordingly against any loss or damage caused by non-compliance with any such legal provisions.
<input checked="" type="checkbox"/>	<p><b>44 Advertising</b></p> <p>44.1 No advertisement of any description, other than those identified in the Specification, will be allowed on premises, vehicles, equipment, materials or consumables used in the performance of the Services without the prior written consent of the Authority, which consent shall not be unreasonably withheld. Any advertisement which is placed on the Authority's Premises with consent shall be promptly removed at the end of the Contract Period.</p> <p>44.2 If required by the Authority, the Provider shall cause any or all premises, vehicles, equipment, materials and consumables used in the performance of the Services to bear such advertisements, devices or insignia as the Authority may from time to time notify in writing.</p> <p>44.3 The Provider shall not advertise the fact that it is providing services to the Authority under this Contract other than with the written permission of the Authority.</p>

## **Schedule 2. General Terms**

### **1 Supply of Services**

- 1.1 The Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this Contract in accordance with the provisions of this Contract.
- 1.2 In the event that the Provider does not comply with the provisions of clause 1.1 in any way, the Authority may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**). The Default Notice shall be in the form set out in Schedule 17.

### **2 Service Levels**

- 2.1 The Service Level Arrangements (if any) shall apply with effect from the Commencement Date (unless the Specification provides to the contrary).

### **3 Compliance**

- 3.1 The Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 3.2 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has used best endeavours to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 Without prejudice to clause 2, the Provider shall provide the Services, or procure that they are provided:
- (a) with all reasonable skill and care and in accordance with Best Industry Practice;
  - (b) in all respects in accordance with the Authority's requirements set out in the Specification which may from time to time be amended in accordance with this Contract by the Authority ; and
  - (c) in accordance with all applicable laws.
- 3.4 Without limiting the general obligation set out in clause 3.1, the Provider shall (and shall procure that the Provider's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998;
  - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment; and
  - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law.

### **4 Authority Premises and Authority Assets**

- 4.1 The Authority shall, subject to clause 3 and clause 9, provide the Provider (and its Sub-Contractors) with access to such parts of the Authority Premises as the Provider reasonably requires for the purposes only of properly providing the Services.

- 4.2 The Authority shall provide the Provider with such accommodation and facilities in the Authority Premises as agreed by the parties from time to time.
- 4.3 Subject to the requirements of the Key Provisions on exit management (if relevant), in the event of the expiry or termination of the Contract, the Authority shall on reasonable notice provide the Provider with such access as the Provider reasonably requires to the Authority Premises to remove any of the Provider's equipment. All such equipment shall be promptly removed by the Provider.
- 4.4 The Provider shall ensure that:
- (a) where using the Authority Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority Authorised Representative's reasonable directions regarding the security of the same;
  - (b) only those of the Provider's Personnel that are duly authorised to enter upon the Authority Premises for the purposes of providing the Services, do so;
  - (c) any Authority Assets used by the Provider are not removed from Authority Premises unless expressly permitted under this Contract or by the Authority Authorised Representative.
- 4.5 The Provider shall notify the Authority immediately on becoming aware of any damage caused by the Provider, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority Premises or to any property of any other recipient of the Services in the course of providing the Services.

## **5 Health and Safety**

- 5.1 The Provider shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Provider of any health and safety hazards that may exist or arise at the Authority Premises and that may affect the Provider in the performance of the Contract.
- 5.2 While on the Authority Premises, the Provider shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority Premises.
- 5.3 The Provider shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the Authority Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 5.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the Contract.
- 5.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

## **6 Charges and Payment**

- 6.1 In consideration of the provision of the Services by the Provider in accordance with the terms and conditions of this Contract, the Authority shall pay the Charges to the Provider.
- 6.2 The Charges shall be calculated as set out in the Payment Schedule 8.
- 6.3 Unless otherwise stated in the Payment Schedule the Charges:
- (a) shall be payable from the Commencement Date;



- (b) shall remain fixed during the Term unless agreed by both parties; and
  - (c) are the entire price payable by the Authority to the Provider in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Provider, travel costs, accommodation expenses and the cost of Provider Personnel.
- 6.4 The Authority shall pay each invoice received by the Provider within 30 days of the date when Authority has determined that the invoice is a valid and undisputed invoice. The Provider shall accept payment electronically via BACS.
- 6.5 The Authority will consider and verify any invoices submitted by the Provider for payment in a timely fashion and agrees that undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed.
- 6.6 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with the Dispute Resolution Procedure. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.
- 6.7 Subject to clause 6.6, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Contract under clause 21 for failure to pay undisputed charges.
- 6.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Provider shall at all times comply with the requirements relating to VAT as more particularly detailed in this Contract and the Specification. The Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this Contract.
- 6.9 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Contract. Such records shall be retained for inspection by the Authority for six years from the end of the Contract Year to which the records relate.
- 6.10 The Authority may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under this Contract.
- 6.11 The Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.
- 6.12 In this clause 6.12, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract. Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
  - (a) provisions having the same effect as clauses 6.4 and 6.5 above; and
  - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 6.4 and 6.5 above.

- 6.13 For the purposes of this clause 6 (but no other) "Sub-Contractor" means a person under a contract, at any stage of remoteness from the Authority in a subcontracting chain, who has entered into a contract wholly or substantially for the purpose of performing (or contributing to the performance of) the whole of any part of this Contract.

## **7 Due Diligence**

- 7.1 The Provider acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
- (b) it has received all information requested by it from the Authority pursuant to paragraph (a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to paragraph (b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this Contract in reliance on its own due diligence.

- 7.2 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

- 7.3 The Provider:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Provider's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract; and
- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet the Service Level Arrangements.

- 7.4 The Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Provider in accordance with clause 7.3(b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

- 7.5 Nothing in this clause 7 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **8 Key Personnel**

- 8.1 Each party shall appoint the persons named as such in the Specification as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the Authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

The Provider shall not remove or replace any of the Key Personnel unless:

- (a) requested to do so by the Authority;
  - (b) the person is on long-term sick leave;
  - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
  - (d) the person resigns from their employment with the Provider; or
  - (e) the Provider obtains the prior written consent of the Authority.
- 8.2 The Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 30 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 8.3 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 10 Working Days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Provider or the Authority becoming aware of the role becoming vacant.

The Authority may require the Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its absolute opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities or for any reason which impacts on the management or operation of any applicable Authority's Premises.

- 8.4 If the Provider replaces the Key Personnel as a consequence of this clause 8, the cost of effecting such replacement shall be borne by the Provider.

## **9 Provider's Personnel Used to Provide the Services**

- 9.1 At all times, the Provider shall ensure that:
- (a) each of the Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - (b) there is an adequate number of Provider's Personnel to provide the Services properly;
  - (c) only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services;

- (d) all of the Provider's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority Premises; and
  - (e) where the Services are regulated activities enabling the Provider to obtain a Disclosure Barring Service (**DBS**) certificate, it holds a clear DBS certificate for each of the Provider's Personnel.
- 9.2 The Authority in its absolute discretion may refuse to grant access to, and remove, any of the Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 9.3 The Provider shall replace any of the Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with all reasonable skill and care. Following the removal of any of the Provider's Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 9.4 The Provider shall maintain up-to-date personnel records on the Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Provider's Personnel. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 9.5 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 10 TUPE**
- The parties agree that the provisions of Schedule 11 shall apply to any Relevant Transfer of staff under this Contract.
- 11 Monitoring**
- 11.1 The Authority may monitor the performance of the Services by the Provider at its discretion.
- 11.2 The Provider shall co-operate with the Authority in carrying out the monitoring referred to in clause 11.1 at no additional charge to the Authority.
- 12 Dispute Resolution Procedure**
- 12.1 If a Dispute arises then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives of both the Authority and the Provider shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representatives of the Authority the Provider are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to senior officers of both the Authority and the Provider who shall attempt in good faith to resolve it; and
  - (c) if the senior officers of the Authority and the Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR

notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

- 12.2 The Provider shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.
- 12.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 36 and 37 which shall apply at all times.
- 12.4 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 36 and 37 of these General Terms.

### **13 Sub-contracting and Assignment**

- 13.1 The Provider shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the Authority. The Provider shall not sub-contract the whole or any part of its obligations under this Contract nor shall it replace a Sub-Contractor approved under this Contract or permit a Sub-Contractor approved under this Contract to assign, novate or otherwise dispose of any or all of its rights and obligations under the Sub-Contract, except with the express prior written consent of the Authority.
  - 13.2 In the event that the Provider enters into any Sub-Contract in connection with this Contract it shall:
    - (a) remain responsible to the Authority for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors and shall indemnify and keep indemnified the Authority against any loss or claim arising resulting from the failure of the Sub Contractor or an employee of the Sub Contractor in the performance of the duties of the Sub Contractor to provide the Services on behalf of the Provider under this Contract;
    - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms and, if necessary, imposes obligations on any further sub-contractors in its sub-contract pursuant to this Contract; and
    - (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's 'Authorised Representative.
  - 13.3 The Authority shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.
  - 13.4 The Authority may, by notice in writing to the Contractor, require the Contractor immediately (or as specified in the notice) to cease to engage a specified Sub-Contractor for the performance of any of its obligations under this Contract where any of the circumstances specified in Regulation 57(1) or (8) of the Public Contracts Regulations 2015 applies to the Sub-Contractor.
- ### **14 Limitation of Liability**
- 14.1 Subject to clause 14.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

- 14.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 14.3 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by its negligence;
  - (c) breach of any obligation as to title implied by statute; or
  - (d) any other act or omission, liability for which may not be limited under any applicable law.

## 15 Insurance

- 15.1 The policy limits set out below shall apply unless expressly amended in the Key Provisions.
- 15.2 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and
  - (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims,
- (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 the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 15.3 The Provider shall, prior to the Commencement Date and on each subsequent anniversary of the Commencement Date, provide the Authority with copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies. This evidence of insurance will be added annually to this Contract in Schedule 12.
- 15.4 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 including by way of set off against payments that may be made by the Authority to the Provider for the provision of the Services.

The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.

- 15.5 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Contract.

## 16 Freedom of Information and Transparency Obligations

- 16.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and transparency obligations under the Public Contracts Regulations 2015, and shall assist and co-operate with the Authority (at the Provider's expense) to enable the Authority to comply with its obligations under the FOIA and the EIRs and its transparency obligations under the Public Contracts Regulations 2015.

- 16.2 The Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within 5 Working Days of receiving a Request for Information;
  - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 16.3 The Authority shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
  - (b) is to be disclosed in response to a Request for Information.
- 16.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 16.5 The Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider. The Authority shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs. The Provider shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 16.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 16.5.
- 16.7 The Provider acknowledges that the United Kingdom Government's transparency agenda, including the transparency obligations under the Public Contracts Regulations 2015, requires that contracts, such as the Contract, and any tender document, such as the invitation to tender and certain other information, are published on a designated, publicly searchable website and the Provider consents to such publication.
- 16.8 The Provider acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. The Authority shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- 16.9 Notwithstanding any other term of the Contract, the Provider hereby consents to the Authority publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

- 16.10 The Provider shall assist and co-operate with the Authority to enable the Authority to publish this Contract.

## **17 Data Protection**

- 17.1 The Provider shall (and shall procure that any of its Provider's Personnel involved in the provision of the Contract shall) comply with any notification requirements under Data Protection legislation and both Parties shall duly observe all their obligations under Data Protection legislation, which arise in connection with the Contract.
- 17.2 Notwithstanding the general obligation in clause 17.1, where the Provider is processing Personal Data as a Data Processor for the Authority, the Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to Data Protection legislation; and
- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Provider is complying with its obligations under Data Protection legislation;
  - (b) within 24 hours of the Provider becoming aware of the breach occurring notify the Authority of any breach and of the security measures required to be put in place pursuant to this clause 17.2;
  - (c) co-operating with the Authority and/or any relevant regulatory body in carrying out any investigation, by providing information requested by the Authority and/or relevant regulatory body within the timescales required;
  - (d) allow the Authority's representatives and/or the representatives of the relevant regulatory body access to the Provider's premises, systems and data for the purposes of any investigation, inspection or audit; and
  - (e) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under Data Protection legislation.
- 17.3 The Provider shall not engage another processor without prior written authorisation from the Authority. The Provider shall inform the Authority of any intended changes concerning the addition or replacement of other processors, giving the Authority the opportunity to object. All additional or replacement processors are required to the Authority's Data Processing Agreement.
- 17.4 The Provider shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profits, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by, or awarded against the Authority arising from any breach of the Provider's obligations in this clause 17 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

## **18 Confidentiality**

- 18.1 The provisions of this clause shall not apply to any Confidential Information that:
- (a) is required for disclosure by any applicable law, provided that clause 16.5 shall apply to any disclosures required under the FOIA or the EIRs;
  - (b) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Authorised Representatives in breach of this clause);



- (c) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - (d) is disclosed by the Authority to any other department, office or agency of the Government;
  - (e) where in the reasonable opinion of the Authority it is necessary to disclose information or required to disclose information to any court tribunal arm of Government or Local Government;
  - (f) may assist in the enabling of a determination to be made under clause 12;
  - (g) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
  - (h) the parties agree in writing is not confidential or may be disclosed.
- 18.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Contract (**Permitted Purpose**); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 18.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Contract,
- and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.
- 18.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 18.5 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 18.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Contract are granted to the other party, or to be implied from this Contract.
- 18.7 On termination of this Contract, the Provider shall:
- (a) return to the Authority all documents and materials (and any copies) containing, reflecting, incorporating or based on the Authority's Confidential Information;

- (b) erase all the Authority's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
  - (c) certify in writing to the Authority that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the Authority's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 18.8 Except as expressly stated in this Contract, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 19 Audit**
- 19.1 During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes;
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all Providers (including Sub-Contractors) of the Services;
  - (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
  - (c) to review the Provider's compliance with Data Protection legislation and the FOIA in accordance with clause 17 and clause 16 and any other legislation applicable to the Services;
  - (d) to review any records created during the provision of the Services;
  - (e) to review any books of account kept by the Provider in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Authority's accounts;
  - (g) to carry out an examination pursuant of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (h) to verify the accuracy and completeness of the Management Reports (if applicable) and any other management information delivered or required by this Contract.
- 19.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 19.3 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Provider's Personnel.
- 19.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

- 19.5 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 19.6 If an audit identifies that:
- (a) the Provider has failed to perform its obligations under this Contract in any material manner; the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
  - (b) the Authority has overpaid any Charges, the Provider shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
  - (c) the Authority has underpaid any Charges, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Provider in relation to invoicing within 20 Working Days.

## **20 Intellectual Property**

- 20.1 Unless expressly stated otherwise in the Specification or in a separate prior written agreement signed by both parties to the contrary, all Intellectual Property Rights created by the Provider, Provider Personnel, a Sub-Contractor or any other employee, agent or subcontractor of the Provider:
- (a) in the course of performing the Services; or
  - (b) exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.
- 20.2 The Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis and all other reasonable professional costs and expenses), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## **21 Termination for Breach**

- 21.1 The Authority may terminate this Contract with immediate effect by the service of written notice on the Provider in the following circumstances:
- (a) if the Provider is in breach of any material obligation under this Contract provided that if the breach is capable of remedy or the Authority has served the Supplier with a Default Notice, the Authority may only terminate this Contract under this clause 21.1 if the Provider has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
  - (b) if a Service Failure Default has occurred;
  - (c) if a Catastrophic Failure has occurred;
  - (d) if an Insolvency Event has occurred;

- (e) if the Provider ceases or threatens to cease to carry on business in the United Kingdom;
  - (f) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Provider to which the Authority reasonably objects; or
  - (g) in accordance with clause 24.7.
- 21.2 The Authority may terminate this Contract by giving not less than 30 days written notice on the Provider in any of the following circumstances:
- (a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
  - (b) at the Commencement Date one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 (including as a result of the application of regulation 57(2)) applied:
    - (i) to the Provider such that it should have been excluded from the procurement procedure; or
    - (ii) to a Sub-Contractor on which the Provider relied in its tender to the Authority for this Contract and the Provider does not cease to engage that Sub-Contractor within 30 days of a notice from the Authority requiring the Provider to cease to engage that Sub-Contractor; or
  - (c) the Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure pursuant to Article 258 of TFEU.
- 21.3 If this Contract is terminated by the Authority for cause in accordance with clause 21.1 or 21.2 such termination shall be at no loss or cost to the Authority.

## **22 Termination on Notice**

- 22.1 The Authority may terminate this Contract at any time by giving not less than 30 days written notice to the Provider.
- 22.2 Any individual member of the Authority in respect of an applicable Authority Premises may terminate this Contract in so far as it relates to an applicable named Authority Premises at any time by the service of 30 days written notice on the Provider.

## **23 Force Majeure**

- 23.1 Subject to the remaining provisions of this clause 23, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.
- 23.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and

- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 23.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 23.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- 23.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 23.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 23.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 60 Working Days.

## **24 Prevention of Bribery**

- 24.1 The Provider:
  - (a) shall not, and shall procure that any Provider Party and all Provider Personnel shall not, in connection with this Contract commit a Prohibited Act;
  - (b) shall not do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act;
  - (c) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract.
- 24.2 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider Party or Provider Personnel, have at any time prior to the Commencement Date:
  - (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 24.3 The Provider shall:
  - (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any

relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

- (b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Provider) compliance with this clause 24 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

24.4 The Provider shall establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Provider Party or Provider Personnel from committing a Prohibited Act and that are compliant with the Bribery Act and shall enforce it where appropriate.

24.5 If any breach of clause 24.1 or clause 24.2 is suspected or known, the Provider must notify the Authority immediately.

24.6 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 24.1 or clause 24.2, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

24.7 The Authority may terminate this Contract by written notice with immediate effect if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 24.1 or clause 24.2. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Authority; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.

24.8 Any notice of termination under clause 24.7 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate.

24.9 Despite clause 12, any dispute relating to:

- (a) the interpretation of clause 24; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

24.10 Any termination under clause 24.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

**25 Not Used**

**26 Waiver**

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

**27 Accumulation of Remedies**

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given there under or existing at law or in equity by statute or otherwise.

**28 Severability**

28.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

28.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**29 Partnership or Agency**

29.1 Nothing in this Contract shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Contract.

29.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

**30 Third Party Rights**

No one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

**31 Publicity**

The Provider shall not:

- (a) make any press announcements or publicise this Contract or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

## **32 Notices**

32.1 Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Contract. Notices may be sent by:

- (a) first-class mail,
- (b) e-mail (provided that the e-mail is sent to the e-mail address of the Authorised Representative of the receiving party as set out at clause 4 of the Key Provisions, or as notified by one party to the other in writing from time to time and are confirmed within 24 hours by first class mailed confirmation of a copy) however notice of a parties' intention to terminate this Contract or informing the other party of a breach of this Contract shall not be accepted in email form and may only be sent by first class mail or facsimile transmission; or
- (c) facsimile transmission (provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy).

32.2 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 32.3:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage.	9.00 am on the third Working Day after posting or at the time recorded by the delivery service.
Pre-paid airmail providing proof of postage.	9.00 am on the fifth Working Day after posting or at the time recorded by the delivery service.
Facsimile transmission/E-mail.	At the time of transmission provided that they are confirmed as set out above.

32.3 For the purpose of clause 32.2 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday, outside the hours of 9.00 am to 5.00 pm, or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

## **33 Changes to the Contract**

No Change to this Contract shall be effective unless it is processed in accordance with the Change of Control Procedure set out in Schedule 13.



**34 Entire Agreement**

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

**35 Counterparts**

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

**36 Governing Law**

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

**37 Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract of its subject matter or formation (including non-contractual disputes).

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

### Schedule 3. Definitions and Interpretation

#### 1 Definitions and Interpretation

##### 1.1 The definitions and rules of interpretation in this clause apply in this Contract.

**Activity** means any levels of services / 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.

**Authorised Representative:** the persons respectively designated as such by the Authority and the Provider, the first such persons being set out in the Key Provisions

**Authority Assets:** any materials, consumables, resources, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services as set out in Schedule 14.

**Authority Premises:** the premises which are to be made available for use by the Provider for the provision of the Services on the terms set out in this Contract as set out in the Specification.

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

**Board of Directors** means the executive board or committee of the relevant organisation

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Business Continuity Plan** means the Provider's plan referred to in Clause **Error! Reference source not found.** (*Business Continuity*) relating to continuity of the Services, as agreed with the Authority and as may be amended from time to time

**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.

**Catastrophic Failure:** any action by the Provider, whether in relation to the Services and this Contract or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

**CEDR** means the Centre for Effective Dispute Resolution

**Change:** any change to this Contract including to any of the Services.

**Change Control Procedure:** the procedure for making a Change, as set out in clause 33 of the General Terms.

**Charges:** means the charges referred to in clause 6 of the General Terms and more particularly set out in the Payment Schedule.

**Commencement Date:** the date on which this Contract commences as set out on the Front Sheet, or, if the Front Sheet does not expressly state the Commencement Date, the date on which the Contract is signed.

**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 set out in Schedule 5

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its Representatives) to the other party and that party's Representatives whether before or after the date of this Contract in connection with the Contract, concerning:

- (a) the existence and terms of this Contract;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
- (c) any information developed by the parties in the course of carrying out this Contract

**Consents means:**

- (a) 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
- (b) 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:** means this agreement and no other.

**Contract Price:** the aggregate Charges paid or payable by the Authority to the Provider for the Services assuming that the Contract runs for the duration of the Term or, if it is not possible to calculate this value; either:

- (a) the price agreed by the parties (acting reasonably) in writing; or
- (b) an amount calculated by the parties (acting reasonably) taking into account the average Charges of the Contract prior to the liability incident and the projected future spend extrapolated to the end of the Term.

**Contract Year:** a period of 12 months, commencing on the Commencement Date.

**CQC** means the Care Quality Commission.

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

**Data:** shall have the meaning as set out in the Specification.

**Data Processor:** shall have the same meaning as set out in Data Protection legislation.

**Data Protection Legislation:** means all current data protection legislation and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**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.

**Default Interest Rate** means LIBOR plus 2% per annum.

**Default Notice:** is defined in clause 1.2 of the General Terms.

**Disclosing Party** means the Party disclosing Confidential Information.

**Dispute:** a dispute arising out of or in connection with this Contract or the performance, validity or enforceability of it.

**Dispute Resolution Procedure:** the procedure set out in clause 12 of the General Terms.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations

**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.

**Exit Management Plan:** the plan (if any) set out in Schedule 10.

**Expiry Date:** means the date set out in clause 2 of the Key Provisions.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure Event:** any circumstance not within a party's reasonable control affecting the performance by a party of its obligations under this Contract arising from acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, collapse of buildings, fire, explosion or accident, interruption or failure of utility service, and any labour or trade dispute, strikes, industrial action or lockouts, but excluding any industrial dispute relating to the Provider, the Provider's Personnel or any other failure in the Provider's supply chain.

**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.

**Front Sheet:** the front sheet of the Contract.

**General Terms:** the provisions set out in Schedule 2.

**Good Clinical Practice** means using standards, practices, methods and procedures conforming to the Law 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.

**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.

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term:** shall have the meaning as set out in the Key Provisions.

**Intellectual Property Rights:** any and all intellectual property rights of any nature anywhere in the world whether registered, or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Insolvency Event:** where;

- (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;

- (g) the Provider (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- (j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

**Key Personnel:** those personnel identified in the Specification for the roles attributed to such personnel, as modified from time to time in accordance with the terms of this Contract.

**Key Provisions:** the terms set out in Schedule 1.

**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.

**Management Reports:** the reports to be prepared and presented by the Provider in accordance with clause **Error! Reference source not found.** of the Key Provisions and the Specification.

**Necessary Consents:** means all consents required from time to time by UK law and all reasonable local consents required by the Authority.

**NICE** means National Institute for Health and Clinical Excellence being 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).

**NHS Act 2006** means the National Health Service Act 2006.

**Ofsted** means the Office for Standards in Education, Children's Services and Skills.

**Parties** means the Authority and the Provider and "Party" means either one of them.

**Payment Schedule:** the document set out at Schedule 8.

**Performance Review Meeting** means a meeting of the Authority and the Provider held in accordance with paragraph 5 of Schedule 17.

**Personal Data:** shall have the same meaning as set out in Data Protection legislation.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Authority; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

**Provider's Authorised Representative** means the person identified in clause **Error! Reference source not found.** or their replacement.

**Provider Party:** the Provider's agents and contractors, including each Sub-Contractor.

**Provider's Personnel:** all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**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.

**Provider's Tender Response:** the tender response document submitted by the Provider and other associated documentation set out in Schedule 7.

**Public Authority** means as defined in section 3 of the FOIA.

**Public Contracts Regulations 2015:** the Public Contracts Regulations 2015 as enacted or the same or equivalent provisions in any re-enactment/amendment.

**Quality Outcomes Indicators** means the agreed key performance indicators and outcomes to be achieved as set out in **Error! Reference source not found.**

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

**Regulated Activity:** in relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006.

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

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

**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.

**Remediation Notice:** a notice served by the Authority in accordance with clause 21.1(a) of the General Terms.

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Authority internally or by any Replacement Provider.

**Replacement Provider:** any third party supplier of Replacement Services appointed by the Authority from time to time.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

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

**Review Meeting** means a meeting to be held in accordance with clause 31 of the Additional Key Provisions or as otherwise requested in accordance with clause 31.2 of the Additional Key Provisions.

**Safeguarding Policies** means the Provider's written policies for safeguarding children and adults, as amended from time to time.

**Serious Incident** means an incident or accident or near-miss where a patient (whether or not a Service User), member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Provider's Premises or where the actions of the Provider, the Staff or the Authority are likely to be of significant public concern.

**Service Commencement Date** means the date at the beginning of this contract.

**Service Failure:** a failure by the Provider to provide the Services in accordance with the Service Level Arrangements.

**Service Failure Default:** a failure by the Provider to provide the Services in accordance with the Service Level Arrangements that the Authority deems shall result in termination of the Contract as set out in the Specification.

**Service Level Arrangements:** the service level arrangements set out in the Specification.

**Service Specification** means each of the service specifications defined by the Authority and set out at Schedule 4.



**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 Quality Performance Report** means a report as described in paragraph 1 of Schedule 17.

**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.

**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.

**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 13 of the General Terms to deliver or assist with the delivery of part of the Services as defined in a Service Specification

**Services:** the services to be delivered by or on behalf of the Provider under this Contract, as more particularly described in the Specification which may from time to time be altered by the Authority.

**Specification:** the specification detailed in Schedule 4.

**Sub-Contract:** (except in clause 6.12 of the General Terms) any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

**Sub-Contractor:** the contractors or suppliers that enter into a Sub-Contract with the Provider.

**Term:** the period of the Initial Term as may be varied by:

- (a) any extensions to this Contract which are agreed pursuant to clause 13 of the Key Provisions; or
- (b) the earlier termination of this Contract in accordance with its terms.

**Termination Date:** the date of expiry or termination of this Contract.

**Transferable Contracts:** the third-party contracts (including any licenses to third-party software) that are necessary to enable the transition of the Services to the Authority or any Replacement Provider on expiry or termination of this Contract.

**Transferring Contracts:** shall have the meaning as set out in Schedule 9.

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

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

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to statute, legislation, regulations or a statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes facsimile transmission and e-mail.
- 1.10 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Contract) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Contract; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression so far as any party is aware or to any party's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

**Schedule 4.****Specification**

*Guidance - See Specification in the tender pack – before signing the Contract the Specification will need to be inserted here.*

*Guidance: Insert the details of what the Provider shall be doing as fully and completely as possible.*

## **Schedule 5.      Conditions Precedent**

1. Provide the Authority with a copy of the Provider's registration with the CQC and/or OFSTED where the Provider must be so registered under the Law.
2. The provider must have a competent workforce who are able to safely deliver against both the universal and specialist nature of the services (including SCPHN qualified nurses and substance misuse staff with the competence that meets the requirements of the Drugs and Alcohol National Occupational Standards (DANOS), see

[http://www.skillsforhealth.org.uk/images/resource-section/service-area/alcohol-and-drugs/DANOS\\_Guidance\\_on\\_Competence\\_and\\_Qualifications.pdf](http://www.skillsforhealth.org.uk/images/resource-section/service-area/alcohol-and-drugs/DANOS_Guidance_on_Competence_and_Qualifications.pdf)

3. The Provider must have an established a clinical governance framework and process which can assure both itself and commissioners that services provided are both safe and effective. This must be able to coordinate and respond to the management of services involving complex young people and adults (for example, including the delivery of interventions and management of incidents involving injecting drug using young people).

## **Schedule 6. Outcomes and Key Performance Indicators**

Refer to Appendix 1 Outcomes Framework and Appendix 8 Key Performance Indicators. Please be advised that this list is indicative and will be further developed, negotiated and agreed between the Authority and Provider post award and throughout the duration of this Contract.

*Guidance: Finalised Outcomes and KPIs to be inserted here once agreed by both parties.*

### **1. Default in Relation to Mandatory KPIs**

- 1.1 The Authority will monitor the Provider's performance in relation to the Mandatory KPIs. A Default Notice (as detailed in Schedule 17) will be issued to the Provider where they fail to meet the required level identified by each individual mandatory KPI.
- 1.2 The Provider will be required to put a Remedial Action Plan in place to address the issues raised through the Default Notice (as detailed in Schedule 17).
- 1.3 The Provider will not be defaulted where the performance failure is due to force majeure as defined in the contract terms, or where non-performance is reasonably defined as being caused by the actions or omissions of a third party and which are outside the control of the Provider and which are not the responsibility of the Provider under this contract. These circumstances should be appropriately evidenced to the Authority where a failure to perform results. The Authority expects that when such circumstances apply, the Provider will use their best endeavours to continue delivering the Service through appropriate means.
- 1.4 The Provider will comply with the monitoring arrangements set out in this Schedule 6, and Schedule 17. The Provider will provide Service Quarterly Performance Reports relating to all mandatory KPIs (Part one) and will report on their overall performance relating to the non-mandatory KPIs (Part two).
- 1.5 Some KPIs are identified as being self-monitoring; the Provider will be responsible for reporting any failure to perform to the required level to the Authority during the quarter in which the non-performance occurred. Where the Provider fails to report non-performance, the Authority reserves the right to instigate a Performance Review as per paragraph 5 of Schedule 17.

## **Schedule 7.      Provider's Tender Response Document**

*Guidance - See Provider's tender response document – before signing the Contract the Tender Response Document will need to be inserted here.*

## **Schedule 8. Payment Schedule**

*Guidance - See Payment Schedule in the tender pack – before signing the Contract the Payment Schedule will need to be inserted here.*

- 1.1 The Authority may request the Provider to provide additional services that fall within its sphere of competence and expertise which are referred to in the Specification. If such service is not identified in the Pricing Schedule the Provider will provide a written quotation. In the event that the Authority declines the Provider's quotation, it reserves the right to seek alternative quotations and in the event of the supply of services, materials and for equipment being carried out by a third party, the Provider will co-operate with such third party whilst fulfilling its responsibilities under this Contract.
- 1.2 The Authority shall pay any VAT on the invoiced sums at the rate and in the manner prescribed by law from time to time.
- 1.3 The payment and invoicing process shall be as set out in the Service Specification.

## **Schedule 9. Exit Management Schedule**

### **1 Introduction**

- 1.1 This Schedule describes the duties and responsibilities of the Provider to the Authority or any individual member of the Authority leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of service provision to a Replacement Provider.
- 1.2 The objectives of this Schedule 9 are to ensure a smooth transition of the availability of the Services from the Provider to the Authority and/or Replacement Provider at the termination (howsoever arising) (including partial termination) or expiry of this Contract.

### **2 Exit and Service Transfer Arrangements**

The Provider agrees to indemnify and keep the Authority fully indemnified for itself and on behalf of any replacement Provider in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the Authority by the Provider, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

### **3 Exit Management Plan**

- 3.1 Where required by the Authority, no later than three (3) months after the Commencement Date, and thereafter as specified in paragraph 3.4 of this Schedule, the Provider shall prepare an Exit Management Plan for review by the Authority which will set out the Provider's proposed methodology for achieving an orderly transition of the Services from the Provider to the Authority and/or its Replacement Provider on the expiry or termination of this Contract.
- 3.2 The Authority shall review the Exit Management Plan within twenty (20) Working Days of receipt from the Provider and shall notify the Provider of any suggested revisions to the Exit Management Plan. In this respect, the Authority will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days of them being communicated to the Provider. Once agreed, the Exit Management Plan shall be inserted into this Contract at Schedule 10. The agreed Exit Management Plan shall be signed as approved by each party. If the parties are unable to agree the contents of the Exit Management Plan within 30 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 3.3 The Exit Management Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services, including the following details as a minimum:
  - (a) how the information in paragraph 6.1 of this Schedule 9 is obtained;
  - (b) how the Provider will deal with the expiry or termination of this Contract;
  - (c) a detailed description of both the transfer and cessation processes, including a timetable;
  - (d) how the Services will transfer to the Replacement Provider and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Provider or its Sub-Contractors (where applicable);
  - (e) the scope of any services and activities to be performed by the Provider to assist the Authority and/or the Replacement Provider in the transfer of the Services to the Authority and/or Replacement Provider including a timetable (where applicable);



- (f) how each of the issues set out in this Schedule 9 will be addressed to facilitate the transition of the Services from the Provider to the Authority and/or the Replacement Provider with the aim of ensuring that there is no disruption to or degradation of the Services;
  - (g) proposals for the identification and transfer of documentation providing details of the Services;
  - (h) proposals for the identification of all leases, maintenance agreements and support agreements utilised by the Provider in connection with the provision of the Services, together with details of the relevant lessors and contractors, the payment terms, expiry dates and any relevant novation and/or early termination provisions;
  - (i) proposals to enable the Authority or the Replacement Provider to recruit suitably skilled personnel;
  - (j) proposals for the training of key members of the Authority's and/or the Replacement Provider's personnel in connection with the continuation of the provision of the Services following the expiry or termination (howsoever arising) of this Contract charged at rates agreed between the parties at that time;
  - (k) proposals for the granting of licences to use all software (including the Software) necessary for the Authority's receipt of the Services and the provision of copies of all related documentation;
  - (l) proposals for the transfer of all Authority Data then in the Provider's possession to either the Authority and/or a Replacement Provider, including:
    - (i) an inventory of all Authority Data;
    - (ii) details of the data structures in which the Authority Data is stored, in the form of an agreed data model together with information on other data structures in which the Authority Data could be stored;
    - (iii) proposed transfer methods, both physical and electronic; and
    - (iv) proposed methods for ensuring the integrity of the Authority Data on transfer;
  - (m) proposals for providing the Authority and/or a Replacement Provider with copies of all documentation used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Provider; and
  - (n) proposals for the supply of any other information or assistance reasonably required by the Authority or a replacement Provider in order to affect an orderly hand over of the provision of the Services.
- 3.4 The Exit Management Plan shall be reviewed and updated by the Provider. In this regard, the Provider shall provide a revised version of the Exit Management Plan to the Authority on each year (or more frequently as may be agreed between the parties). The revised Exit Management Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.2 of this Schedule 9.
- 3.5 Within 20 Working Days after service of a notice to terminate this Contract by either party or 6 months prior to the expiry of this Agreement, the Provider will submit for the Authority's approval the Exit Management Plan in a final form that could be implemented immediately. The final form of the Exit Management Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Management Plan was last agreed.

## **4 Termination Obligations**

- 4.1 The Provider shall comply with all of its obligations contained in the Exit Management Plan.
- 4.2 On termination or expiry of this Contract for any reason, the Provider shall (to the extent that it does not adversely affect the Provider's performance of the Services and the Exit Management Plan):
- (a) immediately deliver to the Authority all Authority Assets (where applicable), copies of information, documentation and Data provided by the Authority to the Provider for the purposes of this Contract;
  - (b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Provider as at the date of expiry or termination or any other sums due to the Authority in accordance with this Contract;
  - (c) cease to use the Authority Data;
  - (d) provide the Authority and/or the Replacement Provider with a complete and uncorrupted version of all Authority Data;
  - (e) certify to the Authority that it has not retained any copies of any Authority documentation or other information or data, except for one copy which the Provider may use for audit purposes only and subject to the confidentiality obligations in clause 18 of the General Terms;
  - (f) vacate any Authority Premises; and
  - (g) provide such information relating to the Services as remains in the possession or control of the Provider.
- 4.3 The provisions of clauses 14 (Limitation of Liability) 15 (Insurance), 16 (Freedom of Information), 17 (Data Protection), 18 (Confidentiality), 19 (Audit), 20 (Intellectual Property Rights) 21 (Termination for Breach) of the General Terms and this paragraph 4 and clause 17 (Reporting and meetings) (if applicable) of the Key Provisions shall survive termination or expiry of this Contract.
- 4.4 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## **5 Assistance on Expiry or Termination**

In the event that this Contract expires or is terminated the Provider shall, where so requested by the Authority in accordance with this Schedule 9, provide assistance to the Authority to migrate the provision of the Services to a Replacement Provider.

## **6 Pre-service Transfer Obligations**

- 6.1 The Provider agrees that, subject to compliance with the Data Protection Legislation:
- (a) within twenty (20) Working Days of the earliest of:
    - (i) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer; or
    - (ii) receipt of the giving of notice of early termination of this Contract or any part thereof; or

- (iii) the date which is six (6) months before the expiry date of this Contract,  
it shall provide to the Authority and/or its Replacement Providers:
  - (iv) details of the Services;
  - (v) details of all Authority Assets currently used in providing the Services;
  - (vi) details of the Transferable Contracts;
  - (vii) a list of those of its, or its Sub-Contractors', employees who are wholly or mainly assigned to the provision of the Services which the Provider believes will transfer to the Authority or the replacement Provider (as the case may be), together with Staffing Information in relation to such employees,
  - (viii) an inventory of any Authority Data in the Provider's possession or control;
  - (ix) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - (x) a list of ongoing and/or threatened disputes in relation to the provision of the Services,
  - (xi) such other material and information as the Authority shall reasonably require, and
- (b) at least ten (10) Working Days prior to the Service Transfer Date, the Provider shall provide to the Authority for itself or on behalf of any replacement Provider (as the case may be) a final list of employees which shall transfer under TUPE.
- 6.2 Within 10 Working Days of the Authority receiving the information in 6.1(a), the Authority shall notify the Provider which, if any, of the Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Provider (the **Transferring Contracts**). Where requested by the Authority and/or its Replacement Provider, the Provider shall provide all reasonable assistance to the Authority and/or its Replacement Provider to enable it to determine which Transferable Contracts the Authority and/or its Replacement Provider requires to provide the Services.
- 6.3 The Provider shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Provider of the Transferring Contracts. The Provider shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 6.4 The Authority shall:
- (a) accept assignments from the Provider or join with the Provider in procuring a novation of each Transferring Contract; and
  - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Provider, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Provider does the same.
- 6.5 The Provider shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Provider has been effected.

- 6.6 The Provider shall indemnify the Authority (and/or the Replacement Provider, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Provider) pursuant to paragraph 6.3 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.
- 6.7 The Provider acknowledges that the Authority may disclose the Provider's Confidential Information to an actual or prospective Replacement Provider or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement.
- 6.8 The Provider warrants that all information provided under paragraph 6 of this Schedule shall be true, accurate and complete and the level of detail to be provided by the Provider shall be such as would be reasonably necessary to enable a third party to prepare an informed offer for those Services and to not be disadvantaged in any subsequent procurement process compared to the Provider.
- 6.9 The Provider shall notify the Authority within 5 Working Days of any change to the information provided in paragraph 6.1 and shall consult with the Authority regarding such changes
- 6.10 From the date of the earliest event referred to in paragraphs 6.1(a)(i) to 6.1(a)(iii) of this Schedule 9, the Provider agrees that it shall not, and agrees to procure that its Sub-Contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:
- (a) increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or
  - (b) replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise; or
  - (c) make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment).

## **Schedule 10. Exit Management Plan**

*Guidance: To insert the Exit Management Plan when it is agreed by both parties.*

## **Schedule 11. TUPE**

### **Part 1 Transfer of Employees**

#### **1 Definitions**

The definitions in this paragraph apply in this schedule:

**Admission Agreement:** the agreement in the form set out in Part 3 of this Schedule 11 to be entered into in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008, as amended, by the administering authority, the Authority and the Provider or Sub-Contractor, as appropriate.

**Appropriate Pension Provision:** in respect of:

(a) Eligible Employees, either:

- (i) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or
- (ii) pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.

**Bond:** the bond to be executed in the Authority's standard form/ in the form set out in Part 3 of this Schedule 11 to the value of [VALUE] under paragraph 5.3.

**Effective Date:** the date(s) on which the Services (or any part of the Services) transfer from the Authority or any Third Party Employer to the Provider or Sub-Contractor.

**Eligible Employees:** the Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Transfer Date.

**Employee Liability Information:** the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE.

**Employment Liabilities:** all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**LGPS:** Local Government Pension Scheme.

**LGPS Regulations:** includes:

- (a) the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239); and
- (b) the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166) (as amended); and

(c) the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (SI 2008/239); and

(d) the Local Government Pension Scheme Regulations 1997 (SI 1997/1612)

(as amended and replaced from time to time).

**Relevant Employees:** those employees whose contracts of employment transfer with effect from the Service Transfer Date from the Provider or Sub-contractor to the Authority or a Replacement Provider by virtue of the application of TUPE.

**Provider's Final Staff List:** the list of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**Provider's Provisional Staff List:** the list prepared and updated by the Provider of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

**Service Transfer Date:** the date on which the Services (or any part of the Services), transfer from the Provider or Sub-contractor to the Authority or any Replacement Provider.

**Staffing Information:** in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including but not limited to the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

**Transfer Date:** **[Insert details]**

**Transferring Employees:** employees of the Authority whose contracts of employment will transfer with effect from the Transfer Date to the Provider by virtue of the application of TUPE as listed in Part 2 of this Schedule 11.

## **2 Transfer of Employees to the Provider**

- 2.1 The Authority and the Provider agree that the contracts of employment of the Transferring Employees shall transfer to the Provider or Sub-contractor on the Transfer Date.
- 2.2 The Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.
- 2.3 The Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Transfer Date.
- 2.4 The Provider shall be liable for and indemnify and keep indemnified the Authority against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Transfer Date.
- 2.5 The Provider shall immediately on request by the Authority provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Transferring Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact, and

shall indemnify the Authority against all Employment Liabilities resulting from any failure by it to comply with this obligation.

### **3 Employment Exit Provisions**

- 3.1 This agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Provider shall (and shall procure that any Sub-Contractor shall) on receiving notice of termination of this agreement, or otherwise on request from the Authority, provide the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including but not limited to information as to the potential application of TUPE to the personnel identified in the Provider's Provisional Staff List. The Provider shall notify the Authority of any changes to this information as and when they occur.
- 3.3 At least 14 days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4 The Authority shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5 The Provider warrants that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.
- 3.6 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 In the six months prior to termination of this Agreement, and at any point after notice has been served to terminate this Agreement, the Provider shall not and shall procure that any Sub-Contractor shall not without the prior written consent of the Authority, assign any person to the provision of the Services who is not listed in the Provider's Provisional Staff List and shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- (a) increase the total number of employees listed on the Provider's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
  - (b) make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Provider's Provisional Staff List;
  - (c) increase the proportion of working time spent on the Services by any of the Provider's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
  - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Staff List; and



- (e) replace any of the Provider's Personnel listed on the Provider's Provisional Staff List or deploy any other person to perform the Services or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Staff List.
- 3.8 The Provider will promptly notify the Authority or, at the direction of the Authority, the Replacement Provider of any notice to terminate employment received from any persons listed on the Provider's Provisional Staff List regardless of when such notice takes effect.
- 3.9 The Provider shall indemnify the Authority and at the Authority's request each and every Replacement Provider in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Authority or any Replacement Provider including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
  - (a) any claim, demand, action or proceeding which is made or brought by a Relevant Employee, or any trade union or other body or person representing any Relevant Employee, against the Authority or any Replacement Provider at any time and which relates to circumstances or events occurring or arising on or prior to the Service Transfer Date;
  - (b) any failure by the Provider or any Sub-Contractor to comply with its or their obligations under this paragraph 3.
- 3.10 The Provider shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Provider against all Employment Liabilities relating to:
  - (a) any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services; or
  - (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor),arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.11 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.11, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.13 Despite paragraph 3.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

#### **4 Pensions**

- 4.1 The Provider shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this agreement.

- 4.2 The provisions of paragraph 4 and paragraph 5 of this Schedule 11 shall be directly enforceable by an affected employee against the Provider or any relevant Sub-contractor.

## **5 Admitted Body Status to the Local Government Pension Scheme**

- 5.1 Where the Provider or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Provider shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate [or Bond value] in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Date.
- 5.2 The Provider shall indemnify and keep indemnified the Authority and/or any Replacement Provider and, in each case, their Providers, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Provider or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this agreement.
- 5.3 The Provider shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or Bond required in accordance with the Admission Agreement. [The format for the bond agreement is attached at Appendix [NUMBER].]
- 5.4 The Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority. The Provider shall be responsible for meeting all costs associated with the award of such benefits.

## **6 Provider Pension Scheme**

[Where the Provider or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS or such other broadly comparable scheme, t][T]he Provider shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

- (a) established no later than [three months] prior to the date of the Relevant Transfer; and
- (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the [NAME OF PENSION SCHEME].

and the Provider shall produce evidence of compliance with this paragraph to the Authority prior to the date of the Relevant Transfer. :

The Authority's actuary shall determine the terms for bulk transfers from the [NAME OF PENSION SCHEME] to the Provider's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this agreement.

## **Part 2 Transferring employees**

<b>Transferring Employees</b>

**Part 3 Admission agreement and Bond [for use in transfers of members of LGPS only]**

[INSERT COPIES]

Intentionally left blank

Intentionally left blank

Intentionally left blank

[INSERT COPIES]

## **Schedule 12. Evidence of Insurance**

*Guidance: To insert evidence of the Provider's compliance with the insurance obligations on receipt.*

## **Schedule 13. Change Control Procedure**

### **1 Definitions**

The definitions in this paragraph apply in this Schedule 13.

**Change Control Note:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

### **2 Permitted Changes**

2.1 Changes to the Contract shall be made only where:

- (a) Such a Change is permitted by the Public Contracts Regulations 2015, Regulation 72(1)(b) to (f); or
- (b) permitted under paragraph 2.2 below.

2.2 A Change is permitted where each of requirements (a) to (d) below is satisfied:

- (a) the Change is of the following scope and nature:
  - (i) relates to the provision of any additional service or services as set out in section 10 Scope and Nature of Possible Modifications or Options of Part Specification; or
  - (ii) relates to changes to the service delivery model, core offer, or the range of activities undertaken, to meet needs, maintain viability and sustainability of provision or necessitated by the circumstances set out in (c) (i) to (c) (iii) below; or
  - (iii) is necessitated by the development and introduction of alternative methods of delivery for specific services; or
  - (iv) temporary/permanent relocation of Children's Centre premises; or
  - (v) is as a result of changes to the funding arrangements or the need to deliver efficiency savings; or
  - (vi) a change in the contracting Authority.
- (b) the price of the Change is calculated as follows:
  - (i) in the case of additional services is in accordance with the Authority's budget for that service, taking into consideration the pricing proposals set out in the Provider's tender submission; or
  - (ii) is based on the pricing proposals set out in the Provider's tender submission and proportionate to the changes being made; or
  - (iii) in accordance with any other contracting authority's budget, where the Authority is contracting on behalf of a third party; or
  - (iv) in accordance with CPI.
- (c) the circumstances necessitating the Change are:
  - (i) the inclusion of any of the additional services set out in section 10 Scope and Nature of Possible Modifications or Options of Part Specification; or

- (ii) the inclusion of services for another contracting authority, that meet the scope and nature of the services within this contract; or
  - (iii) unanticipated changes to the budget, which may be brought about by a range of circumstances, including (but not limited to) changes or reductions in the level of the Public Health grant received by the Authority and changing priorities within the Authority with regard to the allocation of the Public Health grant and/or other budgets; or
  - (iv) changes to the statutory functions to be provided by the Authority; or
  - (v) changes in the remit of the wider Public Health and Children's Social Care agenda; or
  - (vi) changes relating to who has statutory responsibility for provision of Public Health and/or Children's Services; or
  - (vii) of a legislative, statutory or regulatory nature;
  - (viii) due to an increase or decrease in the service budget;
  - (ix) in relation to the changing needs and usage patterns of service users;
  - (x) to ensure the ongoing viability and sustainability of the service; or
  - (xi) because the premises are no longer fit for purpose or are required by the Authority for other purposes.
  - (xii) as a result of a strategic or operational restructure of the Authority, including local government re-organisation.
- (d) the Change does not alter the overall nature of the Contract.

### **3 General Principles**

- 3.1 Where the Authority or the Provider sees a need to change this Contract, the Authority may at any time request and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 4 of this Schedule 13.
- 3.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Provider shall continue to perform this Contract in compliance with its terms before such Change.
- 3.3 Any discussions which may take place between the Authority and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 3.4 No Variation to this Contract will be valid or of any effect unless agreed in writing by the Authority Authorised Representative (or his nominee) and the Provider's Authorised Representative (or his nominee) in accordance with clause Part 132 of the General Terms. All agreed Variations shall form an addendum to this Contract.
- 3.5 Any work undertaken by the Provider and the Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 13, shall be undertaken entirely at the expense and liability of the Provider.

### **4 Procedure**

- 4.1 Discussion between the Authority and the Provider concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
  - (b) a request to change this Contract by the Authority; or
  - (c) a recommendation to change this Contract by the Provider.
- 4.2 Where a written request for an amendment is received from the Authority, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Authority within three weeks of the date of the request.
- 4.3 A recommendation to amend this Contract by the Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 4.4 Each Change Control Note shall contain:
- (a) the title of the Change;
  - (b) the originator and date of the request or recommendation for the Change;
  - (c) the reason for the Change;
  - (d) full details of the Change, including any specifications;
  - (e) the price, if any, of the Change;
  - (f) a timetable for implementation, together with any proposals for acceptance of the Change;
  - (g) a schedule of payments if appropriate;
  - (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
    - (i) the timetable for the provision of the Change;
    - (ii) the personnel to be provided;
    - (iii) the Charges;
    - (iv) the Documentation to be provided;
    - (v) the training to be provided;
    - (vi) working arrangements;
    - (vii) other contractual issues;
  - (i) the date of expiry of validity of the Change Control Note; and
  - (j) provision for signature by the Authority and the Provider.
- 4.5 For each Change Control Note submitted by the Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information;
  - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Provider; or
  - (iii) notify the Provider of the rejection of the Change Control Note.

4.6 A Change Control Note signed by the Authority and by the Provider shall constitute an amendment to this Contract.



**Schedule 14. Service User, Carer and Staff Surveys**

Survey Type	Frequency	Reporting Process	Format
Staff wellbeing survey	Annual	Reported with Q1 data following financial year end	Format to be agreed post contract award
Health transition reviews at entry to reception year and at end of year 6	Annual	Reported with Q2 data following school year end	Format to be agreed post contract award
Young person friendly standards review	Annual	Reported with Q2 data following school year end - format to be agreed post contract award (expectation that service will be compliant with the probability of having a nonpaid member of staff completing these e.g. mystery shopper experience by previous/current service user)	Format to be agreed post contract award
Baby friendly standards review	Annual	Reported with Q1 data following financial year end (expectation that service will be compliant with the probability of having a nonpaid member of staff completing these e.g. mystery shopper experience by previous/current service user)	Format to be agreed post contract award
Service user (family) voice - must include at least one family from our priority groups and must be from two to four families per quarter  The Provider will ensure that the voices of children and young people themselves should be represented	Quarterly	Reported quarterly.  The focus will be on three areas: experience, short and medium term impact (including sustainable links with the community) and lessons learned	These must be in one of three formats: video, vox pops or a visual representation (e.g. journey map). The Provider may choose to invite families to come to the meeting if they feel this is the best way to share the voice and experience
Feedback from the parent carer and young people boards	Quarterly	Reported quarterly. To be consolidated as part of quarterly review paperwork submitted to commissioners	Format to be agreed post contract award
Resilience before and after measures (see outcomes framework for more specific detail)	Monthly	Reported monthly. To be consolidated as part of monthly review paperwork submitted to commissioners	Format to be agreed post contract award

## **Schedule 15. Authority Assets and Leases**

### **Authority Assets**

*Guidance: set out the Authority Assets to be used by the Provider to provide the Services.*

### **Appendix A15: Leases**

The agreed leases shall form Appendix A15 to this Schedule 15.

## **Schedule 16. Incidents Requiring Reporting Procedure**

### **1. Provider Incident Policy**

It is expected that the Provider will have an Incident Policy that details the process for describing, reporting and reviewing the outcome of any serious or untoward incident. The report should provide an opportunity to learn from the incident and reduce any contributory factors. On completion the final incident report is to be forwarded to the designated Authority Authorised Representative.

### **2. Service Quality**

- 2.1 The Provider must provide the service in line with the following key principles on service quality:
- (a) services must be provided within an ethos of continuous improvement, through efficiencies and innovation. There must be a commitment to delivering improving service and performance for the Authority and their residents annually against continuous improvement plans developed by the Provider with no cost implications for the Authority;
  - (b) the Provider will identify in partnership with commissioners and where agreed implement into operational practice, a service delivery plan that incorporates evidence and opportunities for new and higher quality delivery of existing services. This should be achieved through innovation from the Provider working in partnership with the Authority (and where considered appropriate other public bodies or third parties);
- 2.2 the Provider will take a proactive approach to all aspects of service delivery with an ethos of engaging with customers and stakeholders and with sound leadership and management qualities that enables a strong relationship with the Authority's officers and Members.
- 2.3 When reviewing and ensuring service quality, it is essential that service users are a key component of the assurance framework. Providers have consistently asked to bring family stories into the performance management relationship with commissioners. So we have made this one of the corners of our evidence on performance.
- 2.4 The Service will provide independent oversight on complaints from children and young people who receive support from an Advocate as part of the Service.

### **3. Governance**

- 3.1 Governance is a term used to describe the systems and processes used to ensure that organisations deliver safe high quality and cost-effective services. These systems and processes (often called a 'clinical governance framework') assure the Provider and the Authority that:
- (a) Service Users are safe;
  - (b) Service Users receive treatment which is effective for them; and
  - (c) Service Users have good experiences of their treatment.
- 3.2 The Provider is expected to ensure that a systematic approach is being adopted for governance in order to maintain and improve the quality of services received. There is an expectation that the Provider engenders a culture of continual improvement in both the standards of service delivery and experience of service users and their families.
- 3.3 The governance framework of the Provider is expected to:

- (a) be rigorous enough to ensure the objectives of maintaining and improving quality, safety and effectiveness of provision and reducing risk;
- (b) accomplish the above aims and objectives, both independently and in partnership, to the satisfaction of:
  - (i) the Service Users, their families and communities that are served;
  - (ii) the Authority;
  - (iii) the parent organisation of the Provider itself.
- (c) be responsive enough to avoid being so slow, bureaucratic or burdensome that the potential benefits are not realised in practice.

3.4 The governance framework and processes must ensure that the Provider is able to:

- (a) support an organisational and system-wide awareness of and commitment to governance issues;
- (b) ensure that governance is being monitored and issues addressed effectively, i.e. quality and safety are increased and risk reduced;
- (c) provide assurance that all the components of governance are being addressed effectively;
- (d) ensure that staff have the clinical competencies to critically appraise and challenge the safety and effectiveness of all functions being delivered e.g. substance misuse.

3.5 The Provider will be accountable for the practice within their respective service. This includes such specialist activities as:

- (a) risk assessment and management;
- (b) safeguarding;
- (c) preventing harm and promoting health and well-being;
- (d) disposal of hazardous waste.

3.6 The framework of governance responsibilities that the Provider is expected to provide includes, but is not limited to:

- (a) supervision of practice. This will include facilitating reflections on risk and vulnerability management;
- (b) implementation of, and monitoring concordance to, policies, protocols, procedures;
- (c) staff management and development: including recruitment, appraisal and CPD, sickness absence management, enhanced DBS disclosures, staff performance including disciplinary procedures that are relevant to the commissioned services;
- (d) promoting 'Service User' and community involvement in services as appropriate;
- (e) risk and vulnerability management, including safeguarding and child protection;
- (f) assessing and monitoring the quality of service provision;
- (g) addressing poor performance of staff including processes for managing allegations against the workforce;
- (h) safety and suitability of premises and / or equipment;
- (i) responsibility for the complaints process, risk management and quality improvement initiatives;
- (j) ensuring that complaints, whistle blowing and adverse events are investigated and resolved in a timely manner;
- (k) detection of adverse events, including service-specific events;
- (l) conducting internal audit, including clinical audit;

- (m) conducting a significant event investigation, including those that involve clinical judgement and practice;
  - (n) learning from complaints, compliments and untoward incidents and implementing change to prevent recurrence and improve practice;
  - (o) on-going monitoring and management of high-quality data and record keeping;
  - (p) dissemination of good practice, ideas and innovation within the service;
  - (q) providing evidenced assurance in the safety, effectiveness and quality of delivery to the commissioners;
  - (r) ensuring staff are professionally accredited to carry out their role.
- 3.7 The Provider must implement relevant duties under equalities legislation including the Disability Discrimination Act 1995 (DDA), Sex Discrimination Act 1975, and Race Relations Act 1976, Race Relations Amendment Act 2000, the Equality Act 2010 and the Special Educational Needs and Disability Act 2001.
- 3.8 The Provider must actively promote equal opportunities and anti-discriminatory practice within the service and any sub contracted services.
- 3.9 The Provider must have a clear commitment to equality of access and opportunity to learn and pay regard to the national Code of Practice for Special Educational Needs.

#### **4. Reporting**

- 4.1 The Provider must act in an open and transparent way in relation to services provided to service users/patients. Robert Francis QC's statement that, "a relentless focus on the patient's best interests and obligation to keep patients safe and protected from substandard care" is the basis for expecting openness, transparency and candour in the relationships covered in this contract.
- 4.2 The purpose of reporting incidents is for the identification of trends, specific incidents of concern or emerging risks to patient safety. Information will be treated confidentially and securely.
- 4.3 Serious incidents that have been reported to NHS England and/or local Clinical Commissioning Group should be simultaneously notified to the Authority by the Provider.
- 4.4 National And Local Activity Reporting
- (a) A locally developed set of governance monitoring returns will be a contract requirement.
  - (b) The Authority, through a memorandum of understanding with the Clinical Commissioning Group, will have access to any relevant incident reports if it has an impact on the health services for which the Authority has commissioning responsibility.
- 4.5 Governance Reporting
- (a) Reporting of governance items is to include, but not limited to:
    - (i) Compliance with CQC outcomes standards;
    - (ii) Never events (using NPSA national definitions);
    - (iii) SIRIs or SEA's;
    - (iv) Safeguarding training and activities;
    - (v) Complaints /patient experience;
    - (vi) NICE compliance;

- (vii) CAS/NPSA alerts;
  - (viii) External reports, reviews or audits;
  - (ix) Staff wellbeing ;
  - (x) Incidents;
- (b) The following is a guide to the type of incidents that require reporting to Public Health in accordance with the timescales outlined below:
- (i) **Client deaths\*;**
  - (ii) **Significant issues that had the potential for serious harm to the individual/organisation;**
  - (iii) **Pathway issues;**
  - (iv) **Child/adult Protection issues;**
  - (v) **Child/adult Protection referrals;**
  - (vi) **Minor injuries that did not cause serious harm to the individual;**
  - (vii) **Aggression, abuse and violence;**
  - (viii) **Missing or stolen paperwork;**
  - (ix) **Security incidents, including information security;**
  - (x) **Building issues;**

<b>RED</b> incidents	Copied to the Authority automatically and within 24 hours of incident identification.  * the length of time a client is not in treatment at which point it is not required to inform the Authority will be in line with the suppliers internal reporting policies.
<b>AMBER</b> incidents	Only significant harm / total system failures copied to the Authority within 5 working days of incident identification. To be included for discussion as agenda item on the Authority /provider quarterly performance quality, and governance meetings
<b>GREEN</b> incidents	Do not report to the Authority. To be included for discussion as agenda item on the Authority /provider quarterly performance quality, and governance meetings

- (c) If the full patient name/address have been supplied in the incident investigation, further paperwork should only refer to the client's identity if required and whenever possible in the standardised format (initials, date of birth gender) – e.g. AB 01/10/70 M).

## 5. Incident Reporting Procedure

- 5.1 It is expected that all serious and untoward incidents are reported to the Authority within 24 hours of the event by telephone or email and a written incident report submitted within 48 hours of the event. This initial report should include all details that are known including:
- (a) date and time of incident;
  - (b) description of incident;
  - (c) all parties involved;
  - (d) involvement of emergency services;
  - (e) immediate action taken;
  - (f) further action required;

- 5.2 Incidents should be reported to the Authority's Authorised Representative subsequent to, and not in replacement of, any internal organisational incident reporting procedures.
- 5.3 Incidents that involve controlled drugs should also be reported to the Controlled Drugs Accountable Officer in NHS England, in addition to the Authority and internal organisational mechanisms.
- 5.4 Immediate reporting of serious incidents enables the Authority to:
  - (a) provide support to the supplier to resolve immediate difficulties;
  - (b) alert and inform other stakeholders in the service to the incident;
  - (c) manage any publicity;
  - (d) facilitate an inquiry into the incident.
- 5.5 Completed incident forms (Appendix A16 Serious Incident Report) should be returned to the Authority's Authorised Representative.

## Appendix A16: Serious Incident Report Form



# Serious Incident Report Form

This form must be completed and returned to the Council by e-mail within forty-eight hours of a serious incident occurring.

Initial reporting of the incident must take place, by telephone or e-mail, within twenty-four hours of the incident occurring.

**Please return your completed form by e-mail to the Authority's Authorised Representative.**

<b>Name of Organisation submitting the report:</b>
<b>Name and contact details of person submitting the report:</b>
<b>Name of service / contract that this incident relates to:</b>
<b>Please provide details of where the incident occurred:</b>
<b>Please provide details of the individual completing the form, including contact details:</b>
<b>Date and time of the incident:</b>
<b>Date form completed:</b>
<b>Please provide a brief description of the nature of the incident (include whether anyone was injured or killed):</b>



<b>Please provide details of the individuals involved in the incident:</b>
<b>Where the emergency services contacted?</b>
Yes / No
<b>If Yes, which service(s)?</b>
<b>What was the response of the emergency services? (e.g. did they attend the incident and were any recommendations made by them?):</b>
<b>Please provide a brief description of the action taken by staff:</b>
<b>Are there any long term implications for the service as a result of the incident?</b>
<b>Any other relevant information:</b>

**For use by Torbay Council:**

<b>Date form received:</b>
<b>Provider contacted:</b>
Yes / No
<b>Action taken:</b>

## **Schedule 17. Performance and Contract Management**

### **1. Service Quality Performance Report**

- 1.1 The Service Quality Performance Report is expected to be made up in principle of two parts. Part one will be the mandatory KPI's as specified in Schedule 6. The default points system will be based upon the mandatory KPIs only (see Schedule 6).
- Part two will consist of the remaining KPI's and all Outcomes which will be reported in a systematic and cyclical manner (but not expected to be quarterly), to be negotiated with the Provider and the Commissioner.
- 1.2 Within 10 Working Days following the end of each quarter, the Provider shall submit to the Authority a report in respect of the quarter just ended containing the information set out in paragraph 1.3 below.
- 1.3 The Service Quality Performance Report, shall as a minimum contain the following information:
- (a) Part One: a summary assessment of performance against all mandatory Outcomes and relevant KPIs;
  - (b) a record of default points accrued against each mandatory KPI, plus a total number of points accrued.
  - (c) Part Two: a progress assessment of non-mandatory service levels and KPIs and Outcomes which are not expected to be routinely reported each quarter.
  - (d) a full and complete accounting record for the expenditure on the applicable to date, including any variances and mitigations for managing those.
- 1.4 The Service Quality Performance Report shall be submitted by email to the Authority's Authorised Representative in the following format(s):
- (a) service levels, KPI's and Outcomes to be reported in Microsoft Excel
  - (b) financial data to be reported in Microsoft Excel
  - (c) case studies, narrative reports, audits, service user/carer feedback to be reported in Microsoft Word or Adobe Acrobat PDF
- 1.5 The Authority shall notify the Provider in writing within 10 Working Days of receipt by the Authority of the relevant quarterly report from the Provider if there is any part of that report which the Authority (acting reasonably and without delay) disputes.
- 1.6 The Authority and the Provider shall use all reasonable endeavours to resolve any dispute that arises in this respect. Should it not be possible to resolve the dispute before the end of the quarter following the quarter that the report relates to, they should make use of the dispute resolution procedures set out in clause 12 of the General Terms.

### **2. Information Provision**

- 2.1 The Provider shall make available to the Authority, on demand, a copy of the following policies, procedures or other documentation:
- (a) statement of purpose, business plan, business continuity plans and latest copy of any relevant inspection reports;
  - (b) accounts (audited where required by law and other relevant financial information (where this is reasonable);

- (c) evidence of appropriate and adequate insurance cover;
- (d) risk and needs assessment, support planning, security, health and safety, protection from abuse, fair access, diversity and inclusion, child protection (where appropriate), confidentiality and quality standards policy;
- (e) policy & procedure for staff recruitment, induction, training and development;
- (f) complaint procedure and copy of records relating to complaints made in relation to the service and the contractor's response;
- (g) any other documentation that may be reasonably required in order to verify the service.

### **3. Monthly Contract Review Meetings**

- 3.1 Type: Face to Face or conference call.
- 3.2 Quorum: Authority's Authorised Representative, Provider's Authorised Representative.
- 3.3 Frequency: Monthly as a minimum and on an ad hoc basis as required in order to deal with any urgent issues.
- 3.4 The Agenda will include but is not limited to:
  - (h) performance review;
  - (i) service development;
  - (j) partnership working;
  - (k) operational issues;
  - (l) incidents requiring reporting;
  - (m) safeguarding;
  - (n) service user involvement.

### **4. Quarterly Performance Review Meetings**

- 4.1 Type: Face to Face
- 4.2 Quorum: To be defined upon agreement of Terms of Reference for Quarterly Performance Review Meetings
- 4.3 Frequency: Quarterly.
- 4.4 The Agenda will include but is not limited to:
  - (a) the Service Quality Performance Report (Part one and Part two – see paragraph 1.3 above);
  - (b) summary of default points accrued in previous quarter (see 1.3(b) above);
  - (c) progress assessment of non-mandatory Service Levels, KPI's and Outcomes, including any exceptions identified through internal Provider monitoring (and which fall outside of the expected reporting cycle agreed between Provider and Commissioner) (see 1.3(c) above );
  - (d) financial review;
  - (e) service development;
  - (f) partnership working;
  - (g) operational issues;
  - (h) incidents requiring reporting;

- (i) safeguarding;
- (j) service user involvement;
- (k) action plan review;
- (l) strategic issues.

## **5. Performance Review Meetings**

- 5.1 The Authority may undertake a Performance Review at any time where there is concern about the performance of the Agreement, giving not less than 10 Working Days' notice in writing to the Provider.
- 5.2 Any Performance Review undertaken shall be carried out in accordance with any guidelines and directions issued by Public Health England or NHS England.
- 5.3 The Provider shall co-operate with the Authority in carrying out the Performance Review.
- 5.4 The Authority will prepare a Service Improvement Plan taking into account the views of Stakeholders and the Provider. This will be agreed with the Contract Manager within 4 weeks of service commencement.
- 5.5 The Provider agrees to discharge the duties set out in the Service Improvement Plan.
- 5.6 The Authority reserves the right in all circumstances to notify any Regulatory Body or other relevant agency of any issue of concern identified during the Accreditation, performance Review or associated processes that fall within the jurisdiction of that Regulatory Body or agency.

## **6. Financial Monitoring**

- 6.1 The Provider acknowledges the importance to the Authority of transparency and complete and accurate records in relation to financial matters and the provision of the Services.
- 6.2 During the Contract Term and for a period of 12 years following the end of the Contract Term or earlier termination of this Contract the Provider shall maintain and retain the financial records referred to at paragraph 6.1 above and shall allow the Authority and its authorised agents access to that information upon the Authority giving at least 10 Working Days' notice in writing.

## **7. Performance Management System**

- 7.1 The Authority requires good quality service. The Provider acknowledges this requirement and undertakes to use its best endeavours to provide such a service based on the philosophy of "Get it right first time". The Authority shall be entitled to take steps to ascertain whether the Provider has performed the Service and that they have done so in complete accordance with the Contract.

- 7.2 The Provider's performance will be measured against the Outcomes and Key Performance Indicators (KPIs) identified in

, as varied from time to time in accordance with the contract terms.

- 7.3 If the Parties have agreed a consequence in relation to the Provider failing to meet an Outcome or KPI as set out in Schedule 6 and the Provider fails to meet that Outcome or KPI, the Authority may exercise the agreed consequence immediately, without issuing a Contract Query

irrespective of any other rights the Authority may have under this paragraph .

7.4 The provisions under this paragraph do not affect any other rights and obligations the Parties may have under this Contract.

#### 7.5 Default Notice

7.5.1 The Authority will issue a Default Notice to the Provider when:

- (a) the Provider's performance against the priority KPIs does not meet the expected target, or the acceptable target where applicable to the KPI;
- (b) the Provider's performance against other KPIs demonstrates significant or consistent underperformance or non-performance that is impacting on the outcomes for Service Users;
- (c) the Provider breaches a Remedial Action Plan and does not remedy the breach within 5 Working Days of its occurrence.

7.5.2 The Default Notice will set out:

- (a) details of the incident(s) of non-performance;
- (b) any additional information in relation to the incident(s) of non-performance;
- (c) a timeframe for submission by the Provider of the Draft Remedial Action Plan;
- (d) a timeframe for rectification by the Provider of the incident(s) of non-performance;
- (e) details of any consequences of failing to rectify the non-performance within the agreed timeframe.

7.5.3 Where a Default Notice is issued, the Provider will acknowledge receipt within one Working Day. The Provider will provide the Authority with a Remedial Action Plan for approval by the Authority, within the timescale specified within the Default Notice. Once agreed by the Authority, the Provider will implement the Remedial Action Plan within the agreed timescale.

7.5.4 The Remedial Action Plan must set out:

- (a) details of the incident(s) of non-performance;
- (b) the actions required to make the necessary improvements;
- (c) the dates on which the actions will be completed;
- (d) who will be responsible for completing the actions;
- (e) any issues or concerns, if applicable, that the Provider has and wants to raise with the Authority, in order to assist with the completion of the necessary actions.

7.5.5 Where deficient service has been identified and it is not possible to reform the service (whether or not a Default Notice has been issued) the Provider shall use its best endeavours to ameliorate the situation.

7.5.6 Should the Provider fail to remedy the issue referred to in a Default Notice then the Authority shall have power to implement clause 10 of the Key Provisions or rely on the provisions of

Part or clause Part of the General Terms depending upon the nature and seriousness of the breach.

7.5.7 The Authority reserves the right to notify the Provider's Chief Executive and/or Board of Directors, CQC, Ofsted or any other Regulatory Body of the default in order that each of

them may take whatever steps they think are appropriate.

#### 7.6 Withholding Payment for Breach of a Remedial Action Plan

##### 7.6.1 If the Provider breaches a Remedial Action Plan:

- (a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority, from the date of issuing the Default Notice in respect of the breach and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority in relation to each Remedial Action Plan;
- (b) the Authority must pay the Provider any sums withheld under paragraph 7.6.1 **Error! Reference source not found.** within 10 Working Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to paragraph 7.7.1 below no interest will be payable on those sums.

#### 7.7 Unjustified Withholding of Payment

##### 7.7.1 If the Authority withholds sums under paragraph 7.6 above and within 20 Working Days of the date of that withholding the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld unjustifiably, the Authority must pay those sums to the Provider within 10 Working Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld. If the Authority does not accept the Provider's evidence the Provider may refer the matter to dispute resolution.

#### 7.8 Retention of Sums Withheld on Expiry or Termination of the Contract

##### 7.8.1 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Authority may retain permanently any sums withheld under paragraph 7.6 above.

### 8. **Annual Service Development Plan**

#### 8.1 As part of the contract and performance monitoring arrangements it is expected that the Provider will provide to the Authority an annual service development plan including (but not limited to:

- (a) Outcomes;
- (b) digital development;
- (c) community hubs;
- (d) workforce;
- (e) integration;
- (f) social value;
- (g) governance;
- (h) financial management;

#### 8.2 This annual service development plan should incorporate the expectations included within the Milestones Document (Appendix 2). Details within the milestones document are indicative and are subject to negotiation and change.

#### 8.3 It is intended that service users will be included as part of the contract and performance review meetings. Details and agreement regarding how this will be achieved will be negotiated between the Provider and Authority and be informed by the voice of service users.



## Appendix A17: Form of Default Notice

This is a Default Notice given by the Authority to the Provider under the contract referred to below.




If the defaults referred to below are capable of remedy, it is important that the Provider remedies those defaults. Failure to remedy the defaults may give rise to a right for the Authority to terminate the Contract.

Name of the Authority	
Name of the Provider	
Contract Description	
Contract Commencement Date	
Details of the incident(s) of non-performance	
Any additional information	
Timeframe for submission of the draft Remedial Action Plan	
Timeframe for rectification of the incident of non-performance	
Details of consequences of failing to rectify the incident of non-performance within the agreed timeframe	



## Appendix B17: Remedial Action Plan Template

### REMEDIAL ACTION PLAN

<b>Provider:</b>		<b>PROGRESS KEY</b>  For Action  In Progress  Completed
<b>Officer:</b>		
<b>Recipients:</b>		
<b>Date of Plan:</b>		
<b>Objective:</b>		

DETAILS OF THE INCIDENTS OF NON-PERFORMANCE: these should be entered under the relevant KPI section		
1. Overarching KPIs	2. Family Voice	3. Audit
4. Workforce	5. Healthy Child Programme	6. Community Hubs
7. Public Health Nursing	8. Child Development	9. School Ready
10. Parenting Aspirations, Self Esteem, Skills and Family Support	11. Child Measurement	12. Healthy Start
13. Speech, Language and Communication	14. Sexual Health	15. Young Persons Substance Misuse Service

<b>16. Advocacy</b>	<b>17. Independent Visitors Service</b>	<b>18. Return Home Interviews</b>
<b>19. Outcomes Framework</b>	<b>20. Early Help</b>	<b>21. Safeguarding</b>

**ACTION PLAN** – This section contains the actions required to make necessary improvements. Actions and timescales will be subject to discussion and agreement.

	Reference.	Action	By When	By Who	Action Update	Completed Date
1.	Overarching KPIs					
2.	Family Voice					
3.	Audit					
4.	Workforce					
5.	Healthy Child Programme					
6.	Community Hubs					
7.	Public Health Nursing					
8.	Child Development					
9.	School Ready					
10.	Parenting Aspirations, Self Esteem, Skills and Family Support					
11.	Child Measurement					
12.	Healthy Start					

13.	Speech, Language And Communication					
14.	Sexual Health					
15.	Young Persons Substance Misuse Service					
16.	Advocacy					
17.	Independent Visitors Service					
18.	Return Home Interviews					
19.	Outcomes Framework					
20.	Early Help					
21.	Safeguarding					

**SUPPORT PLAN – Any Issues or concerns that the Provider has and wants to raise with Torbay Council.**

	Improvement Area	Action	Person(s) Responsible	Due Date	Completed Date
1.					
2.					
3.					

**RECORD OF FORMAL COMMUNICATIONS – To monitor and track key meetings and communications.**

**SUPPORT PLAN** – Any Issues or concerns that the Provider has and wants to raise with Torbay Council.

	Improvement Area	Action	Person(s) Responsible	Due Date	Completed Date
Date	Method	Subject / Action			Due Date

## AUTHORISATION AND AGREEMENT

**BOTH PARTIES SIGN TO CONFIRM THAT THEY WILL COMPLY WITH THE CONTENTS OF THE SIP.**

This process will close once both parties agree that all actions have been completed satisfactorily or any remaining actions do not warrant continuation of this process.

On behalf of Torbay Council		On behalf of the Named Provider	
<b>Signature:</b>	<b>Name:</b>	<b>Signature:</b>	<b>Name:</b>
<b>Designation:</b>	<b>Date:</b>	<b>Designation:</b>	<b>Date:</b>

**Note:** If agreed please print, sign and return to the Authority's Authorised Officer

**Schedule 18. Not Used**

## **Schedule 19. Business Continuity Plan**

*Guidance: Insert the agreed Provider Business Continuity Plan here.*

## Schedule 20. Data Processing Agreement

### 1 Definitions and Interpretation

In this Schedule the definitions and rules of interpretation below will apply, unless the context otherwise requires or permits:-

**The Authority:** means Torbay Council

**Agreement:** means this Data Processing Agreement;

**Completion:** means the time immediately following the completion of the **purpose**

**Data:** means the information provided to the Supplier for the stated **purpose**

**Data Controller:** has the meaning set out in the General Data Protection Regulation.

**Data Processor:** has the meaning set out in the General Data Protection Regulation.

**Data Protection Legislation:** means all current UK legislation that relates to Data Protection.

**Personal Data:** has the meaning set out in the General Data Protection Regulation.

**Processing and process:** have the meaning set out in the General Data Protection Regulation..

**Intellectual Property Rights:** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other similar rights.

**Parties:** means the parties to this Agreement and **Party** means either of them. Words in the singular include the plural and in the plural include the singular. Clause headings will not affect the interpretation of this agreement.

References to clauses are, unless otherwise provided, references to the clauses of this agreement.

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

In the event that there is any conflict between these terms and conditions and the Schedules they shall take the following order of precedence (from most to least important):

For the purposes of this Schedule, the Authority is the Data Controller and the Supplier is the Data Processor of any Personal Data.

### 2 Processing Activity to be Undertaken

2.1 The processing activity will take place in respect of [insert details of subject matter of processing, e.g. CCTV, children looked after, HR]

2.2 The processing activity shall only be undertaken for the duration of the Contract unless the processing requirement is terminated earlier through formal variation.

2.3 The processing activity will be carried out for the specific purpose of [insert details of why and for what outcome the data is being processed]

- 2.4 The processing activity will only apply to these types of personal data:
- (a) [insert details]
- 2.5 The processing activity will only apply to these categories of data subjects:
- (a) [insert details]
- 2.6 The means of processing will be:
- (a) [insert details]
- 2.7 If the Supplier does not comply with the required agreed under 2.1 to 2.6 and determines the purpose and means of processing the Supplier will be considered to be a Data Controller in respect of that processing.

### **3 Obligations of the Supplier**

- 3.1 The Supplier and its employees are bound by a duty of confidentiality and will to adhere to the conditions within the agreement between the Authority and the Supplier and employees personal responsibilities to comply with the requirements of the Data Protection legislation.
- 3.2 The Supplier will use all reasonable skill and care in providing the Services.
- 3.3 The Supplier will process the Data only to the extent, and in such a manner, as is necessary for this Agreement and will not process the Data for any other purpose.
- 3.4 The Supplier will:
- (a) process the Data in accordance with the Data Protection legislation, in so far as it applies;
  - (b) take appropriate technical and organisational measures against unauthorised or unlawful processing of the Data and against accidental loss of, destruction of, or damage to Data; and
  - (c) act only on instructions from the Authority and in accordance with this agreement;
  - (d) take appropriate technical and organisational measures to assist the Authority in responding to requests for exercising data subject's rights under Data Protection legislation, including but not limited to the right of access and right to be forgotten;
  - (e) comply with the requirement to carry out an data protection impact assessment on any new technologies used in connection with the processing of data under this contract and shall consult the Authority's Data Protection Officer on any impact assessment;
  - (f) on termination of this Data Processing Agreement the Supplier will delete or return all personal data to the Authority;
  - (g) the Supplier will notify the Authority immediately in the event that any instruction from the Authority or its authorised representatives in relation to monitoring compliance with data protection legislation, in their opinion, infringes Article 28 of the General Data Protection Regulation
- 3.5 The Supplier will keep a record of any processing of Data it carries out on behalf of the Authority.
- 3.6 In the event that the Supplier receives any complaint, notice or communication from a third party in connection with the Services, it will immediately notify the Authority in writing to The



Data Protection Officer, Torbay Council, Town Hall, Castle Circus, Torquay TQ1 3DR and provide the Authority with full co-operation and assistance dealing with such complaint, notice or communication.

- 3.7 The Supplier will promptly comply with any reasonable request received from the Authority in relation to the Data.
- 3.8 The Supplier will keep all information (written or oral) confidential, in so far as permitted by law relating to any Data.
- 3.9 The Supplier will not disclose or transfer the Data in whole or in part to any other person without the Authority's written consent (not to be unreasonably withheld or delayed), except to its employees who have a need to know and involved in the performance of the Services.
- 3.10 The Supplier will promptly inform the Authority if they become aware that any Data is lost. The Supplier will recover such Data at its own expense. If equipment containing the data has been lost or stolen, the Supplier will notify the Authority's Data Protection Officer immediately at [infocompliance@torbay.gov.uk](mailto:infocompliance@torbay.gov.uk).
- 3.11 The Supplier will not transfer any Personal Data outside the European Economic Area without the prior written consent of the Authority.
- 3.12 The Supplier will not be restricted by this Agreement in its use of any Data which is in the public domain or in the possession of the Supplier prior to the date of this Agreement.

#### **4 The Supplier's Employees**

- 4.1 The Supplier ensure that access to the Data is limited to:
  - (a) those employees who need access to the Data for the purpose of this Agreement; and in the case of any access by any employee, such part or parts of the Data as is strictly necessary for performance of that employee's duties under this Agreement.
- 4.2 The Supplier will ensure that any of their employees, agents, subcontractors or professional advisors who have access to the Data under this Agreement:
  - (a) are informed of the confidential nature of the Data;
  - (b) have undertaken training in the laws relating to handling Personal Data;
  - (c) are aware of the Supplier obligations under this Agreement.
- 4.3 The Supplier will use reasonable endeavours to ensure the reliability of any of their employees who have access to the Data.

#### **5 The Obligations and Rights of the Authority**

- 5.1 The Authority is entitled, on giving at least five working days' notice to the Supplier, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of the Data.
- 5.2 The requirement under clause 5.1 to give notice will not apply if the Authority believes that the Supplier is in breach of any of its obligations under this Agreement.
- 5.3 The Authority will notify the data subject of any personal data breach, resulting from any actions of the Supplier.

## **6 Warranties**

- 6.1 Each party warrants to the other that it is duly authorised to enter into this Agreement.
- 6.2 The Supplier warrants that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 6.3 The Supplier warrants that it will not authorise any third party or sub-contractor to process the Data.

## **7 Intellectual Property Rights**

- 7.1 The Supplier agrees and acknowledges that any Intellectual Property Rights in the Data belongs to the Authority and that the Supplier does not acquire any rights, title or interest in such Data, save as granted under this Agreement.
- 7.2 The Authority hereby grants the Supplier a royalty free licence to process the Data under this Agreement. For the avoidance of doubt, this licence shall terminate automatically on termination of this Agreement.

## **8 Indemnity**

- 8.1 The Supplier agrees to indemnify and hold the Authority harmless against all costs, claims, losses, damages or expenses (including legal expenses) incurred by The Authority as a result of the Supplier's failure to comply with its obligations under this Agreement and Data Protection legislation.

## **9 Completion of the Term**

- 9.1 Immediately after Completion, the Supplier will delete all Data and any copies of the Data in its possession (unless otherwise stipulated).