

PUBLIC HEALTH SERVICES CONTRACT

DERBYSHIRE COUNTY COUNCIL (1)

AS AUTHORITY

AND

[Insert Name] (2)

AS PROVIDER

**CONTRACT FOR THE
PROVISION OF INPATIENT TREATMENT
FOR THE MANAGEMENT OF WITHDRAWAL
FROM DRUG AND ALCOHOL DEPENDENCE
SERVICE**

CPH129/IKEN 111530

PUBLIC HEALTH SERVICES CONTRACT

CONTENTS

A1.	CONTRACT	6
A2.	INTERPRETATION	6
A3.	COMMENCEMENT AND DURATION	6
A4.	REPRESENTATIVES.....	7
A5.	NOTICES	7
A6.	ENTIRE CONTRACT	7
A7.	COUNTERPARTS.....	8
B1.	SERVICES.....	9
B2.	WITHHOLDING AND/OR DISCONTINUATION OF SERVICE.....	9
B3.	SERVICE AND KEY PERFORMANCE INDICATORS.....	9
B4.	SERVICE USER INVOLVEMENT.....	10
B5.	EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION.....	10
B6.	MANAGING ACTIVITY	11
B7.	STAFF	11
B8.	CHARGES AND PAYMENT	13
B9.	SERVICE IMPROVEMENTS AND BEST VALUE DUTY.....	14
B10.	SAFEGUARDING CHILDREN AND VULNERABLE ADULTS	14
B11.	INCIDENTS REQUIRING REPORTING	15
B12.	CONSENT.....	15
B13.	SERVICE USER HEALTH RECORDS	15
B14.	INFORMATION	15
B15.	EQUIPMENT.....	16
B16.	TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS	16
B17.	COMPLAINTS.....	16
B18.	SERVICE REVIEW	16
B19.	REVIEW MEETINGS.....	17
B20.	CO-OPERATION	17
B21.	WARRANTIES AND REPRESENTATIONS	17
B22.	VARIATIONS.....	18

PUBLIC HEALTH SERVICES CONTRACT

B23.	ASSIGNMENT AND SUB-CONTRACTING	19
B24.	AUDIT AND INSPECTION	19
B25.	INDEMNITIES.....	20
B26.	LIMITATION OF LIABILITY	20
B27.	INSURANCE.....	20
B28.	DEFAULTS AND FAILURE TO SUPPLY	20
B29.	CONTRACT MANAGEMENT	21
B30.	DISPUTE RESOLUTION.....	24
B31.	SUSPENSION AND CONSEQUENCES OF SUSPENSION.....	24
B32.	TERMINATION.....	25
B33.	CONSEQUENCE OF EXPIRY OR TERMINATION	27
B34.	BUSINESS CONTINUITY	27
B35.	COUNTER-FRAUD AND SECURITY MANAGEMENT	27
B36.	CONFIDENTIALITY	28
B37.	DATA PROTECTION	29
B38.	FREEDOM OF INFORMATION AND TRANSPARENCY.....	31
B39.	PROHIBITED ACTS.....	32
B40.	FORCE MAJEURE.....	33
B41.	THIRD PARTY RIGHTS	33
B42.	CAPACITY.....	33
B43.	SEVERABILITY	34
B44.	WAIVER	34
B45.	PUBLICITY	34
B46.	EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY.....	34
B47.	GOVERNING LAW AND JURISDICTION.....	34
	APPENDIX A: SERVICE SPECIFICATIONS	35
	APPENDIX B: CONDITIONS PRECEDENT	36
	APPENDIX D: SERVICE USER, CARER AND STAFF SURVEYS.....	38
	APPENDIX E: CHARGES.....	39

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX F: SAFEGUARDING POLICIES.....	41
APPENDIX G: INCIDENTS REQUIRING REPORTING PROCEDURE	42
APPENDIX H: INFORMATION PROVISION.....	43
APPENDIX I: TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS.....	44
APPENDIX J: SERVICE QUALITY PERFORMANCE REPORT	45
APPENDIX K: DETAILS OF REVIEW MEETINGS.....	46
APPENDIX L: AGREED VARIATIONS	47
APPENDIX M: DISPUTE RESOLUTION.....	48
APPENDIX N: SUCCESSION PLAN.....	52
APPENDIX O: DEFINITIONS AND INTERPRETATION.....	53
APPENDIX P – SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS	60
SECTION C: SPECIAL TERMS AND CONDITIONS.....	61
C1. NOT USED	61
C2. EXTENDING THE DURATION OF CONTRACT	61
C3. DUE DILIGENCE	61
C4. INSURANCE	61
C5. CONTRACT BINDING ON SUCCESSORS	62
C6, CONTINUOUS IMPROVEMENT	62
C7. DATA PROTECTION.....	62
C8. AGENCY	64
C9. HUMAN RIGHTS.....	64
C10. HEALTH AND SAFETY.....	64
C11. DISCLOSURE AND BARRING SERVICE	64
C12. CONFLICTS OF INTEREST	64

PUBLIC HEALTH SERVICES CONTRACT

C13. INTELLECTUAL PROPERTY 65

C14. CHANGE IN CONTROL..... 65

C15. TUPE 67

C16 MALADMINISTRATION..... 69

C17 PREVENT DUTY 69

PUBLIC HEALTH SERVICES CONTRACT

SECTION A: THE PARTICULARS

This Contract is made on [insert date of the last signature to this Contract 202[]]

PARTIES

- (1) **DERBYSHIRE COUNTY COUNCIL** of County Hall Matlock, Derbyshire DE4 3AG (the **Authority**); and
- (2) [insert name of Provider] (Company/Charity No: [XXX]) of [insert address] (the **Provider**).

BACKGROUND

- (A) The Authority must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations. In order to satisfy these obligations the Authority wishes to secure the provision of the Services and the Provider wishes to provide the Services.
- (B) On [INSERT DATE] Derbyshire County Council placed a contract notice with reference number [INSERT REF] on the Find A Tender Service seeking tenders for the supply and delivery of an Inpatient Treatment for the Management of Withdrawal from Drug and Alcohol Dependence service in accordance with the tender documents.
- (C) The Contractor submitted a tender to the Council for the supply of the Services to the Council and the Council has accepted the Contractor's tender.
- (D) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.

IT IS AGREED

A1. CONTRACT

- A1.1. This Contract is comprised of:
- a) these Particulars (Section A);
 - b) the General Terms and Conditions (the **General Conditions**) (Section B); and
 - c) the Special Terms and Conditions (the **Special Conditions**) (Section C),
- as completed and agreed by the Parties and as varied from time to time in accordance with Clause A.B22 (*Variations*) of the General Conditions.

A2. INTERPRETATION

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

A3. COMMENCEMENT AND DURATION

- A3.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the **Commencement Date**).
- A3.2. The Provider shall, subject to having satisfied the Conditions Precedent where applicable, provide the Services from 1 April 2026 (the **Service Commencement Date**).

PUBLIC HEALTH SERVICES CONTRACT

A3.3. This Contract shall expire automatically on 31 March 2029 (the **Expiry Date**), unless it is extended (in Section C) or terminated earlier in accordance with the provisions of this Contract.

A4. REPRESENTATIVES

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

Name: [insert name]
Title: [insert title]
Contact Details: [insert]

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

Name: [insert name]
Title: [insert title]
Contact Details: [insert]

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

A5. NOTICES

A5.1. Any notices given under this Contract shall be in writing and shall be served by hand or post by sending the same to the address for the relevant Party set out in Clause A5.3.

A5.2. Notices:

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

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

a) For the Authority:
Address: [to be completed]
For the attention of: [to be completed]
Tel: [to be completed]

b) For the Provider:
Address: [to be completed]
For the attention of: [to be completed]
Tel: [to be completed]

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

A6. ENTIRE CONTRACT

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

PUBLIC HEALTH SERVICES CONTRACT

A7. COUNTERPARTS

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

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

**SIGNED for and on behalf of
the AUTHORITY**

.....
Signature
**Director of Public Health/Director of Legal and Democratic
Services**

.....
Date

.....
Signature
Director of Legal and Democratic Services

.....
Date

**SIGNED for and on behalf of
the PROVIDER**

.....
Signature

.....
Authorised Signatory's Name

.....
Title

.....
Date

PUBLIC HEALTH SERVICES CONTRACT

SECTION B: GENERAL TERMS AND CONDITIONS

B1. SERVICES

- B1.1. The Provider shall provide the Services in accordance with the Service Specification(s) in Appendix A (*Service Specifications*), including any service limitations set out in them, and in accordance with the Provider's Tender Response and the provisions of this Contract.
- B1.2. The Provider shall satisfy any Conditions Precedent set out in Appendix B (*Conditions Precedent*) prior to commencing provision of the Services.

B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

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

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

B3. SERVICE AND KEY PERFORMANCE INDICATORS

- B3.1. The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Authority in writing:
- a) comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
 - b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
 - c) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
 - d) comply with the recommendations issued from time to time by a Competent Body;

PUBLIC HEALTH SERVICES CONTRACT

- e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
- f) respond to any reports and recommendations made by Local HealthWatch;
- g) comply with the Accessible Information Standards approved in accordance with S.250 Health and Social Care Act 2012; and
- h) Not used.

B4. SERVICE USER INVOLVEMENT

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

B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

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

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

PUBLIC HEALTH SERVICES CONTRACT

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

B5.5. The Provider must provide to the Authority as soon as reasonably practicable, any information that the Authority reasonably requires to:

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

B5.6 The Provider must co-operate and assist with any public consultation and/or equality processes that the Authority undertakes pursuant to any proposed changes in the Services.

B6. MANAGING ACTIVITY

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

B7. STAFF

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

- a) each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- b) there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;
- c) where applicable, Staff are registered with the appropriate professional regulatory body; and
- d) Staff are aware of and respect equality and human rights of colleagues and Service Users.
- e) it can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Provider's discretion) for each of the Staff engaged in the Services

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

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

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

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

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

PUBLIC HEALTH SERVICES CONTRACT

- B7.5. The Provider must have in place and promote a code and effective procedures to ensure that Staff have appropriate means through which they can raise any concerns they may have in relation to the Services. The Provider must ensure that nothing in any contract of employment or contract for services or any other agreement entered into by it with any member of Staff will prevent or inhibit, or purport to prevent or inhibit, the making of any protected disclosure (as defined in the Public Interest Disclosure Act 1998) by that member of Staff nor affect the rights of that member of Staff under that Act.
- B7.6. The Provider must carry out Staff surveys in relation to the Services at intervals and in the form set out in Appendix D (*Service User, Carer and Staff Surveys*) or as otherwise agreed in writing from time to time.
- B7.7. Subject to Clause B7.8, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
- a) the Employment Checks; and
 - b) such other checks as required by the DBS.
- B7.8. Subject to Clause B7.9, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.
- B7.9. Where Clause B7.8 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
- a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
 - d) any other reasonable requirement of the Authority.
- B7.10. If the Authority reasonably considers at any time that any of the Staff are unsuitable to undertake work or services in respect of this Contract, it shall notify the Provider of this in writing and the Provider shall immediately:
- (a) refuse admission to the Staff member(s) to premises where the Services are being delivered and the Authority's premises;
 - (b) direct the Provider to immediately end the involvement in the provision of the Services of the Staff member(s); and
 - (c) at the sole discretion of the Authority acting reasonably, require the Provider to replace any such Staff member(s) with Staff member(s) who comply with the provisions of this Clause B7 and procure that any permissions issued by the Authority to the replaced Staff member(s) is surrendered.
- B7.11. In the event of any breach or incident arising under this Clause B7, the Provider shall investigate and submit a report, including any actions taken as a result, to the Authority, who will determine the impact on the Service and any further action to be taken (if any) under the terms of this Contract.

PUBLIC HEALTH SERVICES CONTRACT

B7.12 Where the Authority has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Authority and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the Authority with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE. If TUPE does apply, Clause C15 of Section C shall apply.

B7.13 The Provider shall indemnify and keep indemnified the Authority and any Successor Provider against any Losses incurred by the Authority and/or the Successor Provider in connection with any claim or demand by any transferring employee under TUPE.

B8. CHARGES AND PAYMENT

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

B8.2. The Provider shall invoice the Authority for payment of the Charges at the end of each calendar month (or such other frequency agreed between the Parties in writing) and the Authority shall pay the undisputed Charges within 30 days of receipt (unless a shorter period at a discount has been agreed), subject to the Authority receiving with the invoice all of the reports due under this Contract which shall relate to the same month of Services that the Provider is submitting payment for and may also include other quarterly or annual reports due at that time. All reports must have been received before the 30 days commences.

B8.3. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

B8.4. In its performance of this Contract the Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).

B8.5. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this Clause B8:

- a) the contesting Party shall within 5 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
- b) any uncontested amount shall be paid in accordance with this Contract.

B8.6. If a Party contests a payment under Clause B8.5 and the Parties have not resolved the matter within 20 Business Days of the date of notification under Clause B8.5, the contesting Party may refer the matter to dispute resolution under Clause B30 and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with Clause B8.2. The Provider's obligations to supply the Services shall not be affected by reference to any such dispute.

PUBLIC HEALTH SERVICES CONTRACT

B8.7. Subject to any express provision of this Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.

B8.8. Without prejudice to any other right or remedy it may have, the Authority reserves the right to set off any amount owing at any time to it by the Provider against any amount payable by the Authority to the Provider under this Contract and/or any other contract between the Parties.

B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY

B9.1. The Provider must, to the extent reasonably practicable, co-operate with and assist the Authority in fulfilling its Best Value Duty.

B9.2. In addition to the Provider's obligations under Clause B9.1, where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.

B9.3. During the term of this Contract at the reasonable request of the Authority, the Provider must:

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

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

B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

B10.1. The Provider shall adopt Safeguarding Policies and such policies shall comply with all applicable Laws and the Authority's safeguarding policy as amended from time to time and may be appended at Appendix F (*Safeguarding Policies*).

B10.2. At the reasonable written request of the Authority and by no later than 10 Business Days following receipt of such request, the Provider must provide evidence to the Authority that it is addressing any safeguarding concerns.

B10.3. If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

B10.4. The Provider must implement comprehensive programmes for safeguarding and Mental Health Act 2007 training for all relevant Staff and must have regard to safeguarding training guidance as published by the Department for Education. The Provider must undertake an annual audit of its conduct and completion of those training programmes and of its compliance with this Clause B10.

PUBLIC HEALTH SERVICES CONTRACT

B11. INCIDENTS REQUIRING REPORTING

- B11.1. The Provider shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and to any Regulatory Body as applicable, in accordance with the Law.
- B11.2. If the Provider gives a notification to the CQC or any other Regulatory Body under Clause B11.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within 5 Business Days or within the timescale set out in Appendix G (*Incidents Requiring Reporting Procedure*).
- B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix G (*Incidents Requiring Reporting Procedure*).
- B11.4. Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this Clause B11 and Appendix G (*Incidents Requiring Reporting Procedure*).

B12. CONSENT

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

B13. SERVICE USER HEALTH RECORDS

- B13.1. The Provider must create, maintain, store and retain Service User health records for all Service Users. The Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
- B13.2. The Provider must:
- a) use Service User health records solely for the execution of the Provider's obligations under this Contract; and
 - b) give each Service User full and accurate information regarding his/her treatment and Services received.
- B13.3. The Provider must at all times during the term of this Contract have a Caldicott Guardian and shall notify the Authority of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this Contract, it shall promptly notify the Authority of the identity and contact details of such replacements.
- B13.4. Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.
- B13.5. The Provider acknowledges that the Service User health records are subject to the audit, inspection and other rights of the Authority and others as set out in Clause B24 (*Audit and Inspection*).

B14. INFORMATION

- B14.1. The Provider must provide the Authority the information specified in Appendix H (*Information Provision*) to measure the quality, quantity or otherwise of the Services.

PUBLIC HEALTH SERVICES CONTRACT

B14.2. The Provider must deliver the information required under Clause B14.1 in the format, manner, frequency and timescales specified in Appendix H (*Information Provision*) and must ensure that the information is accurate and complete.

B14.3. If the Provider fails to comply with any of the obligations in this Clause B14 and/or Appendix H (*Information Provision*), the Authority may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Appendix H (*Information Provision*).

B14.4. In addition to the information required under Clause B14.1, the Authority may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

B15. EQUIPMENT

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

B16. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS

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

B17. COMPLAINTS

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

B17.2. The Provider shall operate a complaints procedure acceptable to the Authority and promote the procedure appropriately to all Service Users and their representatives. The procedure shall allow for advocacy on behalf of Service Users and shall provide for independent participants in any appeals stage. The Provider shall co-operate with any investigation under the Authority's complaints procedure.

B17.3. If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in Clause B28 (*Default and Failure to Supply*).

B17.4. The Provider shall record the volume and nature of complaints received, how complaints were investigated and outcomes of investigations. The Provider shall provide copies of these to the Authority within 10 Business Days of such request.

B17.5. The Provider shall ensure that Service Users and their representatives are made aware that they can use the Authority's complaint procedure (where applicable) and are provided with details of how they can access the procedure.

B18. SERVICE REVIEW

B18.1. The Provider must deliver to the Authority the Reports at the times set out in Appendix J (*Service Quality Performance Report*).

B18.2. The Provider must submit each report in the form and manner specified in Appendix J (*Service Quality Performance Report*).

PUBLIC HEALTH SERVICES CONTRACT

B19. REVIEW MEETINGS

B19.1. The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix K (*Details of Review Meetings*).

B19.2. Notwithstanding Clause B19.1, if either the Authority or the Provider:

- a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
- b) considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,

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

B20. CO-OPERATION

B20.1. The Parties must at all times act in good faith towards each other.

B20.2. The Provider must co-operate fully and liaise appropriately with:

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

in order to:

- f) ensure that a consistently high standard of care for the Service User is at all times maintained;
- g) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
- h) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Authority's or members of the public; and
- i) ensure that proposed changes to services are subject to public consultation and equality processes, as appropriate.

B21. WARRANTIES AND REPRESENTATIONS

B21.1. The Provider warrants and represents that:

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

PUBLIC HEALTH SERVICES CONTRACT

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

B21.2. The Authority warrants and represents that:

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

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

B22. VARIATIONS

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

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

B22.3. If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice

PUBLIC HEALTH SERVICES CONTRACT

(unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including agreement on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation (if applicable). If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract.

B22.4. No Variation to this Contract will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or his nominee) in accordance with Clause A5 (*Notices*). All agreed Variations shall form an addendum to this Contract and shall be recorded in Appendix L (*Agreed Variations*).

B23. ASSIGNMENT AND SUB-CONTRACTING

B23.1. The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract.

B23.2. The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Provider.

B24. AUDIT AND INSPECTION

B24.1. The Provider must comply with all reasonable written requests made by the Authority, CQC, the National Audit Office, the General Pharmaceutical Council, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises 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 where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.

B24.2. Subject to Law and notwithstanding Clause B24.1, an Authorised Person may enter the Provider's Premises without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person. Such access shall include a right to access all computer systems, personnel and financial records, Service User health records (sensitive personal data redacted as necessary), minute books and any other relevant evidence (including obtaining relevant copies).

B24.3. Within 10 Business Days of the Authority's reasonable request, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.

B24.4. The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.

B24.5. During any audit undertaken under Clauses B24.1 or B24.2, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:

- a) all reasonable information requested within the scope of the audit;
- b) reasonable access to the Provider's Premises;
- c) access to the Staff;
- d) penetration and compliance tests of any hosting infrastructure; and
- e) all steps to test the Provider's compliance with the Authority's ISO27001 standard.

PUBLIC HEALTH SERVICES CONTRACT

- B24.6 The Provider must, at its own expense, in line with applicable Law and guidance:
- a) implement an ongoing, proportionate programme of clinical audit of the Services in accordance with Good Clinical Practice;
 - b) implement an ongoing, proportionate audit of the accuracy of its recording and coding of clinical activity relating to the Services; and
 - c) provide to the Authority on request the findings of any audits carried out under a) and/or b) above.

B25. INDEMNITIES

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

B26. LIMITATION OF LIABILITY

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

B27. INSURANCE

- B27.1. The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- B27.2. The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.
- B27.3. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

B28. DEFAULTS AND FAILURE TO SUPPLY

- B28.1. In the event that the Authority is of the reasonable opinion that there has been a Default (or a number of Defaults taken together) which is a material breach of this Contract by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Contract including under Clause B29 (*Contract Management*), consult with the Provider and then do any of the following:

PUBLIC HEALTH SERVICES CONTRACT

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

B28.2. If the Authority exercises any of its rights under Clause B28.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

B29. CONTRACT MANAGEMENT

B29.1. The consequence in relation to the Provider failing to meet a Key Performance Indicator is as set out in Appendix C (*Key Performance Indicators*). If the Provider fails to meet the Key Performance Indicator, the Authority may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Authority may have under this Clause B29.

B29.2. The provisions of this Clause B29 do not affect any other rights and obligations the Parties may have under this Contract.

B29.3. Clauses B29.19, B29.23, B29.24 and B29.26 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Authority.

Contract Query

B29.4. If the Authority has a Contract Query it may issue a Contract Query Notice to the Provider.

B29.5. If the Provider has a Contract Query it may issue a Contract Query Notice to the Authority.

Excusing Notice

B29.6. The Receiving Party may issue an Excusing Notice to the Issuing Party within 5 Business Days of the date of the Contract Query Notice.

B29.7. If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within 10 Business Days following the date of the Contract Query Notice.

Contract Management Meeting

B29.8. Unless the Contract Query Notice has been withdrawn, the Authority and the Provider must meet to discuss the Contract Query and any related Excusing Notice within 10 Business Days following the date of the Contract Query Notice.

B29.9. At the Contract Management Meeting the Authority and the Provider must agree either:

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

PUBLIC HEALTH SERVICES CONTRACT

- B29.10. If a Joint Investigation is to be undertaken:
- a) the Authority and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation.
 - b) the Authority and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

Joint Investigation

- B29.11. On completion of a Joint Investigation, the Authority and the Provider must produce and agree a JI Report. The JI Report must include (without limitation) a recommendation to be considered at the next Review Meeting that either:
- a) the Contract Query be closed; or
 - b) Remedial Action Plan be agreed and implemented.
- B29.12. Either the Authority or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Contract to consider a JI Report.

Remedial Action Plan

- B29.13. If a Remedial Action Plan is to be implemented, the Authority and the Provider must agree the contents of the Remedial Action Plan within:
- a) 5 Business Days following the Contract Management Meeting; or
 - b) 10 Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under Clause B29.11.
- B29.14. The Remedial Action Plan must set out:
- a) the actions required and which Party is responsible for each action to remedy the failure in question and the date by which each action must be completed;
 - b) the improvements in outcomes and or other key indicators required, the date by which each improvement must be achieved and for how long it must be maintained; and
 - c) where the breach is by the Provider and subject to the maximum sums identified in Clause B29.23, any reasonable and proportionate financial sanctions or other consequences for failing to complete any agreed action by the specified date and/or to achieve and maintain any agreed improvement.
- B29.15. The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.
- B29.16. The Authority and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.
- B29.17. If following implementation of a Remedial Action Plan:
- a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;

PUBLIC HEALTH SERVICES CONTRACT

- b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

Withholding Payment for Failure to Agree Remedial Action Plan

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

Exception Reports

- B29.21. If a Party breaches a Remedial Action Plan and does not remedy the breach within 5 Business Days of its occurrence, the Provider or the Authority (as the case may be) may issue a First Exception Report to that Party's appropriate Director (in the case of the Provider, to its Board of Directors; in the case of the Authority, to its Director of Public Health). If the Party in breach is the Provider, the Authority may withhold payment from the Provider in accordance with Clause B29.23.
- B29.22. If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Authority or the Provider (as the case may be) may issue a Second Exception Report to:
 - a) the relevant Party's Director (in the case of the Provider, to its Board of Directors; in the case of the Authority, to its Director of Public Health); and/or;
 - b) CQC or any other Regulatory Body,

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

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

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

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

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

PUBLIC HEALTH SERVICES CONTRACT

Unjustified Withholding or Retention of Payment

- B29.25. If the Authority withholds sums under Clause B29.19 or Clause B29.23 or retain sums under Clause B29.24, and within 20 Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld or retained unjustifiably, the Authority must pay those sums to the Provider within 10 Business Days following the date of the Authority's acceptance of that evidence. If the Authority does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

Retention of Sums Withheld on Expiry or Termination of this Contract

- B29.26. If the Provider does not agree a Remedial Action Plan:
- a) within 6 months following the expiry of the relevant time period set out in Clause B29.13; or

b) before the Expiry Date or earlier termination of this Contract,

whichever is the earlier, the Authority may retain permanently any sums withheld under Clause B29.19.

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

B30. DISPUTE RESOLUTION

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

B31. SUSPENSION AND CONSEQUENCES OF SUSPENSION

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

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

(each a **Suspension Event**).

- B31.2. Where a Suspension Event occurs the Authority:

PUBLIC HEALTH SERVICES CONTRACT

- a) may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Authority that it is able to and will perform the suspended Service, to the required standard; and
 - b) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.
- B31.3. During the suspension of any Service under Clause B31.2, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to Clause B31.2 has been referred to dispute resolution under Clause B30 (*Dispute Resolution*).
- B31.4. During the suspension of any Service under Clause B31.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:
- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with Clause B31.2; and/or
 - b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with Clause B31.5.
- B31.5. The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- B31.6. Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).
- B31.7. Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:
- a) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
 - b) at the cost of the Provider:
 - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
 - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B31.8. As part of its compliance with Clause B31.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.
- B31.9. If it is determined, pursuant to Clause B30 (*Dispute Resolution*) that the Authority acted unreasonably in suspending a Service, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B31.10. During any suspension of a Service the Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.

B32. TERMINATION

PUBLIC HEALTH SERVICES CONTRACT

- B32.1. The Authority may voluntarily terminate this Contract or any Service provided under it by giving the Provider not less than 28 days' written notice at any time after the Service Commencement Date.
- B32.2. The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:
- a) the Provider is in persistent or repetitive breach of the Key Performance Indicators;
 - b) the Provider is in persistent breach of its obligations under this Contract;
 - c) the Provider:
 - (i) fails to obtain any Consent;
 - (ii) loses any Consent; or
 - (iii) has any Consent varied or restricted,
the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;
 - d) the Provider has breached the terms of Clause B39 (*Prohibited Acts*);
 - e) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
 - f) the Provider materially breaches its obligations in Clauses B37 or C7 (*Data Protection*);
 - g) two or more Second Exception Reports are issued to the Provider under Clause B29.22 (*Contract Management*) within any rolling 6-month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
 - h) the Provider breaches the terms of Clause B23 (*Assignment and Sub-contracting*);
 - i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
 - j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
 - k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach (where capable of remedy) within 30 Business Days following receipt of notice from the Authority identifying the breach or the breach is not capable of remedy in the reasonable opinion of the Authority.
- B32.3. Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than 30 Business Days without the Parties agreeing alternative arrangements.
- B32.4. The Provider may terminate this Contract or any Service with immediate effect by written notice to the Authority if the Authority is in material breach of its obligation to pay the Charges in accordance with this Contract, provided that:
- (a) The payment is only in relation to undisputed sums;

PUBLIC HEALTH SERVICES CONTRACT

- (b) The Authority has received all of the documentation required to be provided in accordance with this Contract in order for payment to be made;
- (c) The Provider has notified the Authority in writing of its failure to pay and such failure has not been remedied within 20 Business Days of receipt of the written notification.

B33. CONSEQUENCE OF EXPIRY OR TERMINATION

- B33.1. Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- B33.2. Not Used.
- B33.3. On the expiry or termination of this Contract or termination of any Service the Provider must co-operate fully with the Authority to migrate the Services in an orderly manner to the Successor Provider.
- B33.4. In the event of termination or expiry of this Contract, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.
- B33.5. If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under Clauses B32.4, B32.3 or if the Authority terminates under Clause B32.1 (*Termination*)), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination, including all costs in relation to procuring an alternative provider) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.
- B33.6. The provisions of Clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B23 (*Assignment and Sub-contracting*), B24 (*Audit and Inspection*), B33 (*Consequence of Expiry or Termination*), B36 (*Confidentiality*), B37 (*Data Protection*) and B38 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.

B34. BUSINESS CONTINUITY

- B34.1. The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.
- B34.2. The Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify the Authority as soon as reasonably practicable of its activation and in any event no later than 5 Business Days from the date of such activation.

B35. COUNTER-FRAUD AND SECURITY MANAGEMENT

- B35.1. The Provider must put in place and maintain appropriate counter fraud and security management arrangements.
- B35.2. The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Authority.
- B35.3. The Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

PUBLIC HEALTH SERVICES CONTRACT

B35.4. If the Provider or its Staff commits Fraud in relation to this or any other contract with the Authority, the Authority may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

B36. CONFIDENTIALITY

B36.1. Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the **Disclosing Party**) and the Party that receives it (the **Receiving Party**) has no right to use it.

B36.2. Subject to Clauses B36.3 and B36.4, the Receiving Party agrees:

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

B36.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:

- a) in connection with any dispute resolution under Clause B30 (*Dispute Resolution*);
- b) in connection with any litigation between the Parties;
- c) to comply with the Law;
- d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in Clause B36.2;
- e) to comply with a regulatory bodies request.

B36.4. The obligations in Clause B36.1 and Clause B36.2 will not apply to any Confidential Information which:

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

B36.5. The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this Clause B36.

B36.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Clause B36.

B36.7. This Clause B36 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

PUBLIC HEALTH SERVICES CONTRACT

B36.8. The obligations in Clause B36.1 and Clause B36.2B shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

B37. DATA PROTECTION

B37.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in the Data Processing Schedule by the Authority and may not be determined by the Provider. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

B37.2. The Provider shall notify the Authority immediately if it considers that any of the Authority’s instructions infringe the Data Protection Legislation.

B37.3. The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

B37.4. The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with the Data Processing Schedule, unless the Provider is required to do otherwise by Law. If it is so required, the Provider shall promptly notify the Authority before processing the Personal Data, unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) Nature of the data to be protected;
 - (ii) Harm that might result from a Data Loss Event;
 - (iii) State of technological development; and
 - (iv) Cost of implementing any measures;
- (c) ensure that:
 - (i) the Provider’s Staff do not process Personal Data except in accordance with this Contract (and, in particular, the Data Processing Schedule);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff of the Provider who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Provider’s duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;

PUBLIC HEALTH SERVICES CONTRACT

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data.
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
 - (ii) the Authority or the Provider has provided appropriate safeguards in relation to the transfer in accordance with GDPR Article 46 or or Section 74 of the DPA 2018 as determined by the Authority;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations; and
 - (v) the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
 - (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Provider is required by Law to retain the Personal Data.
- B37.5. Subject to Clause B37.6, the Provider shall notify the Authority immediately if it:
 - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- B37.6. The Provider's obligation to notify under Clause B37.5 shall include the provision of further information to the Authority in phases, as details become available.
- B37.7. Taking into account the nature of the processing, the Provider shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause B37.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance, as requested by the Authority, following any Data Loss Event;
 - (e) assistance, as requested by the Authority, with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- B37.8. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
 - (a) the Authority determines that the processing is not occasional;

PUBLIC HEALTH SERVICES CONTRACT

- (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR, or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- B37.9. The Provider shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- B37.10. The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- B37.11. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:
 - (a) notify the Authority in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Authority;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause, such that they apply to the Sub-processor; and
 - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- B37.12. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- B37.13. The Authority may, at any time on not less than 30 Business Days' notice, revise this Clause B37 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- B37.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may, on not less than 30 Business Days' notice to the Provider, amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

B38. FREEDOM OF INFORMATION AND TRANSPARENCY

- B38.1. The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B38.2. If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:
 - a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
 - b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
 - c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within 2 Business Days) transfer the request to the Authority;

PUBLIC HEALTH SERVICES CONTRACT

- d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
 - e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within 5 Business Days of such request and without charge.
- B38.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.
- B38.4. Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- B38.5. In preparing a copy of this Contract for publication pursuant to Clause B38.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.
- B38.6. The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.
- B38.7. In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

B39. PROHIBITED ACTS

- B39.1. The Provider shall not do any of the following:
- a) offer, give, or agree to give the Authority (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the Authority, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority; and
 - b) in connection with this Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,
- (together **Prohibited Acts**).
- B39.2. If the Provider or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the Provider in relation to this Contract, the Authority shall be entitled:
- a) to exercise its right to terminate under Clause B32.2 (*Termination*) and to recover from the Provider the amount of any loss resulting from the termination; and

PUBLIC HEALTH SERVICES CONTRACT

- b) to recover from the Provider the amount or value of any gift, consideration or commission concerned; and
- c) to recover from the Provider any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

B39.3. Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010.

B39.4. The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within 5 Business Days of the Authority requesting it and enforced by the Provider where applicable.

B39.5. Should the Provider become aware of or suspect any breach of this Clause B39, it will notify the Authority immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.

B40. FORCE MAJEURE

B40.1. Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.

B40.2. Subject to Clause B40.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.

B40.3. The Party claiming relief as a result of an event of Force Majeure must serve an initial written notice on the other Party immediately it becomes aware of the event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief must then serve a detailed written notice within a further 15 Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform the relevant obligations under this Contract as is available, including the effect of the event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Services.

B40.4. A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.

B40.5. The Authority shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

B41. THIRD PARTY RIGHTS

B41.1 No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract. A person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

B42. CAPACITY

PUBLIC HEALTH SERVICES CONTRACT

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

B43. SEVERABILITY

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

B44. WAIVER

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

B45. PUBLICITY

B45.1. Without prejudice to Clause B38 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way or use the Authority's name or brand in any promotion or marketing or announcements.

B45.2. The Provider must take all reasonable steps to ensure the observance of the provisions of Clause B45.1 by all its staff, servants, agents, consultants and sub-contractors.

B46. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

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

B47. GOVERNING LAW AND JURISDICTION

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

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

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX A: SERVICE SPECIFICATIONS

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX B: CONDITIONS PRECEDENT

1. Provide the Authority with a copy of the Provider's registration with the CQC where the Provider must be so registered under the Law

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX C: KEY PERFORMANCE INDICATORS

Not Used

APPENDIX D: SERVICE USER, CARER AND STAFF SURVEYS

1.1 Service User & Carer Surveys

During the provision of the Services the Provider shall give consideration to the importance of involving Service Users and Carers (where appropriate) and shall recognise that every Service User and Carer shall be valued as an individual and his or her views, attitudes and opinions should be respected.

The Provider undertakes to involve Service Users and Carers wherever possible including:

- (a) providing information to Service Users and Carers;
- (b) involving Service Users and Carers in devising and developing their own recovery plan;
- (c) using Service User and Carer feedback/evaluation forms in relation to the Services provided;
- (d) collecting the views, attitudes and opinions of Service Users and Carers via consultations and surveys; and
- (e) consulting Service Users and Carers on the planning and design of Services.

1.2 Staff Surveys

The Provider shall undertake an assessment of its Staff's knowledge and skills in compliance with service delivery quality standards.

Staff surveys shall be used in order to identify amongst other matters:

- (a) individual Staff member's strengths in order to improve ways in which the Service is delivered and to prepare those Staff members for different roles;
- (b) individual Staff member and team/unit's skills and knowledge gaps which might undermine Service delivery;
- (c) knowledge deficits in relation to local recovery facilities and mutual aid support for Service Users;
- (d) knowledge deficits in relation to national initiatives and structures (e.g. PHE, NHS England);
- (e) general training and developmental needs and opportunities for individual Staff members and teams;
- (f) continuing engagement with learning opportunities to improve Service delivery; and
- (g) the extent to which the learning from training and developmental opportunities is applied in practice.

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX E: CHARGES

[Insert Price Schedule]

1. Payment Provisions

- 1.1 The Charges shall be inclusive of all costs, expenses and disbursements including but not limited to the leasing or licencing of premises and travel expenses incurred by the Provider arising out of or in connection with the full and proper performance and completion of the Service and the Charges shall not be amended to reflect any increase in any such costs expenses or disbursements.
- 1.2 Changing market conditions are such that the Provider shall be required to remain competitive throughout the duration of the Contract.
- 1.3 If the Authority can demonstrate, to its own satisfaction, that the Provider no longer represents the lowest overall market price commensurate with the requirements of the Contract (product, service or support) it reserves the right to purchase from an alternative source.
- 1.4 The Parties agree that the Charges shall be fixed for the first 12 months of the Contract.
- 1.5 After the first 12 months of the Contract the Provider may apply to the Authority to increase the Charges where it is experiencing exceptional cost pressures (the **Charges Review**) providing:
 - (a) not less than thirty (30) days prior written notice has been provided to the Authority;
 - (b) the increase in cost is directly in line with any such increase in the Provider's costs and does not provide any additional financial benefit to the Provider;
 - (c) the Provider provides the Authority with written evidence (including from its third-party contractors where relevant) on an open and transparent basis to demonstrate to the Authority's satisfaction that there is a need for the proposed price increase and to enable the Authority to understand how proposed cost increases relate directly to sustained or improved service user experience and to assess and ensure best value for the Authority; and
 - (d) any increase in the Charges following an Exceptional Charges Review is limited to CPI in the month that the request was made.
- 1.6 The Authority reserves the right to determine the acceptability of any alteration to the Charges and where agreed shall be set out in writing by the Authority.
- 1.7 If such increase is found to be unacceptable to the Authority:
 - (a) the Charges which were applicable immediately prior to the Exceptional Charges Review shall continue to apply; or
 - (b) the Authority may terminate the Contract.
- 1.8 The Provider acknowledges that the level of Charges as at the Commencement Date cannot be guaranteed throughout the term of this Contract. Further, the Provider acknowledges that external funding made available to the Authority may reduce through the term of this Contract and/or that the Authority may change its priorities for expenditure across its services at any time. Should a reduction or change occur, the Authority is likely to have to reduce the value of this Contract and the levels and maximum amounts available under it. In such circumstances, the following shall apply:

PUBLIC HEALTH SERVICES CONTRACT

- (a) both Parties agree to take all reasonable steps to agree a reduction in or redistribution of the Charges and to agree any changes to service delivery and KPIs where appropriate, giving due regard to such financial pressures of the Authority;
- (b) the Authority shall propose an initial period in which to agree the reduction/redistribution and any changes required under (a) above and the Provider shall agree and cooperate with the Authority in respect of such timeframe;
- (c) on agreement of the reduction/redistribution, and any changes required to the Contract, the Parties shall:
 - (i) agree an implementation plan, which shall set out the timeframe in which such reduction/redistribution and any changes are implemented and any actions required of the Parties in respect of such implementation; and
 - (ii) vary the Contract in writing by the authorised representatives of both Parties. Clause B22 (*Variation*) shall therefore not apply to this Clause B8.6.

Should the Parties be unable to agree a reduction/redistribution in the Charges and any changes in circumstances such as those identified above within the timeframe provided under (b), the Authority shall be entitled to terminate this Contract in whole or in part on a minimum of six (6) months' written notice.

- 1.5 The Authority shall not be liable to pay Charges that have been invoiced more than six months after the end of the month on which the relevant Services were delivered or if relevant reports are more than six months overdue.

2. Invoicing

- 2.1 The Authority has implemented an eProcurement solution through (SAP) Orderpoint. It is a provision of the Contract that the Provider will agree to their inclusion in the Orderpoint system as soon as possible after the award of contract.
- 2.2 The purchase order number quoted must appear on any correspondence and invoice relating to that order.
- 2.3 The Provider shall submit invoices to accounts.payable@derbyshire.gov.uk unless requested otherwise in writing.
- 2.4 Invoices must be computer produced and shall show details of:
- Vendor number
 - Purchase order number
 - A full and proper description including:
 - The initials and date of birth of the patient(s) that the invoice relates to
 - The admission and discharge dates for each patient that the invoice relates to
 - The number of bed nights charged for each patient that the invoice relates to
 - Total invoice price
 - Clearly identified VAT as applicable
- 2.5 The Authority reserves the right to modify the invoicing processes to include requests for electronic invoices.
- 2.6 All payments will be made through the BACS Payment system.
- 2.7 Any changes to banking/payments details shall be submitted to the accounts payable team as soon as possible. This should be in the form of a hard copy on letter-headed paper and should be signed by an authorised officer.

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX F: SAFEGUARDING POLICIES

1. The Provider's Safeguarding Policies as at the Commencement Date are expected to comprise:
 - (a) Safeguarding Vulnerable Adults Policy;
 - (b) Child protection and safeguarding policy;
 - (c) Lone working policy;
 - (d) Staff Code of Conduct;
 - (e) Whistleblowing policy;
 - (f) Complaints/Comments policy.

2. The Provider warrants and represents that its Safeguarding Policies shall at all times comply with the Authority's safeguarding policies (as amended from time to time) https://www.derbyshire.gov.uk/social_health/care_and_health_service_providers/safeguarding/default.asp and shall be no less onerous or protective in any material way. This warranty is given on the Commencement Date and repeated on every day during the term of this Contract.

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX G: INCIDENTS REQUIRING REPORTING PROCEDURE

- 1.1 The Provider must have and maintain an Incident Response Plan, which is the Provider's operational plan for responding to and recovery from Serious Incidents and emergencies.
- 1.2 The Provider must have in place evacuation plans which provide for relocation of Service Users to alternative secure premises in the event of any Serious Incident or emergency and how that relocation is to be effected in such a way as to maintain public safety and confidence.
- 1.3 The Provider must assist in the development of and participate in joint planning and training exercises (if required) connected with its Incident Response Plan.
- 1.4 The Provider must have in place and maintain Staff who are suitably trained and competent in dealing with emergencies.
- 1.5 If there is a Serious Incident or emergency:
 - (a) the Provider must comply with its Incident Response Plans;
 - (b) the Provider must provide the Authority with whatever further assistance the Authority may reasonably require to respond to that Serious Incident or emergency; and
 - (c) the Provider must comply with its own Business Continuity Plan.
- 1.6 The Provider must notify the Authority as soon as reasonably practicable and in any event no later than one Business Day following:
 - (a) the activation of its Incident Response Plan;
 - (b) any risk or any actual disruption to Services; and/or
 - (c) the activation of its Business Continuity Plan in accordance with B34.2.
- 1.7 The Provider warrants and represents that it shall at all times comply with the Authority's Serious Incident Policy as updated and amended from time to time (https://www.derbyshire.gov.uk/social_health/care_and_health_service_providers/safeguarding/default.asp).

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX H: INFORMATION PROVISION

Management Information Requirements

Requirement	Schedule/Frequency	To be provided:
Legal Requirements Copy(s) of Liability, Indemnity and Insurance Policies	On renewal each year	Upon renewal
Financial Arrangements Audited accounts	Annually	As soon as available
Equality & Diversity Policy	As updated / adjusted	As soon as available
Any Others		
Please note: Additional copies of the above documents / reports must be provided upon request.		

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX I: TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX J: SERVICE QUALITY PERFORMANCE REPORT

The reports required to be provided by the Provider to ensure quality performance of the service and their frequency of provision are detailed in Part 4 of the Service Specification.

APPENDIX K: DETAILS OF REVIEW MEETINGS

Not Used

APPENDIX L: AGREED VARIATIONS

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX M: DISPUTE RESOLUTION

Part 1 of Appendix M – Dispute Resolution Process

1. ESCALATED NEGOTIATION

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

2. MEDIATION

- 2.1 If the Parties are unable to settle the Dispute by negotiation, they must within 5 Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in Part 2 of this Appendix M.
- 2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.
- 2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

3. EXPERT DETERMINATION

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

PUBLIC HEALTH SERVICES CONTRACT

- 3.6 The Expert must produce a written decision with reasons within 30 Business Days of receipt of the statement of case referred to in paragraph 3.4, or any longer period as is agreed by the Parties after the Dispute has been referred.
- 3.7 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 3.8 The Parties must comply with any request or direction of the Expert in relation to the expert determination.
- 3.9 The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties and the Expert agree are within the scope of the expert determination. The Expert must send his decision in writing simultaneously to the Parties. Within 5 Business Days following the date of the decision the Parties must provide the Expert and each other with any requests to correct minor clerical errors or ambiguities in the decision. The Expert must correct any minor clerical errors or ambiguities at his discretion within a further 5 Business Days and send any revised decision simultaneously to the Parties.
- 3.10 The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- 3.11 The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, or material breach of instructions on the part of the Expert at which point a Party will be permitted to apply to Court for an Order that:
 - 3.11.1 the Expert reconsider his decision (either all of it or part of it); or
 - 3.11.2 the Expert's decision be set aside (either all of it or part of it).
- 3.12 If a Party does not abide by the Expert's decision the other Party may apply to Court to enforce it.
- 3.13 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 3.14 The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.
- 3.15 The Expert is appointed to determine the Dispute or Disputes between the Parties and his decision may not be relied upon by third parties, to whom he shall have no duty of care.

PUBLIC HEALTH SERVICES CONTRACT

Part 2 of Appendix M - Nominated Mediation Body

PUBLIC HEALTH SERVICES CONTRACT

Part 3 of Appendix M - Recorded Dispute Resolutions

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX N: SUCCESSION PLAN

Not used

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX O: DEFINITIONS AND INTERPRETATION

1. The headings in this Contract shall not affect its interpretation.
2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
4. References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.
5. References to any body, organisation or office shall include reference to its applicable successor from time to time.
6. Any references to this Contract or any other documents includes reference to this Contract or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.
7. Use of the singular includes the plural and vice versa.
8. Use of the words “include”, “includes”, “including” and “included” will be construed without limitation.
9. The following terms shall have the following meanings:

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

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

Authority Representative means the person identified in Clause A4.1 or their replacement

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

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

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

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

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

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

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

CEDR means the Centre for Effective Dispute Resolution

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

Commencement Date means the date identified in Clause A3.1.

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

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

PUBLIC HEALTH SERVICES CONTRACT

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

Consents means:

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

Consumer Price Index (CPI) means the annual percentage change for the previous 12 months (whether an increase or a decrease) and calculated annually thereafter (or the most recently available last 12 months) in the UK Government Consumer Prices Index (CPI) as published by the Office for National Statistics at ons.gov.uk (or such successor or replacement price index or department, or failing such publication, such other index as the parties may agree most closely resembles such index).

Contract has the meaning given to it in Clause A1.1

Contract Query means:

- (i) a query on the part of the Authority in relation to the performance or non-performance by the Provider of any obligation on its part under this Contract, which may include any failure to meet the KPIs; or
- (ii) a query on the part of the Provider in relation to the performance or non-performance by the Authority of any obligation on its part under this Contract,

as appropriate

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

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

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning set out in the GDPR

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

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

Data Processing Schedule means the Schedule of Processing, Personal Data and Data Subjects set out in Appendix P.

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

Data Protection Legislation means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;

PUBLIC HEALTH SERVICES CONTRACT

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

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

Debarment List means the official register maintained pursuant to the Procurement Act 2023, which identifies suppliers who are subject to exclusion from public procurement processes. A supplier may be listed following a determination by a Minister of the Crown that the supplier meets one or more exclusion grounds under the Act. Suppliers on the Debarment List are classified as either:

- **Excluded providers**, who must not be awarded contracts unless there are overriding public interest reasons; or
- **Excludable providers**, who may be excluded at the discretion of the contracting authority.

The Authority shall refer to the Debarment List when assessing the suitability of any Provider under this Agreement.

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

Default Interest Rate means the Term SONIA Reference Rate for a 3-month tenor, as published by an authorised benchmark administrator (such as Refinitiv or ICE Benchmark Administration) at or around 11:00 a.m. London time on the first Business Day of the applicable interest period, plus 2% per annum

Disclosing Party means the Party disclosing Confidential Information

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

DPA 2018: Data Protection Act 2018;

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

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

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

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

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

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

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

PUBLIC HEALTH SERVICES CONTRACT

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

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

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

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

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

Expiry Date means the date set out in Clause A3.3

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

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

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

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

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

General Conditions has the meaning given to it in Clause A1

Good Clinical Practice means using standards, practices, methods and procedures conforming to the Law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider, or a person providing services the same as or similar to the Services, at the time the Services are provided, as applicable

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

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

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

PUBLIC HEALTH SERVICES CONTRACT

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

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

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

Key Performance Indicators or KPIs means the agreed key performance indicators and outcomes to be achieved as set out in Appendix C (*Key Performance Indicators*)

Law means:

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

LED: Law Enforcement Directive (*Directive (EU) 2016/680*);

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

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

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

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

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

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

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

NHS Act 2006 means the National Health Service Act 2006

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

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

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

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

PUBLIC HEALTH SERVICES CONTRACT

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

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

Public Authority means as defined in section 3 of the FOIA

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

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

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

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

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

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

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

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

Service Commencement Date means the date set out in Clause A3.2.

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

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

Service Quality Performance Report means the reports as detailed in Appendix J (*Service Quality Performance Report*) required to monitor the Provider's performance

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

Special Conditions has the meaning given to it in Clause A1

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

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

PUBLIC HEALTH SERVICES CONTRACT

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

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

Sub-processor: any third party appointed to process Personal Data on behalf of the Provider related to this Contract.

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

Tender Response means the Provider's response to the Authority's Invitation to Tender, which may include any documents attached at Appendix A (*Service Specifications*) or otherwise incorporated by reference into this Contract and thereby contractually binding on the Provider as though it was attached

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

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

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

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

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

PUBLIC HEALTH SERVICES CONTRACT

APPENDIX P – SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Provider shall comply with any further written instructions with respect to processing by the Authority.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter e.g. Processing of personal data in relation to [type of PH programme]]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include, by way of examples only: employment processing, statutory obligation, recruitment assessment etc]</i></p> <p><i>e.g. Nature of processing: to include receipt, collection, storage, use, disclosure and destruction of personal data.</i></p> <p><i>Purpose: Medical care/enable preventative healthcare measures and reduce risk from [X]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed] e.g. Data will be retained in accordance with the standard retention periods for adult health records and then destroyed</i>

PUBLIC HEALTH SERVICES CONTRACT

SECTION C: SPECIAL TERMS AND CONDITIONS

C1. NOT USED

C2. EXTENDING THE DURATION OF CONTRACT

C2.1. The Authority may extend the term of this Contract by a further period of up to 2 periods of 2 years each (i.e. a total contract term of up to 7 years) (the **Extension Period(s)**). If the Authority wishes to extend this Contract, it shall give the Provider at least 20 Business Days' written notice of such intention before the Expiry Date set out in Clause A3.3 (*Commencement and Duration*).

C2.2. If the Authority gives such notice, the Expiry Date will be extended by the period set out in the notice.

C3. DUE DILIGENCE

C3.1 The Provider acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
- (b) it has received all information requested by it from the Authority pursuant to Clause C3.1(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 Authority pursuant to Clause C3.1(b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this Contract in reliance on its own due diligence.

C3.2 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

C3.3 The Provider, as at the Commencement Date, warrants and represents that as far as it is aware all information contained in the Provider's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract.

C3.4 The Provider shall not make any material changes to the Services without prior consultation with and agreement from the Authority.

C4. INSURANCE

C4.1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the following levels of cover:

PUBLIC HEALTH SERVICES CONTRACT

- (a) public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000);
- (c) professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover;
- (d) medical malpractice insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims,

(together the **Required Insurances**).

C4.2. The Provider undertakes to maintain in force at its own cost the professional indemnity insurance held in accordance with Clauses B27.1 and B27.2 for a period of seven (7) years beyond the life of this Contract, to begin on the Expiry Date or termination of this Contract (howsoever arising).

C4.3. If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

C5. CONTRACT BINDING ON SUCCESSORS

C5.1. This Contract will be binding on and will be to the benefit of the Authority and Provider and their respective successors and permitted transferees and assigns.

C6. CONTINUOUS IMPROVEMENT

C6.1 The Provider shall have an ongoing obligation throughout the term of the Contract to identify new or potential improvements to the Services. As part of this obligation the Provider shall identify and report to the Authority Representative quarterly throughout the term of the Contract (including the Extension Period) on:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) new or potential improvements to the Services including the quality, safety, responsiveness, procedures, performance mechanisms and support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority 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 at greater benefits to the Authority.

C6.2 Any potential changes highlighted as a result of the Provider's reporting in accordance with Clause C6.1 shall be addressed by the Parties using the procedure set out in Clause B22 (*Variations*).

C7. DATA PROTECTION

C7.1. It is agreed by the Parties that:

- (a) Where Personal Data derives from existing data bases or records owned by the Provider, the Provider shall act as joint Data Controller with the Authority;

PUBLIC HEALTH SERVICES CONTRACT

- (b) Where Personal Data (including information on Service Users) derives from existing records owned by the Authority or is created by the Provider for the Services, the Authority shall be Data Controller and the Provider shall be the Data Processor for the Authority, processing such information in accordance with the Authority's instructions;
 - (c) A Provider who is a Data Controller will only be required to share information and records on Service Users that is specific to the Service (**Service Data**). The Provider shall ensure that all Service Data is stored in a manner which allows the Authority or a Successor Provider full access to the Service Data at all times (e.g. Service Data should not be solely recorded on a Service User's medical records).
- C7.2. A Provider who is a Data Processor shall share all information and records generated on Service Users with the Authority or a Successor Provider.
- C7.3. The Provider must ensure that it notifies Service Users that their Personal Data may be shared with or provided to the Authority or a Successor Provider for the purposes under this Contract.
- C7.4. If Authority data is corrupted, lost or sufficiently degraded as a result of the Provider's omission or negligence so as to be unusable, the Authority may:
 - (a) require the Provider (at the Provider's expense) to restore or procure the restoration of such data and the Provider must do so as soon as practicable but not later than 5 Business Days and/or
 - (b) itself restore or procure the restoration of such data. The Provider must reimburse the Authority for any reasonable expenses incurred in doing so.
- C7.5. If at any time the Provider suspects or has reason to believe that Authority data has or may become corrupted, lost or degraded in any way for any reason, the Provider must notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take.
- C7.6. Upon reasonable notice to the Provider, the Authority shall be entitled to audit the procedures of the Provider (which shall include the right to enter the Provider's premises and access its systems, including IT systems) for the purpose of ensuring compliance with Data Protection Legislation and to satisfy itself that the Provider is so complying.
- C7.7. Where the Authority requests data in the Provider's possession for the purpose of complying with a data subject access request made under Data Protection Legislation, the Provider will retrieve the relevant data and provide a full copy of such to the Authority as soon as is possible but in any event within 5 Business Days of receipt of the request or any other period as agreed in writing.
- C7.8. Without prejudice to the Provider's responsibilities in respect of subject access, where the Provider directly receives a request for disclosure of data of which the Authority is Data Controller (as defined in the DPA) from a data subject or any other third party, it shall promptly notify, and provide a copy of the request to the Authority.
- C7.9. The Provider shall not process any data in, or transfer any data to, any country outside of the European Economic Area (as it is constituted from time to time) without the prior written consent of the Authority.
- C7.10. The Provider shall not appoint a third party to process data pursuant to this Contract without the prior written consent of the Authority. The Provider shall:
 - (a) choose a third party with sufficient guarantees in respect of the technical and organisation security measures, having regard to Data Protection Legislation, governing the processing to be carried out;
 - (b) ensure compliance with the measures referred to in Clause B37 and this Clause C7;

PUBLIC HEALTH SERVICES CONTRACT

and

- (c) ensure that the processing of data carried out by such third party is only done so under a contract:
 - (i) which is evidenced in writing; and
 - (ii) which obliges such third party to act only in accordance with Clause B37 and this C7.

C7.11 The Provider shall procure that any third party with whom it contracts agrees to terms including clauses the same as, or no less onerous than, those contained in Clause B37 and this C7.

C8. AGENCY

C8.1. The Provider must not in any circumstances hold itself out as being the servant or agent of the Authority. The Provider must not hold itself out as being authorised to enter into any agreement on behalf of the Authority or in any way bind the Authority to the performance, variation, release or discharge of any obligation to a third party. The Provider's staff shall not hold themselves out to be and shall not be held out by the Provider as being servants or agents of the Authority.

C9. HUMAN RIGHTS

C9.1. The Provider must not do or permit to allow anything to be done which is incompatible with the rights contained in the European Convention on Human rights and the Human Rights Act 1998. Without prejudice to the rights of the Authority under Clause B25 (*Indemnities*), the Provider must indemnify the Authority against any loss, claims and expenditure resulting from the Provider's breach of this clause.

C10. HEALTH AND SAFETY

C10.1. The Provider must promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.

C10.2. The Provider must comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders regulations and codes of practice relating to health and safety which may apply to the Provider's staff and other persons working on the Provider's Premises in the performance of this Contract.

C10.3. The Provider must on written request of the Authority and in any event within 5 Business Days of that request, provide the Authority with a copy of its health and safety policy statement (as required by the Health and Safety at Work Act 1974).

C11. DISCLOSURE AND BARRING SERVICE

C11.1. The Provider must have policies and procedures which acknowledge and provide for ongoing monitoring of the Staff, including undertaking further DBS disclosures every three years.

C11.2. The Provider must keep and must procure that the Authority is kept advised at all times of any Staff who, subsequent to their commencement of employment, receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider.

C12. CONFLICTS OF INTEREST

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

PUBLIC HEALTH SERVICES CONTRACT

C13. INTELLECTUAL PROPERTY

- C13.1. Except as set out expressly in this Contract, each Party shall retain its own existing IPR and neither Party will acquire the IPR of the other Party.
- C13.2. The Provider grants the Authority a fully paid-up non-exclusive licence to use Provider IPR for the duration of this Contract for the purposes of the exercise of its functions and obtaining the full benefit of the Services, which will include the dissemination of best practice to other providers who have a contract with the Authority.
- C13.3. The Authority grants the Provider a fully paid up non-exclusive licence to use Authority IPR for the duration of this Contract for the sole purpose of providing the Services.
- C13.4. In the event any new IPR is created by the Provider or any of its Staff in the course of or for the purpose of performing the Services (including the creation of any website), such IPR shall vest in the Authority on creation and shall thereafter be included within the Authority IPR.
- C13.5. In the event that the Provider or the Authority at any time devise, discover or acquire rights in any Improvement, they must promptly notify the other Party of the IPR to which that Improvement relates giving full details of the Improvement and whatever information and explanations as that Party may reasonably require to be able to use the Improvement effectively and must assign to that Party all rights and title in any such Improvement without charge.
- C13.6. On expiry or termination of this Contract, the Provider shall provide to the Authority all of the Authority IPR to ensure continuity of the Services to a replacement provider.
- C13.7. It is a condition of this Contract that the Services will not infringe any IPR of any third party and the Parties shall indemnify and keep indemnified each other throughout the term of this Contract against all actions, proceedings, costs, claims, demands, losses and expenses which a Party has suffered or incurred as a result of or in connection with the other Party's misuse of that third party IPR.

- C13.8. For the purposes of this clause:

Authority IPR means any IPR owned by or licensed to the Authority which is relevant and necessary to the performance of the Services by the Provider, including Improvements

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

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

Provider IPR means any IPR owned by or licensed to the Provider (other than by the Authority) that will be used by the Provider in the delivery of the Services, including Improvements.

C14. CHANGE IN CONTROL

- C14.1. This clause applies to any Provider Change in Control but not to a Change in Control of a company which is a Public Company.
- C14.2. The Provider must as soon as possible on, and in any event within 5 Business Days following, a Provider Change in Control notify the Authority of that Change in Control and submit to the Authority a completed Change in Control Notification.

PUBLIC HEALTH SERVICES CONTRACT

- C14.3. If the Provider indicates in the Change in Control Notification an intention or proposal to make any consequential changes to its operations then, to the extent that those changes require a change to the terms of this Contract in order to be effective, they will only be effective when a Variation is made in accordance with Clause B22 (*Variations*). The Authority will not and will not be deemed by a failure to respond or comment on the Change in Control Notification to have agreed to or otherwise to have waived its rights under Clause B22 (*Variations*) in respect of that intended or proposed change.
- C14.4. The Provider must specify in the Change in Control Notification any intention or proposal to make a consequential change to its operations which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract. If the Provider does not do so it will not be entitled to propose a Variation in respect of that for a period of 6 months following the date of that Change in Control Notification, unless the Authority agrees otherwise.
- C14.5. If the Provider does not specify in the Change in Control Notification an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Provider's Premises as a result of or in connection with the Change in Control then, unless the Authority provides its written consent to the relevant action, the Provider must:
- (a) ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract; and
 - (b) continue providing the Services from the Provider's Premises,
- in each case for at least 12 months following the date of that Change in Control Notification. The provisions of this clause will not apply to an assignment by way of security or the grant of any other similar rights by the Provider consequent upon a financing or re-financing of the transaction resulting in Change of Control.
- C14.6. The Provider must supply to the Authority, whatever further information relating to the Change in Control the Authority may, within 20 Business Days after receiving the Change in Control Notification, reasonably request.
- C14.7. Notwithstanding any other provision of this Contract a Restricted Person must not hold, and the Provider must not permit a Restricted Person to hold, at any time 5% or more of the total value of any Security in the Provider or in the Provider's Holding Company or any of the Provider's subsidiaries (as defined in the Companies Act 2006).
- C14.8. Nothing in this clause will prevent or restrict the Provider from discussing with the Co-ordinating Commissioner a proposed Change in Control before it occurs. In those circumstances, all and any information provided to or received by the Authority in relation to that proposed Change in Control will be Confidential Information.
- C14.9. Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.
- C14.10. For the purposes of this clause:

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

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

PUBLIC HEALTH SERVICES CONTRACT

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

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

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

Public Company means:

a company which:

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

Restricted Person means:

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

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

C15. TUPE

C15.1. If the Authority has notified the Provider that it intends to tender or retender any Services, the Provider must within 20 Business Days following written request (unless otherwise agreed in writing) provide the Authority with anonymised details of Staff engaged in the provision of the relevant Services who may be subject to TUPE. The Provider must indemnify and keep indemnified the relevant Commissioner and at the Co-ordinating Commissioner's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this clause.

C15.2. During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not without the prior written consent of the Authority, in relation to any persons engaged in the provision of the Services or the relevant Service:

- (a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);

PUBLIC HEALTH SERVICES CONTRACT

- (b) increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider by more than 5% (except in the ordinary course of business);
 - (c) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
 - (d) replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
 - (e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.
- C15.3. The Provider must indemnify and keep indemnified the Authority and, at the Authority's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or any Service, against any Losses in respect of:
- (a) the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider;
 - (b) claims brought by any other person employed or engaged by the Provider who is found to or is alleged to transfer to the Authority or new provider under TUPE; and/or
 - (c) any failure by the Provider to comply with its obligations under TUPE in connection with any transfer to the Authority or new provider.
- C15.4. The Authority must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider against any Losses in respect of:
- (a) any failure by the new provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new provider;
 - (b) any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service; and/or
 - (c) any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service.

PUBLIC HEALTH SERVICES CONTRACT

C16 MALADMINISTRATION

- C16.1 In the event of a complaint to the Commission for Local Administration in England (the **Ombudsman**) concerning the provision of the Service by the Provider or of the conduct of the Provider generally, the Provider shall give to the Authority and to the Ombudsman every assistance in the investigation of the complaint including access to the extent it is lawfully free, all records of any kind whatsoever in its possession and access to the Provider's staff for the purpose of interview.
- C16.2 If after such investigation, the Ombudsman finds that the complaint was justified and that the Provider was guilty of maladministration, the Provider shall indemnify the Authority against:
- (a) all costs incurred by the Authority in relation to any investigation under the Local Government Act 1974 by the Ombudsman of a complaint of maladministration made against the Authority; and
 - (b) all payments made by the Authority intended to remedy or otherwise compensate persons specified by the Ombudsman for maladministration causing injustice on account of any act or omission (deliberate or otherwise) by the Provider save where such act or omission occurs as a result of the Provider carrying out or abiding by the lawful policy of the Authority provided that this indemnity shall apply irrespective of whether the costs were incurred and the payments made:
 - i. pursuant to a formal investigation and report by the Ombudsman; or
 - ii. pursuant to the terms of an early settlement of the complaint without any formal investigation and report by the Ombudsman provided always that such settlement shall have first been agreed by the Authority, the Ombudsman and the persons specified by the Ombudsman.

C17 PREVENT DUTY

- C17.1 The Parties have a statutory duty under Section 26 of the Counter-Terrorism and Security Act 2015 requiring specified authorities, including local authorities and service providers, to have due regard to the need to prevent people from being drawn into terrorism. This includes identifying individuals at risk of radicalisation and referring them to appropriate support services (the **Prevent Duty**)
- C17.2 The Provider shall comply with the Prevent Duty under the Counter-Terrorism and Security Act 2015 and ensure that staff are trained to identify and respond to signs of radicalisation and extremism in the context of public health service delivery.
- C17.3 The Provider shall have in place policies and procedures to safeguard individuals from being drawn into terrorism, including referral pathways to relevant authorities.
- C17.4 The Provider shall cooperate with the Authority and relevant multi-agency partners in fulfilling Prevent Duty obligations, including sharing information and participating in safeguarding panels where appropriate.
- C17.5 The Provider shall provide evidence of compliance with this Clause upon request, including training records, policy documents, and records of action taken to act in accordance with the Prevent Duty.
- C17.6 The Authority reserves the right to audit the Provider's Prevent Duty arrangements and require remedial action where deficiencies are identified.