

**READING BOROUGH COUNCIL (1)**

**AND**

**[Insert Name] (2)**

**AS PROVIDER**

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**CONTRACT FOR THE  
PROVISION OF A COMPREHENSIVE  
DRUG AND ALCOHOL RECOVERY AND  
TREATMENT SYSTEM**

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C J Brooks  
Head of Legal Services,  
Reading Borough Council,  
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**SECTION A**  
**THE PARTICULARS**

## PARTIES

- (1) [READING BOROUGH COUNCIL of Civic Offices Civic Centre Reading RG1 7AE (the **Authority**); and
- (2) [insert name of Provider] [Company Registration number] of [insert address] (the **Provider**).

## BACKGROUND

- (A) The Authority wishes to enter into a Contract for the provision of a comprehensive drug and alcohol recovery and treatment system more particularly described in the Specification annexed hereto at Appendix A ("the Services").
- (B) By an advertisement dated 9 December 2013 in the Official Journal of the European Union the Council invited expressions of interest under the Restricted Procedure for the provision of the Services.
- (C) The Provider submitted its Tender ("the Tender") and following the procurement exercise the Authority selected the Provider to provide the Services subject to the terms and conditions of this Contract.

## IT IS AGREED

### A1. CONTRACT

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

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

### 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 October 2014 (the **Service Commencement Date**).

- A3.3. This Contract shall expire automatically on 30 September 2017 (the **Expiry Date**), unless it is extended or terminated earlier in accordance with the provisions of this Contract.
- A3.4. The Authority may extend the term of this Contract up to a maximum of two years either through a single extension or multiple extensions ("the Extension Period"). If the Authority wishes to extend this Contract it shall give the Provider at least 3 month's written notice of such intention before the Expiry Date or before the end of each subsequent Extension Period where relevant.
- A3.5. If the Authority gives such notice in clause A3.4 the Expiry Date will be extended by the period set out in the notice or notices.

#### **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. PAYMENT**

A6.1 Payment shall be made in accordance with Clause B (Charges and Payment) and submissions for payment shall be rendered quarterly in arrears.

A6.2 The Parties agree that there will be quarterly/annual reconciliation and it shall be reconciled in accordance with Clause B.

#### **A7. CONDITIONS PRECEDENT**

A7.1 The following shall be provided prior to the Commencement Date.

- (a) A certificate setting out the Required Insurances and
- (b) Proof of CQC registration or at the discretion of the Authority satisfactory evidence of significant progress towards achieving CQC registration in a timely manner and
- (c) Satisfactory evidence of the required DBS checks

#### **A8. SERVICE QUALITY**

A8.1 Annual Strategic Review meeting: The period for the Service Improvement Plan shall be every month.

A8.2 Quality and Performance Quarterly Review Meeting: the frequency for the Review Meetings shall be quarterly.

#### **A9. INSURANCE**

1. The insurance levels for the Required Insurances (Type A) are:-

- a) Public Liability £10 million
- b) Employers Liability £5 million
- c) Product Liability £10 million
- d) Professional Indemnity £5 million
- e) Clinical negligence/medical malpractice £10 million

2. The insurance levels for the Required Insurances per individual claim (Type B) are:-

- f) public liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
- g) employer's liability insurance with a limit of indemnity of not less than £5 million;
- h) professional indemnity insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;
- i) product liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims

#### **A10. 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.



**A11. COUNTERPARTS**

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

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

**SIGNED by [Insert Authorised  
Signatory's Name]  
for and on behalf of  
the AUTHORITY**

.....  
**Signature**

.....  
**Title**

.....  
**Date**

**SIGNED by [Insert Authorised  
Signatory's Name]  
for and on behalf of  
the AUTHORITY**

.....  
**Signature**

.....  
**Title**

.....  
**Date**

**OR**

**Executed as a deed by affixing the common seal of the Authority in the presence of:**

.....  
**[COMMON SEAL]**

.....  
**Signature of Authorised signatory**

.....  
**Signature of Authorised signatory**

***[Please delete as appropriate – mechanism for execution will be subject to the Authority's constitution and Scheme of Delegation]***

**SIGNED by [Insert Authorised  
Signatory's Name]**

for and on behalf of  
the PROVIDER

.....  
**Signature**

.....  
**Title**

.....  
**Date**

**SECTION B**  
**GENERAL TERMS AND CONDITIONS**

## **B1. SERVICES**

- B1.1. The Provider shall provide the Services in accordance with the Service Specification(s) in Appendix A (*Service Specifications*), including any service limitations set out in them, and in accordance with the provisions of this Contract.
- B1.2. The Provider shall satisfy any Conditions Precedent set out in Clause A.7 (*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 firstly attempt to find alternative means to provide a service and secondly must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 2 Business Days);
  - b) the Provider must tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
  - c) the Provider must inform the Authority in writing without delay and wherever possible in advance of taking such action;

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

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

- B3.1. The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Authority in writing:
- a) comply, where applicable, with the registration and regulatory compliance guidance of 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;
  - d) comply with the recommendations issued from time to time by a Competent Body;

- e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
- f) respond to any reports and recommendations made by Local Health Watch; and
- g) comply with the Quality and Performance Return set out in Section six of the Specification entitled Targets Monitoring and Review.

#### **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.

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

- B5.1. The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.

- B5.2. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).

- B5.3. In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
- b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
- c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

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

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

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

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

- B5.6. Where the Provider is not a Public Authority then the Provider must not do or permit or allow anything to be done which is incompatible with the rights contained in the Human Rights Act 1998. Without prejudice to the rights of the Authority under Clause B26 (Indemnities) the Provider must indemnify the Authority against any loss claims and expenditure resulting from the Provider's breach of this clause.

#### **B6. MANAGING ACTIVITY**

- B6.1. The Provider must manage Activity in accordance with the needs and demands made on the Service and these must be ordered to ensure that delivery of services and experience

of the service user and carer experience and the service they receive is prioritised. Any serious or prolonged issues that have an impact on the ability of the Provider to deliver must be raised with the Authority as soon as possible.

## **B7. STAFF**

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

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

B7.2. If requested by the Authority, the Provider shall as soon as practicable and by no later than 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, 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. Not used.

B7.5. Not used.

B7.6. Except where clauses B7.7 and B7.8 apply, 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) where the Services are or include activity that is defined as regulated activity under the Safeguarding Vulnerable Groups Act 2006 then such Standard DBS Check or Enhanced DBS Check (as appropriate) as required by the Act.

B7.7. Where applicable and provided the provisions of clause 7.8 are satisfied, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.

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

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

- b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
  - c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
  - d) any other reasonable requirement of the Authority.
- B7.9. The Provider must keep and must ensure that the Authority:
- a) is kept advised at all times of any staff who subsequent to their commencement of employment receives a relevant conviction caution reprimand; and/or
  - b) where the Services constitute regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006 is warned of previous relevant convictions cautions reprimands or warnings which become known to the Provider (or any employee of a Sub-contractor involved in the provision of the Services.
- B7.10 The provisions of Schedule 1 (TUPE and Pensions) and any Special Conditions shall apply.

## **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 of the provision of the Services in accordance with the terms of this Contract the Authority shall pay the Provider the charges.
- B8.2 The Charges shall consist of an quarterly sum payable by the Authority to the Provider in accordance with clause B8.3 below.
- B8.3 The Charges shall (subject to the provisions of the Contract which provide for a variation or review thereof) be as stated in Schedule 2 and shall be deemed to include all costs of providing the Services howsoever incurred or arising, except as otherwise expressly provided for under this Contract
- B8.4 The Charges shall accrue from day to day and be payable quarterly in arrears from the Commencement Date. Payments will be made by BACS transfer to the Provider's nominated bank account
- B8.5 Subject to the Authorised Representative being satisfied that the Services have been properly carried out, payment shall be made by the Authority to the Provider within 30 days of Receipt of each valid invoice.
- B8.6 The Provider must provide the Authority with either:-
- B8.6.1 a Direct Notification (e.g. a P6 Schedule D Notice) issued by the Provider's tax office and relating specifically to the work undertaken for the Authority or,
  - B8.6.2 a letter from a firm of accountants confirming that the Provider has arrangements with the HM Revenue and Customs for accounting for statutory deductions from income.
- B8.7 The Provider shall provide the Authority with statements of account in accordance with Section six of the Specification entitled Targets Monitoring and Review
- B8.8 The statement shall be supported by such other information and documentation as the Authority may reasonably require from time to time
- B8.9 The Charges shall be paid in Pounds Sterling to the Provider in accordance with the terms and conditions of this Contract

- B8.10 In the event of the Authority receiving reduced funding for this Service resulting in a reduction in the requirement for the Services the Charges shall be reduced proportionately
- B8.11. The Charges do not include VAT. If VAT is payable then the Authority must pay this in addition to the Charges provided that the Provider supplies the Authority with a proper VAT invoice in accordance with clause B8.12 below
- B8.12 At the end of every month, Providers with VAT payable on their Charges shall provide the Authority with a correct valid VAT only invoice which shall give in detail (and where necessary, showing calculations) particulars of the VAT due on the monthly Charges payable for the immediately preceding month
- B8.13 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.
- B8.14 If a Party contests a payment under clause B8.13 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.6, the contesting Party may refer the matter to dispute resolution under clause B30 (*Dispute Resolution*) and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.3.
- B8.15 Except where it is contested pursuant to clause B8.13 when interest will not be payable until it has been resolved pursuant to clause B8.14 and 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. The interest will be calculated on a daily basis, from the date when payment should have been made to the date when payment is actually made. The interest rate that will apply will be the base rate of NatWest Bank plc from time to time, plus 2% per annum
- B8.16 Each Party may retain or set off any sums owed to the other Party which have fallen due and payable against any sum due to the other Party under this Contract or any other agreement between the Parties.
- B8.17 The Provider shall not be entitled to suspend delivery of the Services or any of the Services where it exercises its rights under either clause B8.13 or clause B8.14.
- B8.18 It is agreed between the parties that the rate of Default Interest described herein provides the Provider with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

## **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**

### **Safeguarding – Staff and Employment checks**

- B10.1. The parties acknowledge that the Provider may be providing regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006 and will have responsibility for the management and control of any regulated activity provided under this Contract.
- B10.2. Where required by the Safeguarding Vulnerable Groups Act 2006 the Provider shall:
- a) ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the barred lists; and
  - b) monitor the level, i.e. enhanced or standard, and validity of the checks under this clause B10.2 for each member of Staff.
- B10.3. The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006.
- B10.4. The Provider shall refer information about any person carrying out the Services to the DBS where the Provider removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users.
- B10.5. The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out or there may be a risk of unsuitability to carry out regulated activity or who may otherwise present a risk to Service Users.
- B10.6. The Provider shall ensure that Staff, temporary staff, agents, or volunteers do not abuse, neglect, harm or exploit Service Users, carers or colleagues.

### **Safeguarding – Policies and Procedures**

- B10.7. The Provider shall have in force and shall maintain a safeguarding of vulnerable adults and children policy which shall set out and require compliance by its Staff with the obligations detailed in this clause B10 and the principles and procedures laid down in the policies cited in the following sub-clause B10.8 in order that there can be effective joint action to protect vulnerable adults and children from abuse.

- B10.8. The Provider shall comply with the local multi-agency policy more particularly detailed in Section 8.2 of the Specification
- B10.9. The Provider shall have in place a robust safeguarding training programme for all Staff (including volunteers) appropriate to their level of responsibility, and, as a minimum standard, they will comply with the requirements detailed in the Specification. Further the Provider shall maintain appropriate records of training for the Authority's audit purposes.
- B10.10. The Provider shall establish clear policies to deal with dangerous, exploitative or unsafe behaviour and practice and provide training to all of the Provider's Staff to develop appropriate skills and knowledge.
- B10.11. The Provider shall have in place and shall have implemented robust up-to- date procedures, (including, disciplinary procedures, whistle-blowing policy and recruitment checks), for avoiding and responding to actual or suspected physical, sexual, psychological, financial or material and discriminatory abuse and acts of neglect or omission. Such procedures shall be reviewed at least once every year.
- B10.12. The Provider shall ensure that its disciplinary procedures are compatible with the responsibility to protect vulnerable adults and which shall include the ability to suspend an employee pending the outcome of a safeguarding investigation. It should be noted that the decision to suspend shall remain with the Provider and take into account the best interests of the employee and/or the alleged victim of abuse, the outcome of a risk assessment, and consideration of the potential harms/dangers to the individual/individuals concerned, and any other relevant factors including those outlined in the Multi- Agency Safeguarding Policy. Any decision to suspend shall be properly recorded in writing and a copy of this shall be provided to the Authority within 24 hours of any decision being made.

#### **Safeguarding: Monitoring, Investigation and Enforcement**

- B10.13. The Provider shall immediately provide the Authority with any information that the Authority reasonably requests to enable it to be satisfied that the obligations of this clause B10 have been met.
- B10.14. The Provider shall at all times co-operate with the Authority's processes for inspection, monitoring, evaluations, quality audit and safeguarding in whatever way is reasonably requested by the Authority. Accordingly, the Authority may request access to records held by the Provider regarding Service Users and the Provider's Staff where necessary under the Multi- Agency Policies.
- B10.15. Not used.
- B10.16. The Authority reserves the right to undertake its own safeguarding investigation without prejudice to any investigation undertaken by the CQC or any other Regulatory Body. In the event that a safeguarding investigation is initiated by the Authority it will be conducted in accordance with the Multi- Agency Safeguarding Policy. The Provider agrees and acknowledges that any action taken by the CQC or Regulatory Body and which does not result in the deregistration of the Provider by the CQC will not be binding upon the Authority nor require the Authority to conclude its own investigation. For the avoidance of doubt the Authority shall be under no obligation to provide prior written or other notification of a safeguarding investigation by the Authority to the Provider.
- B10.17. The Authority may require the Provider's Staff to be withdrawn and an acceptable person substituted in the event of:
  - a) the Provider failing to comply with the provisions set out in this Contract

in relation to the protection of vulnerable adults; or

- b) the Provider's Staff refuses to complete a disclosure statement/application;  
or
- c) the disclosure at any stage of information that in the reasonable opinion of the Authority renders the Provider's Staff unsuitable for the work involved;  
and

any such decision by the Authority will be taken in compliance with Rehabilitation of Offenders Act 1974.

B10.18. Not used.

B10.19. In the event that the Authority through the course of a safeguarding investigation identifies that remedial action is required in respect of the Contract, the Authority will follow the procedures set out in clauses B29 (*Defaults and Failure to Supply*) and B30 (*Contract Management*).

B10.20. In the event that the Authority receives any written notification from the CQC, other Regulatory Body or other interested stakeholder concerning the Provider in relation to suspected or actual safeguarding issues the Authority reserves the right to issue any relevant notice under clauses B29 (*Defaults and Failure to Supply*) and 30 (*Contract Management*) or to request further information under clause B10.13 to carry out further investigations, and a risk assessment of the Provider, its premises and the Services.

B10.21. The Authority reserves the right to share any information received as part of any investigation with the CQC, relevant Regulatory Body, Public Health England, other partner commissioners of health and social care services, the police and the emergency services where it is reasonably appropriate to do so.

B10.22. The Provider shall accept and bear the costs of any learning interventions recommended by the Authority to support improvements in safeguarding.

B10.23. The Provider will work with the Authority's Safeguarding Adults Team where appropriate to implement these actions to achieve improvements in the quality of service delivery arising from safeguarding issues.

## **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.

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.

B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, and non-Service User safety incidents that are agreed between the Provider and the Authority.

B11.4. Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause B.11.

## **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 RECORDS**

- B13.1. The Provider must create, maintain, store and retain Service User records for all Service Users. The Provider must retain Service User records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
- B13.2. The Provider must:
- a) use Service User 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. Not used.

#### **B14. INFORMATION**

- B14.1. The Provider must provide the Authority with the information specified in the Specification to measure the quality, quantity or otherwise of the Services.
- B14.2. The Provider must deliver the information required under clause B14.1 in the format, manner, frequency and timescales specified in the Specification 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, including issuing a Contract Query Notice or exercise its rights under Clause B28 (Defaults and Failure to Supply) 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.
- 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 AND ESTATES**

- 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 fit for the purpose of providing the applicable Services.
- B15.2. The Provider shall reimburse the Authority the cost of repairing and rectifying any accidental damage or deliberate damage caused to the Estates during the Term. For the avoidance of doubt the Authority will arrange for repairs and rectification of such damage provided it is notified in writing by the Provider.
- B15.3. Subject to clauses B15.1 and B15.2 the responsibility for carrying out maintenance and repairs in respect of the Estates and for payment for the same shall be as more particularly detailed in the Specification at Section Nine.

#### **B16. NOT USED**

#### **B17. COMPLAINTS**

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

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

B17.3. The Provider undertakes to co-operate with the Authority with any investigation into a complaint including providing such information that is reasonably necessary

## **B18. SERVICE REVIEW**

B18.1. The Provider must each depending on the particular frequency as required and detailed in Section Six of the Specification of this Contract deliver to the Authority a Service Quality Performance Report.

B18.2. The Provider must submit each Service Quality Performance Report in the form and manner detailed in the Specification.

## **B19. REVIEW MEETINGS**

B19.1. The Parties must review and discuss the Service Quality and Performance Returns and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held at a frequency as required and detailed in Section Six of the Specification.

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 Joint Investigation 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 the Provider;
- c) any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and
- d) primary, secondary and social care services,

in order to:

- e) ensure that a consistently high standard of care for the Service User is at all times maintained;

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

**B21. WARRANTIES AND REPRESENTATIONS**

**B21.1. The Provider warrants and represents that:**

- a) It has full capacity and authority to enter into this Contract and all necessary Consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- c) in entering this Contract it has not committed any Fraud;
- d) all reasonably material information supplied by it to the 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) 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 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. In response to a request for a Variation, the Party shall produce a Variation Notice which must set out in as much detail as is reasonably practicable the proposed Variation(s) and shall include the following:
- a) the title of the Variation;
  - b) the originator and date of the request for the Variation;
  - c) the reason for the Variation;
  - d) full details of the Variation including the consequences on delivery of the Services and the Charges, supported by relevant documentation where possible;
  - e) a timetable for implementation together with any proposals for acceptance of the Variation;
  - f) the date of expiry of validity of the Variation Notice;
  - g) any other relevant information to support the Variation; and
  - h) provision for signature by the Authority and by the Provider.
- 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 40 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. Such discussions will be without prejudice to the rights of either Party under this Contract.
- B22.4. Neither the Authority or the Provider shall unreasonably withhold its consent to any Variation.
- B22.5. Until such time as a Variation is agreed in accordance with this clause B23 and unless the Parties agree otherwise in writing, the Authority and Provider shall continue to supply the Services specified in this Contract as if the request for a Variation had not been made.
- B22.6. 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.

B22.7. Any services undertaken by the Provider, its Sub-contractors or agents which has not been authorised in advance as Variation to this Contract pursuant to this clause B23 shall be undertaken at the expense and liability of the Provider.

B22.8. 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 its nominee) in accordance with clause A4 (Notices) but a signed Variation Notice by both parties shall discharge this requirement.

### **B23. ASSIGNMENT AND SUB-CONTRACTING**

B23.1. The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the Authority in writing:

- a) consenting to the appointment of the Sub-contractor (which the Authority may in its absolute discretion refuse); and
- b) approving the Sub-contract arrangements (which the Authority in its absolute discretion may refuse).

For the avoidance of doubt at the Commencement Date the Authority has approved the appointment of the sub-contractors listed in Schedule 3 for the purposes therein specified.

B23.2. The Authority's consent to sub-contracting under clause B23.1 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.

B23.3. Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable and this shall include (but not be limited to) any requirements regarding confidential information FOIA and DPA and safeguarding requirements set out in Clause B10..

B23.4. The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Provider.

### **B24. AUDIT AND INSPECTION**

B24.1. The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.

B24.2. Subject to Law and notwithstanding clause B24.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.

B24.3. Within 10 Business Days of the 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 clause 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 and/or the premises of any Sub-contractor; and
- c) access to the Staff agents or consultants or where applicable agents employed or consultants of sub-contractors.

## **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 DPA, 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 DPA by the Authority.

## **B26. LIMITATION OF LIABILITY**

B26.1. Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.

B26.2. Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract.

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 shall at its own cost and shall procure that any Subcontractors shall for the services for which they are appointed at their own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the following levels of cover (together the **Required Insurances**):

### **B27.1.1 TYPE A INSURANCE**

- a. public liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
- b. employer's liability insurance with a limit of indemnity of not less than £5 million;
- c. professional indemnity insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;

- d. product liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims;
- e. clinical negligence/medical malpractice £10 million per individual claim.

and

#### B27.1.2 TYPE B INSURANCE

- f. public liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
- g. employer's liability insurance with a limit of indemnity of not less than £5 million;
- h. professional indemnity insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;
- i. product liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims;

B27.2. Without prejudice to any other remedies or provisions in this Contract including the right to suspend or terminate, if, for whatever reason, the Provider and/or any Subcontractor/s 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.

B27.3. 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. Such request can be made annually throughout the duration of 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 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:

- 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 and within the discretion of the Authority the Authority may reasonably decide to also withhold any further sums payable under this Contract until the remedial plan has been implemented and or;
- b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B31 (*Suspension and Consequences of Suspension*) and/or
- 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.

- B28.3 If the Authority withholds sums under clause 28.1(a) and within 20 Business Days of the date of that withholding the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld unjustifiably the Authority must pay those sums to the Provider within 10 Business Days following the date of the Authority's acceptance of that evidence, together with interest at Default Interest Rate for the period for which the sums were withheld. If the Authority does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

## **B29. CONTRACT MANAGEMENT**

- B29.1. If the Parties have agreed a consequence in relation to the Provider failing to meet an Indicator as described in the Quality and Performance Return set out in section six of the Specification entitled Targets Monitoring and Review and the Provider fails to meet the 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.

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

- a) the Authority in discussion with the Provider must set 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 in discussion with the Provider may implement 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 then the Authority shall prepare and issue a Remedial Action Plan within a reasonable period of time and where relevant discuss the contents of the same with the Provider.

B29.14 The Remedial Action Plan must set out:

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

B29.15 The Provider and the 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;
- b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority unresolved due to the fault of the Provider (including a breach of the Remedial Action Plan) then this shall be treated as a material breach and the provisions of clause B28.1 shall apply and for the avoidance of doubt a further remedial plan is an option within the absolute discretion of the Authority.
- c) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority unresolved and not due to the fault of the Provider then a further Remedial Action Plan may be agreed in accordance with clauses B29.13 and B29.14.

## **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 this clause B30, unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.
- B30.2. The provisions of this clause B30 do not affect any other rights and obligations the Parties may have under this Contract

### **Escalated procedure**

- B30.3. Except to the extent that any injunction is sought relating to a matter arising out of clause B38 (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") and provided no Party in Dispute is represented by the same individual each of the Parties shall negotiate in good faith be represented:
- a) 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
  - b) for the last 5 Business Days, by its chief executive, director, or board member who has authority to settle the Dispute.

### **Mediation**

- B30.4. 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 clause A6].
- B30.5. 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.
- B30.6. 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.

### **Expert Determination**

- B30.7. 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 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.
- B30.8. 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.
- B30.9. 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.

- B30.10 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.
- B30.11 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.
- B30.12 The Expert must produce a written decision with reasons within 30 Business Days of receipt of the statement of case referred to in clause B31.9, or any longer period as is agreed by the Parties after the Dispute has been referred.
- B30.13 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- B30.14 The Parties must comply with any request or direction of the Expert in relation to the expert determination.
- B30.15 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.
- B30.16 The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- B30.17 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:
- a) the Expert reconsider his decision (either all of it or part of it); or
  - b) the Expert's decision be set aside (either all of it or part of it).
- B30.18 If a Party does not abide by the Expert's decision the other Party may apply to Court to enforce it.
- B30.19 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.
- B30.20 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.
- B30.21 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.

**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:
- 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**

B32.1. [Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 12 months' 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 Quality Outcomes Indicators;
- b) the Provider is in persistent breach of its obligations under this Contract;
- c) the Provider:
  - (i) fails to obtain any Consent;
  - (ii) loses any Consent; or
  - (iii) has any Consent varied or restricted,
 the effect of which might reasonably be considered by the 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 clause B37 (*Data Protection*);
- g) the Provider breaches the terms of clause B23 (*Assignment and Sub-contracting*);
- h) 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;



- i) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
  - j) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 40 Business Days following receipt of notice from the Authority identifying the breach.
- 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 any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B32.4 if the Authority has failed to remedy such breach within 40 Business Days of receipt of notice from the Provider to do so.
- B33. CONSEQUENCE OF EXPIRY OR TERMINATION**
- B33.1. Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- B33.2. On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.
- 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 which shall include (and without prejudice to any agreed Succession Plan) the following:
  - a) where directed by the Authority transfer of copies of all records created under clause B13 (*Service User Records*) in such format and period as is reasonable;
  - b) provide access to any Provider Premises or Equipment that may be needed for the continued provision of the Service by the Successor Provider during any interim period; and
  - c) provide any other details that are necessary by the Successor Provider to ensure that the provision of Services continues notwithstanding the expiry or termination of this Contract.
- 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 B32.1 or B32.3 (*Termination*)), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.

- 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*) 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 maintain a Business Continuity Plan and must notify the Authority as soon as reasonably practicable of its activation and in any event no later than 5 Business Days from the date of such activation.
- B34.3. If requested by the Authority the Provider shall provide a copy of the Business Continuity Plan within 10 Business Days of the request.

**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.
- 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.
- B36.8. The obligations in clause B36.1 and clause B36.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

## **B37. DATA PROTECTION**

- B37.1. The Provider shall at all times comply with their duties under the DPA including where appropriate maintaining a valid and up to date registration under the DPA and where reasonably requested by the Authority shall provide proof of their compliance with the DPA.
- B37.2. The Parties agree that:
- a) they shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties; and
  - b) where the Provider will be acting as a Data Controller for Personal Data supplied under this Contract, the Provider shall only use the shared Personal Data for

the purpose and purposes that it has been shared under this Contract and that they will ensure that where required there will be relatively fair processing notices in place and that individual informed consent will have been sought.

B37.3. To the extent that the Provider is acting as a Data Processor on behalf of the Authority, the Provider shall comply with the obligations set out in Principle Seven of the DPA and in particular without limitation.

- a) only process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instruction given by the Authority under this Contract;
- b) not disclose Personal Data to any third parties other than:
  - (i) Staff of the Provider, Sub-Contractors and agents to whom such disclosure is reasonably necessary in order to perform the Contract and has been agreed in accordance with clause B37.2, or
  - (ii) to the extent required under an order of a court or tribunal;

provided that the Provider shall give notice in writing to the Authority of any disclosure under an order of the court or tribunal immediately it is aware of such a requirement;

- c) put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data (including where Personal Data is in transit), and against the accidental loss, destruction of, damage alteration or disclosure to such Personal Data having regard to the specific requirements in clause B37.3, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction, and provide a written description of such measures upon reasonable request by the Authority;
- d) take reasonable steps to ensure the reliability of Staff who will have access to such Personal Data;
- e) ensure that such Staff are properly informed and trained in protecting Personal Data and obligations under the DPA and this Contract and in particular this clause B37, and ensure that no unauthorised Staff have access to Personal Data;
- f) provide the Authority with such information, access to premises or Staff or Sub-contractors or affiliates as the Authority may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA and in particular this clause B37.2 including any actual, potential or suspected breaches of its obligations under this clause B37.2 or the DPA;
- g) within 5 Business Days notify the Authority if the Provider receives any requests for disclosure of or access to the Personal Data (including subject access requests made by the Data Subject) or complaint relating to the Provider's or Authority's obligations under the DPA and cooperate in accordance with clause B37.3;
- h) promptly notify the Authority within 24 hours of any breach or alleged or potential breach of the DPA or any security measures required to be put in place pursuant to this clause B37 and provide the Authority with full co-operation and assistance in relation to investigating any such breach or alleged breach to include but not be

limited to inspection or premises and security arrangements if requested;

- i) obtain prior written consent from the Authority in order to transfer any Personal Data to any Sub-contractor or affiliates of the Provider or Sub-contractor for the provision of the Services and provide such evidence to show that the obligations required under this Contract pursuant to this clause B37.2 have been imposed upon the Sub-contractor as part of any request for consent;
- j) not transfer any Personal Data supplied under this Contract outside the European Economic Area;
- k) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA;
- l) unless the Parties have agreed in writing otherwise, at the end of the Contract immediately return all originals of the Personal Data supplied under the Contract by the Authority or to a Successor Provider in accordance with the DPA.

B37.4 To the extent that the Provider is the Data Processor and where a request is received for disclosure, access or amendment to Personal Data or a complaint relating to the Provider's or Authority's obligations under the DPA has been made then the Provider shall:

- a) provide the Authority with full details of the request for disclosure, access or amendment or of the complaint;
- b) under the direction of or pursuant to any instructions of the Authority respond to such request for disclosure, request for access or amendment or complaint within any relevant timescales set out in the DPA or as directed by the Authority;
- c) provide any further information that the Authority may reasonably require in order to deal with or investigate any such complaint or request for disclosure, access or amendment of Personal Data.

B37.5 The Provider and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law.

#### Authority data

B37.6. To the extent that any Authority data is held and/or processed by the Provider, shall supply that Authority data to the Authority as requested by the Authority.

B37.7. If the 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 10 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.

B37.8. 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.

#### **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;
  - 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.
  - f) with regard to all information that may be subject to a request under FOIA to retain such information to permit any disclosure and the Provider shall permit the Authority to inspect such information upon reasonable request.
- 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. Neither Party shall do any of the following:

- a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and
- b) in connection with this Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,

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

B39.2. If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 or give any fee or reward the receipt of which is an offence under S117(2) of the Local Government Act 1972 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:

- a) to exercise its right to terminate under clause B32.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
- b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
- c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

B39.3. Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

B39.4. The Provider must have in place an anti bribery policy for the purposes of preventing any of its 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. Except for the express rights reserved as set out in Schedule 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.

#### **B42. CAPACITY**

B42.1. Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Contract, the obligations of the 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. The Provider shall observe the Authority's approval processes by obtaining with suitable notice the Authority's written consent prior to engaging in any promotional activity making public statements or issuing press releases in relation to this contract.

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.

#### **B48 CONFLICTS OF INTEREST**

B48.1. If a Party becomes aware of any conflict of interest which had or is likely to have an adverse effect on the other Party's decision whether or not to have contracted, or 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.

#### **B49 INTELLECTUAL PROPERTY**

B49.1. Except as set out expressly in this Contract, no Party will acquire the IPR of the other Party.

B49.2. The Provider now grants the Authority a fully paid-up non-exclusive licence to use Provider IPR for the duration of this Contract for the purposes of the exercise of its functions and obtaining the full benefit of the Services, which will include the dissemination of best practice to other providers who have a contract with the Authority.

B49.3. In the event that the Provider or the Authority at any time devise, discover or acquire rights in any Improvement that relates to the Services, 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 to such Improvement without charge.

#### **B50 CHANGE IN CONTROL**

B50.1. This clause applies to any Provider Change in Control and/or any Material Sub-Contractor Change in Control, but not to a Change in Control of a company which is a Public Company.

B50.2. The Provider must:

- a) as soon as possible, and in any event within 5 Business Days following a Provider Change in Control; and/or
- b) immediately on becoming aware of a Sub-contractor Change in Control; notify the Authority of that Change in Control and submit to the Authority a completed Change in Control Notification.

B50.3. 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 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.

B50.4. 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 any 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.

B50.5. The Provider must supply (and must use its reasonable endeavours to procure that the relevant Sub-contractor supplies) to the Authority whatever further information relating to the Change in Control the Authority may, within 20 Business Days after receiving the Change in Control Notification, reasonably request.

B50.6. The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Sub-contractor include a provision obliging the sub-contractor to inform the Provider in writing on, and in any event within 5 Business Days following, a Sub-contractor Change in Control in respect of that Sub-contractor.

B50.7. If:

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

b) following consideration of the information provided to the Authority in the Change in Control Notification or under clause B50.5, the Authority reasonably concludes that, as a result of that Sub-contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Sub-contractor to provide Services in accordance with this Contract (and, in reaching that conclusion, the Authority may consider any factor, in its absolute discretion), that it considers relevant to the provision of Services, then

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

d) the Provider must duly replace the relevant Sub-contractor within the period specified under clause B50.7(c).

B50.8. Notwithstanding any other provision in this Contract:

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

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

B50.9. If the Provider breaches clause B50.8(b) the Authority may by serving written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within:

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

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

B50.10. Nothing in this clause will prevent or restrict the Provider from discussing with the Authority 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.

B50.11. Subject to the Law and to the extent reasonable the Parties must cooperate in any public announcements arising out of a Change in Control

## **B51 DEFINITIONS AND INTERPRETATION**

B51.1. The Contract shall be interpreted in accordance with this clause B51:

- a) The headings in this Contract shall not affect its interpretation.
- b) 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 Use of the singular includes the plural and vice versa.
- c) References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
- d) References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.
- e) References to any body, organisation or office shall include reference to its applicable successor from time to time.
- f) 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.
- g) The use of any of the following terms in any phrase, sentence or sub- clause shall be construed as illustrative and shall not limit the scope of the clause: include, including, in particular, or any other similar expressions.
- h) Use of the singular includes the plural and vice versa.

B51.2. The following terms shall have the meanings as set out:

**Activity** means any levels of services and/or Service User flows and as set out in a Service Specification and amended from time to time by the Authority

**Actuary** means a Fellow of the Institute and Faculty of Actuaries

**Actuary's Letter** means the bulk transfer terms to be issued by the LGPS Actuary within thirty (30) days of the Transfer Date in respect of the LGPS which specify the actuarial methods and assumptions for calculating the Transfer Value

**Administering Authority** means the relevant body administering the LGPS

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

**Authority IPR** means any IPR owned by or licensed to the Authority which is relevant and necessary to the performance of the Services by the Provider, including without limitation the IPR set out at Appendix F (*Policies and Procedures*), including Improvements

**Authority Representative** means the person identified in clause A7.1 (*Representatives*) or their replacement

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

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

**Business Continuity Plan** means the Provider's plan referred to in clause B34.2 (*Business Continuity*) relating to continuity of the Services, as approved by 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 officer or employee responsible for safeguarding the confidentiality of service user 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

**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 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

**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 Schedule 2 (*Charging*)

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

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

**Conditions Precedent** means the conditions precedent, if any, to commencement of service delivery referred to in clause A3.2 (*Commencement and Duration*) and set out in clause A5 (*Conditions Precedent*)

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

**Consents** means:

- (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration or Gillick competence of the Service User 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

**Consenting Employees** means those of the Employees who join the Supplier's Scheme from the Transfer Date and who consent in writing to payment of the Transfer Value in respect of their benefits to the Supplier's Scheme within the period specified in Clause 3.1.2 of Part D of Schedule 7 and who do not withdraw that request before the expiry of the period specified in Clause 3.1.2 of Part D of Schedule 7

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

**Contract Query** means:

- (i) a query on the part of the Authority in relation to the performance or non-performance including any Activity or quality issues by the Provider of any obligation on its part under this Contract; or
- (ii) a query on the part of the Provider in relation to the performance or non-performance by the Authority of any obligation on its part under this Contract, as appropriate

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

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

**Data Processor** has the meaning set out in the DPA

**Data Subject** has the meaning set out in the DPA

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

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

**Default Interest Rate** means the base rate set from time to time by Lloyds Bank plc 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** means the Data Protection Act 1998

**Employees** means those of the Transferring Employees who were:

- (a) active members of the LGPS on the Transfer Date;
- (b) in a waiting period.
- (c) opted out of membership but were entitled to rejoin the LGPS; or
- (d) entitled to join the LGPS but for absence on account of ill-health.

**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

**Employment Liabilities** means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs) expenses and all other liabilities whatsoever

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

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

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

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

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

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

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

**Estates** means the Authority's Premises and other such land and property whether fixed or mobile from which the Provider provides services including the Services

**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 clause 31 (*Dispute Resolution*)

**Expert Determination Notice** means a notice in writing served pursuant to clause B31.6 (*Dispute Resolution*) showing an intention to refer Dispute for expert determination

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

**Ex-Authority Employee** means any Third Party Employee who:

- (a) on the day before their employment first transferred from the Authority (or another public sector employer) was an active member of the NHSPS (or relevant public sector scheme), or in a waiting period, or had opted-out but was entitled to rejoin the NHSPS (or relevant public sector scheme), or entitled to join but for absence on account of ill-health; and
- (b) on the day before the Transfer Date is in service under the Third Party Scheme by virtue of which they accrue pension benefits or would be in such service but for the fact they are long term absent from work;

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

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

- (i) any industrial action occurring within the Provider's or any Sub-

contractor's organisation; or

- (ii) the failure by any Sub-contractor to perform its obligations under any Sub-contract

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

**Future Transferring Employees (Pensions)** means an Employee engaged in, or whose principal purpose is to provide the Services, who is transferred or is deemed to transfer from the Supplier to a subcontractor or from a subcontractor to another subcontractor or from any subcontractor back to the Supplier pursuant to TUPE

**Future Transfer Payment** means the value of the retirement and death benefits under the Supplier's Scheme or Subcontractor's Scheme prospectively and contingently payable to and in respect of the Future Transferring Employees (Pensions) to the Subcontractor's Scheme (or back to the Supplier's Scheme) calculated by the Supplier's Actuary or the Subcontractor's Scheme Actuary as applicable in accordance with actuarial methods and assumptions no less favourable to the Future Transferring Employees (Pensions) than those set out in the Actuary's Letter

**GAD** means the Government Actuary's Department

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

**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

**Holding Companies** means has the definition given it in the section 1159 of the Companies 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

**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

**Incident Response Plan** means an operational plan for response to and recovery from Significant Incidents as identified in national, local and community risk registers and in accordance with any national emergency planning framework and the Civil Contingencies Act 2004

**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

**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

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

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

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

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

**Law** means (and in each case in force in England and Wales):

- (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

**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

**LGPS** means the Local Government Pension Scheme registered under Chapter 2 of Part 4 of the Finance Act 2004

**LGPS Actuary** means GAD or another actuary as appointed by the Authority for the purpose of Part D of Schedule 1

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

**LGPS Regulations** means the Local Government Pension Scheme (Benefits Membership and Contributions) Regulations 2007 and the Local Government Pension Scheme (Administration) Regulations 2008 and the Local Government Pension Scheme (Transitional Provisions) 2008

**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

**Multi-Agency Safeguarding Policy** has the same meaning as in the Specification (Safeguarding clause 8.2)

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

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

**Negotiation Period** means the period of 15 Business Days following receipt of the first offer under clause B30 (*Dispute Resolution*)

**Parties** means the Authority and the Provider and “Party” means either one of them

**Personal Data** has the meaning set out in the DPA

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

**Provider’s Actuary** means the Actuary (or firm of Actuaries) appointed as scheme actuary by the trustees of the Provider’s pension scheme for the purposes of Section 47 of the Pensions Act 1995

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

**Provider IPR** means any IPR owned by or licensed to the Provider (other than by the Authority) that will be used by the Provider in the delivery of the Services, as set out in Appendix F (*Policies and Procedures*) herein [insert], including Improvements

**Provider Representative** means the person identified in clause A7.2 (*Representatives*) or their replacement

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

**Provider’s Scheme** means the retirement benefits scheme established by the Provider or in which it participates for the purposes of Part D of Schedule 1. A reference to the Provider’s Scheme shall, where appropriate, include a reference to the trustees or administrators of such Scheme

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

**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 which 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

**Quality Outcomes Indicators** means the agreed key performance indicators and outcomes to be achieved as set out in the Service Specification

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

**Regulatory Body** means any body 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 the clauses A9 and/or B27

**Restricted Person** means:

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

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

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

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

**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 Estate 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 (*Commencement and Duration*)

**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 Return** has the same meaning as in Section six of the Specification

**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

**Significant Incidents** means

- i) an event or occurrence which constitutes an emergency for the purposes of the Civil Contingencies Act 2004; and/or
- ii) constitutes an emergency under local and community risk registers; and/or
- iii) is designated as a significant or emergency incident under the Incident Response Plan

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

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

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

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

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

**Sub-contracting Transfer Date** means the date on which any Future Transferring Employees (Pensions) transfer or are deemed to transfer from the Supplier to a subcontractor, from a subcontractor to another subcontractor, or from a subcontractor back to the Supplier, as appropriate, pursuant to TUPE

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

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

**Sub-contractor's Scheme** means the one or more retirement benefits schemes established by a subcontractor or in which it participates for the purposes of complying with Clause 5 of Part D of Schedule 1. A reference to the Subcontractor's Scheme shall, where appropriate, include a reference to the trustees or administrators of such Scheme

**Sub-contractor's Scheme Actuary** means the Actuary appointed by any Subcontractor for the purposes of Part D of Schedule 1

**Succession Plan** means a plan agreed by the Parties to deal with transfer of the Services to an alternative provider following expiry or termination of this Contract

**Successor Provider** means any replacement or successor provider (whether temporarily or permanently) to whom the Services are transferred on termination or expiry of this Contract

**Transfer Value** means the value of the retirement and death benefits under the LGPS which are prospectively and contingently payable to and in respect of the Consenting Employees as calculated by the LGPS Actuary and verified by the Supplier's Actuary in accordance with the actuarial methods and assumptions set out in the Actuary's Letter

**Transfer Value Date** means the date falling ten (10) Business Days after the date on which the Transfer Value is determined by the LGPS Actuary and verified by the Supplier's Actuary

**Transferring Employees** means all those employees, if any, assigned by the Authority to the provision of a service the same as or similar to the Services immediately before the Transfer Date and listed in Schedule 1

**Third Party** means any supplier of the Services or services of the same or similar nature to the Services (either in whole or in part) immediately before the Transfer Date

**Third Party Employees** means all those employees, if any, assigned by a Third Party to the provision of a service the same as or similar to the Services immediately before the Transfer Date

**Third Party Scheme** means a retirement benefits scheme in which the Third Party participates, which provides pension benefits in respect of Ex-Authority Employees and which might be or include the LGPS

**Transfer of and Discharge from Care Protocols** means the protocols agreed between the Parties for the transfer and discharge of Service Users after the Services have been delivered

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law

**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 or any part or all of the Services and shall also include the funding of this Contract by the Authority

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

[illegible]

**6.1 If required, insert types of insurances and levels of cover required**

## **APPENDIX B**

### **CONDITIONS PRECEDENT**

1. Proof of CQC registration or at the discretion of the Authority satisfactory evidence of significant progress towards achieving (QC registration in a timely manner.
2. A certificate setting out the Required Insurances (Type A and Type B).
3. Satisfactory evidence of the required DBS checks

**SECTION C**  
**SPECIAL TERMS AND CONDITIONS**



## SCHEDULE 1

### Part A            Not used

### Part B

- 1.1     The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Transferring Employees will transfer on the Transfer Date to the Provider or any subcontractor pursuant to TUPE.
- 1.2     The Provider agrees, or shall ensure by written agreement that any subcontractor shall agree, to accept the Transferring Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (including the provision of a broadly comparable pension (which shall be dealt with in accordance with Part D of this Schedule and with full continuity of employment.
- 1.3     The Provider's agreement in Clause 1.2 of Part B of this Schedule (and any subsequent agreement by any subcontractor), is subject to the right of any employee identified as a Transferring Employee to object to being transferred to the Provider or any subcontractor.
- 1.4     The Provider will, or shall ensure by written agreement that any subcontractor will:
  - 1.4.1     not later than twenty-eight (28) days after issue of a written notice in writing to it from the Authority, provide the Authority with the information required under regulation 13(4) of TUPE. The Provider shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
  - 1.4.2     provide such assistance and information to the Authority as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Provider or any subcontractor (including attendance at any meetings with Transferring Employees, trade unions and employee representatives);
  - 1.4.3     comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and
  - 1.4.4     immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Transferring Employees about any Measures in accordance with regulation 13(6) of TUPE.
- 1.5     The Authority will on or before the Transfer Date:
  - 1.5.1     pay or ensure that the relevant employer pays all wages, salaries and other benefits of the Transferring Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Transferring Employees in respect of the period before the Transfer Date;
  - 1.5.2     ensure that any loans or advances made to the Transferring Employees before the Transfer Date are repaid to it;
  - 1.5.3     account to the proper authority or ensure that the relevant employer accounts for all PAYE tax deductions and national insurance contributions payable in respect of the Transferring Employees in the period before the Transfer Date; and

- 1.5.4 pay or ensure that the relevant employer pays the Provider the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date.
- 1.6 The Authority will:
- 1.6.1 provide or, in the case of employees not employed by the Authority immediately before the Transfer, ensure that the relevant employer provides such assistance and information to the Provider as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Provider or any subcontractor, including the provision of all employee liability information identified in regulation 11 of TUPE in relation to the Transferring Employees; and
- 1.6.2 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE.
- 1.7 The Authority shall indemnify and keep indemnified the Provider in relation to any Employment Liabilities arising out of or in connection with any claim which arises as a result of any act or omission of the Authority in relation to the Transferring Employees prior to the Transfer Date save for where such act or omission results from complying with the instructions of the Provider or subcontractor, including the Provider or subcontractor failing to comply with its obligations under regulation 13 of TUPE, but only to the extent that such claim is brought by:
- 1.7.1 any of the Transferring Employees (whether on their own behalf or in their capacity as employee representatives); or
- 1.7.2 any trade union, staff association or staff body recognised by the Authority in respect of any of the Transferring Employees or any employee representatives acting on behalf of any of the Transferring Employees.
- 1.8 The Provider shall be responsible for or shall procure that any relevant subcontractor shall be responsible from the Transfer Date for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and other Staff.
- 1.9 The Provider shall indemnify and will keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with:
- 1.9.1 any act or omission of the Provider or subcontractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Transferring Employee or Staff (including but not limited to any liability which arises because a Transferring Employee's employment with the Provider or subcontractor is deemed to include their previous continuous employment with the Authority);
- 1.9.2 any act or omission of the Provider or subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Authority's failure to comply with regulation 13 of TUPE;
- 1.9.3 any allegation or claim by a Transferring Employee or any other employee of the Authority that in consequence of the transfer of Services to the Provider or subcontractor there has or will be a substantial change in such Transferring Employee's working conditions to their detriment within regulation 4(9) of TUPE; and
- 1.9.4 any allegation or claim that the termination of employment of any of the Transferring Employees or any other employee of the Authority whether on or before the Transfer Date which arises as a result of any act or omission by the

Provider or subcontractor save for where such act or omission results from complying with the instructions of the Authority.

- 1.10 If any person who is an employee of the Authority who is not a Transferring Employee claims or it is determined that their contract of employment has been transferred from the Authority to the Provider or any subcontractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned:
- 1.10.1 the Provider will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;
  - 1.10.2 the Authority may offer employment to such person within twenty eight (28) days of the notification by the Provider;
  - 1.10.3 if such offer of employment is accepted, the Provider or subcontractor shall immediately release the person from their employment; and
  - 1.10.4 if after the period specified in Clause 1.10.2 of Part B of this Schedule has elapsed, no offer of employment has been made by the Authority or such offer has been made by the Authority but not accepted within a reasonable time, the Provider or subcontractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person from the Transfer Date.

## **Part C**

- 1.1 The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Third Party Employees will transfer on the Transfer Date to the Provider or a subcontractor pursuant to TUPE.
- 1.2 The Provider agrees, or shall ensure by written agreement that any subcontractor shall agree, to accept the Third Party Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (including if required the provision of a broadly comparable pension (which shall be dealt with in accordance with Part D of this Schedule and with full continuity of employment.
- 1.3 The Provider's agreement in Clause 1.2 of Part C of this Schedule (and any subsequent agreement by any subcontractor), is subject to the right of any Third Party Employee to object to being transferred to the Provider or any subcontractor.
- 1.4 The Provider will, or shall ensure by written agreement that any subcontractor will:
- 1.4.1 not later than twenty eight (28) days after issue of a written notice in writing to it from the Authority, provide the Third Party with the information required under regulation 13(4) of TUPE. The Provider shall be liable to the Authority for, and shall indemnify and keep the Authority and any Third Party indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
  - 1.4.2 provide such assistance and information to the Third Party as it may reasonably request to facilitate a smooth and efficient handover of the Third Party Employees to the Provider or any subcontractor (including attendance at any meetings with Third Party Employees, trade unions and employee representatives);
  - 1.4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and

- 1.4.4 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Third Party Employees about any Measures in accordance with regulation 13(6) of TUPE.
- 1.5 The Provider shall be responsible for, or shall procure that any relevant subcontractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements and outgoings in respect of the Third Party Employees and other Staff.
- 1.6 The Provider shall indemnify and will keep indemnified the Authority and any Third Party in relation to any Employment Liabilities arising out of or in connection with:
- 1.6.1 any act or omission of the Provider or a subcontractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Third Party Employee or Staff (including but not limited to any liability which arises because a Third Party Employee's employment with the Provider or a subcontractor is deemed to include their previous continuous employment with the Third Party);
- 1.6.2 any act or omission of the Provider or a subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Third Party's failure to comply with regulation 13 of TUPE;
- 1.6.3 any claim or allegation by a Third Party Employee or any other employee of the Authority or Third Party that in consequence of the transfer of Services to the Provider or a subcontractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and
- 1.6.4 any claim or allegation that the termination of employment of any of the Third Party Employees or any other employee of the Third Party whether on or before the Transfer Date or not which arise as a result of any act or omission by the Provider or a subcontractor save for where such act or omission results from complying with the instructions of the Authority.
- 1.7 The Authority shall use reasonable endeavours to transfer to the Provider or any subcontractor the benefit of any indemnity it has from the Third Party.
- 1.8 At any time during or up to 2 (two) years after the expiration or termination of this Contract the Provider shall supply immediately upon request by the Authority's such information as may be reasonably required to comply with the TUPE Regulations and this Contract for disclosure to third parties intending to submit tenders or otherwise offering to enter into any subsequent contract for the provision of the Service and the Provider shall keep the Authority indemnified against any losses claims and expenses arising from any failure or non-compliance with this obligation.

## **Part D**

### **Provisions regarding pensions**

#### **1 Provider's Scheme**

- 1.1 The Provider shall either:
- 1.1.1 offer the Employees membership with effect from the Transfer Date of an occupational pension scheme which is Broadly Comparable to the LGPS immediately prior to the Transfer Date; or
- 1.1.2 where the Provider is able to participate in the LGPS as an employing authority (on such terms as are appropriate to the Provider's relationship with the

Employees in relation to LGPS), offer the Employees the opportunity to join, or remain in, the LGPS with effect from the Transfer Date,

provided that the Provider shall have absolute discretion as to which of the above options to select, unless legislation operates before the Transfer Date to impose an unconditional, mandatory obligation on the Provider to provide the Employees with continued membership of, or eligibility for, the LGPS.

- 1.2 The Provider shall either notify details of the Provider's Scheme or confirm participation in the LGPS with effect from the Transfer Date (as applicable) to the Authority as soon as it is able to do so and in any event by no later than thirty (30) Business Days before the Transfer Date (or such other period as is reasonable in the context of matters, responsibilities and obligations to be addressed by the parties prior to the Transfer Date).
- 1.3 Where Clause 1.1.1 of Part D of this Schedule applies, the Provider shall at its cost procure that, by no later than the Transfer Date, the Provider's Scheme:
  - 1.3.1 is registered with Her Majesty's Revenue & Customs for the purposes of the Finance Act 2004;
  - 1.3.2 is Broadly Comparable to the LGPS immediately prior to the Transfer Date;
  - 1.3.3 for the purpose of determining whether any Employee is entitled to benefits (including any enhancement of service on ill-health retirement or death benefits) under the Provider's Scheme, takes periods of employment with the Authority and the Provider into account as a single unbroken period;
  - 1.3.4 subject to Clause 4.4 of Part D of this Schedule provides day for day past service credits (or an equivalent recommended by GAD as a suitable reflection of the differences in benefit structures between the two schemes) to Employees; and
  - 1.3.5 satisfies such other requirements, either in addition to or in substitution for all or any of the foregoing requirements in this Clause 1.3 of Part D this **Error! Reference source not found.**, as GAD may at any time impose in respect of the Employees.
- 1.4 The Provider shall further procure that:
  - 1.4.1 no amendment shall, without the consent of the Employee concerned, be made to the Provider's Scheme which could reduce the value of the benefits of that Employee accrued to the date upon which the power to amend is exercised, such value to be calculated as a past service reserve on the basis of such reasonable terms and assumptions (including, for the avoidance of doubt, a reasonable assumption as to their future increases in pensionable earnings) as are determined by the trustees of the Provider's Scheme, acting on the advice of the Provider's Actuary. For the avoidance of doubt, the Provider is not prevented by the terms of Part D of this Schedule 1 from amending the Provider's Scheme in respect of future service from the date of the amendment provided that the Provider's Scheme is, from the date of such amendment, Broadly Comparable to the LGPS as at the date of the amendment;
  - 1.4.2 in relation to Clause 1.3.2 of Part D of this Schedule, if GAD has certified the Provider's Scheme on an interim basis, the Provider shall procure that there is a valid final certificate issued by GAD for the Provider's Scheme no later than six months after the Transfer Date; and
  - 1.4.3 such documents, information and other evidence as the Authority may reasonably require from time to time and at any time to enable it to be satisfied that the Provider's Scheme complies and continues to comply with the requirements of Part D of this Schedule relating to Employees are submitted promptly to the Authority.

## **2 Membership of Provider's Scheme**

- 2.1 The Provider shall procure that where Clause 1.1.1 of Part D of this Schedule 7 applies:
- 2.1.1 an Employee shall be eligible to remain a member of the Provider's Scheme throughout the period of their employment with the Provider in connection with any of the Services. For the avoidance of doubt, if any Employee who is a member of the Provider's Scheme ceases to be engaged in providing the Services and opts out of the Provider's Scheme by prior written notice, such Employee shall cease to be in active membership of the Provider's Scheme but shall be eligible to be re-admitted to the Provider's Scheme (as amended in accordance with Clause 1.4.1 of Part D of this Schedule, if applicable) if they again become engaged in providing the Services; and
- 2.1.2 membership of the Provider's Scheme for Employees shall not be conditional on their agreeing to payment of the Transfer Value in respect of them.

## **3 Calculation of Transfer Value**

- 3.1 The Provider agrees that where Clause 1.1.1 of Part D of this Schedule applies in relation to each Employee:
- 3.1.1 on or within three (3) calendar months after each Employee has joined the Provider's Scheme for the first time to invite such Employee to request in writing payment of a Transfer Value in respect of the Employee by the LGPS to the Provider's Scheme; and
- 3.1.2 Employees shall be given three (3) calendar months from the date on which the invitations are issued under Clause 3.1.1 of Part D of this Schedule, in which to return their written requests to the Provider.
- 3.2 Following the receipt of requests made by Employees under Clause 3.1 of Part D of this Schedule, the Authority shall use reasonable endeavours to procure that the LGPS instructs the LGPS Actuary to determine the Transfer Value in accordance with the Actuary's Letter and to notify the Provider's Actuary of its findings for verification.
- 3.3 The Authority and the Provider respectively undertake, insofar as it is within their respective powers to do so, to procure that:
- 3.3.1 all such information within their respective possession or under their respective control as the Provider's Actuary may reasonably request for the purposes of calculating or verifying the Transfer Value or for any other purpose of this Clause 3.3.1 of Part D of this Schedule shall be made available promptly to the Provider's Actuary; and
- 3.3.2 with the exception of the request forms referred to in Clause 3.1 of Part D of this Schedule, no notice or communication pertaining to a transfer payment from the LGPS will be issued or given to the Employees by the Authority or the Provider without the written consent of the other Party (such consent not to be unreasonably withheld or delayed).

## **4 Payment of Transfer Value**

- 4.1 Where Clause 3 of Part D of this Schedule applies the Authority shall use its reasonable endeavours to procure that on the Transfer Value Date the LGPS shall pay to the Provider's Scheme an amount in cash equal to the Transfer Value.
- 4.2 If the Transfer Value is or would be insufficient in the opinion of the Provider's Actuary to enable benefits to be provided in the Provider's Scheme which are in the reasonable opinion

of the Provider's Actuary equal in value to those given up in the LGPS, such shortfall shall be discharged as set out in Part E of this Schedule.

4.3 The Provider shall use its reasonable endeavours to procure that the trustees of the Provider's Scheme promptly accept the Transfer Value and any shortfall payment.

4.4 The Provider shall procure that, subject to receipt of the Transfer Value and any shortfall payment by the Provider's Scheme:

4.4.1 each of the Consenting Employees is awarded a credit of such period of pensionable service in the Provider's Scheme as the LGPS Actuary has determined in the Actuary's Letter; and

4.4.2 for the purpose of calculating benefits for and in respect of the Consenting Employees under the Provider's Scheme, the pensionable service so credited under Clause 4.4.1 of Part D of this Schedule and the pensionable service which each of the Consenting Employees accrues in the scheme from the Transfer Date shall be treated in the Provider's Scheme as a single unbroken period.

## **5 Subcontracting**

5.1 If the Contract operates to transfer the employment of any Employees or Ex-Authority Employees from the Authority or from any Third Party direct to an Initial Subcontractor (as defined below) at the Transfer Date the Provider shall procure that the Initial Subcontractor discharges all the obligations under Part D of this Schedule which the Provider would have undertaken had the employees in question transferred to the Provider, including the obligations to provide access to a suitable retirement benefits scheme under Clause 1 of Part D of this Schedule, to arrange for the calculation and payment of a Transfer Value under Clauses 3 and 4 of Part D of this Schedule and to pay any bulk transfer shortfall under Clause 4.2 of Part D of this Schedule if so provided under Part E of this Schedule.

**"Initial Subcontractor"** means the employer of any Employee or Ex-Authority Employee where such employment arises by direct transfer from the Authority or from a Third Party to the Initial Subcontractor rather than via the Provider.

5.2 Where during the Term as the result of the transfer of an undertaking which is the whole or part of the Services the employment of any Future Transferring Employee (Pensions) is transferred, the Provider shall, or shall procure or require any relevant subcontractor to, comply with the obligations contained in Part D of this Schedule in relation to any Future Transferring Employees (Pensions) by analogy with all of the obligations set out in this Schedule relating to Employees provided that any relevant subcontractor shall have the same rights which the Provider would have had under Part D of this Schedule by analogy and in particular that:

5.2.1 where there are references to Transfer Date, these shall be read as meaning the Subcontracting Transfer Date, and where there are references to Provider's Scheme, these shall where applicable be read as meaning the relevant Subcontractor's Scheme; and

5.2.2 similar obligations to those under Part D of this Schedule, including those in Clause 5 of Part D of this Schedule, are imposed on any subsequent transferee of the Future Transferring Employees (Pensions).

5.3 In addition, in relation to any Future Transferring Employees (Pensions) who are members of the Provider's Scheme (or relevant Subcontractor's Schemes) immediately prior to the Subcontracting Transfer Date who join the Subcontractor's Scheme or, where they transfer back into the employment of the Provider from a subcontractor, the Provider's Scheme:

5.3.1 the Provider shall, or shall procure that the subcontractor is required to, ensure that:

- (i) those Future Transferring Employees (Pensions) are invited, on or within three (3) calendar months after the Employee has joined the Subcontractor's Scheme of the Provider's Scheme, as applicable, to request in writing payment of the Future Transfer Payment from the Provider 's Scheme to the Subcontractor's Scheme or from one Subcontractor's Scheme to the Provider's Scheme, as applicable; and
- (ii) shall be given three months from the date on which the said invitations are issued in which to return the requests to the Provider's Scheme (or relevant Subcontractor's Scheme as applicable);

5.3.2 the Provider shall as applicable either:

- (i) require the trustees of the Provider's Scheme to offer to the trustees of the Subcontractor's Scheme bulk transfer terms in respect of the Future Transferring Employees (Pensions) and where agreed, promptly to calculate and pay to the trustees of the Subcontractor's Scheme an amount in cash or other assets equal to the Future Transfer Payment; or
- (ii) procure that the trustees of the Subcontractor's Scheme offer to the trustees of the Provider Scheme bulk transfer terms in respect of Future Transferring Employees (Pensions) and where agreed, promptly calculate and pay to the trustees of the Provider's Scheme an amount in cash or other assets equal to the Future Transfer Payment; and

5.3.3 where the Provider has failed to procure that trustees of the Provider's Scheme or the trustees of any relevant Subcontractor's Scheme, as applicable, offer bulk transfer terms in accordance with Clause 5 of Part D of Schedule, the Provider shall so advise the Authority and the Authority may issue such reasonable requests to such party, if any, as it thinks fit. The Provider shall comply with and shall use its reasonable endeavours to procure that all subcontractors shall comply with, all such reasonable requests.

5.4 The Authority may from time to time and at any time require the Provider to obtain and to produce to the Authority such information and evidence concerning any subcontractor and any Subcontractor's Schemes as the Authority may reasonably require in order to be satisfied that the provisions of Part D of this Schedule have been and continue to be satisfied and the Provider shall promptly use its reasonable endeavours to obtain the same following the receipt of such a request.

## **6 Expiry or earlier termination of this Contract**

6.1 On expiry or earlier termination of this Contract and where the Authority has notified the Provider of the identity of the Successor, the Provider shall procure that where the Authority has required the Successor to observe obligations on substantially the same terms as those set out in Part D of this Schedule and the Successor has complied with those terms the trustees of the Provider's Scheme or Subcontractor's Scheme shall offer to the trustees of each of the Successor's schemes bulk transfer terms in respect of the Subsequent Transferring Employees and provide for a Subsequent Transfer Payment.

6.2 Subject to Clause 6.3 of Part D of this Schedule, the Provider shall further procure that:

- 6.2.1 the Employees who are members of the Provider's Scheme (or relevant Subcontractor's Scheme) and who are to transfer to the employment of the Successor:
  - (i) are invited, on or before the date on which this Contract expires or terminates, to request payment of the Subsequent Transfer Payment from the Provider's Scheme (or relevant Subcontractor's Scheme) to the Successor's scheme; and



- (ii) shall be given three (3) months from the date on which this Contract expires or terminates or the date on which the said invitations are issued, whichever is later, in which to return the requests to the trustees of the Provider's Scheme (or relevant Subcontractor's Scheme); and

6.2.2 the trustees of the Provider's Scheme (or relevant Subcontractor's Scheme) promptly calculate and pay to the trustees of the Successor's scheme the Subsequent Transfer Payment.

6.3 Where the Provider has failed to procure that trustees of the Provider's Scheme (or failed to procure that the trustees of any relevant Subcontractor's Scheme) offer bulk transfer terms in accordance with Clauses 6.1 and 6.2 of Part D of this Schedule, the Provider shall so advise the Authority and the Authority may issue such reasonable requests to such party, if any, as it thinks fit. The Provider shall comply with and shall procure that all subcontractors shall comply with, all such reasonable requests.

## **7 Second and subsequent generation contracts**

7.1 If and to the extent that the Contract relates to Ex-Authority Employees the foregoing provisions of this Part D of this Schedule shall apply treating Ex-Authority Employees as Employees including without limitation:

7.1.1 they are offered membership of the LGPS (or the public sector scheme of which they were last active members) or a Broadly Comparable scheme for future service under Clause 1 of Part D of this Schedule;

7.1.2 they are, if appropriate, invited to request a transfer payment in respect of their past service rights under the Third Party's Scheme to the Provider's Scheme under Clause 3 of Part D of this Schedule;

7.1.3 a bulk transfer payment is made, if appropriate, under Clause 4 of Part D of this Schedule; and

7.1.4 Clauses 5 and 6 of Part D of this Schedule apply substituting references to Ex-Authority Employees for references to Employees.

7.2 In particular:

7.2.1 in Clauses 1.1.1, 1.1.2 and 1.2 of Part D of this Schedule references to the LGPS are deemed to be references to the public sector scheme of which the Ex-Authority Employees were last active members;

7.2.2 the single unbroken period in Clause 1.3.3 of Part D of this Schedule shall include the period of employment with the Third Party;

7.2.3 Clause 3 of Part D of this Schedule shall apply on the basis that the Transfer Value relates to the value of benefits under the Third Party's Scheme and if the said scheme is not the LGPS the amount shall be calculated by the actuary to the scheme in question rather than by the LGPS Actuary;

7.2.4 in relation to Clause 3 of Part D of this Schedule the Authority shall use reasonable endeavours to procure that the Third Party instructs the actuary to the Third Party's Scheme to determine the Transfer Value and that the Third Party provides information to the said actuary as required by Clause 3.3.1 of Part D of this Schedule; and

7.2.5 Clause 4 of Part D of this Schedule applies on the basis that the Transfer Value has the modified meaning set out in Clause 7.2.3 of Part D of this Schedule, that in relation to Clause 4.1 of Part D of this Schedule the Authority uses its reasonable endeavours to procure that where the Third Party's Scheme is not the

LGPS the Third Party ensures that the trustees of the Third Party's Scheme pay the Transfer Value and in relation to Clause 4.2 of Part D of this Schedule the reference to benefits given up in the LGPS is a reference to benefits given up in the Third Party's Scheme.

## **8 Indemnity**

- 8.1 The Provider shall be liable to the Authority for, and shall indemnify the Authority and keep the Authority indemnified against any loss, damages, claims, costs and expenses incurred by the Authority, including the costs and expenses (whether legal, actuarial or other) incurred by the Authority in preparing for, defending and implementing any court, Employment Tribunal or Pensions Ombudsman proceedings, order, judgment, award or direction, awarded against or incurred or paid by the Authority to and/or in favour of any Employee or any other person as a result of the failure of the Provider to comply with the provisions of Part D of this Schedule and/or of the failure of any subcontractor to comply with the terms of its contract with the Provider.

## **Part E**

### **Provisions regarding shortfalls**

- 9.1 Where the Administering Authority obtains an actuarial variation under the LGPS Regulations and the Provider or any approved sub-contractor is required to pay a revised contribution or payment to the LGPS Fund representing any deficit under regulation 38 of the Administration Regulations ("the Exit Contribution") such contribution or payment shall be paid by the Provider or approved sub-contractor (as the case may be) and the Provider or approved sub-contractor (as the case may be) shall be reimbursed in accordance with paragraph 9.2 of this Schedule 1 less any tax benefit that is deductible under that paragraph.
- 9.2 Subject to paragraph 9.3, where an Exit Contribution is payable, the Authority shall forthwith (and in any event within 21 Business Days) upon agreement of the amount of Exit Contribution, and on the Provider delivering to the Authority a copy of the rates and adjustments certificate prepared by the Administering Authority pursuant to Regulation 38(2) of the Administration Regulations, reimburse the Provider or the Sub-Contractor an amount equal to the net cost (reflecting any tax benefits) of any Exit Contribution.
- 9.3 If there is any Dispute about the amount of any Exit Contribution, the Provider shall co-operate, and procure that the relevant Sub-Contractor co-operates, in good faith with the Authority, to procure that they reach agreement as to the Exit Contribution. If agreement cannot be reached as to Exit Contribution, the Exit Contribution, shall be referred to an independent actuary to be appointed by agreement of both the Provider and the Authority or, in default of agreement within 14 days of the first nomination of an actuary by one party to the other, by the President from time to time of the Institute and Faculty of Actuaries on the application of either the Authority or the Provider. The independent actuary shall act as expert and not as arbitrator; his decision shall, save in the event of manifest error, be final and binding on the parties and his costs shall be split equally between the parties or as he directs. Where any contributions to the Fund which are used in the calculation of the Exit Contribution, are determined by the Administering Authority's Actuary under the LGPS Regulations they shall be determined by the Administering Authority's Actuary pursuant to the LGPS Regulations.

## **SCHEDULE 2**

### **CHARGING**

**SCHEDULE 3**  
**APPROVED SUBCONTRACTORS**