

## **SCHEDULE 1 – TERMS AND CONDITIONS**

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## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

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

**Achieved KPIs:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 4).

**Associated Company:** any holding company from time to time of the Provider and any subsidiary from time to time of the Provider, or any subsidiary of any such holding company.

**Authorised Representatives:** the persons respectively designated as such by the Council and the Provider, the first such persons being set out in Schedule 2.

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

**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 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.

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

**Business Continuity Plan:** a plan which sets out the procedures to be adopted by the Supplier to ensure the continued availability of essential services where by reason of a Disaster or other circumstances the Supplier is unable to provide the Services (including the procedures to be taken by the Supplier in planning and providing for any such event), the Business Continuity Plan in place at the date of this Contract being set out in Schedule 2.

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

**Caldicott Information Governance Review:** the Information Governance Review (March 2013) also known as Caldicott 2, available at

(<https://www.gov.uk/government/publications/the-information-governance-review>) referred to in Schedule 8.

**Caldicott Principles:** the principles applying to the handling of patient-identifiable information set out in the report of the Caldicott Committee (1 December 1997) as referred to in Schedule 8.

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

**CQC Regulations:** the Care Quality Commission (Registration) Regulations 2009

**Carer:** any relative, friend or neighbour who without payment provides help and support to the Service User.

**Catastrophic Failure**

- (a) a failure by the Provider for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms on the occurrence of a Disaster.
- (b) any action by the Provider, whether in relation to the Services and this Contract or otherwise, which in the reasonable opinion of the Council's Authorised Representative has or may cause significant harm to the reputation of the Council.

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

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

**Change Control Procedure:** the procedure for changing this Contract, as set out in Schedule 6.

**Charges:** the charges which shall become due and payable by the Council to the Provider in respect of the Services in accordance with the provisions of this Contract, as such charges are set out in Schedule 5.

**Commencement Date:** the commencement date set out in Schedule 2.

**Commercially Sensitive Information:** the information listed in Schedule 2 comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Provider significant commercial disadvantage or material financial loss.

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

**Community Investment Requirement:** the requirement set out in the Specification as more particularly described in (and subject to the price adjustment mechanism set out in) Schedule 4.

**Consistent Failure:** shall have the meaning set out in Schedule 4.

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

**Crown:** the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

**Crown Body:** any department, office or agency of the Crown.

**Default Notice:** is defined in clause 6.3.

**Disaster:** an event defined as a disaster in the Business Continuity Plan.

**Dispute Resolution Procedure:** the procedure set out in clause 27.

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

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

**Exit Management and Transition Plan:** a plan produced by the Provider which sets out the strategy to be followed on the termination (in whole or in part) or expiry of the Contract developed in accordance with the requirements of the Specification and referred to in Clause 43 and Schedule 2.

**Expiry Date:** the expiry date set out in Schedule 2.

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

**Force Majeure:** any cause affecting the performance by a party of its obligations under this Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Provider, the Provider's Personnel or any other failure in the Provider's supply chain.

**Good Clinical Practice:** means using standards, practices, methods and procedures conforming to all Applicable Laws 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.

**Governing Body:** in respect of any party, the board of directors, governing body, executive team or other body having overall responsibility for the actions of that party.

**Guidance:** any applicable local authority, health or social care guidance, direction or determination which the Council and the Provider have a duty to have regard to including any document published under section 73B of the NHS Act or by any relevant Regulatory Body.

**Health and Safety Policy:** the health and safety policy of the Council as provided to the Provider on or before the Commencement Date and as subsequently provided to the Provider from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

**Incentivised KPIs;** those key performance indicators set out in Schedule 4 (if any);

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

**IG Guidance for Serious Incidents:** HSCIC's Checklist Guidance for Information Governance Serious Incidents Requiring Investigation June 2013, available at

(<https://www.igt.hscic.gov.uk/KnowledgeBaseNew/HSCIC%20IG%20SIRI%20%20Checklist%20Guidance%20V2%200%201st%20June%202013.pdf>)

and NHS England Serious Incident Framework April 2015 available at:

<https://www.england.nhs.uk/patientsafety/wp-content/uploads/sites/32/2015/04/serious-incident-framework-upd2.pdf>

**Initial Term:** the period commencing on the Commencement Date and Expiry Date.

**Insolvency Event:** where:

- (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a

scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of that other party;

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (f) the Provider (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);
- (i) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (j) the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

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



marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**KPIs:** the key performance indicators set out in Schedule 4.

**Key Personnel:** those personnel identified in Schedule 2 for the roles attributed to such personnel, as modified pursuant to clause 14.

**Law:** any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Provider is bound to comply;

**Legal Guardian:** means a person who has the legal authority (and the corresponding duty) to care for the personal and property interests of another person;

**Lessons Learned:** experience derived from provision of the Services or otherwise, 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:** an organisation established under section 222 of the Local Government and Public Involvement in Health Act 2007 as a local independent consumer champion for health and social care.

**Losses:** 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 for the avoidance of doubt excluding indirect losses.

**Management Reports:** the reports to be prepared and presented by the Provider in accordance with clause 24 and Schedule 4 to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

**Mobilisation Date:** means the date set out in Schedule 2.

**Mobilisation Period:** means the period from the Mobilisation Date to the Commencement Date.

**Mobilisation Plan:** the plan referred to in clause 43 drawn up by the Provider which identifies the actions they intend to achieve in the Mobilisation Period and which meets the requirements of the Specification.

**National Institute for Health and Clinical Excellence or NICE:** the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body) as referred to in this Schedule 1 and in Schedule 8.

**NHS Care Records Guarantee:** the document setting out the rules that govern information held in the NHS Care Records Service, which is reviewed at least annually by the National Information Governance Board for Health and Social Care as referred to in Schedule 8.

**NHS Information Governance Toolkit:** an online system which allows NHS organisations and partners to assess themselves against Department of Health information governance policies and standards (<https://www.igt.hscis.gov.uk/>) as referred to in this Schedule 1 and in Schedule 8.

**NHS Act :** the National Health Service Act 2006

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

**Patient Group Directive (PGD):** all written instructions for the supply or administration of medicines to groups of patients who may not be individually identified before presentation for treatment in accordance with the Human Medicines Regulations 2012 as set out in the Specification (Schedule 3).

**Patient Safety Incident:** any unintended or unexpected incident that occurs in respect of a Service User, during and as a result of the provision of the Services, that could have led to, or did lead to, harm to that Service User.

**Payment Plan:** the plan for payment of the Charges as set out in Schedule 5.

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

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Council.
- (d) any activity, practice or conduct which would constitute one of the offences listed under *clause 1.1(c)*, if such activity, practice or conduct had been carried out in the UK.

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

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

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

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

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

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

**Remediation Notice:** a notice served by the Council in accordance with clause 38.1(a).

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

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

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

**Response to Caldicott:** the Department of Health publication Information: To share or not to share? A Government response to the Caldicott Review September 2013, available at <https://www.gov.uk/government/publications/caldicott-information-governance-review-department-of-health-response> and referred to in Schedule 8

**Senior Information Risk Owner:** the Supplier's nominated person, being an executive or senior manager on the Governing Body of the Supplier, whose role it is to take ownership of the organisation's information risk policy, act as champion for information risk on the Governing Body of the Supplier and provide written advice to the accounting officer on the content of the organisation's statement of internal control in regard to information risk referred to in Schedule 8.

**Serious Incident:** a serious incident requiring investigation, being an incident that occurred in relation to the Services resulting in one of the following:

- (i) unexpected or avoidable death of one or more Service Users, staff, visitors or members of the public;
- (ii) serious harm to one or more Service Users, Staff, visitors or members of the public or where the outcome requires life-saving intervention, major surgical/medical intervention, permanent harm or will shorten life expectancy or result in prolonged pain or psychological harm
- (iii) a scenario that prevents or threatens to prevent the Provider's or any Sub-Contractor's ability to continue to deliver the Services, for example, actual or potential loss of personal/organisational information, damage to property, reputation or the environment, IT failure or incidents in population programmes like screening and immunisation where harm potentially may extend to a large population;
- (iv) allegations of abuse;
- (v) adverse media coverage or public concern; and/or
- (vi) in any additional/alternative circumstances set out in Schedule 2.

**Service Development Plan;** the plan referred to in clause 20 drawn up by the Provider which meets the requirements of the Specification.

**Services Environment;** any premises in which the Services are delivered (which may include but is not limited to premises owned by the Supplier or premises in which the Supplier has permission to operate the Services).

**Service Failure:** a failure by the Provider to provide the Services in accordance with any Target KPI.

**Service User:** the person directly receiving the Services provided by the Provider as specified in the Schedule 3 (Service Specification) and includes their Carer and Legal Guardian where appropriate.

**Service User Health Records:** a record which consists of information and correspondence relating to a particular physical or mental health or condition of a Service User (whether in electronic form or otherwise), including any such record generated by a previous provider of services to the Service User which is required to be retained by the Provider for medico-legal purposes.

**Services:** the services to be delivered by or on behalf of the Provider under this Contract, as more particularly described in Schedule 3.

**Sub-Contract:** any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

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

**Target KPI:** the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Schedule 4.

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

- (a) any extensions to this Contract which are agreed pursuant to clause 3; or
- (b) the earlier termination of this Contract in accordance with its terms.

**Termination Payment Default:** is defined in Schedule 5.

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

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.9 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.10 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Contract) at any time.
- 1.11 References to clauses and schedules are to the clauses and schedules of this Contract; references to paragraphs are to paragraphs of the relevant schedule.

## **COMMENCEMENT AND DURATION**

### **2. TERM**

This Contract shall take effect on the Mobilisation Date. Delivery of the Services shall begin on the Commencement Date and shall continue for the Term.

### **3. EXTENDING THE INITIAL TERM**

- 3.1 The Council may extend this Contract beyond the Initial Term in accordance with the procedure set out in Schedule 2.
- 3.2 If the Council does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of clause 42 shall apply.

### **4. DUE DILIGENCE AND PROVIDER'S WARRANTY**

- 4.1 The Provider acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
  - (b) it has received all information requested by it from the Council pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
  - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.1(b);
  - (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
  - (e) it has entered into this Contract in reliance on its own due diligence.

- 4.2 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Provider:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract; and
  - (b) shall promptly notify the Council in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 4.4 The Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Provider in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

## **THE SERVICES**

### **5. CONDITIONS PRECEDENT**

- 5.1 The Provider must comply with the Conditions Precedent set out in and in accordance with Schedule 2.

### **6. SUPPLY OF SERVICES**

- 6.1 The Services are currently provided by third parties ("Existing Providers") up to 2 November 2018. The Provider shall engage with the Existing Providers

during the Mobilisation Period in order to ensure a smooth transition of the Services from the Existing Providers to the Provider.

- 6.2 The Provider shall provide the Services to the Council with effect from the Services Commencement Date and for the duration of this Contract in accordance with the provisions of this Contract and the Specification.
- 6.3 In the event that the Provider does not comply with the provisions of clause 6 in any way, the Council may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**).
- 6.4 The Provider acknowledges and understands that the Services commissioned under this Agreement are subject to grant funding and that the Charges or the range of services supported by the charges is subject to change. Subject always to clause 42, in the event that the Council are notified that the amount of funding is to be reduced the Council will notify the Provider promptly. Thereafter both parties shall work in good faith together to identify and agree (such agreement not to be unreasonably withheld) changes to the Services to meet any necessary reduction in the Charges.

## **7. KPIs**

- 7.1 Where any Service is stated in Schedule 4 to be subject to a specific KPI, the Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 7.2 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 4.
- 7.3 The Provider shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 24.
- 7.4 In the event that the Contract so provides (in Schedule 2), where any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Council may have, the provisions of clause 13 shall apply.

## **8. SERVICE STANDARDS**

- 8.1 Without prejudice to clause 7, the Provider shall provide the Services, or procure that they are provided:



- (a) with reasonable skill and care and in accordance with the terms of this Contract and Good Clinical Practice prevailing in the sector from time to time ;
- (b) in all respects in accordance with the Council's policies; and
- (c) in accordance with all Applicable Laws.

8.2 The Provider shall

- (a) Be registered and shall remain registered throughout the Term with any relevant Regulatory Bodies
- (b) Comply, where applicable, with the registration and regulatory compliance guidance of the CQC and any other Regulatory Body;
- (c) Respond, where applicable, to all requirements and enforcement actions issued from time to time by the CQC or by any other Regulatory Body;
- (d) Consider and respond to the recommendations arising from any audit, Serious Incident report or Patient Safety Incident report;
- (e) Comply with recommendations issued from time to time by a Competent Body;
- (f) Comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
- (g) Respond to any reports and recommendations made by Local Healthwatch;
- (h) implement Services only in accordance with PGD where appropriate and as required by the Specification;
- (i) implement Services only in accordance with and as required by the Specification;

8.3 The Provider shall comply with all relevant current and future statutory provision and local requirements that are laid down in the Contract or that are issued to the Provider as part of a Variation Notice.

8.4 The Provider must to the extent where it is reasonably practicable co-operate with and assist the Council in fulfilling its Best Value Duty.

8.5 The Provider agrees to use its best endeavours to ensure that the Council receives the benefit of any reduction in costs of providing the Services at all times during this Agreement.

## **9. COMPLIANCE**

- 9.1 The Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 9.2 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 9.3 The Provider shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
  - (b) the Health and Safety Policy whilst at the Council Premises.
- 9.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Provider shall instruct the Provider's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 9.5 Without limiting the general obligation set out in clause 8, the Provider shall (and shall procure that the Provider's Personnel shall):
- (a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:
    - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (ii) the Council's equality and diversity policy as provided to the Provider from time to time; and
    - (iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law; and
  - (b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

- (c) In performing its obligations under this Contract the Provider must comply with the obligations contained in section 149 of the Equalities Act 2010 and section 6 of the Human Rights Act 1998 as if it were a public authority for the purposes of those sections. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

## **10. SERVICE USER INVOLVEMENT**

- 10.1 The Provider must engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with Law and in accordance with the Specification.
- 10.2 The Provider must provide evidence to the Council when requested of the involvement of Service Users, Carers and Staff and any other stakeholders in the development of Services.
- 10.3 The Provider must provide evidence to the Council when requested of the partnership working it has undertaken service development to aid the Council with its future planning.

## **11. DISASTER RECOVERY**

- 11.1 The Provider shall produce and review at least annually or following use a Business Continuity Plan which shall comply in all respects with the requirements set out in the Specification.
- 11.2 The Provider shall comply at all times with the relevant provisions of the Business Continuity Plan.
- 11.3 Following the declaration of a Disaster in respect of any of the Services, the Provider shall:
  - (a) implement the Business Continuity Plan;
  - (b) continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and
  - (c) restore the affected Services to normal within the period laid out in the Business Continuity Plan.

To the extent that the Provider complies fully with the provisions of this clause 11 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Contract on the part of the Provider), the KPIs to which the affected Services are to be provided during the continuation of the

Disaster shall not be the KPIs as referred to in clause 7 but shall be the KPIs set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

## **CHARGES AND PAYMENT**

### **12. PAYMENT**

- 12.1 In consideration of the provision of the Services by the Provider in accordance with the terms and conditions of this Contract, the Council shall pay the Charges to the Provider in accordance with the Payment Plan.
- 12.2 The Provider shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable in accordance with Schedule 2 and the Payment Plan. All invoices shall be directed to the Council's Authorised Representative.
- 12.3 The Council shall pay the Charges which have become payable in accordance with the Payment Plan within 30 days of receipt of an undisputed invoice from the Provider. Any invoices for payment submitted by the Provider are to be considered and verified by the Council in a timely fashion and undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed.
- 12.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 27. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 14 days after resolution of the dispute between the parties.
- 12.5 Subject to clause 12.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Contract under clause 38.4 for failure to pay undisputed charges.
- 12.6 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. The Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Provider's

failure to account for, or to pay, any VAT relating to payments made to the Provider under this Contract.

- 12.7 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council for 6 years from the end of the Contract Year to which the records relate.
- 12.8 Where the Provider enters into a Sub-Contract with a Provider or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 12.9 The Council may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under this Contract or any other Contract pursuant to which the Provider or any Associated Company of the Provider provides goods or services to the Council.
- 12.10 If The Council wishes to set off any amount owed by the Provider to the Crown or any part of the Crown (including the Council) against any amount due to the Provider pursuant to *clause 12.9* it shall give notice to the Provider within 30 days of receipt of the relevant invoice, setting out the Council's reasons for withholding or retaining the relevant Charges.
- 12.11 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 12.12 The Provider shall not be eligible for any payments in respect of the Mobilisation Period.

### **13. PRICE ADJUSTMENT MECHANISMS**

- 13.1 The Council has an obligation to ensure that Services being delivered are of a consistently high quality and meet Target KPIs and other requirements of the Service Users.

- 13.2 Any mechanisms that the Council will use under this Contract as a method of price adjustment are set out in Schedule 4:
- (a) Reflect poor performance by the Supplier falling below agreed Target KPIs; and
  - (b) Incentivise the Supplier to meet the Target KPIs and enable the parties to take action to remedy and prevent any future failure to meet Target KPIs.
- 13.3 If the Provider commits a Service Failure, the mechanisms set out Schedule 2 shall apply.

## **STAFF**

### **14. KEY PERSONNEL**

- 14.1 Each party shall appoint the persons named as such in Schedule 2 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 14.2 The Provider shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Council;
  - (b) the person is on long-term sick leave;
  - (c) the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
  - (d) the person resigns from their employment with the Provider; or
  - (e) the Provider obtains the prior written consent of the Council.
- 14.3 The Provider shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within that number of Working Days set out in Schedule 2 of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

- 14.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than the number of Working Days set out in Schedule 2. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Provider or the Council becoming aware of the role becoming vacant.
- 14.5 The Council may require the Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 14.6 If the Provider replaces the Key Personnel as a consequence of this clause 14, the cost of effecting such replacement shall be borne by the Provider.

**15. OTHER PERSONNEL USED TO PROVIDE THE SERVICES**

- 15.1 At all times, the Provider shall ensure that:
- (a) each of the Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - (b) there is an adequate number of Provider's Personnel to provide the Services properly;
  - (c) only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
  - (d) all of the Provider's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.
- 15.2 The Council may refuse to grant access to, and remove, any of the Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 15.3 The Provider shall replace any of the Provider's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider's Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

- 15.4 The Provider shall maintain up-to-date personnel records on the Provider's Personnel engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Provider's Personnel. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation (as defined in schedule 8 including GDPR).
- 15.5 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.
- 15.6 The Provider must ensure that it has proper procedures in place to address improper conduct of Provider Personnel and if any serious allegations are made against Provider Personnel the Provider shall suspend the Provider Personnel until the matter is resolved to the satisfaction of the Council and if appropriate a report made to the relevant Regulatory Body.

**16. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- 16.1 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006
- 16.2 The Provider shall:
- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
  - (b) monitor the level and validity of the checks under this *clause 16.2* for each member of staff;
  - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 16.3 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.



- 16.4 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 16 have been met.
- 16.5 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users.
- 16.6 The Provider will comply with all the requirements of the Specification with regard to Safeguarding.
- 16.7 The Provider shall comply with the Council's safeguarding policy and the procedures of the Local Safeguarding Children Board, Local Safeguarding Adults Board and the Cheshire East Domestic Abuse Partnership. The Provider shall throughout the Term appoint a named safeguarding lead who is able to access enhanced advice, support and knowledge from the Council's Safeguarding Team.

## **17. INCIDENTS REQUIRING REPORTING**

- 17.1 The Provider shall notify Serious Incidents to any Regulatory Body or any other appropriate regulatory or supervisory body as applicable, in accordance with the Law.
- 17.2 If the Provider gives a notification to any Regulatory Body under this clause which directly or indirectly concerns any Service User, the Provider must also send a copy of the notification to the Council's Authorised Representative within five Working Days.
- 17.3 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.

## **18. SERVICE USER HEALTH RECORDS AND SERVICE USER CONSENT**

- 18.1 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.

- 18.2 On termination or expiry of this Contract, the Provider must act in accordance with the instructions of the Authorised Representative at that time and promptly and securely transfer to or deliver a copy of any Service User Health Record held by the Provider to the Council or a third party nominated by the Council.
- 18.3 The Provider must
- (i) Use Service User health records solely for the execution of the Provider's obligations under this Contract
  - (ii) Give each Service User full and accurate information regarding his/her treatment and Services received.
- 18.4 The Provider must at all times during the Term of this Contract have a Caldicott Guardian and shall notify the Authorised Representative of their identity and contact details prior to the Services Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the Term of this Contract, it shall promptly notify the Authorised Representative of the identity and contact details of such replacements.
- 18.5 Subject to Guidance and where appropriate, the Service User Health Records should include the Service User's verified NHS number.
- 18.6 The Provider must publish, maintain and operate a Service User Consent Policy which complies with Good Clinical Practice and the Law.

## **19. SERVICES ENVIRONMENT AND EQUIPMENT**

- 19.1 The Provider must ensure that the Services Environment and the Equipment is fit for the purpose of providing the Services and are clean, safe, suitable, sufficient, adequate, functional, accessible (making reasonable adjustments where required in order to ensure accessibility) and effective.
- 19.2 The Provider must ensure that all Staff using Equipment and all Service Users and Carers using Equipment independently have received appropriate and adequate training and have been assessed as competent in the use of that Equipment.
- 19.3 All Equipment and materials owned by or hired or leased by or on loan to the Provider intended to be used in the delivery of the Services shall be deemed to be at the sole risk of the Provider and if prior permission is given by the Authorised Representative to store such equipment at any location owned by the Council it shall be stored at the sole risk of the Provider.

- 19.4 All Equipment and material owned by or hired or leased by or on loan to the Provider and used in the delivery of the Services shall be Serviced and maintained by the Provider in accordance with the manufacturer's recommendations and in any event such that the Equipment is in a condition suitable for use in the delivery of the Services. Where appropriate, the Provider shall ensure that where there is a Statutory or other obligation to undertake testing of the Equipment, such testing is carried out by suitably qualified and competent persons at regular intervals.

**20. EXIT MANAGEMENT AND TRANSITION PLAN AND SERVICE DEVELOPMENT PLAN**

- 20.1 The Provider must produce a Service Development Plan in accordance with the requirements of the Specification and as set out in Schedule 2.
- 20.2 The Provider must produce an Exit Management and Transition Plan in accordance with the requirements of the Specification and as set out in Schedule 2.

**21. COMPLAINTS**

- 21.1 The Provider shall draw up a complaints procedure (if it has not already got one) and shall operate it from the Commencement Date and shall provide the Council with a copy. The system dealing with compliments and complaints together with any responses to MPs letters and the steps taken by the Provider to deal with these in relation to the delivery of the Services shall be made available upon request by the Council.
- 21.2 The Provider's complaints procedure will comply with the requirements of any Regulatory Body to which the Provider is subject to, including any changes in such requirements, or shall be approved by the Council (and the Council shall not be unreasonable or delay in giving its approval).
- 21.3 The Provider shall notify the Authorised Representative at the first available opportunity, and in any event within 2 working days, in writing of any serious complaints received and report all steps taken in response thereto within 7 working days thereafter.
- 21.4 The Provider shall have notices permanently displayed in their premises giving information as to how complaints about the provision of the Services may be made.

21.5 The Provider shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner. The Provider shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Authorised Representative at all reasonable times.

21.6 If a complaint is received about the provision of the Service, 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 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 39 (Default).

## **22. PROVIDER WITHHOLDING AND/OR DISCONTINUATION OF THE SERVICE**

22.1 Except where required by Law, the Provider shall not be required to provide or to continue to provide Services to any Service User

- (i) Who in the reasonable professional opinion of the Provider and following a professional risk assessment undertaken on a multi agency basis is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
- (ii) Who displays abusive, violent or threatening behaviour unacceptable to the Provider (acting reasonably and taking into account the mental health of that Service User);
- (iii) In respect of whom no valid consent (where required) has been given in accordance with the Service User Consent Policy;
- (iv) In that Service User's domestic setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
- (v) Where expressly instructed not to do so by an emergency Provider who has authority to give such instruction, for so long as that instruction applies.

22.2 If the Provider proposes not to provide a Service or to stop providing this Service to any Service User under this clause:

- (i) Where reasonably possible, the Provider must explain to the Service User, Carer or Legal Guardian 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 two Working Days);

- (ii) The Provider must tell the Service User, Carer or Legal Guardian of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
- (iii) 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 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

The Provider must liaise with the Council to seek to maintain or restore provision of the relevant Services to the Service User in a way that ensures the safety of all concerned and minimises any disruption to the Service User's care and risk to the Service User.

## **23. TUPE**

- 23.1 The Provider will provide the Council on demand, at no cost to the Council and within such reasonable time which the Council may stipulate, with such information regarding the terms and conditions of its Staff involved in the provision of the Services as the Council may reasonably require in order for the Council to decide whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) (or as may be amended) apply upon expiry or termination of this Contract and/or so that the Council can make appropriate provision in any future tender documentation for the Services and or related services. Information disclosed to the Council pursuant to the clause shall not be used for any other purpose without the consent of the Provider.
- 23.2 Where TUPE applies, the parties agree that the provisions of Schedule 2 shall apply to any Relevant Transfer of staff under this Contract.

## **CONTRACT MANAGEMENT**

### **24. REPORTING AND MEETINGS**

- 24.1 The Provider shall provide the management reports in the form and at the intervals set out in Schedule 4.
- 24.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 4 and the Provider shall, at

each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

**25. MONITORING**

- 25.1 The Council may monitor the performance of the Services by the Provider.
- 25.2 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 25.1 at no additional charge to the Council.

**26. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT**

- 26.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 26.2 The Provider shall have an ongoing obligation throughout the Term to identify innovations or new or potential improvements to the Services. As part of this obligation the Provider shall identify and report to the Council's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
  - (a) the emergence of new and evolving relevant technologies which could improve the Services;
  - (b) innovations or new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
  - (c) innovations or new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
  - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.
- 26.3 Any potential Changes highlighted as a result of the Provider's reporting in accordance with clause 26.2 shall be addressed by the parties using the Change Control Procedure.

## **27. DISPUTE RESOLUTION**

27.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Head of Commissioning and the Provider's (SENIOR OFFICER TITLE referred to in Schedule 2) who shall attempt in good faith to resolve it; and
- (c) if the Council's Head of Commissioning and the Provider's (SENIOR OFFICER TITLE referred to in Schedule 2) are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve.

27.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 55 which clause shall apply at all times.

## **28. SUB-CONTRACTING AND ASSIGNMENT**

28.1 Subject to clause 28.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other party, neither may the Provider sub-contract the whole or any part of its obligations under this Contract except with the express prior written consent of the Council, such consent not to be unreasonably withheld.

28.2 In the event that the Provider enters into any Sub-Contract in connection with this Contract it shall:

- (a) remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of

any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.

- 28.3 The Council shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Council.

## **LIABILITY**

### **29. INDEMNITIES**

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, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or applicable law by the Council or its Representatives (excluding any Provider's Personnel).

### **30. LIMITATION OF LIABILITY**

- 30.1 Subject to clause 31.5, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 30.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 30.3 Without affecting its liability for breach of any of its obligations under this Contract, the Provider will be liable to the Council for, and must indemnify and keep the Council indemnified against



- (a) Any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever in respect of:
  - (i) Any loss of or damage to property (whether real or personal); and
  - (ii) Any injury to any person, including injury resulting in death; and
  - (iii) Any Losses of the Council

that result from or arise out of the Provider's or any sub-contractor's negligence or breach of contract in connection with the performance of this Contract or the provision of the Services (including its use of Equipment or other materials or products, and the actions or omissions of Staff or any Sub-Contractor in the provision of the Services), except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Council its employees or agents.

- 30.4 Subject to *clause 30.5*, the Council's maximum aggregate liability to the Provider for all claims arising in any Contract Year (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable) shall not in any circumstances exceed 100% of the Charges payable in any Contract Year..
- 30.5 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
  - (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by its negligence;
  - (c) breach of any obligation as to title implied by statute; or
  - (d) any other act or omission, liability for which may not be limited under any applicable law.

### **31. INSURANCE**

- 31.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the levels of cover set out in Schedule 2 (the **Required Insurances**) The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

- 31.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 31.3 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.
- 31.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.
- 31.5 The Provider shall hold and maintain the Required Insurances for a minimum of period of years set out in Schedule 2, following the expiration or earlier termination of the Contract.

## **INFORMATION**

### **32. FREEDOM OF INFORMATION**

- 32.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Provider shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - (c) provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
  - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.
- 32.2 The Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1

of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **33. DATA PROTECTION**

- 33.1 The Provider will comply with the provisions set out in Schedule 2 and Schedule 8.

### **34. CONFIDENTIALITY**

- 34.1 Subject to clause 34.2, the parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

- 34.2 Clause 34.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 32.2 shall apply to any disclosures required under the FOIA or the EIRs;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 34.1;
- (d) by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 27;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Council to any other department, office or agency of the Government; and
- (h) by the Council relating to this Contract and in respect of which the Provider has given its prior written consent to disclosure.

- 34.3 On or before the expiry or termination of this Contract the Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees,

rate-payers or service users, are delivered up to the Council or securely destroyed.

## **35. AUDIT**

- 35.1 The Provider must comply with all reasonable written requests made by the National Audit Office, any Authorised Representative and the authorised representative of the Local Healthwatch for entry to the Provider's Premises and/or any premises of a 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.
- 35.2 Subject to Law and notwithstanding clause 34.1 above, an Authorised Representative may enter the Provider's premises and/or the premises of a Sub-Contractor without notice for the purposes of auditing, viewing, observing and 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 Representative.
- 35.3 During the Term and for a period of 6 years after the termination or expiry of this Contract, the Council may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all Providers (including Sub-Contractors) of the Services;
  - (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
  - (c) to review the Provider's compliance with the Data Protection Legislation, the FOIA, as defined in and in accordance with clause 33 (Data Protection) and clause 32 (Freedom of Information) and any other legislation applicable to the Services;
  - (d) to review any records created;
  - (e) to review any books of account kept by the Provider in connection with the provision of the Services;

- (f) to carry out the audit and certification of the Council's accounts;
  - (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
  - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this Contract.
- 35.4 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 35 more than twice in any calendar year.
- 35.5 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 35.6 Subject to the Council's obligations of confidentiality, the Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Provider's Personnel.
- 35.7 The Council shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 35.8 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Provider in which case the Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 35.9 If an audit identifies that:
  - (a) the Provider has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges

or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;

- (b) the Council has overpaid any Charges, the Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
- (c) the Council has underpaid any Charges, the Council shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Provider in relation to invoicing within 20 days.

### **36. HANDOVER**

- 36.1 The Provider shall use all reasonable endeavours to transfer all data in accordance with industry standard format (or any format reasonably specified by the Council or a Replacement Provider) relating to the Services including without limitation requests for Services to be undertaken which have not been completed.
- 36.2 At any time upon reasonable notice from the Authorised Representative or (where the request is occasioned by the termination of this Contract) forthwith and in any event upon the day which shall be not less than 3 months before the end of the Term or within 4 weeks of early termination of this Contract the Provider shall supply to the Council full, complete and accurate information as to the identity and terms and conditions of employment of all Employees then currently engaged in the provision of the Service (whether or not employed by the Provider) and any other Employee Liability Information as specified in the TUPE Regulations and shall warrant the accuracy of such information and shall forthwith notify the Council of any change in such information.
- 36.3 The Provider undertakes to effect no changes in the numbers, identity, functions and terms and conditions of employment of Staff employed by the Provider in connection with the performance of the Services during the last 6 months of the Term without the Council's consent such consent not to be unreasonably withheld or delayed.
- 36.4 On the expiry of the Term (or if this Contract is terminated in whole or in part for any reason), the provisions of any Exit Management and Transition Plan shall come into effect and the Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Provider.

### **37. INTELLECTUAL PROPERTY**

37.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Provider or any employee, agent or subcontractor of the Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

37.2 The Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

## **TERMINATION**

### **38. TERMINATION FOR BREACH**

38.1 The Council may terminate this Contract in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:

- (a) if the Provider is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Council may only terminate this Contract under this clause 38.1 if the Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;
- (b) if a Consistent Failure has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if there is an Insolvency Event.
- (e) if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010.
- (f) If the Provider has any of its necessary registrations cancelled by any Regulatory Body.
- (g) If the Provider fails to obtain any Necessary Consent; loses any Necessary Consent or 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

- (h) If any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

38.2 The Council may terminate this Contract in accordance with the provisions of clause 40 and *clause 41*.

38.3 If this Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

38.4 The Provider may terminate this Contract in the event that the Council commits a Termination Payment Default by giving 30 days' written notice to the Council. In the event that the Council remedies the Termination Payment Default in the 30 day notice period, the Provider's notice to terminate this Contract shall be deemed to have been withdrawn.

#### **39. TERMINATION ON NOTICE**

39.1 Without affecting any other right or remedy available to it, the Council may terminate this Contract at any time by giving 3 months' written notice to the Provider and the provisions of clause 42 (Consequences of Termination) shall apply.

#### **40. FORCE MAJEURE**

40.1 Subject to the remaining provisions of this clause 40, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.

40.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and



- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 40.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 40.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- 40.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 40.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 40.7 The Council may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 20 Working Days or as otherwise set out in Schedule 2.

#### **41. PREVENTION OF BRIBERY**

- 41.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider's Personnel, have at any time prior to the Commencement Date:
  - (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or

otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

41.2 The Provider shall not during the term of this Contract:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

41.3 The Provider shall during the term of this Contract:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under *clause 41.3(a)* and make such records available to the Council on request.

41.4 The Provider shall immediately notify the Council in writing if it becomes aware of any breach of *clause 41.1* and/or *clause 41.2*, or has reason to believe that it has or any of the Provider's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

41.5 If the Provider makes a notification to the Council pursuant to *clause 41.4*, the Provider shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with *clause 35*.

41.6 If the Provider is in Default under *clause 41.1* and/or *clause 41.2*, the Council may by notice:

- (a) require the Provider to remove from performance of this Contract any Provider's Personnel whose acts or omissions have caused the Default; or
- (b) immediately terminate this Contract.

41.7 Any notice served by the Council under clause 41.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).

## **42. CONSEQUENCES OF TERMINATION**

42.1 If this Contract is terminated in whole or in part the Council shall:

42.1.1 be liable to pay to the Provider only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or

42.1.2 be entitled to deduct from any sum or sums which would have been due from the Council to the Provider under this Contract or any other contract and to recover the same from the Provider as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or

42.1.3 in the event that any sum of money owed by the Provider to the Council (the Provider's debt) exceeds any sum of money owed by the Council to the Provider (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Provider's debt from any future Council's debt or to recover the Provider's debt as a civil debt.

42.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract, and to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under the Contract.

42.3 On the expiry of the Term or if this Contract is terminated in whole or in part for any reason the provisions of any Exit Management and Transition Plan shall come into effect and the Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Provider.

- 42.4 On expiry or termination of this Contract and on satisfactory completion of any Exit Management and Transition Plan (or where reasonably so required by the Council before such completion) the Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Provider's Authorised Representative shall certify full compliance with this clause.
- 42.5 The provisions of clause 7 (provision of records), clause 29 (Indemnities), clause 31 (Insurance), clause 32 (Freedom of Information), clause 33 (Data Protection), clause 35 (Audit), clause 38 (Termination for Breach) and this clause 42 (Consequences of termination) shall survive termination or expiry of this Contract.

## **GENERAL PROVISIONS**

### **43. NON-SOLICITATION**

Neither party shall (except with the prior written consent of the other) during the term of this Contract solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

### **44. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **45. RIGHTS AND REMEDIES**

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

### **46. SEVERABILITY**

- 46.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

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

#### **47. PARTNERSHIP OR AGENCY**

- 47.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 47.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **48. THIRD PARTY RIGHTS**

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

#### **49. PUBLICITY**

The Provider shall not:

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

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

#### **50. NOTICES**

- 50.1 Any notice given to a party under or in connection with this contract shall be given in writing marked for the attention of the party's Authorised Representative and delivered by hand or by pre-paid first-class post or other next working day delivery service to the address set out in Schedule 2.

- 50.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address in accordance with Schedule 2;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- 50.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail or fax.

## **51. ENTIRE CONTRACT**

- 51.1 The Contract of which these term and conditions form Schedule 1, constitutes the entire Contract between the parties and supersedes and extinguishes all previous Contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 51.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

## **52. COUNTERPARTS**

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

## **53. TRANSPARENCY**

- 53.1 The parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the FOIA the text of this Contract and any Schedules to this Contract is not confidential information. The Council shall be responsible for determining in its absolute discretion whether any part of this Contract or its Schedules is exempt from disclosure in accordance with the provisions of the FOIA.

53.2 Notwithstanding any other term of this Contract, the Provider hereby gives its consent for the Council to publish this Contract and its Schedules in its entirety, including from time to time agreed changes to the Contract, to the general public in whatever form the Council decides.

**54. GOVERNING LAW**

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

**55. JURISDICTION**

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