



## **Contract Terms and Conditions relating to the provision of Community Health Improvement Services**

The following terms and conditions will apply to a contract directly awarded by Dorset Council to an eligible Provider for the provision of Community Health Improvement Services.

These terms may not be qualified or amended and apply to the exclusion of any terms of the Provider.

They are deemed wholly incorporated in the Contract awarded to the eligible Provider for the relevant Services.

It is not a requirement for an eligible Provider to sign these terms and conditions. The eligible Provider will sign electronically to confirm acceptance of the terms and conditions at the point of award of Contract.

This Contract is directly awarded in accordance with Direct Award Process B under Regulation 6(4) of the Health Care Services (Provider Selection Regime) Regulations 2023.

## **CONTENTS**

### **SECTION A: THE PARTICULARS**

- A1. CONTRACT**
- A2. INTERPRETATION**
- A3. COMMENCEMENT AND DURATION**
- A4. REPRESENTATIVES**
- A5. NOTICES**
- A6. ENTIRE CONTRACT**
- A7. COUNTERPARTS**

### **SECTION B: GENERAL TERMS AND CONDITIONS**

- B1. SERVICES**
- B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE**
- B3. SERVICE AND QUALITY OUTCOMES INDICATORS**
- B4. SERVICE USER INVOLVEMENT**
- B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**
- B6. MANAGING ACTIVITY**
- B7. EMPLOYEES**
- B8. CHARGES AND PAYMENT**
- B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY**
- B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**
- B11. INCIDENTS REQUIRING REPORTING**
- B12. CONSENT**
- B13. SERVICE USER HEALTH RECORDS**
- B14. INFORMATION**
- B15. EQUIPMENT**

- B16. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS**
- B17. COMPLAINTS**
- B18. SERVICE REVIEW**
- B19. REVIEW MEETINGS**
- B20. CO-OPERATION**
- B21. WARRANTIES AND REPRESENTATIONS**
- B22. VARIATIONS**
- B23. ASSIGNMENT AND SUB-CONTRACTING**
- B24. AUDIT AND INSPECTION**
- B25. INDEMNITIES**
- B26. LIMITATION OF LIABILITY**
- B27. INSURANCE**
- B28. DEFAULTS AND FAILURE TO SUPPLY**
- B29. CONTRACT MANAGEMENT**
- B30. DISPUTE RESOLUTION**
- B31. SUSPENSION AND CONSEQUENCE OF SUSPENSION**
- B32. TERMINATION**
- B33. CONSEQUENCE OF EXPIRY OR TERMINATION**
- B34. BUSINESS CONTINUITY**
- B35. COUNTER-FRAUD AND SECURITY MANAGEMENT**
- B36. CONFIDENTIALITY**
- B37. DATA PROTECTION**
- B38. FREEDOM OF INFORMATION AND TRANSPARENCY**
- B39. PROHIBITED ACTS**
- B40. FORCE MAJEURE**
- B41. THIRD PARTY RIGHTS**
- B42. CAPACITY**

- B43. SEVERABILITY**
- B44. WAIVER**
- B45. PUBLICITY**
- B46. EXCLUSION OF PARTNERSHP, JOINT VENTURE OR AGENCY**
- B47. GOVERNING LAW AND JURISDICTION**

## **APPENDICES**

**APPENDIX A: SERVICE SPECIFICATION FOR SERVICES AWARDED**

**APPENDIX B: QUALITY OUTCOMES INDICATORS**

**APPENDIX C: SERVICE USER, CARER AND EMPLOYEES**

**APPENDIX D: CHARGES**

**APPENDIX E: INCIDENTS REQUIRING REPORTING PROCEDURE**

**APPENDIX F: INFORMATION PROVISION**

**APPENDIX G: SERVICE QUALITY PERFORMANCE REPORT**

**APPENDIX H: DISPUTE RESOLUTION**

**APPENDIX I: DEFINITIONS AND INTERPRETATION**

**APPENDIX J: DBS CHECKS DOCUMENTS**

## **SECTION C: SPECIAL TERMS AND CONDITIONS**

- C1. EXTENDING THE CONTRACT**
- C2. INSURANCE**
- C3. CONTRACT BINDING ON SUCCESSORS**
- C4. AGENCY**
- C5. HUMAN RIGHTS**
- C6. HEALTH AND SAFETY**

- C7. CONFLICTS OF INTERESTS**
- C8. DISCLOSURE AND BARRING SERVICE (DBS) CHECKS**
- C9. PAYMENTS TO SUB-CONTRACTORS**
- C10. RETENTION OF RECORDS**
- C11. CHANGE IN LAW**
- C12. TUPE**
- C13. ACTION ON EXPIRY OR TERMINATION**
- C14. REVIEW OF CHARGES**
- C15. PREVENT DUTY**
- C16. CARE ACT 2014**
- C17. USE OF COUNCIL'S ASSETS**
- C18. INTELLECTUAL PROPERTY RIGHTS**
- C19. WHISTLEBLOWING**
- C20. MODERN SLAVERY ACT 2015**

## SECTION A: THE PARTICULARS

### BACKGROUND

- (A) The Council must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2012. In order to satisfy these obligations, the Council wishes to secure the provision of the Services and the Provider wishes to provide the Services.
- (B) The Council is host authority for the provision of public health functions in Dorset by Public Health Dorset which comprises two local authorities. Accordingly, in setting up the Contract, the Council is contracting with the Provider on behalf of itself and Bournemouth, Christchurch and Poole Council.
- (C) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.
- (D) The Services in respect of which the Contract may be awarded are:

Service	Name
1	NHS Health Checks
2	Emergency Hormonal Contraception (EHC) services
3	Long-Acting Reversible Contraception (LARC)
4	Open Access Needle Exchange Services
5	Supervised Consumption Services
6	Community-Based Smoking Cessation Services

and the Services awarded to the Provider will be notified at the point of award of Contract.

### IT IS AGREED

#### A1. CONTRACT

A1.1. This Contract is comprised of:

- these Particulars (Section A);
- the General Terms and Conditions (the 'General Conditions') in (Section B); and
- the Special Terms and Conditions (the 'Special Conditions') in (Section C);

as completed and agreed by the Parties and as varied from time to time in accordance with clause B22 (*Variations*) of the General Conditions.

## **A2. INTERPRETATION**

- A2.1. This Contract shall be interpreted in accordance with Appendix I (*Definitions and Interpretation*) unless the context requires otherwise.
- A2.2. If there is any conflict or inconsistency between the provisions of this Contract, such conflict or inconsistency must be resolved according to the following order of priority:
- a) Section C;
  - b) Section B; and
  - c) Section A.

## **A3. COMMENCEMENT AND DURATION**

- A3.1. The Provider shall provide the Services from the date agreed at the point of award of the Contract (the 'Commencement Date').
- A3.2. The Contract begins on the date the Services commence as agreed at award of Contract (the 'Commencement Date') and shall continue until the agreed Contract end date (the 'Expiry Date') unless it is extended in accordance with clause C.1 or terminated earlier in accordance with the provisions of this Contract.

## **A4. REPRESENTATIVES**

- A4.1. The Council will nominate a person who is authorised to act on behalf of the Council on all matters relating to this Contract (the 'Council Representative') and the identity of such person shall be notified to the Provider at the Commencement Date.
- A4.2. The Provider will nominate a person who is authorised to act on behalf of the Provider on all matters relating to this Contract (the 'Provider Representative') and the identity of such person shall be notified to the Council at the Commencement Date.
- A4.3. The Provider may replace the Provider Representative and the Council may replace the Council Representative at any time by giving written notice to the other Party.

## **A5. NOTICES**

- A5.1. Any notices given under this Contract shall be in writing and may be sent by email to the Provider Representative and the Council Representative at the email address provided for this purpose.
- A5.2. The email address of the Council Representative for the purpose of clause A5.1 is [phcontracts@dorsetcouncil.gov.uk](mailto:phcontracts@dorsetcouncil.gov.uk) for the attention of the CHIS Contract Manager.

- A5.3. Any notice shall be deemed to have been received at the time of transmission or if this time falls outside business hours in the place of receipt, when business hours resume.
- A5.4. Either Party may change its Representative or address for service by serving a notice in accordance with this clause A5.

**A6. ENTIRE CONTRACT**

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

**SECTION B: GENERAL TERMS AND CONDITIONS**

**B1. SERVICES**

- B1.1. The Provider shall provide the Services in accordance with the Service Specification in Appendix A (*Service Specification*) including any service limitations set out in them, and in accordance with the provisions of this Contract.

**B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE**

- B2.1. Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:
- a) who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
  - b) who displays abusive, violent or threatening behaviour unacceptable to the Provider (acting reasonably and taking into account the mental health of that Service User);
  - c) in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Employees engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
  - d) where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.
- B2.2. If the Provider proposes not to provide or to stop providing a Service to any Service User under clause B2.1:



- a) where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 2 Business Days);
- b) the Provider must tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
- c) the Provider must inform the Council in writing without delay and wherever possible in advance of taking such action;

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

### **B3. SERVICE AND QUALITY OUTCOMES INDICATORS**

B3.1. The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Council in writing:

- a) comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
- b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
- c) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
- d) comply with the recommendations issued from time to time by a Competent Body;
- e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
- f) respond to any reports and recommendations made by Local HealthWatch; and
- g) comply with the Quality Outcomes Indicators set out in Appendix B (*Quality Outcomes Indicators*).

### **B4. SERVICE USER INVOLVEMENT**

B4.1. The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.

B4.2. As soon as reasonably practicable following any reasonable request from the Council, the Provider must provide evidence to the Council of the involvement of Service Users, Carers and Employees in the development of Services.

- B4.3. The Provider must carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Council 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 C (*Service User, Carer and Employees Surveys*) or as otherwise agreed between the Parties in writing from time to time.
- B4.4. The Provider must review and provide a written report to the Council on the results of each survey carried out under clause B4.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Council, the Provider must publish the outcomes and actions taken in relation to such surveys.

## **B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**

- B5.1. The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, ethnic or national origin, culture or linguistic background, religion or belief, gender or sexual orientation or any other non-medical characteristics within the meaning and scope of the Equality Act 2010 except as permitted by the Law.
- B5.2. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- B5.3. The Provider must provide to the Council as soon as reasonably practicable, any information that the Council reasonably requires to:
- a) monitor the equity of access to the Services; and
  - b) fulfil their obligations under the Law.

## **B6. MANAGING ACTIVITY**

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

## **B7. EMPLOYEES**

- B7.1. At all times, the Provider must ensure that:
- a) each of the Employees is suitably qualified and experienced, adequately trained, legally entitled to work in the UK and capable of providing the applicable Services in respect of which they are engaged;

- b) there is an adequate number of Employees to provide the Services properly in accordance with the provisions of the applicable Service Specification;
- c) where applicable, Employees are registered with the appropriate professional regulatory body; and
- d) Employees are aware of and respect equality and human rights of colleagues and Service Users.
- e) it can provide a clear DBS Certificate as required by the Council for each of the Employees engaged in the Services.

B7.2. If requested by the Council, the Provider shall as soon as practicable and by no later than 20 Business Days following receipt of that request, provide the Council with evidence of the Provider's compliance with clause B7.1.

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

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

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

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

B7.5. The Provider must carry out Employees surveys in relation to the Services at intervals and in the form set out in Appendix C (*Service User, Carer and Employees Surveys*) or as otherwise agreed in writing from time to time.

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

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

## **B8. CHARGES AND PAYMENT**

- B8.1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Council shall pay the Provider the Charges.
- B8.2. The Charges are set out at Appendix D (*Charges*).
- B8.3. Payment shall unless otherwise stated be deemed to be deemed to be inclusive of all costs, expenses and overheads of any kind incurred by the Provider.
- B8.4. The Provider shall invoice the Council for payment of the Charges in the correct amount at the end of each calendar month (or such other frequency agreed between the Parties in writing or as provided in Appendix D - Charges) which the Council shall pay within 30 Business Days of receipt.
- B8.5. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice.
- B8.6. In its performance of this Contract the Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).
- B8.7. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:
- a) the contesting Party shall within 10 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
  - b) any uncontested amount shall be paid in accordance with this Contract.
- B8.8. If a Party contests a payment under clause B8.77 and the Parties have not resolved the matter within 10 Business Days of the date of notification under clause B8.77, the contesting Party may refer the matter to dispute resolution under clause A.B30 and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.4.

- B8.9. Subject to any express provision of this Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B8.10. Each Party may retain or set off any sums owed to the other Party which have fallen due and payable against any sum due to the other Party under this Contract or any other agreement between the Parties.

**B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY**

- B9.1. The Provider must to the extent reasonably practicable co-operate with and assist the Council in fulfilling its Best Value Duty.
- B9.2. In addition to the Provider's obligations under clause B9.1, where reasonably requested by the Council, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Council and shall assist the Council with the preparation of any Best Value performance plans.
- B9.3. During the term of this Contract at the reasonable request of the Council, the Provider must:
- a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;
  - b) implement such improvements; and
  - c) where practicable following implementation of such improvements decrease the price to be paid by the Council for the Services.
- B9.4. If requested by the Council, the Provider must identify the improvements that have taken place in accordance with clause B9.3, by reference to any reasonable measurable criteria notified to the Provider by the Council.

**B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- B10.1 The Provider shall comply with the Council's safeguarding procedures as set out in clause C.8 as may be amended from time to time.
- B10.2 At the reasonable written request of the Council and by no later than 10 Business Days following receipt of such request, the Provider must provide evidence to the Council that it is addressing any safeguarding concerns.
- B10.3 If requested by the Council, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

**B11. INCIDENTS REQUIRING REPORTING**

- B11.1. If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
- B11.2. If the Provider gives a notification to the CQC or any other Regulatory Body under clause B11.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council within 5 Business Days or within the timescale set out in Appendix E (*Incidents Requiring Reporting Procedure*).
- B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Council and set out in Appendix E (*Incidents Requiring Reporting Procedure*).
- B11.4. Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this clause B11 and Appendix E (*Incidents Requiring Reporting Procedure*).

**B12. CONSENT**

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

**B13. SERVICE USER HEALTH RECORDS**

- B13.1. The Provider must create, maintain, store and retain Service User health records for all Service Users. The Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
- B13.2. The Provider must:
- a) use Service User health records solely for the execution of the Provider's obligations under this Contract; and
  - b) give each Service User full and accurate information regarding his/her treatment and Services received.
- B13.3. The Provider must at all times, where required, during the term of this Contract have a Caldicott Guardian and shall notify the Council 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 Council of the identity and contact details of such replacements.

- B13.4. Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.

#### **B14. INFORMATION**

- B14.1. The Provider must provide the Council the information specified in Appendix F (*Information Provision*) to measure the quality, quantity or otherwise of the Services.
- B14.2. The Provider must deliver the information required under clause B14.1 in the format, manner, frequency and timescales specified in Appendix F (*Information Provision*) and must ensure that the information is accurate and complete.
- B14.3. If the Provider fails to comply with any of the obligations in this clause B14 and/or Appendix F (*Information Provision*), the Council may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Appendix F (*Information Provision*).
- B14.4. In addition to the information required under clause B14.1, the Council may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

#### **B15. EQUIPMENT**

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

#### **B16. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS**

- B16.1. The Provider must comply with any Transfer of and Discharge from Care Protocols agreed by the Parties.

#### **B17. COMPLAINTS**

- B17.1. The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services.
- B17.2. If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Council may have under this Contract, the Council may, in its sole discretion, uphold the complaint and take any action specified in clause B28 (*Default and Failure to Supply*).

**B18. SERVICE REVIEW**

- B18.1. The Provider must deliver to the Council a Service Quality Performance Report against the factors set out in Appendix G at a frequency determined by the Council (*Service Quality Performance Report*).
- B18.2. The Provider must submit each Service Quality Performance Report in the form and manner specified in Appendix G (*Service Quality Performance Report*).

**B19. REVIEW MEETINGS**

- B19.1. 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 shall be held in the form and intervals determined by the Council.
- B19.2. Notwithstanding clause B19.1, if either the Council or the Provider:
- a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
  - b) considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,

that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Business Days following that notice.

**B20. CO-OPERATION**

- B20.1. The Parties must at all times act in good faith towards each other.
- B20.2. The Provider must co-operate fully and liaise appropriately with:
- a) the Council;
  - b) any third party provider who the Service User may be transferred to or from the Provider;
  - c) any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and
  - d) primary, secondary and social care services,
- in order to:
- e) ensure that a consistently high standard of care for the Service User is at all times maintained;



- f) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
- g) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Council or members of the public.

## **B21. WARRANTIES AND REPRESENTATIONS**

B21.1. The Provider warrants and represents that:

- a) It has full capacity and authority to enter into this Contract and all necessary Consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- c) in entering this Contract, it has not committed any Fraud;
- d) all reasonably material information supplied by it to the Council during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Council which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract;
- e) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract;
- f) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract;
- g) in the 3 years prior to the Commencement Date:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract; and

- h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.

B21.2. The Council warrants and represents that:

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

B21.3. The warranties set out in this clause B21 are given on the Commencement Date and repeated on every day during the term of this Contract.

B21.4. Each of the parties acknowledges that in entering into this Contract is does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Contract and any clauses, warranties or other terms implied by statute, common law or custom and practice are excluded from this Contract to the fullest extent permitted by Law.

## **B22. VARIATIONS**

B22.1. This Contract may not be amended or varied other than in accordance with this clause B22.

B22.2. Either Party may from time to time during the term of this Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

B22.3. If a Variation Notice is issued, the Council and the Provider must enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract. Alternatively, the Parties may agree to determine the matter in accordance with the dispute resolution procedure at clause B30.

- B22.4. No Variation to this Contract shall be valid or of any effect unless agreed in writing by the Council Representative (or his nominee) and the Provider Representative (or his nominee). All agreed Variations shall form an addendum to this Contract.

**B23. ASSIGNMENT AND SUB-CONTRACTING**

- B23.1. The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the consent of the Council in writing, which shall include:
- a) consenting to the appointment of the Sub-contractor (such consent not to be unreasonably withheld or delayed); and
  - b) approving the Sub-contract arrangements (such approval not to be unreasonably withheld or delayed) which shall include the addition of any of the clauses in this Contract to the Sub-contract as the Council may reasonably require.
- B23.2. The Council's consent to sub-contracting under clause B23.1 will not relieve the Provider of its liability to the Council for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.
- B23.3. Any Sub-contract submitted by the Provider to the Council for approval of its terms, must impose obligations on the proposed Sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.
- B23.4. The Council may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract, or any part without the consent of the Provider including to any statutory successor.

**B24. AUDIT AND INSPECTION**

- B24.1. The Provider must comply with all reasonable written requests made by CQC, 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.

- B24.2. Subject to Law and notwithstanding clause B24.1, 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.
- B24.3. Within 10 Business Days of the Council's reasonable request, the Provider must send the Council 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.
- B24.4. The Council 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.
- B24.5. During any audit undertaken under clause B24.1 or B24.2, the Provider must provide the Council with all reasonable co-operation and assistance in relation to that audit, including:
- a) all reasonable information requested within the scope of the audit;
  - b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
  - c) access to the Employees.

## **B25. INDEMNITIES**

- B25.1. The Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Contract, or breach of its statutory duty or breach of an obligation under the Data Protection Legislation, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or breach of statutory duty or breach of an obligation under the Data Protection Legislation by the Council.

## **B26. LIMITATION OF LIABILITY**

- B26.1. Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract
- B26.2. Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.
- B26.3. Nothing in this Contract will exclude or limit the liability of either Party for:
- a) death or personal injury caused by its negligence; or

b) fraud or fraudulent misrepresentation.

B26.4 Subject to clause B26.3 above, the total aggregate liability of both parties whether in contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with this Agreement will be a maximum of the total Fees paid or payable under this Agreement.

## **B27. INSURANCE**

B27.1. The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

B27.2. The Provider must give the Council, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.

B27.3. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

## **B28. DEFAULTS AND FAILURE TO SUPPLY**

B28.1. In the event that the Council is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Provider, then the Council may, without prejudice to any other rights or remedies it may have under this Contract including under clause B29, do any of the following:

- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 10 Business Days or such other period of time as the Council may direct;
- b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B31;
- 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 B32 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Council may supply or procure a third party to supply such part of the Services.

B28.2. If the Council exercises any of its rights under clause B28.1, the Provider must indemnify the Council 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 Council or a third

party provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

- B28.3. If the Provider withdraws, makes unavailable or fails to provide the Services, either temporarily or permanently, the Council reserves the right to require the Provider to reimburse a relevant proportion of the Charges in respect of the period of unavailability, unless otherwise agreed in advance with the Council. The Provider shall provide at its own expense such assistance as may be required by the Council to calculate such proportion of the Charges.

## **B29. CONTRACT MANAGEMENT**

- B29.1. If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in Appendix B (*Quality Outcomes Indicators*) and the Provider fails to meet the Quality Outcomes Indicator, the Council may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Council may have under this clause B29.
- B29.2. The provisions of this clause B29 do not affect any other rights and obligations the Parties may have under this Contract.
- B29.3. Clauses B29.19, B29.23, B29.24 and B29.26 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Council.

### **Contract Query**

- B29.4. If the Council has a Contract Query it may issue a Contract Query Notice to the Provider.
- B29.5. If the Provider has a Contract Query it may issue a Contract Query Notice to the Council.

### **Excusing Notice**

- B29.6. The Receiving Party may issue an Excusing Notice to the Issuing Party within 5 Business Days of the date of the Contract Query Notice.
- B29.7. If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within 10 Business Days following the date of the Contract Query Notice.

### **Contract Management Meeting**

- B29.8. Unless the Contract Query Notice has been withdrawn, the Council and the Provider must meet to discuss the Contract Query and any related Excusing Notice within 10 Business Days following the date of the Contract Query Notice.
- B29.9. At the Contract Management Meeting the Council and the Provider must agree either:

- a) that the Contract Query Notice is withdrawn; or
- b) to implement an appropriate Remedial Action Plan; or
- c) to conduct a Joint Investigation.

B29.10. If a Joint Investigation is to be undertaken:

- a) the Council and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation.
- b) the Council and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

### **Joint Investigation**

B29.11. On completion of a Joint Investigation, the Council and the Provider must produce and agree a JI Report. The JI Report must include (without limitation) a recommendation to be considered at the next Review Meeting that either:

- a) the Contract Query be closed; or
- b) Remedial Action Plan be agreed and implemented.

B29.12. Either the Council or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Contract to consider a JI Report.

### **Remedial Action Plan**

B29.13. If a Remedial Action Plan is to be implemented, the Council and the Provider must agree the contents of the Remedial Action Plan within:

- a) 5 Business Days following the Contract Management Meeting; or
- b) 5 Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause B29.11.

B29.14. The Remedial Action Plan must set out:

- a) milestones for performance to be remedied;
- b) the date by which each milestone must be completed; and
- c) subject to the maximum sums identified in clause B29.23, the consequences for failing to meet each milestone by the specified date.

B29.15. The Provider and the Council must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.

- B29.16. The Council and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Council and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.
- B29.17. If following implementation of a Remedial Action Plan:
- a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;
  - b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Council or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

#### **Withholding Payment for Failure to Agree Remedial Action Plan**

- B29.18. If the Council and the Provider cannot agree a Remedial Action Plan within the relevant period specified in clause B29.13, they must jointly notify the Boards of Directors (as applicable) of both the Provider and the Council.
- B29.19. If, 10 Business Days after notifying the Boards of Directors, the Council and the Provider still cannot agree a Remedial Action Plan, the Council may withhold up to 2% of the monthly sums payable by it under clause B8 (Charges and Payment) for each further month the Remedial Action Plan is not agreed.
- B29.20. The Council must pay the Provider any sums withheld under clause B29.19 within 10 Business Days of receiving the Provider's agreement to the Remedial Action Plan. Unless clause B29.25 applies, those sums are to be paid without interest.

#### **Exception Reports**

- B29.21. If a Party breaches a Remedial Action Plan and does not remedy the breach within 5 Business Days of its occurrence, the Provider or the Council (as the case may be) may issue a First Exception Report to that Party's chief executive and/or Board of Directors. If the Party in breach is the Provider, the Council may withhold payment from the Provider in accordance with clause B29.23.
- B29.22. If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Council or the Provider (as the case may be) may issue a Second Exception Report to:



- a) the relevant Party's chief executive and/or Board of Directors; and/or
- b) CQC or any other Regulatory Body,

in order that each of them may take whatever steps they think appropriate.

#### **Withholding of Payment at First Exception Report for Breach of Remedial Action Plan**

B29.23. If the Provider breaches a Remedial Action Plan:

- a) the Council may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Council under clause B8 (Charges and Payment), from the date of issuing the First Exception Report 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 Council under clause B8 (Charges and Payment) in relation to each Remedial Action Plan;
- b) the Council must pay the Provider any sums withheld under clause B29.23(a) within 10 Business Days following the Council's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to clause B29.25, no interest will be payable on those sums.

#### **Retention of Sums Withheld at Second Exception Report for Breach of Remedial Action Plan**

B29.24. If the Provider is in breach of a Remedial Action Plan the Council may, when issuing any Second Exception Report retain permanently any sums withheld under clause B29.23.

#### **Unjustified Withholding or Retention of Payment**

B29.25. If the Council withholds sums under clause B29.19 or clause B29.23 or retains sums under clause B29.24, and within 20 Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Council that the relevant sums were withheld or retained unjustifiably, the Council must pay those sums to the Provider within 10 Business Days following the date of the Council's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld or retained. If the Council does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

#### **Retention of Sums Withheld on Expiry or Termination of this Contract**

B29.26. If the Provider does not agree a Remedial Action Plan:

- a) within 6 months following the expiry of the relevant time period set out in clause B29.13; or

b) before the Expiry Date or earlier termination of this Contract,  
whichever is the earlier, the Council may retain permanently any sums withheld under clause B29.19.

B29.27. If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Council may retain permanently any sums withheld under clause B29.23.

### **B30. DISPUTE RESOLUTION**

B30.1. If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix H (*Dispute Resolution*), unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.

### **B31. SUSPENSION AND CONSEQUENCES OF SUSPENSION**

B31.1. A suspension event shall have occurred if:

- a) the Council reasonably considers that a breach by the Provider of any obligation under this Contract:
  - (i) may create an immediate and serious threat to the health or safety of any Service User; or
  - (ii) may result in a material interruption in the provision of any one or more of the Services; or
- b) clause B31.1 does not apply, but the Council, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of a Service or Services; or
- c) the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each a ***Suspension Event***).

B31.2. Where a Suspension Event occurs the Council:

- 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 Council that it is able to and will perform the suspended Service, to the required standard; and
- b) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

- B31.3. During the suspension of any Service under clause B31.2, the Provider must comply with any steps the Council reasonably specifies in order to remedy the Suspension Event, including where the Council's decision to suspend pursuant to clause B31.2 has been referred to dispute resolution under clause B30 (*Dispute Resolution*).
- B31.4. During the suspension of any Service under clause B31.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:
- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B31.2; and/or
  - b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B31.5.
- B31.5. 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.
- B31.6. Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Council in respect of any Losses directly and reasonably incurred by the Council in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).
- B31.7. Following suspension of a Service the Provider must at the reasonable request of the Council and for a reasonable period:
- a) co-operate fully with the Council 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 Council or members of the public; and
  - b) at the cost of the Provider:
    - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
    - (ii) deliver to the Council all materials, papers, documents and operating manuals owned by the Council and used by the Provider in the provision of the suspended Service.
- B31.8. As part of its compliance with clause B31.7 the Provider may be required by the Council to agree a transition plan with the Council and/or any alternative Successor Provider.
- B31.9. If it is determined, pursuant to clause B30 (*Dispute Resolution*) that the Council acted unreasonably in suspending a Service, the Council must

indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.

- B31.10. 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.

## **B32. TERMINATION**

- B32.1. Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 3 months' written notice at any time after the Service Commencement Date.

- B32.2. The Council may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:

- a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
- b) the Provider is in persistent breach of its obligations under this Contract;
- c) the Provider:
  - (i) fails to obtain any Consent;
  - (ii) loses any Consent; or
  - (iii) has any Consent varied or restricted,the effect of which might reasonably be considered by the Council to have a material adverse effect on the provision of the Services;
- d) the Provider has breached the terms of clause B39 (*Prohibited Acts*);
- e) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
- f) the Provider materially breaches its obligations in clause B37 (*Data Protection*);
- g) two or more Second Exception Reports are issued to the Provider under clause B29.22 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
- h) the Provider breaches the terms of clause B23 (*Assignment and Sub-contracting*);

- i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- k) 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 Business Days following receipt of notice from the Council identifying the breach.

B32.3. Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Council or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than 30 Business Days without the Parties agreeing alternative arrangements.

B32.4. The Provider may terminate this Contract or any Service with immediate effect by written notice to the Council if the Council is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B32.4 if the Council has failed to remedy such breach within 30 Business Days of receipt of notice from the Provider to do so.

### **B33. CONSEQUENCE OF EXPIRY OR TERMINATION**

B33.1. Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.

B33.2. On the expiry or termination of this Contract or termination of any Service the Provider must co-operate fully with the Council to migrate the Services in an orderly manner to the successor provider.

B33.3. In the event of termination or expiry of this Contract, the Provider must cease to use the Council's Confidential Information and on the earlier of the receipt of the Council's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Council.

- B33.4. If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B32.4, B32.3 or if the Council terminates under clause B32 (*Termination*), the Council procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Council, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Council in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.
- B33.5. The provisions of clauses B7 (*Provider Employees*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B23 (*Assignment and Sub-contracting*), B24 (*Audit and Inspection*), B33 (*Consequence of Expiry or Termination*), B36 (*Confidentiality*) and B38 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.

**B34. BUSINESS CONTINUITY**

- B34.1. The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.
- B34.2. The Provider must have contingency arrangements in place during the Contract to ensure continuity of the Services at all times, at no extra cost to the Council. These shall include, but not be limited to, arrangements to deal with staff absences.
- B34.3. The Provider shall have a Business Continuity Plan and associated contingency arrangements in place to ensure minimum disruption in the provision of the Services in the event of a major incident affecting its ability to provide the Services, including any insolvency event affecting the Provider or any key Sub-contractor.
- B34.4. The Provider shall provide to the Council on request, at any time during the Contract, evidence of contingency plans such as sight of the Provider's Business Continuity Plan, together with evidence of the regular testing of those plans, and the Council reserves the right to require review and/or amendment of such plans and any other contingency arrangements to meet the Council's requirements, and in any event, the Provider shall review the plans as a minimum every six months.
- B34.2. The Provider must notify the Council as soon as reasonably practicable if it activates its Business Continuity Plan and, in any event, no later than 5 Business Days from the date of such activation.

**B35. COUNTER-FRAUD AND SECURITY MANAGEMENT**

- B35.1. The Provider must put in place and maintain appropriate counter fraud and security management arrangements.

- B35.2. 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 Council.
- B35.3. The Provider must notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- B35.4. If the Provider or its Employees commits Fraud in relation to this or any other contract with the Council, the Council may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Council) and recover from the Provider the amount of any Loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

### **B36. CONFIDENTIALITY**

- B36.1. Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.
- B36.2. Subject to Clauses B36.3 and B36.4, the Receiving Party agrees:
- a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
  - b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
  - c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- B36.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:
- a) in connection with any dispute resolution under clause B30 (*Dispute Resolution*);
  - b) in connection with any litigation between the Parties;
  - c) to comply with the Law;
  - d) to its Employees, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B36.2;
  - e) to comply with a Regulatory Body request.
  - f) if it is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or EIR.
- B36.4. The obligations in clause B36.1 and clause B36.2 will not apply to any Confidential Information which:
- a) is in or comes into the public domain other than by breach of this Contract;
  - b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or

- c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B36.5. The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B36.
- B36.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B36.
- B36.7. This clause B36 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- B36.8. The obligations in clause B36.1 and clause B36.2b) shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

## **B37. DATA PROTECTION**

### **Definitions**

For the purposes of this clause, the following terms shall have the following meanings:

**Agreed Purposes:** has the meaning given in clause B37.1;

**Data Controllers in Common** where both Parties are Controllers and process Personal Data under the Contract independently of the other;

**Data Discloser:** a Party that discloses Shared Personal Data to the other Party;

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI



2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party;

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** have the meaning given in the Data Protection Legislation;

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

**Data Subject Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**DPA 2018:** Data Protection Act 2018;

**EU GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679);

**Joint Controllers or Joint Control** where two or more entities are Controllers of the Personal Data and therefore jointly determine the purposes and means of processing;

**Permitted Recipients:** the Parties to this Contract, the employees of each Party and any third parties engaged to perform obligations in connection with this Contract.

**Processor Personnel** means all directors, officers, employees, agents, consultants and contractors of the Processors and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

**Shared Personal Data:** the Personal Data to be shared between the Parties under clause 37.1 of this Contract. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of Data Subject:

- a) postcode;
- b) ethnicity;

- c) age; and
- d) type and date of medical procedure.

**Sub-processor:** any third party appointed to process Personal Data on behalf of that Processor related to this Contract.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

37.1 The Parties agree that in relation to:

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

37.1.2 Personal Data, the processing of which is required by the Council for the purposes of quality assurance, performance management and contract management the Council and the Provider will be Data Controllers in Common;

together the “Agreed Purposes”.

37.2 Each Party acknowledges that one Party (referred to in this clause as the **Data Discloser**) will disclose to the other Party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

37.3 Each Party shall comply with the obligations imposed on a Controller under the Data Protection Legislation and any material breach of the Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other Party, give grounds to the other Party to terminate this Contract with immediate effect.

37.4 Each Party shall be responsible for meeting their obligations under the GDPR in providing information to any Data Subject in respect of whose Personal Data that Party is Controller.

37.5 Each Party shall be responsible for responding to a Data Subject Request in relation to Personal Data for which it is Controller in compliance with the GDPR.

37.6 Each Party shall:

37.6.1 ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

37.6.2 give full information to any Data Subject whose Personal Data may be processed under this Contract of the nature of such processing. This includes giving notice that, on the termination of this Contract, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

- 37.6.3 process the Shared Personal Data only for the Agreed Purposes;
  - 37.6.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
  - 37.6.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
  - 37.6.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
  - 37.6.7 not transfer any Personal Data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 37.7 Each Party shall provide reasonable assistance to the other Party in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:
- a. consult with the other Party about any notices given to Data Subjects in relation to the Shared Personal Data
  - b. promptly inform the other Party in the event of receipt of a Data Subject Request in relation to Shared Personal Data;
  - c. assist the other Party, at the cost of the other Party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, Data Protection Impact Assessments and consultations with the Information Commissioner or other regulators;
  - d. not disclose, release, amend, delete or block any Shared Personal Data in response to a Data Subject's rights request without first consulting the other Party wherever possible;
  - e. at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the

Data Discloser on termination of this Contract unless required by law to store the Shared Personal Data;

- f. promptly notify the other Party if it receives any request, complaint or communication relating to that Party's obligations under the Data Protection Legislation;
- g. promptly notify the other Party it is receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- h. promptly notify the other Party if it receives a request from any third party for disclosure of Personal Data under the Contract where compliance with such request is required or purported to be required by Law; and
- i. promptly notify the other Party if it becomes aware of a Data Loss Event or any breach of the Data Protection Legislation.

37.8 Each Party shall comply with its obligation to notify a Personal Data Breach to the Information Commissioner's Office and, where applicable, Data Subjects, under the GDPR in respect of the Personal Data for which it is Controller, (having first liaised with the other Party to agree which Party shall notify the Personal Data Breach to the Information Commissioner's Office), and each Party shall inform the other Party of any Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner's Office or Data Subject.

37.9 The Parties agree to provide reasonable assistance to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

37.10 The Parties shall maintain complete and accurate records and information in respect of the Personal Data for which it is Controller in order to demonstrate compliance with this clause and the Data Protection Legislation and to allow for audit of its Data Processing activity by the other Party's designated auditor.

37.11 Each Party shall, if relevant, be responsible for carrying out a Data Protection Impact Assessment in relation to the Personal Data for which it is Controller prior to commencing processing of such Personal Data, should that Party consider it necessary, to ensure compliance with its obligations under the Data Protection Legislation with respect to Data Protection Impact Assessments.

37.12 Each Party shall provide the other with contact details of at least one employee as a point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a Personal Data Breach, and the regular review of the Parties' compliance with the Data Protection Legislation.

**B38. FREEDOM OF INFORMATION AND TRANSPARENCY**

- B38.1. The Parties acknowledge their respective duties under the FOIA and EIR and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B38.2. If the Provider is not a Public Authority, the Provider acknowledges that the Council is subject to the requirements of the FOIA and EIR and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA and EIR. Accordingly the Provider agrees:
- a) that this Contract and any other recorded information held by the Provider on the Council's behalf for the purposes of this Contract are subject to the obligations and commitments of the Council under the FOIA and EIR;
  - b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA or EIR is a decision solely for the Council;
  - c) that if the Provider receives a request for information under the FOIA or EIR, it will not respond to such request (unless directed to do so by the Council) and will promptly (and in any event within 2 Business Days) transfer the request to the Council;
  - d) that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
  - e) to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA and EIR) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Council within 5 Business Days of such request and without charge.
- B38.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR, the content of this Contract is not Confidential Information.
- B38.4. Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA or EIR.

- B38.5. In preparing a copy of this Contract for publication pursuant to clause B38.4 the Council may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Council's absolute discretion.
- B38.6. The Provider must assist and co-operate with the Council to enable the Council to publish this Contract.
- B38.7. In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

**B39. PROHIBITED ACTS**

- B39.1. Neither Party shall do any of the following:
- a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and
  - b) in connection with this Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,
- (together "**Prohibited Acts**").
- B39.2. If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:
- a) to exercise its right to terminate under clause B32.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
  - b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
  - c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

- B39.3. Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.
- B39.4. The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Employees from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Council within 5 Business Days of the Council requesting it and enforced by the Provider where applicable.
- B39.5. Should the Provider become aware of or suspect any breach of this clause B39, it will notify the Council immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Council, co-operate with any investigation undertaken by the Council and allow the Council to audit any books, records and other relevant documentation.

**B40. FORCE MAJEURE**

- B40.1. Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.
- B40.2. Subject to clause B40.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.
- B40.3. The Party claiming relief as a result of an event of Force Majeure must serve an initial written notice on the other Party immediately it becomes aware of the event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief must then serve a detailed written notice within a further 15 Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform the relevant obligations under this Contract as is available, including the effect of the event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Services.
- B40.4. A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.
- B40.5. The Council shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

**B41. THIRD PARTY RIGHTS**

- B41.1. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract other than as explicitly provided for in this Contract.

**B42. CAPACITY**

- B42.1. Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Contract, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon the Council or in any way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability on the part of the Council under this Contract (howsoever arising) in any capacity other than as contracting counterparty.

**B43. SEVERABILITY**

- B43.1. If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Contract.

**B44. WAIVER**

- B44.1. Any relaxation or delay by either Party in exercising any right under this Contract will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

**B45. PUBLICITY**

- B45.1. Without prejudice to clause B38 (*Freedom of Information and Transparency*), except with the written consent of the Council, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.
- B45.2. The Provider must take all reasonable steps to ensure the observance of the provisions of clause B45.1 by all its Employees, servants, agents, consultants and sub-contractors.

**B46. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY**

- B46.1. Nothing in this Contract creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Council and the Provider.

**B47. GOVERNING LAW AND JURISDICTION**



B47.1. This Contract will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.

B47.2 Subject to the provisions of clause B30 (Dispute Resolution), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.

## **APPENDIX A**

### **SERVICE SPECIFICATION FOR SERVICES AWARDED**

as provided on tender for Services awarded to the Provider

## **APPENDIX B**

### **QUALITY OUTCOMES INDICATORS**

The Provider must adhere to the Quality Outcomes Indicators outlined in each of the Service Specifications in accordance with best practice Guidance and availability requirements of the Services.

The Provider must have a complaints procedure in place and demonstrate to Service Users and the Council how complaints have been addressed to improve the Services.

Both Parties are required to regularly assess Contract performance and address any additional matters during Review Meetings, scheduled at intervals and in a format determined by the Council.

The Council may request a Review Meeting within 5 Business Days following notice.

Quality control checks may take place at any point at the discretion of the Council.

## **APPENDIX C**

### **SERVICE USER, CARER AND EMPLOYEES SURVEYS**

In accordance with clauses B4 (Service User Involvement) and B7 (Employees) of the Contract the Provider shall carry out Service User Surveys and Employees Surveys, as and when requested by the Council.

## APPENDIX D

### CHARGES

In accordance with clause B8 (Charges and Payment) of the Contract, the Council shall pay the Provider the following:

#### LOT 1: NHS Health Check Payments

Payment will be made on a **monthly** basis on receipt of a fully completed PharmOutcomes reporting template.

Payment will be made on a **quarterly** basis on receipt of a fully completed SystemOne reporting template.

The Council will pay the Provider at the rate outlined below for the claimed activity:

Description of Activity	Charge
Delivery of NHS Health Check to Service User with no target risk factors	£28.00
Delivery of NHS Health Check to Service User with one or more target risk factors (outlined in section 2.2.3 of Service Specification)	£35.00

#### LOT 2: Emergency Hormonal Contraception (EHC) Payments

Payment will be made on a monthly basis on receipt of a fully completed PharmOutcomes reporting template.

The Council will pay the Provider at the rate outlined below for the claimed activity:

Description of Activity	Charge
Completed consultation (regardless of whether a supply is made to the Service User or not) including issue of free condoms	£ 20.00
Cost of provision of a supervised dose of Levonorgestrel <i>Based on the Drug Tariff Price and subject to BNF rate changes</i>	£ 5.20
Cost of provision of a supervised <b>double dose</b> of Levonorgestrel where BMI > 26 or individuals weighing more than 70kg <i>Based on the Drug Tariff Price and subject to BNF rate changes</i>	£5.20
Cost of provision of a supervised dose of EllaOne <i>Based on the Drug Tariff Price and subject to BNF rate changes</i>	£ 14.05

#### LOT 3: Long-Acting Reversible Contraception (LARC) Payments

Payment will be made on a **quarterly** basis on receipt of a fully completed SystemOne reporting template.

The Council will pay the Provider at the rates outlined below for the claimed activity:

Device Type	Ref	Description of Activity	Payment
SDI	A	The cost of <b>fitting</b> a sub-dermal implant <i>Includes consumables e.g. Lidocaine</i>	£50.49
	B	The cost of <b>removing</b> a sub-dermal implant <i>Includes consumables and pre-removal counselling</i>	£50.49
	C	The costs of a sub-dermal implant <b>replacement</b> (removal with reinsertion) <i>Includes consumables; no pre-removal counselling required</i>	£80.11
	D	The cost according to provision for the <b>implant device</b> <i>Based on NHS indicative price and subject to BNF rate changes</i>	£91.77

Device Type	Ref	Description of Activity	Payment
IUC	A	The cost of single episode of care; <b>pre-fitting counselling, fitting and check</b> (where indicated) of an intra-uterine contraceptive device <i>Includes consumables</i>	£87.00
	B	For <b>pre-removal counselling</b> and <b>removal</b> of an intra-uterine contraceptive device <i>Includes consumables</i>	£25.45
	C	The cost according to provision for the <b>LNG-IUD (Levonorgestrel Intra Uterine Device)</b> :  <ul style="list-style-type: none"> <li>• Mirena (52mg)</li> <li>• Benilexa (52mg)</li> <li>• Kyleena (19.5mg)</li> <li>• Jaydess (13.5mg)</li> </ul>	£96.80 £71.00 £83.60 £76.14
		The cost according to provision for the <b>IUD (Intra Uterine Device) / non-hormonal copper coil</b> <i>Based on NHS indicative price and subject to BNF rate changes</i>	£16.50

#### LOT 4: Needle Exchange Payments

Payment will be made on a **monthly** basis on receipt of a fully completed PharmOutcomes reporting template.

The Council will pay the Provider at the rate outlined below for the claimed activity:

Description of Activity	Payment
Each interaction with a Service User, whether for the return of used equipment, issue of new equipment, or both.	£1.50

The Provider will be paid on a **quarterly** basis for the following:

In any quarter (3 months) where the Provider records activity, a fee of **£188.00** will be paid to the Provider.

#### **LOT 5: Supervised Consumption Payments**

Payment will be made on a **monthly** basis on receipt of a fully completed PharmOutcomes reporting template.

The Council will pay the Provider at the rate outlined below for the claimed activity:

<b>Description of Activity</b>	<b>Payment</b>
Each instance of supervision of oral solution, tablets or lyophilisate (e.g. methadone, naltrexone, Espranor).	£2.50
Each instance of supervision of sublingual tablets (e.g. buprenorphine or the combined drug of buprenorphine with naloxone).	£3.00

The Provider will be paid on a **quarterly** basis for the following:

In any quarter (3 months) where the Provider records activity, a fee of **£25.00** will be paid to the Provider.

#### **Lot 6: Smoking Cessation Payments**

Payment will be made on a **monthly** basis on receipt of a fully completed PharmOutcomes reporting template.

Payment will be made on a **quarterly** basis on receipt of a fully completed SystmOne reporting template.

The Council will pay the Provider at the rate outlined below for the claimed activity:

<b>Description of Activity</b>	<b>Payment</b>
Enrolment in service (1st Consultation)	£35.00
2nd Consultation	£10.00
3rd Consultation	£10.00
Supply of NRT or Varenicline	£2.00
Successful 4-week quit – (verified or non-verified)	£45.00

Any review of charges shall be in accordance with clause C14 (Review of Charges).

## APPENDIX E

### INCIDENTS REQUIRING REPORTING PROCEDURE

In accordance with clause B11 (Incidents Requiring Reporting) of the Contract, the Provider shall have clear and comprehensive incident reporting procedures in place to ensure timely identification, reporting, and resolution of any incidents that may occur during service delivery. These procedures must be communicated to all staff members and regularly reviewed and updated as necessary to maintain effectiveness.

Incidents include but are not limited to:

1. **Adverse Events:** Any unexpected or serious events occurring during the provision of the Services that may result in harm to the Service Users or others must be reported immediately.
2. **Safety Incidents:** Incidents involving the safety or welfare of Service Users, staff, or visitors within the premises used to provide the Services must be reported promptly.
3. **Equipment Malfunctions:** Any malfunction or failure of equipment used in the provision of the Services that may affect service delivery or Service User safety must be reported and addressed promptly.
4. **Medication Errors:** Incidents involving medication errors, such as incorrect dosage, administration, or prescription, must be reported and investigated to prevent recurrence.
5. **Complaints and Feedback:** Any complaints or feedback received from Service Users, their families, or other stakeholders regarding the quality or delivery of the Services must be documented and addressed according to the Provider's complaints handling procedure.
6. **Data Breaches:** Any breaches of confidentiality or data security related to Service User information must be reported in accordance with the provisions of Clause B37.
7. **Staff Incidents:** Incidents involving staff misconduct, negligence, or breaches of professional conduct that may impact the delivery of the Services must be reported and investigated according to the Provider's disciplinary procedure.
8. **Critical Incidents:** Critical incidents, such as natural disasters, accidents, or emergencies, occurring within or affecting the Provider's premises or operations, must be reported and managed promptly to ensure the safety and well-being of all involved.
9. **Non-Compliance:** Instances of non-compliance with contractual obligations, regulatory requirements, or quality standards related to the provision of the Services must be reported and addressed to mitigate risks and ensure compliance.
10. **Any Other Significant Events:** Any other significant events or occurrences that may impact the delivery, quality, or safety of the provision of the Services must be reported and managed according to the Provider's incident reporting procedure.



## APPENDIX F

### INFORMATION PROVISION

In accordance with clause B14 (Information) of the Contract, the Provider must provide the Council management information or evidence relating to the minimum Provider qualification requirements as set out in the table below:

Service	Minimum Provider Qualification Requirements
<p>Service 1</p> <p>NHS Health Checks</p>	<ol style="list-style-type: none"> <li>1. Capacity to deliver a minimum of 5 NHS Health Checks per calendar month.</li> <li>2. Sourcing and maintenance of equipment used within the NHS Health Check.</li> <li>3. Participation in an appropriate External Quality Assessment (EQA) program for each point of care testing (POCT) location.</li> <li>4. Receipt of POCT machine familiarization and updates by the machine manufacturer.</li> <li>5. Frontline delivery staff fully trained to deliver the NHS Health Check program according to the NHS Health Check Competence Framework.</li> <li>6. Frontline delivery staff trained in effective communication of risk and behaviour change techniques, as outlined in the NICE guidance PH6 and HLP level 1 or PSPH Award Level 2.</li> <li>7. The Provider shall record all activity and performance data using one of the following electronic systems: <ul style="list-style-type: none"> <li>• PharmOutcomes</li> <li>• SystmOne</li> </ul> </li> <li>8. The Provider shall sign up to receive alerts of best practice updates and other notifications at <a href="http://www.nhshealthchecks.co.uk">www.nhshealthchecks.co.uk</a>.</li> <li>9. Implementation of robust, secure methods for sharing individual Personal Data in compliance with GDPR legal guidance within 2 calendar weeks of the NHS Health Check being delivered with relevant entities (i.e., GP practices, LWD, Commissioners).</li> </ol>
<p>Service 2</p> <p>Emergency Hormonal Contraception (EHC) services</p>	<ol style="list-style-type: none"> <li>1. Qualified staff providing treatment trained in safeguarding children and emergency contraception according to CPPE e-learning and online assessment or equivalent.</li> <li>2. Qualified, professionally registered, trained, and competent staff in line with NICE, good practice guidance to supply Service Users with medication outlined in the specification either as a prescription or under the terms of the PHD Patient Group Direction (PGD) for EHC.</li> <li>3. Provision of a suitably private consultation room ensuring accessibility for all Service Users, including those with additional mobility needs.</li> <li>4. Availability of the Services to all eligible residents of the county of Dorset, including out-of-area Service Users who require the service in Dorset.</li> <li>5. Accessibility of the Services for a minimum of 35 hours a week, providing a same-day, walk-in service with a trained staff member available at all times.</li> </ol>

	<ol style="list-style-type: none"> <li>6. The Provider shall ensure that all consultations are logged on the PharmOutcomes system to enable the Council to monitor activity and verify payments for Services provided.</li> <li>7. Ensuring all staff delivering the Services have an Enhanced Level DBS check.</li> </ol>
<p>Service 3</p> <p>Long-Acting Reversible Contraception (LARC)</p>	<ol style="list-style-type: none"> <li>1. All healthcare professionals undertaking the full range of contraceptive fitting services shall hold, as a minimum, the Faculty of Sexual and Reproductive Health (FSRH) accredited qualifications of the electronic knowledge assessment (eKA) and Letters of Competence (LoC) for Subdermal Implants (SDI) and Intrauterine Techniques (IUT/IUS). This includes safeguarding training and procedures for young people and Frazer competency.</li> <li>2. Practitioners holding a Letter of Competence for SDIs or IUD/IUS must be recertified every five years as specified by the FSRH.</li> <li>3. The Provider shall have access to an appropriate patient record system and PGD consultation form where required.</li> <li>4. The Provider shall be accessible to undertake at least 3 procedures per month with opening hours convenient for the Service User and sufficient appointments available for Service Users to be seen within 2 weeks.</li> <li>5. Ensure the premises and special equipment and supplies for the fitting and removing of LARC devices and Chlamydia testing are available as required, including privacy, a suitable room with a couch, sufficient space and equipment for resuscitation, suitable equipment for insertion and removal, and the facility for local anaesthesia administration.</li> <li>6. The Provider shall record all activity and performance data using one of the following electronic systems: <ul style="list-style-type: none"> <li>• PharmOutcomes</li> <li>• SystmOne</li> </ul> </li> <li>7. The Services shall be made available to all eligible residents of the county of Dorset.</li> <li>8. Ensure adequate supplies of relevant contraception information for Service Users.</li> <li>9. Ensure that all staff delivering the Services have an Enhanced Level DBS check.</li> </ol>
<p>Service 4</p> <p>Needle Exchange</p>	<ol style="list-style-type: none"> <li>1. The Provider shall offer the Services for at least 35 hours a week, spread over at least 5 days, with no appointment necessary.</li> <li>2. The Provider shall have a suitable area for storage of stock and returned items.</li> <li>3. The Provider layout shall allow for discreet requests for packs as well as for returns of used needles, syringes, and other injecting paraphernalia.</li> <li>4. The Provider shall ensure that all consultations are logged on the PharmOutcomes system to enable Public Health to monitor activity and verify payments for Services provided.</li> </ol>
<p>Service 5</p> <p>Supervised Consumption</p>	<ol style="list-style-type: none"> <li>1. The Provider shall have a designated area available for the supervision of self-administration of prescribed medication, ensuring privacy and safety for both staff and Service Users.</li> <li>2. The Services shall be provided by staff who are authorised to supply and possess controlled drugs, adhering to the</li> </ol>

	<p>conditions defined by The Misuse of Drugs Regulations 2001 and any other relevant legislation and regulations.</p> <ol style="list-style-type: none"> <li>3. The Provider shall ensure that all consultations are logged on the PharmOutcomes system to enable the Council to monitor activity and verify payments for Services provided.</li> <li>4. The Provider shall offer the Services for at least 35 hours a week, spread over at least 5 days.</li> </ol>
<p>Service 6</p> <p>Smoking Cessation</p>	<ol style="list-style-type: none"> <li>1. The Provider shall have qualified smoking cessation advisors who have completed the NSCST online training available at <a href="http://elearning.ncsct.co.uk/england">http://elearning.ncsct.co.uk/england</a>.</li> <li>2. The Provider shall be qualified, registered, trained, and competent to supply Service Users with the medication outlined in the Service Specification, either as a prescription or under the terms of the Public Health Dorset Patient Group Direction (PGD).</li> <li>3. The Provider will have a suitably private consultation room and ensure accessibility for all Service Users, including those with additional mobility needs.</li> <li>4. The Provider shall record all activity and performance data using one of the following electronic systems: <ul style="list-style-type: none"> <li>• PharmOutcomes</li> <li>• SystmOne</li> </ul> </li> <li>5. The Provider shall ensure the Services are available to any residents of the county of Dorset, aged 12 and over.</li> <li>6. The Services must be offered for 35 hours a week. However, if a provider is unable to fulfil this requirement, they must deliver within their capacity and work towards increasing availability of provision to 35 hours per week.</li> <li>7. The Provider will ensure the Services are available for Service Users to be seen within 2 weeks.</li> <li>8. The Provider shall ensure that all staff delivering the Services have an Enhanced Level DBS check.</li> </ol>

Providers using Systmone or PharmOutcomes will not be paid for data submitted more than six months after the activity was undertaken.

## **APPENDIX G**

### **SERVICE QUALITY PERFORMANCE REPORT**

In accordance with clause B18 (Service Review) of the Contract the Provider shall ensure that the necessary documentation, as detailed in Appendix A - Specification, is maintained and made available to the Council to enable the Services to be monitored.

## **APPENDIX H**

### **DISPUTE RESOLUTION**

#### **1. ESCALATED NEGOTIATION**

- 1.1 Except to the extent that any injunction is sought relating to a matter arising out of clause B36 (Confidentiality), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the 15 Business Days following receipt of the first such offer (the "Negotiation Period") each of the Parties shall negotiate in good faith and be represented:
  - 1.1.1 for the first 10 Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter that led to the Dispute and has authority to settle the Dispute; and
  - 1.1.2 for the last 5 Business Days, by its chief executive, director, or board member who has authority to settle the Dispute, provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

#### **2 MEDIATION**

- 2.1 If the Parties are unable to settle the Dispute by negotiation, they must within 5 Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or such other independent body or organisation agreed between the Parties.
- 2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.
- 2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

#### **3. EXPERT DETERMINATION**

- 3.1 If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within 10 Business Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.
- 3.2 If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.
- 3.3 Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.
- 3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution

sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.

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

## APPENDIX I

### DEFINITIONS AND INTERPRETATION

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

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

**Authorised Person** means the Council and any body or person concerned with the provision of the Service or care of a Service User.

**Council Representative** means the person identified in clause A4.1 or their replacement.

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

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

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

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

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

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

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

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

**Charges** means the charges which shall become due and payable by the Council to the Provider in respect of the provision of the Services in accordance with the provisions of this Contract, as such charges are set out in Appendix D (*Charges*).

**Commencement Date** means the date identified in clause A3.2.

**Competent Body** means any body that has authority to issue standards or recommendations with which either Party must comply.

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

**Consents means:**

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

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

**Contract Query** means:

- (i) a query on the part of the Council in relation to the performance or non-performance by the Provider of any obligation on its part under this Contract; or
- (ii) a query on the part of the Provider in relation to the performance or non-performance by the Council of any obligation on its part under this Contract,

as appropriate.

**Contract Query Notice** means a notice setting out in reasonable detail the nature of a Contract Query.

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

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

**Council** means Dorset Council acting as host authority on behalf of Public Health Dorset.

**Council Network** means the communications link between the Council's office and the Provider's office that is directly or indirectly under the control of the Council.

**Council Software** means the System together with any other software and related documentation owned by or licensed to the Council including any upgrades or related documentation necessary for the Services.

**Data Protection Legislation** means the legislation defined in clause B37.

**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 Employees in connection with or in relation to the subject-matter of this Contract and in respect of which the Provider is liable to the Council.

**Default Interest Rate** means two percent (2%) per annum above the base rate for the time being of National Westminster Bank PLC.

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

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

**EIR** means the Environment Information Regulations 2004

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

**Employment Checks** means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, disclosure and barring checks, and occupational health checks.

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

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

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

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

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

**Expiry Date** means the date set out in clause A3.2.

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

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

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

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

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

**General Conditions** has the meaning given to it in clause A1.

**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 Council and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006.

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

**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.

**Intellectual Property Rights** means patents, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

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

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

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

**Law** means:

- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
  - (ii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
  - (iii) National Standards;
  - (iv) Guidance; and
  - (v) any applicable industry code;
- in each case in force in England and Wales.

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

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

**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.

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

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

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

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

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

**Patient Safety Incident** means any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to, harm to that Service User.

**Personal Data** has the meaning set out in clause B37.

**Prohibited Acts** has the meaning given to it in clause B39.1 (*Prohibited Acts*).

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

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

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

**Public Health Dorset** means the local authorities of Dorset Council and Bournemouth Christchurch and Poole Council working together in respect of public health services, with Dorset Council as the host authority.

**Quality Outcomes Indicators** means the agreed key performance indicators and outcomes to be achieved as set out in Appendix B (*Quality Outcomes Indicators*).

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

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

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

**Required Insurances** means the types of policy or policies providing levels of cover as specified in clause C2.

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

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

**Serious Incident** means an incident or accident or near-miss where a patient (whether or not a Service User), member of Employees, 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 Employees or the Council are likely to be of significant public concern.

**Service Specification** means each of the service specifications defined by the Council and set out at Appendix A (*Service Specifications*) for the Services awarded to the Provider.

**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 Appendix G (*Service Quality Performance Report*).

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

**Special Conditions** has the meaning given to it in clause A1.

**Sub-contract** means a contract approved by the Council 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 Council under clause B23 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification.

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

**System** means the Council Software and the Council Network.

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

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

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

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

## **APPENDIX J**

### **DISCLOSURE & BARRING SERVICE (DBS) CHECKS DOCUMENTS**

These DBS check documents are as follows which are provided as separate documents:

Code of Conduct – Contractors Working in Settings for Children or Vulnerable Adults

DBS Check Summary – Contractors Working for Dorset Council

Risk Assessment – Disclosure of Criminal Convictions – Record Form

## **SECTION C: SPECIAL TERMS AND CONDITIONS**

### **C1. EXTENDING THE CONTRACT**

- C1.1. The Council may extend the term of this Contract by a further two periods, the first of 3 years and the second of 2 years (the Extension Period) equating to a potential total Contract term of 10 years. If the Council wishes to extend this Contract, it shall give the Provider at least 3 months' written notice of such intention before the Expiry Date set out in clause A3.3 (*Commencement and Duration*).
- C1.2. If the Council gives such notice, the Expiry Date will be extended by the period set out in the notice.

### **C2. INSURANCE**

- C2.1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the following levels of cover:
- (a) Public Liability Insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
  - (b) Employer's Liability Insurance with a limit of indemnity of not less than £10 million;
  - (c) Professional Indemnity Insurance with a limit of indemnity of not less than £1 million in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;
- (together the Required Insurances).
- C2.2. If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

### **C3. CONTRACT BINDING ON SUCCESSORS**

- C3.1. This Contract will be binding on and will be to the benefit of the Council and Provider and their respective successors and permitted transferees and assigns.

### **C4. AGENCY**

- C4.1. The Provider must not in any circumstances hold itself out as being the servant or agent of the Council. The Provider must not hold itself out as being authorised to enter into any agreement on behalf of the Council or in any way bind the Council to the performance, variation, release or discharge of any obligation to a third party. The Provider's Employees shall not hold themselves out to be and shall not be held out by the Provider as being servants or agents of the Council.

### **C5. HUMAN RIGHTS**

- C5.1. The Provider must not do or permit to allow anything to be done which is incompatible with the rights contained in the Human Rights Act 1998. Without prejudice to the rights of the Council under clause B25 (*Indemnities*), the Provider must indemnify the Council against any loss, claims and expenditure resulting from the Provider's breach of this clause.

## **C6. HEALTH AND SAFETY**

- C6.1. The Provider must promptly notify the Council of any health and safety hazards which may arise in connection with the performance of this Contract.
- C6.2. The Provider must 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 the Provider's Employees and other persons working on the Provider's Premises in the performance of this Contract.
- C6.3. The Provider must on written request of the Council and in any event within 5 Business Days of that request, provide the Council with a copy of its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974).

## **C7. CONFLICTS OF INTEREST**

- C7.1. If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on the other Party's decision whether or not to contract or continue to contract substantially on the terms of this Contract, the Party aware of the conflict must immediately declare it to the other. The other Party may then take whatever action under this Contract as it deems necessary.

## **C8. DISCLOSURE AND BARRING SERVICE (DBS) CHECKS**

- C8.1 The Provider shall comply with the requirements of this clause if the performance of the Services requires the Employees of the Provider to provide services or work in settings for children or vulnerable adults and/or to have access to Personal Data (within the meaning of the Data Protection Legislation) held on the ICT systems of the Council.
- C8.2 The Provider shall comply with all relevant Law and government guidance for safeguarding children and vulnerable adults in performing the Services. This shall include, but shall not be limited to, the Protection of Freedoms Act 2012, the Safeguarding Vulnerable Groups Act 2006, the Rehabilitation of Offenders Act 1974 and all subsequent Law, legislative amendments, sub-ordinate Law, changes to government guidance and any additional government guidance that may be issued from time to time.
- C8.3 The Council's DBS policies are available on request and may be subject to change to conform to changes in Law, government guidance or the Council's policy.
- C8.4 If the Provider's Employees are required to provide services or work in settings for children or vulnerable adults, the Council's Code of Conduct – Contractors Working in Settings for Children or Vulnerable Groups at Appendix J shall be issued by the Provider to all Employees engaged in the Services. The issue of the Code of Conduct to the Provider's Employees shall be recorded by the Provider with confirmation provided to the Council on request. The Council may require any of the Provider's Employees deployed on the Services to be withdrawn and an acceptable person substituted in the event of the Provider's Employees failing to comply with the Code of Conduct.
- C8.5 The Provider shall be responsible for determining whether DBS checks are required for its Employees and for obtaining such checks in accordance with its DBS checking policy and procedures. The Provider shall meet all costs in respect of the same.
- C8.6 The Provider shall provide the Council with evidence of its compliance with clauses B8.2 and B8.3 above by way of a DBS Check Summary recording details of DBS checks and recorded risk assessments undertaken on any conviction or other relevant

information disclosed. These records shall be made available for inspection by the Council in the format set out in Appendix J at any time on request and as part of contract compliance monitoring.

- C8.7 If a conviction or other relevant information is disclosed, a risk assessment shall be conducted by the Provider to determine suitability to perform the Services. The assessment shall be undertaken and recorded in accordance with the process and format set out in Appendix J and shall take account of the Council's policy on the employment of ex-offenders.
- C8.8 The Provider shall ensure that checks and assessment of suitability are undertaken before its Employees provide the Services. The Provider shall ensure that its Employees who are subject to DBS checking are required to declare all convictions received during the course of their deployment to work on the Services and that where a declaration is made, a further assessment of suitability is undertaken and recorded in the DBS Checks Summary referred to at clause C8.6 above.
- C8.9 In urgent situations, the Council may, at their discretion, obtain a DBS Adult First check to permit the Provider's Employees to provide the Services pending completion of a DBS check. The Council shall inform the Provider should this apply. The cost of a DBS Adult First check shall be met by the Provider.
- C8.10 The Provider shall be a member of the DBS update service if required to do so by its regulator. The Council may require the Provider to be a member of the DBS update service where the Council has identified that this will assist effective service delivery and/or improve safeguarding and the Provider shall comply with such requirement.
- C8.11 The Council reserves the right, acting reasonably, to conduct additional DBS checks on Employees deployed on the Services, where deemed necessary, at the Provider's cost. The Council shall provide an explanation for such action.
- C8.12 The Provider shall ensure that Employees who are deployed to work on the Services and who are subject to DBS checking are in possession of a letter/ID badge from the Provider confirming clearance for presentation on request from the manager of the site where the Services are performed or from a Service User.
- C8.13 The Provider shall not under any circumstances deploy to regulated activity (within the meaning of the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012) any person who is barred from working with children and/or vulnerable adults or deploy any person to the Services who is reasonably deemed by the Council to be unsuitable for deployment to the Services.
- C8.14 The Council may require any of the Provider's Employees deployed on the Services to be withdrawn and an acceptable person substituted in the event of:
- C8.14.1 the Provider failing to comply with its obligations under this clause; or
  - C8.14.2 the Provider's Employees refusing to complete a disclosure statement/application; or
  - C8.14.3 the disclosure at any stage of information that in the reasonable opinion of the Council renders the Provider's Employees unsuitable for deployment to the Services

and any such decision shall be taken in accordance with the Council's policy on the employment of ex-offenders.



- C8.15 The Council shall under no circumstances be liable either to the Provider or the Provider's Employees in respect of any award, cost, expenses, liability, loss or damage occasioned by withdrawal of the Employees from the Services in accordance with this clause and the Provider shall fully indemnify the Council in respect of any such claims made.
- C8.16 The Council reserves the right to monitor the suitability of the Provider's Employees to perform the Services.
- C8.17 The Council shall closely monitor the Provider's compliance with this Clause to ensure that the Provider fully adheres to the Law and procedures referred to, and the Provider shall fully co-operate with the Council, at its own expense, to enable the Council to carry out such monitoring requirements.
- C8.18 The Provider shall be responsible for meeting any reasonable costs arising from changes in Law, government guidance or the Council's policy relating to the carrying out of DBS checks on its Employees.

### **Safeguarding Children and Vulnerable Adults**

- C8.19 The Provider shall comply with the requirements of the Dorset Multi-Agency Safeguarding Adults Policy and Procedures, these can be found at: <https://www.dorsetcouncil.gov.uk/care-and-support-for-adults/dorset-safeguarding-adults-board/dorset-safeguarding-adults-board.aspx>. and any subsequent amendments or policies and procedures issued by the Council. The Provider shall evidence compliance with these procedures.
- C8.20 Where it relates to the Services, the Provider shall fully adopt and implement the Pan-Dorset Safeguarding Children Partnership (PDSCP) policies and procedures located at <http://pandorsetscb.proceduresonline.com/contents.html>. The Provider shall follow and fully implement the prescribed procedures in relation to safer recruitment in the PDSCP i.e [http://pandorsetscb.proceduresonline.com/g\\_safe\\_rec.html](http://pandorsetscb.proceduresonline.com/g_safe_rec.html) and all other child safeguarding procedures as they have been or may be amended from time to time. The Provider shall evidence compliance with these procedures.
- C8.21 The Provider shall appoint a named safeguarding lead for the Services who is fully conversant with the requirements of the safeguarding procedures referred to at clauses B8.19 to B8.20 as appropriate. The safeguarding lead shall ensure that there is a clear method for Service Users and relatives to recognise and report abuse.
- C8.22 The Council, acting reasonably, retains the right to require any Employees to be withdrawn in the event of any safeguarding information or any other matter relating to a Service User coming to light which in the reasonable opinion of the Council deems the Employees unsuitable to work with the Service User. The Provider shall immediately notify the Council in the event that it becomes aware of such information. The Council shall under no circumstances be liable either to the Provider or the Provider's Employees in respect of any award, cost, expenses, liability, loss or damage occasioned by withdrawal of Employees from the Services and the Provider shall fully indemnify the Council in respect of any such claims made.
- C8.23 The Provider must evidence that a robust staff recruitment, training and supervision programme is in place which meets best practice requirements and ensures all reasonable steps are taken to ensure the suitability and competency of the Employees deployed to the Service User. The staff recruitment process must comply with all best practice safeguarding processes.

- C8.24 All allegations and incidents of harm must be followed up promptly and the details and action taken recorded in a special record/file for the purpose and on the personal file of the Service User.
- C8.25 The Provider shall have policies and procedures in place for Employees concerning the investigation of allegations of financial irregularities and the involvement of police, the Council and professional bodies.
- C8.26 Employees employed by the Provider who are believed to have committed any offence defined by regulations must be immediately reported to the Disclosure and Barring Service, irrespective of whether their employment with the Provider comes to an end.
- C8.27 Training on prevention of harm to adults at risk and on the current safeguarding policy and procedures shall be given to all Employees within six months of employment and be updated every two years.
- C8.28 The Provider shall be required to withdraw Employees and provide an acceptable substitute where it is appropriate to do so in order to comply with schemes of vetting and barring that are from time to time in force in order to comply with the requirements of the Safeguarding Vulnerable Groups Act 2006.
- C8.29 Failure to comply with the provisions of this clause where relevant to the Services shall be deemed a Default in accordance with clause B28 (*Defaults and Failure to Supply*) and may be actioned accordingly.

## **C9. PAYMENTS TO SUB-CONTRACTORS**

- C9.1. Where the Provider enters into a Sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-contract which requires payment to be made of all sums due by the Provider to the Sub-contractor within a specified period not exceeding 30 Business Days from the receipt of a valid claim.

## **C10. RETENTION OF RECORDS**

- C10.1. The Provider shall keep and maintain until six years after the Contract has ended full and accurate records of the Services provided, all expenditure reimbursed by the Council and all payments made by the Council.
- C10.2. The Provider shall on request afford the Council or its representatives such access to those records as may be required by the Council in connection with the provision of the Services.

## **C11. CHANGE IN LAW**

- C11.1. The Provider shall not be relieved of its obligations to perform the Services under this Contract as a result of a change in Law if the change and its effect are known as the Commencement Date.
- C11.2. If a change in Law occurs or is shortly to occur which shall significantly affect the provision of the Services or the cost of doing so, the Provider shall notify the Council to express an opinion of the likely effects of the change including:
- a) whether any change is required to the Services or the terms of this Contract; and
  - b) whether the Provider requires any relief from compliance with its obligations.

- C11.3. If the Parties to the Contract agree upon the effects of the change in Law and any financial consequences, such agreement shall be implemented through clause B22.
- C11.4. In the case of any Dispute arising under this clause, it shall be resolved in accordance with clause B.30.

## **C12. TUPE**

- C12.1. At any time during the last six months of the contract period, which shall include any extension under clause C1 (*Extending the Contract*) the Provider shall provide to the Council within 20 Business Days of a written request such information as the Council may reasonably require in respect of TUPE.
- C12.2. The Provider shall comply with its obligations under clause B36 (Confidentiality) in relation to any information supplied under clause C12.1.
- C12.3. The Provider shall permit the Council to use the information for the purposes of TUPE and re-tendering.
- C12.4. If TUPE applies on termination or expiry of this Contract then:
- a) the Provider agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of the information under clause C12.1;
  - b) the Provider agrees to indemnify the Council from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities in connection with or as a result of any claim or demand by any Employees or other personnel or person claiming to be an Employee on any date upon which the Contract is terminated and/or transferred to any third party ('Relevant Transfer Date') arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- C12.5. In the event that the information provided by the Provider in accordance with clause C12.1 become inaccurate, whether due to changes to the employment and personnel details of the affected Employees made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Council of the inaccuracies and provide the amended information within 10 Business Days.
- C12.6. Where there are Employees transferring to the Provider at the Commencement Date of this Contract who are members of or were eligible to be members of the NHS Pension Scheme (NHSPS) immediately before the Commencement Date, the Provider shall procure that prior to the Commencement Date it shall comply with the government policy *Fair Deal for staff pensions – staff transfer from central government (Fair Deal 2013)* and shall accordingly be expected to offer such Employees continued access to the NHSPS for the duration of the Contract. The Provider shall make the appropriate arrangements with the relevant NHS employer prior to the Commencement Date of this Contract.
- C12.7. The Provider will fully comply with its obligations in respect of the pension arrangements made under clause C12.6 for the duration of this Contract.

- C12.8. The Provider will indemnify the Council against all liabilities arising from any failure by the Provider to comply with the requirements in clauses C12.6 and C12.7.
- C12.9. The Council reserves the right to terminate the Contract with immediate effect should the Provider fail to comply with its obligations under clauses C12.6 to C12.7.
- C12.10. The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its termination or expiry.

### **C13. ACTION ON EXPIRY OR TERMINATION**

- C13.1. The Provider acknowledges that on termination or expiry of the Contract, the continuity of the Services is of paramount importance. The Provider shall minimise disruption caused and assist the implementation of any contingency plan proposed by the Council to deal with the effect of such termination or expiry in so far as it is practicable to do so.
- C13.2. The Provider shall promptly provide such assistance and comply with such timetable as the Council may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or their equivalent) in the period immediately before the expiry or other termination of the Contract. The Provider shall ensure that its Sub-contractors are under a similar obligation. The Council shall be entitled to require the provision of such assistance both prior to and up to twelve months after the expiry or other termination of the Contract. If the Council requires such assistance after the expiry or other termination of the Contract and within twelve months of the expiry or other termination of the Contract, the Council shall reimburse any reasonable costs incurred by the Provider in the course of providing such assistance.
- C13.3. Such assistance may include, without limitation, delivery of documents and data in the possession or control of the Provider or its Sub-contractors which relate to the performance, monitoring, management and reporting of the Services, including the documents and data, if any, which the Provider may otherwise be obliged to disclose under this Contract or is otherwise beneficial to orderly transfer.
- C13.4. The Provider shall not knowingly or purposely obstruct the ability of the Council to ensure an orderly transfer of responsibility for service provision.
- C13.5. Within twenty one days of being so requested by the Council, the Provider shall provide and thereafter keep updated all the information necessary to enable the Council to issue tender documents for the future provision of the Services.
- C13.6. If the Council requests assistance from the Provider, where the expiry or earlier termination of the Contract arises due to the Provider's Default, the Provider shall provide such assistance free of charge. Otherwise the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take reasonable steps to mitigate such costs.

- C13.7. The Council shall take all necessary precautions to ensure that the information referred to in clause C13.5 above is given only to Providers who have qualified to tender or/have been successful in being selected as the provider following a tender exercise for the future provision of the Services. The Council shall require that such provider shall treat that information in confidence and that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Council and that they shall not use it for any other purpose.
- C13.8. The Provider shall indemnify the Council against any claim made against the Council at any time by any person in respect of any liability incurred by the Council arising from any deficiency or inaccuracy in information which the Provider is required to provide under clause C13.5 above.
- C13.9. On expiry or termination of the Contract, the Provider shall return all copies of data and/or if requested by the Council shall destroy the same and certify in writing to the Council that they have been destroyed.
- C13.10. The Provider will be responsible for collecting and removing all data from its system within sixty days of the Contract Expiry Date.
- C13.11. The provisions of this clause shall survive termination or expiry of the Contract.

#### **C14. REVIEW OF CHARGES**

- C14.1 The Charges are fixed for the first year of the Contract.
- C14.2 The Council will review the Charges on 1 April in each year of the Contract but does not commit to any increase in the Charges year on year.

#### **C15. PREVENT DUTY**

- C15.1. In providing the Services, the Provider shall comply with the principles and obligation of the Prevent Duty in having due regard to the need to prevent people from being drawn into terrorism in accordance with section 26 of the Counter-Terrorism and Security Act 2015. The Provider shall ensure that its Employees have a good understanding of the Prevent Duty and are trained to recognise vulnerability to being drawn into terrorism and are aware of available programmes to deal with the issue.

#### **C16. CARE ACT 2014**

- C16.1. The Provider shall comply with the principles and obligations of the Care Act 2014 and any subsequent amendments.

#### **C17. USE OF COUNCIL'S ASSETS**

- C17.1 The Provider shall comply in all respects with the terms of the Council Software licence and the Council's Information Security Policy and Standards for the duration of the Contract.
- C17.2 The Provider may not disclose or make available the Council Software to any entity nor permit others to use it except the Provider's Employees and agents, who may use it only on the Council's behalf for the purpose of providing the Services within the limits of the application licence, and who are deemed to have agreed to such terms.

C17.3 This Contract does not transfer or grant to the Provider any right, title, interest or Intellectual Property Rights in the Council Software.

C17.4 The Provider agrees that it will not:

- a) copy the Council Software except as expressly permitted by the Council or by Law;
- b) sell, lease, license or sublicense the Council Software or the documentation connected with it; or
- c) use any Confidential Information of the Council.

## **C18. INTELLECTUAL PROPERTY RIGHTS**

C18.1 The Provider shall not cause or permit anything that may change or endanger the Intellectual Property Rights of the Council or the Council's title to it or assist or allow others to do so.

C18.2 The Council shall retain ownership and all Intellectual Property Rights in any Council Software or other material made available to the Provider in connection with this Contract.

C18.3 Except where disclosure is necessary for the performance of this Contract, the Provider shall ensure that neither it nor any of its Employees, servants, agents, suppliers or sub-contractors use or disclose any of the Council's Intellectual Property Rights or other information obtained in the course of performing this Contract without the Council's prior written approval.

C18.4 The Provider shall obtain approval before using any material which is or may be subject to any third party Intellectual Property Rights.

C18.5 The Provider will indemnify the Council against any claim for alleged infringement of any third party Intellectual Property Rights.

## **C19. WHISTLEBLOWING**

C19.1 The Provider shall be aware of and adhere to the principles set out in the Council's whistleblowing policies in reporting concerns which arise during the Contract and shall ensure that its agents and Sub-contractors do the same. The Council's whistleblowing policy can be accessed on the Council's website at [www.dorsetcouncil.gov.uk](http://www.dorsetcouncil.gov.uk)

## **C20. MODERN SLAVERY ACT 2015**

C20.1 The Provider warrants and undertakes that in performing its obligations under the terms of this Contract, it will:

- a) comply with the Modern Slavery Act 2015; and
- b) not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015; and

c) include in its subcontracting arrangements provisions that are at least as onerous as those set out in this clause.

C20.2 The Provider warrants that neither it nor any of its officers, Employees, agents or Sub-contractors has:

a) committed an offence under the Modern Slavery Act 2015 ('a MSA Offence'); or

b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA offence or prosecution under the Modern Slavery Act 2015.