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**LEICESTER CITY COUNCIL (1)**

**AS AUTHORITY**

**AND**

**[INSERT] (2)**

**AS PROVIDER**

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| **CONTRACT FOR THE PROVISION INTRAUTERINE DEVICES OR INTRAUTERINE SYSTEMS (IUS/D) AND THE PROVISION OF SUBDERMAL IMPLANTS (SDI)** |

**LEICESTER CITY COUNCIL**

**Legal Services**

**115 Charles Street**

**Leicester**

**LE1 1FZ**

SECTION A: THE FRAMEWORK

**A1 Contract Details and Signatures**

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| **CONTRACT FOR THE PROVISION INTRAUTERINE DEVICES OR INTRAUTERINE SYSTEMS (IUS/D) AND THE PROVISION OF SUBDERMAL IMPLANTS (SDI)** | |
| **BETWEEN** | |
| **LEICESTER CITY COUNCIL (the Council)**  City Hall, 115 Charles Street, Leicester, LE1 1FZ | |
| **AND** | |
| **Name of**  **Provider** | **(the Provider)** |
| **Provider’s Registered Business** |  |
| **Trading Address** | *If applicable* |
| **CQC Registration Number** | *If applicable* |
| **Company/Charity Number** | *If applicable* |
| **Commencement Date** | *Actual Date* |
| **Contract Period** | *To be quoted in number of months or total number of years* |
| **Expiry Date** | *Actual Date* |
| **Potential Extension Period** | *For consistency this is quoted as either up to a total number of months/ up to an actual date or up to total number of years up to an actual date* |

|  |  |  |
| --- | --- | --- |
| **Signed on behalf of the Council** | **Signatory 1** | **Signatory 2 (if required)** |
|  |  |
| **Name of Authorised Signatory** |  |  |
| **Duly authorised position** |  |  |
| **Date Signed** |  |  |
| **Signed on behalf of the Provider** | **Signatory 1** | **Signatory 2 / Witness** |
|  |  |
| **Name of duly authorised person or Witness** |  |  |
| **Duly authorised position** | *Director*  *Company Secretary*  *Witness* |  |
| **Witness Occupation**  **(if applicable)** |  |  |
| **Witness Address**  **(if applicable)** |  |  |
| **Date signed** |  |  |
| **Council’s authorised Representative** |  |  |
| **Address for service of Notices** |  |  |
| **Provider’s Authorised Representative** |  |  |
| **Address for service of Notices** |  |  |

SECTION A: THE PARTICULARS

**BACKGROUND**

(A) The Authority must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations. In order to satisfy these obligations, the Authority wishes to secure the provision of the Services and the Provider wishes to provide the Services.

(B) The Authority together with invited tenders for the Service and the Provider was awarded the tender based on the Provider’s Tender Response

(C) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.

(D) The Parties are aware that the Provider may have entered into a Consortium arrangement with Consortium Members to provide the Services.

**IT IS AGREED**

* 1. **CONTRACT**
     1. This Contract comprises:

1. these Particulars (Section A);
2. the General Terms and Conditions (the ***General Conditions***) (Section B); and
3. the Appendices to section B (the Appendices) (Section C)

as completed and agreed by the Parties and as varied from time to time in accordance with clause B23 (*Variation*) of the General Conditions to this Contract and shall include the Appendices.

* 1. **INTERPRETATION** 
     1. This Contract shall be interpreted in accordance with Appendix U (*Definitions and Interpretation*) unless the context requires otherwise.
     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:

1. Section A
2. The General Conditions at Section B
3. Section C the Appendices to Section B provided that to the extent that the Provider’s Tender Response (Appendix Q) exceeds the minimum requirements set out in the Service Specification (Appendix A), the Provider shall deliver the Service to the standard set out in the Provider’s Tender Response.
   1. **COMMENCEMENT AND DURATION**
      1. This Contract shall commence on [1 April 2019] subject to the Provider having satisfied the Conditions Precedent (the ***Commencement Date***).
      2. The Provider shall provide the Services from the [1 April 2019] (the ***Service Commencement Date***).
   2. **AUTHORISED REPRESENTATIVES**
      1. The person set out in Clause A1 (Council’s Authorised Representative) is authorised from the Commencement Date to act on behalf of the Council on all matters relating to this Contract. The person in Clause A1 (Provider’s Authorised Representative) is authorised during the Mobilisation Process and from the Commencement Date to act on behalf of the Provider on all matters relating to this Contract. The Provider may replace the Provider’s Authorised Representative and the Council may replace the Council’s Authorised Representative at any time by giving written notice to the other Party.
   3. **NOTICES**
      1. Any notices given under this Contract shall be in writing and shall be served by hand or first class post or by e-mail by sending the same to the address for the relevant Party set out in clause A5.3.
      2. Notices:
         1. by post and correctly addressed shall be effective upon the earlier of actual receipt, or 2 Business Days after mailing; or
         2. by hand shall be effective upon delivery; or
         3. by e-mail shall be effective upon the sender’s receipt of an acknowledgement from the intended recipient.
      3. For the purposes of clause A5.2, notices on each Party shall be deemed served if sent to each Party’s Representative at the address specified in Clause A4 above.

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

**A6. ENTIRE CONTRACT**

A6.1 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 to the extent that it relates to the same or similar services to the Services and is designed to remain effective until the Service Commencement Date.

**A7. COUNTERPARTS**

A7.1 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.

SECTION B: GENERAL TERMS AND CONDITIONS

**B1 SERVICES**

* + 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, in accordance with the provisions of this Contract and in accordance with the Law
    2. The Provider shall prior to commencing provision of the Services

(a) satisfy any Conditions Precedent set out in Appendix B (*Conditions Precedent*); and

(b) work with the Authority to ensure delivery of the Services with effect from the Service Commencement Date;

B1.3 The Provider shall implement any transition arrangements set out at Appendix P within the timescales set out in the said Appendix P.

**Conditions Precedent**

B1.4 This Contract is conditional upon the Provider prior to the Commencement Date successfully completing the Mobilisation Process and the Conditions Precedent set out in Appendix B (Conditions Precedent) to the satisfaction of the Authority. Once the Mobilisation Process and the Conditions Precedent have been completed by the Provider and the Authority has notified the Provider of such, this Contract is deemed to be effective and the provision of the Services can commence on the Commencement Date. If the Mobilisation Process and the Conditions Precedent are not completed by the Provider to the satisfaction of the Authority Clause B1.7 below shall apply.

B1.5 The Provider shall use all reasonable endeavours to procure that the Conditions Precedent are satisfied as soon as practicable and, in any event, no later than one (1) month prior to the Commencement Date.

B1.6 If at any time either party becomes aware of a fact or circumstance that might prevent a Conditions Precedent being satisfied, it shall immediately inform the other Party. A Condition Precedent may only be waived by the Authority’s Authorised Representative or their nominee in writing.

B1.7 If the Mobilisation Process and Conditions Precedent are not completed to the satisfaction of the Authority by 9.00am on the Commencement Date or where the Authority have stipulated an earlier date, on that date, this Contract shall cease to have effect immediately after that time on that date except for any terms that survive under Clause B34.8. In such circumstances, this Contract terminates without liability on either party, although without prejudice to claims for any antecedent breach.

* 1. **WITHHOLDING AND/OR DISCONTINUATION OF SERVICE** 
     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:
        1. who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
        2. who displays abusive, violent or threatening behaviour unacceptable to the Provider acting reasonably and taking into account the mental health of that Service User;
        3. 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;
        4. 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, or
        5. where no Valid Service User Consent has been given
     2. If the Provider proposes not to provide or to stop providing a Service to any Service User under clause B2.1:
        1. where reasonably possible, the Provider must explain to the Service User, or where appropriate and with the Service User’s consent their Legal Guardian, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 2 Business Days);
        2. the Provider must tell the Service User (or (where the Service User consents) their Legal Guardian or advocate) of the right to challenge the Provider’s decision through the Provider’s complaints procedure and how to do so;
        3. the Provider must inform the Authority in writing without delay and (1) wherever possible or (2) where necessary in the interests of the wider public 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 and provided that the withholding or discontinuing these specific Services to the Service User is seen as an action of last resort.

* 1. **SERVICE AND PERFORMANCE MEASURES**

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:

* + - 1. comply, where applicable, with the registration and regulatory compliance guidance of any Regulatory Body;
      2. respond, where applicable, to all requirements and enforcement actions issued from time to time by a Regulatory Body;
      3. consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
      4. comply with the recommendations issued from time to time by a Competent Body;
      5. comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
      6. respond to any reports and recommendations made by Local HealthWatch;
      7. comply with the Performance Measures set out within Appendix A (Service Specification);
      8. comply with the Contract Monitoring Framework (CMF) for the Service the guidance for which is set out in Appendix C (Quality Schedule)
      9. not undertake any treatment outside the scope of any referral from a General Practitioner where the Service User is subject to a formal referral from their General Practitioner
      10. comply with the quality standards for information provided to Service Users by the Provider and set out in Appendix J (*The Public Health Information Standard*)
      11. comply with and register with the Public Health England Health Charter information set out in Appendix V *(Public Health England Health Charter)*
  1. **SERVICE USER INVOLVEMENT**
     1. The Provider shall engage, liaise and communicate with Service Users and, subject to the Service User Consent Policy, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.
     2. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide evidence to the Authority of the involvement of Service Users, Carers and Staff in the development of Services.
     3. The Provider must carry out Service User surveys and Carer surveys and shall carry out any other surveys reasonably required by the Authority in relation to the Services
     4. The Provider must review and provide a written report to the Authority on the results of each survey carried out under clause B4.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Authority, the Provider must publish the outcomes and actions taken in relation to such surveys.
  2. **EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**
     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.
     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). In particular, comply with the Accessible Information Standard (AIS).
     3. The Provider shall comply with the Accessible Information Standard to address the inequality in control, choice and access to care that can arise for Service Users who have additional communication needs.
     4. In performing this Contract, the Provider must have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
        1. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
        2. 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
        3. 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.

* + 1. 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.
    2. The Provider must provide to the Authority as soon as reasonably practicable, any information that the Authority reasonably requires to:
       1. monitor the equity of access to the Services; and
       2. fulfil their obligations under the Law.
  1. **MANAGING ACTIVITY**

The Provider must manage Activity so as to provide the Services as set out in the Service Specification or as may be further agreed from time to time between the Parties and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services. Requirements for action planning in relation to the Charges are set out in Appendix K (*Details of Review Meetings*).

* 1. **STAFF**
     1. In addition to the Authority’s requirements in Appendix A (*Service Specification*) and the general provisions of the terms of this Contract in relation to Staff providing the Services the Provider shall at all times ensure that it has sufficient, suitably qualified and Staff experienced in a medical; clinical and non-clinical; management; supervisory and/or professional capacity as appropriate, to ensure that the Services are provided in all respects from the Commencement Date and at all times during the term and in accordance with the provisions of this Contract and in particular that:
        1. 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;
        2. there is an adequate number of Staff to provide the Services properly and be appropriately supervised in accordance with the provisions of the applicable Service Specification;
        3. where applicable, Staff are registered with and maintain registration with the appropriate professional regulatory body
        4. Staff are aware of and respect the equality and human rights of colleagues and Service Users and are aware of the requirements of the Equality Act 2010;
        5. carry appropriate ID; and
        6. are covered by the Provider's appropriate indemnity insurances
     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.
     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:
        1. proper and sufficient continuous professional and personal development, training and instruction; and
        2. 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.

* + 1. Where applicable under section 1(F)(1) of the NHS Act 2006, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England (or, where a Special Health Authority is discharging that duty by virtue of a direction under section 7, with the Special Health Authority or otherwise co-operate with the Secretary of State in the discharge of the duty under that subsection) to help them secure an effective system for the planning and delivery of education and training.
    2. The Provider must carry out Staff surveys in relation to the Services at intervals and in the manner set out in Appendix D (Service User, Carer and Staff Surveys) or as otherwise agreed in writing from time to time.
    3. The Provider shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the Provider) and shall establish and where necessary update from time to time a procedure for its personnel encouraging personnel to report to the Provider any incidents of malpractice within the Provider or Authority. In this context “malpractice” shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration
    4. Subject to clause B7.8, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
       1. the Employment Checks; and
       2. such other checks as required by the DBS.
    5. Subject to clause B7.9, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.
    6. Where clause B7.8 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
       1. the new member of Staff has been subject to an DBS Adult First check, which confirms that they are not barred; and
       2. an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
       3. 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
       4. 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
       5. any other reasonable requirement of the Authority.
    7. 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 any activity comprised in the Services
    8. The Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause B7 have been met. In addition, the Provider shall:

(a) on the engagement of any person who is or will be employed or engaged by the Provider in the provision of the Services notify the Authorised Person of this and supply a certificate that the checks required by this clause B7 have been made and that the result of each check is satisfactory; and

(b) thereafter the Provider warrants to the Authority that it will undertake the monitoring of DBS status of staff employed by it and engaged in the delivery of the Services so that it can be satisfied that it is complying with this clause B7 (c) and it will immediately notify the Authority of any change of status of the staff so engaged, removing from the Services any person who is barred or is unsuitable to work with children and/or vulnerable adults.

(c) not employ or use the services of any person who:

(i) is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Services users; or

(ii) is in the reasonable opinion of the Authorised Person unsuitable to work with children or vulnerable adults

and the Provider shall comply immediately with any instruction by the Authorised Person that such a person shall cease to be engaged in or associated with the delivery of the Services.

**Living Wage Foundation**

B7.12. The Provider shall meet the obligations for the Living Wage as set out below:

**Employees**

B7.13 From the date of this Contract the Provider shall for all employees aged 18 or over of the Provider (excluding apprentices or interns) based in UK who provide a service to or on behalf of the Provider involving 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year (‘Relevant Employees’):

1. pay all Relevant Employees not less than the Living Wage; and
2. increase the amount which it pays to affected employees by the same amount as any increase to the Living Wage, within 6 months of the date on which any increase in the Living Wage is officially announced by Living Wage Foundation; and
3. following each contract term notify all affected Relevant Employees of the date of the next increase within one month of the official announcement as announced by the Living Wage Foundation.

**Contractors or Sub-contractors**

B7.14 The Provider shall ensure that all of its contractors, Sub-contractors and third parties engaged in the provision of Services to the Council shall adopt the measures set out in clause K2.2 in relation to such individuals as if they were the Provider’s Relevant Employee’s in respect of that employee’s work for the Services.

**Monitoring and Records**

B7.15 Without prejudice to any other provision of this Contract the Provider shall:

(a) provide to the Council such information concerning the payment of the Living Wage to its employees or to the employees of its sub-contractors engaged in the provision of the Services as the Council may reasonably require from time to time; and

(b) co-operate and provide all reasonable assistance to the Council in monitoring the effect of the Living Wage on the quality of service provided under this Contract.

B7.16. The Provider shall undertake checks to ensure that any potential Staff who are likely to be in a position where they are providing the Service to a Service User has a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom. The Provider shall not employ or engage any Staff prior to receipt of a satisfactory check. Should the check disclose information about Staff which indicates that the person does not have a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom then that person shall not be so employed or engaged in any work in or about the Services.

B7.17. The terms and obligations contained within Appendix T (*TUPE*) form part of this Contract (including the definitions). The Provider agrees and shall procure that any subsequent Sub -Contractor shall agree that the provisions of Appendix T shall apply to any Relevant Transfer of staff under this Contract.

B7.18. Where the Authority has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Authority provide within 20 Business Days of that request (unless otherwise agreed in writing), provide the Authority with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.

B7.19. The Provider shall indemnify and keep indemnified the Authority and any Replacement Provider against any Losses incurred by the Authority and/or the Replacement Provider in connection with any claim or demand by any Relevant Employee under TUPE.

B7.20. Upon expiry or termination of this Contract (such date being termed the “Transfer Date”) for whatever reason the provisions of B7.21 and B7.22 shall have effect in respect of Transferring Employees regardless of whether legislation shall determine that TUPE applies:

B7.21. The Provider shall or shall procure that all wages, salaries and other benefits of the Transferring Employees and other employees or former employees of the Consultant (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Provider up to the Transfer Date are satisfied;

B7.22. Without prejudice to Clause B7.21, the Provider shall:

(a) remain responsible for all the Provider employees (other than the Transferring Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Authority or any new provider appointed to provide the Services against all Losses incurred by the Authority or new provider resulting from any claim whatsoever whether arising before on or after the Transfer Date by or on behalf of any of the Provider’s employees who do not constitute the Transferring Employees;

(b) in respect of those employees who constitute Transferring Employees the Provider shall indemnify the Authority or any new provider appointed by the Authority to provide the Services against all Direct Losses incurred by the Authority or new provider resulting from any claim whatsoever by or on behalf of any of the Transferring Employees in respect of the period on or before the Transfer Date (whether any such claim, attributable to the period up to and on the Transfer Date, arises before, on or after the Transfer Date) including but not limited to any failure by the Provider to comply with its or their obligations under Regulation 10 of TUPE and/or Article 6 of the Acquired Rights Directive as if such legislation applied, even if it does not in fact apply, save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or the new provider.

B7.23. The Authority shall be entitled to assign the benefit of the indemnity in clause B17.21 to any new provider appointed by the Authority to provide services equivalent to those provided by the Provider under this Contract

B7.24. The Provider agrees to provide the Authority with full and accurate employment information regarding the Transferring Employees and will not for a period of 12 months prior to termination or expiry of this Contract make any material changes in the numbers of Transferring Employees, their remuneration or other terms and conditions of employment.

B7.25. In respect of those employees (if any) of another provider and who were wholly or mainly engaged in the provision of the Services immediately before the commencement of the Services by the Provider (“Outgoing Transfer Date”) the Provider shall indemnify the Authority against all Direct Losses incurred by the Authority resulting from any claim whatsoever by these employees from the commencement of the Services (whether such claim attributable to the period before the Outgoing Transfer Date arises before on or after the Outgoing Transfer Date) arising out of or by virtue of any failure by the Provider to comply with its or their obligations under Regulation 10 of TUPE and or Article 6 of the Acquired Rights Directive save to the extent that such failure to comply arises out of an act or omission of the Authority.

* 1. **CHARGES AND PAYMENT**
     1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Authority shall pay the Provider the Charges in accordance with and as set out at Appendix E (*Charges*)
     2. The Provider shall submit to the authority invoices for payment of the Charges together with such supporting activity data as the Authority may reasonably require in accordance with and as set out in Appendix E (*Charges*).
     3. On receipt of such invoices and supporting activity data, the Authority shall pay the Provider the Charges, subject always to the provisions of clause B8.6 below.
     4. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
     5. In its performance of this Contract the Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).
     6. If the Authority, acting in good faith, contests all or any part of any invoice for payment calculated in accordance with this clause B8:
        1. it shall notify the Provider 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;
        2. notification pursuant to Clause B8.6 a) shall be given within 5 Business Days from the day on which both the contested invoice and its supporting activity data are received by the Authority;
        3. where a contested invoice includes elements which are uncontested, the Authority will pay the uncontested elements within 30 days of receipt of a revised invoice for the uncontested amount only.
     7. If a payment is contested under clause B8.6 and the parties have not resolved the matter informally within 20 Business Days of the date of notification under Clause B8.6, either Party may refer the matter to dispute resolution under clause B31 (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 this clause B8.
     8. 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.

**Financial Viability not used**

* 1. **SERVICE IMPROVEMENTS AND BEST VALUE DUTY** 
     1. The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.
     2. In addition to the Provider’s obligations under clause B9.1, 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.
     3. During the term of this Contract at the request of the Authority, the Provider must:
        1. 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;
        2. implement such improvements; and
        3. where practicable following implementation of such improvements decrease the price to be paid by the Authority for the Services.
     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 ADULTS AT RISK (adults who may be experiencing abuse/neglect)**

B10.1 The Provider must make the necessary arrangements to ensure compliance with the Safeguarding Vulnerable Groups Act 2006 (as amended) and all other Laws relevant to the duty to safeguard and promote the welfare of children and Adults at Risk (as defined under the Care Act 2014) in the delivery of all aspects of the Service.

B10.2 The Provider must comply with and abide by the Leicester, Leicestershire and Rutland (LLR) Safeguarding Adults Multi-Agency Policy and Procedure for protecting Adults at Risk from abuse and the LLR Children Boards Policy and Procedures for protecting children from abuse, the links for which are set out in Appendix F (Safeguarding). The Provider undertakes to check the LLR Safeguarding Multi-Agency Policy and Procedure website regularly and shall subscribe to updates from the website. Any subsequent changes following such updates shall be disseminated to all Staff.

B10.3 The Provider accepts an obligation to work to protect children and Adults at Risk from abuse in accordance with the LLR Safeguarding Adults Multi-Agency Policy and Procedure where appropriate, to do so in partnership with any other agencies supporting the Service User.

B10.4 In the event that a conflict arises between the Provider’s safeguarding policies and procedures and the LLR Safeguarding Multi-Agency Policy and Procedure, the Provider shall without delay, raise this issue with the Council’s Authorised Representative. If the conflict remains unresolved following discussions with the Council’s Authorised Representative, the Provider must follow the LLR Safeguarding Multi-Agency Policy and Procedure.

B10.5 The Provider must ensure that all Staff are aware of safeguarding issues and the steps they must take in response to any concerns, suspicions or allegations of harm from abuse or neglect made to them or any observations they make about the abuse of children and Adults at Risk.

B10.6 The Provider must ensure that all Staff undertake basic induction training with respect to awareness that abuse can take place and their duty to report concerns, suspicions or allegations of harm from abuse or neglect.

B10.7 The Provider must have in place comprehensive procedures for reporting of and managing allegations against Staff which demonstrates the promotion of the safety and welfare of children and Adults at Risk and which are compliant with statutory requirements and the LLR Safeguarding LLR Safeguarding Multi-Agency Policy and Procedure and LLR Children Boards Policy and Procedures for protecting children from abuse.

B10.8 The Provider must provide evidence of robust and effective complaints and whistle-blowing policies including a guarantee to Staff and Service Users that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.

B10.9 The Provider must co-operate with any audit undertaken by the Council (or its agent) into the extent to which its operational guidance continues to be appropriate for the protection of Adults at Risk, the training available to its Staff, and the conduct of any investigations undertaken by or involving the Provider.

B10.10 The Provider must ensure that it has appropriate procedures in place that support:

1. reporting immediately to the Council’s Contact and Response Team or allocated social worker concerns and details of any incidents and/or convictions in relation to Staff where any allegation of abuse is considered to pose an immediate risk and in all other cases the allegation should be reported within 48 hours; and
2. other action necessary to support the Council’s policies or Section 42 of the Care Act 2014 duties, including the possible mandatory participation in safeguarding meetings and protection/action plans.
3. Sharing of learning from investigations of adult abuse and promoting an open and supportive approach to learning from experience.

B10.11 Throughout a safeguarding investigation, the Provider will be required to fully co-operate with the safeguarding investigation processes in line with the LLR Safeguarding Adults Multi-Agency Policy and Procedure and the LLR Children Boards Policy and Procedures for protecting children from abuse.

B10.12 On completion of all safeguarding investigations, if it is subsequently determined under the LLR Safeguarding Adults Multi-Agency Policy and Procedure that the allegation of abuse was substantiated and that a member of Staff has committed any physical, sexual, psychological or financial abuse in respect of a Service User or Carer the Council may:

1. require the Provider to immediately cease to use the services of that member of Staff; and/or
2. suspend the Services; or
3. terminate this Contract and recover any losses resulting from the termination.

The Provider shall fully indemnify the Council against any claims made by or on behalf of the member of Staff in respect of termination of their employment following the action taken by the Council under Clause B10.12 (i).

B10.13 The Provider shall immediately refer to the Council’s lead officer for PiPoT (Person in a Position of Trust) any information about Staff or other individual in a position of trust who has behaved in a way which indicates that they may be unsuitable to be in a position of trust or who may pose a risk of harm due to their actions deriving from their personal life. The referral is made to the Council’s Contact and Response Team.

B10.14 The Provider shall immediately refer to the Council’s Local Authority Designated Officer (LADO) any information about any Staff or other individual in a position of trust who has behaved in a way which indicates that they may be unsuitable to be in a position of trust or who may pose a risk of harm to children due to their actions deriving from their personal life.

**B11. INCIDENTS REQUIRING REPORTING**

B11.1. If the Provider is required to be CQC registered it shall comply with the arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not required to be CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.

B11.2. If the Provider gives a notification to the CQC or any other Regulatory Body under clause B11.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within 5 Business Days or within the timescale set out in Appendix A (Service Specification).

B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix C (Quality Schedule) and Appendix S (Serious Incidents Protocol) as applicable.

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 and Appendix A (Service Specification).

**B12. CONSENT**

B12.1 The Provider must maintain and operate a Valid Service User Consent practice which complies with Good Clinical Practice and the Law.

**B13. SERVICE USER HEALTH RECORDS**

B13.1 The Provider must at its own cost, create, maintain, keep up to date, store and retain Service User health records for all Service Users, in an organised system. The Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.

B13.2 The Provider must:

* + - 1. use Service User health records solely for the execution of the Provider’s obligations under this Contract; and
      2. 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.

**B14 INFORMATION**

B14.1 The Provider must provide the Authority the information specified in Appendix A *(Service 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 Appendix A and must ensure that the information is accurate and complete.

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

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

**B15 EQUIPMENT**

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

**B16 ENVIRONMENT**

B16.1 Whilst on the Authority's premises the Provider shall ensure that its employees comply with the Authority’s general statement of safety policy and with the lawful requirements of the Authority’s safety officer

B16.2 For as long as this Contract is in force the Provider must have in place a health and safety policy which complies with all statutory requirements. A copy of this must be supplied to the Authority on demand at the cost of the Provider.

B16.3. The Provider must ensure that they have, at all times, a suitably qualified person designated to be responsible for matters of Health and Safety.

B16.4 Any premises from which the Provider delivers the Services to Service Users shall be fit for purpose, clean, safe, adequate and functional and accessible (making reasonable adjustments where required) taking into account the needs of Service Users. Adequate provision shall be made to ensure the maintenance of privacy**.**

**B17 TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS**

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

**B18 COMPLAINTS**

B18.1 The Provider must inform the Authority of any complaints it receives in respect of the provision of the Services.

B18.2 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 B29 (*Defaults and Failure to Supply*).

**B19 SERVICE REVIEW**

B19.1 The Provider must deliver to the Authority a service quality performance report against the factors set out in Appendix A (Service Specification).

B19.2 The Provider must submit each service quality performance report in the form and manner and at the frequency specified in Appendix A (Service Specification).

**B20. REVIEW MEETINGS**

B20.1 The Parties must review and discuss service quality performance reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix K (*Details of Review Meetings*).

B20.2 Notwithstanding clause B20.1, if either the Authority or the Provider reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Business Days following that notice.

**B21. CO-OPERATION**

B21.1 The Parties must at all times act in good faith towards each other.

B21.2 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.

**B22. WARRANTIES AND REPRESENTATIONS**

B22.1 The Provider warrants and represents that:

* + - 1. 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;
      2. 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;
      3. in entering this Contract it has not committed any Fraud;
      4. 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;
      5. 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;
      6. it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract;
      7. in the 3 years prior to the Commencement Date:
         1. 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;
         2. It has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
         3. It has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract; and

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

B22.2 The Authority warrants and represents that:

* + - 1. 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;
      2. 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;
      3. it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract; and
      4. 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.

B22.3 The warranties set out in this clause B22 are given on the Commencement Date and repeated on every day during the term of this Contract.

**B23 VARIATION**

B23.1 This Contract may not be amended or varied other than in accordance with this clause B23.

B23.2 Either Party may from time to time during the term of this Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

B23.3 If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract.

B23.4 No Variation to this Contract will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or his nominee) in accordance with clause A5 (*Notices*). All agreed Variations shall form an addendum to this Contract and shall be recorded in Appendix L (*Agreed Variations*).

**B24 ASSIGNMENT AND SUB-CONTRACTING AND CONSORTIUMS**

B24.1 The Provider must not:-

(a) assign, delegate, transfer, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the prior written consent of the Authority:

(b) sub- contract any of its rights or obligations under this Contract without the Authority in writing

(i) consenting to the appointment of the Sub-contractor (such consent not to be unreasonably withheld or delayed); and

(ii) approving the Sub-contract arrangements (such approval not to be unreasonably withheld or delayed).

B24.2 The Authority’s consent to sub-contracting under clause B24.1 (b) (ii) 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.

B24.3 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.

B24.4 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.

**Consortium**

B24.5 If a Consortium is to be established for delivery of the Services the Consortium shall be regulated and bound by a Consortium agreement between its respective members which will ensure the timely and proper delivery and monitoring of the Services by the Consortium and a copy of the said Consortium agreement shall be agreed with the Authority and shall be annexed to this Contract prior to the Commencement Date.

B24.6 If a Consortium is established for delivery of the Services any such proposed Consortium agreement must show an obligation is placed on the lead member to pay other the consortium members in accordance with Regulation 113 (6) of the Public Contracts Regulations 2015.

B24.7 If a Consortium is established for delivery of the Services the Consortium shall appoint one (1) of its members as a lead member who will act in a representative capacity of the Consortium in dealings with the Authority and the lead member shall monitor the delivery of the Contract Services being provided by the Consortium members.

B24.8 If a Consortium is established for delivery of the Services the lead member of the Consortium shall collate returns requested by the Authority’s Authorised Representative for contract monitoring requirements and shall inform the Authority’s Authorised Representative of any Consortium member(s) failing to achieve the expected standards under the Contract and the steps which are to be undertaken by the Consortium to resolve matters.

B24.9 If a Consortium is established for delivery of the Services the Authority will be obliged to only make payments to the lead body detailed in the Consortium agreement and not to individual Consortium members.

B24.10 If a Consortium is established for delivery of the Services each member of the Consortium shall be jointly and severally responsible for the delivery of the Services and jointly and severally liable in the event of any Default.

B24.11 Having been advised of the lead member in accordance with Clause B24.7 the Authority will be entitled to refuse to discuss questions in relation to delivery of the Services with individual Consortium members.

B24.12 Any variation to said Consortium agreement shall be put in writing to the Authority with at least one (1) month notification and the Consortium shall obtain the Authority’s written consent, (which the Authority shall not unreasonably withhold). The Consortium shall (if applicable) meet the Authority’s legal costs in facilitating any such request.

B24.13 Failure by the Provider to comply with its obligations under this Clause may be regarded as a fundamental breach of this Contract.

**B25 AUDIT AND INSPECTION AND OPEN BOOK ACCOUNTING**

B25.1 The Provider must comply with all reasonable written requests made by: a Regulatory Body including but not limited to, CQC, the National Audit Office and OFSTED; any Authorised Person and/or inspections, visits by Authority staff for quality purposes and in relation to any requirements under Appendix A; the external auditor of the Authority 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.

B25.2 Subject to Law and notwithstanding clause B25.1, an Authorised Person or the external auditor of the Authority 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.

B25.3 Within ten (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.

B25.4 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 or the privacy or dignity of a Service User.

B25.5 During any audit undertaken under clause B25.1 or B25.2, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:

1. all reasonable information requested within the scope of the audit;
2. reasonable access to the Provider’s Premises and/or the premises of any Sub-contractor; and
3. access to the Staff and Staff records in accordance with data protection obligations.

**Open Book Accounting**

B25.6 The Provider shall at all times:

1. maintain a full record of particulars of the costs of performing the Service
2. upon request by the Authority, provide a written summary of any of the Charges, including details of any funds held by the Provider specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Provider of its obligations under this Contract; and
3. provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause.

B25.7 Compliance with clause B25.6 shall require the Provider to keep books of account together with supporting materials in accordance with best accountancy practice with respect to this Contract showing in detail:

(a) administrative overheads;

(b) capital and revenue expenditure; and

(c) such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for this Contract.

B25.8 The Provider shall have the books of account evidencing the items listed in Clause B25.7 available for inspection by the Authority (and its advisers) upon reasonable notice and shall present a written report of these to the Authority on reasonable notice as and when requested from time to time.

**B26 INDEMNITIES**

B26.1 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, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or applicable law by the Authority.

**B27 LIMITATION OF LIABILITY**

B27.1 Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract save where any liability arises under or by virtue of an express indemnity set out in this contract.

B27.2 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.

B27.3 Nothing in this Contract will exclude or limit the liability of either Party for:

1. death or personal injury caused by its negligence; or
2. fraud or fraudulent misrepresentation.
3. conditions implied by section 2 of the Supply of Goods and Services Act 1982
4. fraudulent misrepresentation
5. defective products
6. breach of intellectual property rights
7. breach of statutory duty

**B28 INSURANCE**

B28.1 The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances and any other insurances required by Law. The cover shall contain an indemnity to principals clause and shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

B28.2 The Provider must give the Authority, on request, a copy of or a broker's summary of cover of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.

B28.3 The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider’s liabilities under this Contract.

B28.4 The Provider shall maintain in force (or procure that its Sub-contractors shall maintain in force) at their own cost appropriate indemnity arrangements including but not limited to:

28.4.1 employers’ liability insurance

28.4.2 public liability insurance

28.4.3 not used

28.4.4 professional indemnity insurance

“the Required Arrangements”

B28.5 The minimum cover required under the Required Arrangements shall be in accordance with the following table:

|  |  |
| --- | --- |
| Type of insurance | Minimum Cover |
| 28.4.1 Employers Liability | Five million pounds (£5,000, 000) in value in respect of any single claim or series of claims made in respect of any incident |
| 28.4.2 Public Liability (Third Party) | Five million pounds £5,000,000) in value in respect of any single claim or series of claims made in respect of any incident |
| 28.4.3 Professional Indemnity | Two million pounds (£2,000, 000) in value in respect of any single claim or series of claims made in respect of any incident |
| 28.4.4 Medical Malpractice | Two million pounds (£2,000, 000) in value in respect of any single claim or series of claims made in respect of any incident |

B28.6 For the purpose of this clause B28, an indemnity arrangement, any compromise or either is:

28.6.1 a policy of insurance;

28.6.2 an arrangement made for the purposes of indemnifying a person or organisation; or

28.6.3 a combination of a policy of insurance and an arrangement made for the purposes of indemnifying a person or organisation

B28.7 The Provider shall, from time to time and in any event within five (5) Business Days of a written demand, provide documentary evidence to the Authority that any indemnity arrangements taken out by the Provider pursuant to this clause B28 (Insurance and Indemnity) are fully maintained and that any premiums on them and/or contributions in respect of them if any are fully paid.

B28.8 For avoidance of doubt:

28.8.1 such indemnity arrangement shall be maintained in the name of the Provider (and/or sub-contractor as appropriate)

28.8.2 such indemnity arrangement shall be obtained from a reputable indemnifier, who has not been identified by the Authority as being unacceptable to the Provider;

28.8.3 the Provider shall be liable to make good any deficiency in the event that the proceeds of any indemnity arrangement are insufficient to cover the settlement or any claim; and the

28.8.4 the Provider warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit ort allow others to take or fail to take any action, as a result of which the indemnity arrangement may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part or which may otherwise render any sum paid out under such indemnity arrangement repayable in whole or part.

B28.9 Upon expiry or termination of this Contract the Provider shall (and shall use its reasonable endeavours to procure that each of its Material Sub-Contractors shall) procure that any ongoing liability it has or may have in negligence to any user arising out of any care and treatment under this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of 21 years from the termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist

B28.10 In connection with the Services, unless the Authority and the Provider otherwise agree in writing, the Provider shall not require, and shall ensure that no other person shall require any Service User to sign any document whatsoever containing any waiver of the Provider’s liability (other than a waiver in reasonable terms relating to personal property) to that Service User, except for where such a document is required pursuant to medical research procedures approved by the local research ethics committee and the Service User has given consent in accordance with the Service User Consent Policy.

B28.11 This clause B28 (Insurance) shall survive in all respects the expiry of this Contract or its termination for any reason.

B28.12 Nothing in this Contract shall exclude or limit the liability of either party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation

B28.13 Each party shall at all times take reasonable steps to minimise and mitigate any loss for which one party is entitled to bring as claim against the other pursuant to this Contract.

B28.14 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

B28.15 The insurances referred to in clause B28.1 shall contain a clause waiving the insurers’ subrogation rights against the Authority and its employees and agents.

B28.16 The Provider shall give the Authority notification within ten (10) Business Days after any claim in excess of £10,000 (indexed) on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) give full details of the incident giving rise to the claim.

B28.17 The Provider shall give the Authority notification as soon as possible of any cancellation, non-renewal or any adverse material change to any of the Required Insurances.

**B29 DEFAULTS AND FAILURE TO SUPPLY**

B29.1 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 B30 (*Contract Management*), consult with the Provider and then do any of the following:

1. 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;
2. without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B32 (*Suspension and Consequences of Suspension*);
3. without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause B33 (*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.

B29.2 If the Authority exercises any of its rights under clause B29.1, 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.

**B30 CONTRACT MANAGEMENT**

B30.1 If the provider

(a) fails to meet a requirement of the Contract Monitoring Framework;

(b) fails to meet a Performance Measure as set out in Appendix A;

(b) fails to perform the Services fully in accordance with the Specification, or;

(c) is in breach of any provision of this Contract (which is not a fundamental breach and is in the reasonable opinion of the Authority capable of remedy)

then the Authority may, irrespective of any other rights the Authority may have under this clause B30, issue a Notice to Remedy Breach (‘NTRB’) to the Provider.

B30.2 The provisions of this clause B30 do not affect any other rights and obligations the Parties may have under this Contract.

**Notice to Remedy Breach**

B30.3 A Notice to Remedy a Breach (NTRB) is a notice to the Provider in writing specifying the failure or breach (as the case may be) and specifying the steps and the time period required to remedy the breach. The Provider shall at its own cost and expense remedy such failure and/or breach and any damage resulting from such failure and/or breach.

B30.4 Failure to remedy the breach(s) specified in the NTRB entitles the Authority at its sole discretion to one or all of the following:

* + - 1. issue or agree with the Provider an Action Plan in accordance with Clause B30.6;
      2. suspend all or part of the Services in accordance with Clause B32;
      3. consider this failure a fundamental Breach

B30.5 Should the Authority serve an NTRB then it shall be entitled to recover from the Provider all costs incurred in drawing up and serving the NTRB which may include but is not restricted to:

* + - 1. the production of all written correspondence in connection with the NTRB;
      2. the cost of the Authority’s Staff resources used to monitor the NTRB;
      3. the cost of the Authority’s Staff resources used to conduct elements of the Provider’s service;
      4. the production of reports by the Authority’s Staff in relation to the NTRB; and
      5. any other action deemed necessary by the Authority to safeguard the interests of all Service Users.

**Action Plan**

B30.6 If an Action Plan is to be implemented it may set out the following:

a) milestones for performance to be remedied;

b) the date by which each milestone must be completed;

c) subject to the maximum sums identified in Clause B30.10, the consequences for failing to meet each milestone by the specified date.

B30.7 The Provider must implement and meet the milestones within the timescales set out in the Action Plan. The Provider shall co-operate with the Authority to address the concerns raised within the Action Plan to ensure the satisfactory resumption of the Services within the stipulated timescales.

B30.8 The Authority and the Provider must record progress made or developments under the Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis.

B30.9 If following implementation of the Action Plan, the agreed actions have been completed and the agreed improvements achieved and maintained then the Authority will confirm in writing that the Action Plan has been completed and the NTRB related to this Action Plan has been complied with by the Provider.

**Withholding Payment for failure to comply with Action Plan**

B30.10 If the Provider fails to comply with and/or breaches an Action Plan:

a) the Authority may, upon giving at least ten (10) Business Days, notice in writing and the reasons for it, withhold in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority under Clause D1 (Contract Price), from the date of the notice pursuant to this Clause and for each month the Provider’s breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority under Clause B8 (Charges and Payment)in relation to each item in the Action Plan;

b) the Authority will pay the Provider any sums withheld under Clause I41. a) within ten (10) Business Days if the Authority is satisfied and confirms that the breach of the Action Plan has been rectified and/ or the required improvement has been achieved and maintained. Subject to B30.13 no interest will be payable on any sums withheld.

**Retention of Sums Withheld**

B30.11 Where non-compliance of the Action Plan persists beyond the timeframe stipulated in the Action Plan then the Authority, without prejudice to any other rights and remedies, may permanently retain the sums withheld in accordance with Clause B30.10

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

B30.12 If the Provider fails to remedy a breach which results in termination of the Contract or the Contract expires prior to the breach being remedied, the Authority may:

* + - * 1. within three (3) months following the expiry of the stipulated time period set out in the Action Plan; or

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

whichever is the earlier, retain permanently any sums withheld.

**Unjustified Withholding or Retention of Payment**

B30.13 If the Authority withholds sums under B30.10 or retains sums under B30.11 or B30.12 and within twenty (20) Business Days of the date of that withholding or retention the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld or retained unjustifiably, the Authority must pay those sums to the Provider within ten (10) Business Days following the date of the Authority’s acceptance of that evidence. If the Authority does not accept the Provider’s evidence the Provider may refer the matter to Dispute Resolution as set out in Clause B31.

B30.14The provisions of this Clause do not affect any other rights and obligations the Parties may have under this Contract.

**B31 DISPUTE RESOLUTION**

B31.1 If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix M (*Dispute Resolution*), unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.

**B32 SUSPENSION AND CONSEQUENCES OF SUSPENSION**

B32.1 A suspension event shall have occurred if the Authority reasonably considers that a breach by the Provider of any obligation under this Contract:

* + - * 1. may create an immediate and serious threat to the health or safety of any Service User; or
        2. may expose Service Users to risk that is not acceptable to the Council;
        3. may result in a material interruption in the provision of any one or more of the Services; or
        4. clause B32.1 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
        5. 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***).

B32.2 Where a Suspension Event occurs the Authority:

1. 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
2. must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

B32.3 During the suspension of any Service under clause B32.2, 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 B32.2 has been referred to dispute resolution under clause B31 (*Dispute Resolution*).

B32.4 During the suspension of any Service under clause B32.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

1. 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 B32.2; and/or.
2. all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B32.5.

B32.5 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.

B32.6 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).

B32.7 Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:

1. 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
2. at the cost of the Provider:
   * + - 1. promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative successor provider; and
         2. 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.

B32.8 As part of its compliance with clause B32.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative successor provider.

B32.9 If it is determined, pursuant to clause B31 (*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.

B32.10 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.

**B33. TERMINATION**

B33.1 The Authority may voluntarily terminate this Contract or any Service by giving the Provider not less than 3 months' written notice at any time after the Service Commencement Date.

B33.1A The Provider may at any time with the written consent of the Authority terminate this Contract at any time on giving not less than six (6) months’ written notice giving reasons for the termination. The consent of the Authority to such a termination will not be unreasonably withheld.

B33.2 The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:

1. the Authority serving three (3) or more NTRBs (whether rectified or not) in a rolling twelve (12) month period, or
2. the Provider has repeatedly breached any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract.
3. the Provider is in fundamental breach of its obligations under this Contract or is in breach of its obligations under this agreement Contract which is incapable of remedy;
4. the Provider:
   * + - 1. fails to obtain any Consent;
         2. loses any Consent; or
         3. 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;

1. the Provider has breached the terms of clause B40 (*Prohibited Acts*);
2. any of the Provider’s necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
3. the Provider materially breaches its obligations in clause B38 (*Data Protection*);
4. the Provider breaches the terms of clause B24 (*Assignment and Sub-contracting*);
5. 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;
6. the Provider ceases or threatens to cease to carry on business in the United Kingdom; or, being a company, is struck off the Register of Companies;
7. 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 forty (40) Business Days following receipt of notice from the Authority identifying the breach, or
8. The Provider is subject any other the criteria set out in regulation 23 of the Public Contracts Regulations (criteria for the rejection of economic operators)

B33.3 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.

B33.4 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 B33.4 if the Authority has failed to remedy such breach within 40 Business Days of receipt of notice from the Provider to do so.

**B34. CONSEQUENCE OF EXPIRY OR TERMINATION**

B34.1 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.

B34.2 At least 3 months prior to the expiry or termination of this Contract or termination of any Service for any reason the Provider, and any successor provider, will ensure that a Succession Plan is agreed which is satisfactory to the Authority. The Succession Plan will, once agreed between the Provider and the Authority be deemed incorporated in this Contract as Appendix N and the Provider will use its best endeavours to comply with the provisions of the Succession Plan.

B34.3 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.

B34.4 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.

B34.5 Upon ceasing to provide the Services hereunder, the Provider shall return to the Authority, all Confidential information provided to the Provider by the Authority and the Provider will ensure that all programs, data and other materials held or stored on the Provider’ computer systems are removed from such equipment or are transferred to similar equipment owned by the Authority or to a Replacement Provider.

B34.6 If the Services comprise records management then the Provider shall hand over all records to the Authority on termination and, notwithstanding any provision to the contrary in this Contract, these records shall not be deleted by the Provider save for any copy or copies held by the Provider following such hand over.

B34.7 If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B33.1 or B33.3 (*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.

B34.8 The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B24 (*Assignment and Sub-contracting*), B25 (*Audit and Inspection*), B34 (*Consequence of Expiry or Termination*), B37 (*Confidentiality*) and B39 (*Freedom of Information and Transparency*), B42 (Intellectual Property Rights), Appendix T TUPE, Appendix N Succession Plan will survive termination or expiry of this Contract.

**B35. BUSINESS CONTINUITY**

B35.1 The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.

B35.2 The Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify the Authority as soon as reasonably practicable of its activation and in any event no later than 5 Business Days from the date of such activation.

**B36. COUNTER-FRAUD AND SECURITY MANAGEMENT**

B36.1 The Provider must put in place and maintain appropriate counter fraud and security management arrangements.

B36.2 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.

B36.3 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.

B36.4 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.

**B37. CONFIDENTIALITY**

B37.1 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.

B37.2 Subject to Clauses B37.3 and B37.4, the Receiving Party agrees:

1. to use the Disclosing Party’s Confidential Information only in connection with the Receiving Party’s performance under this Contract;
2. 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
3. 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.

B37.3 The Receiving Party may disclose the Disclosing Party’s Confidential Information:

1. in connection with any dispute resolution under clause B31 (*Dispute Resolution*);
2. in connection with any litigation between the Parties;
3. to comply with the Law;
4. 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 B37.2;
5. to comply with a regulatory bodies request.

B37.4 The obligations in clause B37.1 and clause B37.2 will not apply to any Confidential Information which:

1. is in or comes into the public domain other than by breach of this Contract;
2. the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
3. 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.

B37.5 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 B37.

B37.6 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B37 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 B37.

B37.7 This clause B37 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

B37.8 The obligations in clause B37.1 and clause B37.2 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.

**B38. DATA PROTECTION**

B38.1 The Provider acknowledges that it is a Data Controller in respect of any Personal Data processed by it and agrees to comply with its obligations under Data Protection Legislation accordingly.

B38.2 Both Parties shall exchange Personal Data where it is necessary to do so for the purpose of fulfilling their respective obligations under this Contract. The Parties will where possible in order to facilitate the exchange of information anonymise or aggregate such information to the degree that it does not identify any individual. The Parties may agree additional terms or conditions upon which such data is to be shared. Any such data sharing or processing agreements agreed between the Parties are to be inserted at Appendix R (Processing, Personal Data and Data Subjects)

B38.3 The Provider shall and shall procure that any of its Staff and agents involved in the provision of the Contract and any sub-contractor shall comply with their obligations under Data Protection Legislation and shall enter into appropriate arrangements with third parties.

B38.4 Upon the termination or expiry of the Contract the Provider shall ensure that all Personal Data held by it shall be up-to-date and accurate. Where it is necessary in order for the efficient transition of services to the Authority or a new provider or to a third party to be achieved then the Provider being the transferring Party shall, having first satisfied itself that such transfer is compliant with all laws, transfer current and required Personal Data to the Authority or new provider or to the third party in a secure manner and shall take all reasonable steps, at its own cost, to provide the Personal Data in a usable and compatible format.

B38.5 Historical personal data shall be retained by the Provider in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be securely deleted in accordance with Data Protection Legislation and Good Clinical Practice.

B38.6 For the avoidance of doubt, it is stated here that neither Party is a Data Processor on behalf of the other Party in furtherance of their obligations under this Contract. In the event it is established at any time during this Contract that Personal Data is to be processed by the Provider under this Contract on behalf of the Authority then the Provider shall:

1. immediately enter into a Data Processing Agreement with the Authority on reasonable terms to be determined by the Authority to ensure full compliance with Data Protection Legislation; and
2. (ii) indemnify and keep the Authority indemnified in full for any and all consequences (including a Personal Data breach) arising as a result of the Provider’s failure to comply with any of its obligations under this clause B38.6

B38.7 Failure by the Provider to enter into a Data Processing Agreement in accordance with clause B38.6 (i) shall be deemed a fundamental breach which shall entitle the Authority to immediately terminate the Contract without consequence or any liability under this Contract.

B38.8 Any clause in this Contract limiting the Provider liability in respect of any obligations, claims, losses, damages, liabilities, fines, penalties, interest or otherwise under the Data Protection Legislation and/or this clause B38.8 shall not apply

B38.9 Each Party (the indemnifying Party) agrees to fully indemnify and keep indemnified and defend at its own expense the other Party against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable due to any failure by the indemnifying Party or its staff, employees or agents or sub-contractors to comply with their obligations under this Clause B38.9.

B38.10 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

**B39. FREEDOM OF INFORMATION AND TRANSPARENCY**

B39.1 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.

B39.2 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:

1. 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;
2. 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;
3. 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;
4. 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
5. 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.

B39.3 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.

B39.4 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.

B39.5 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.

B39.6 The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.

B39.7 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.

**B40. PROHIBITED ACTS**

B40.1 Neither Party shall do any of the following:

1. 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;
2. 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**”).

B40.2 If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:

1. to exercise its right to terminate under clause B33.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
2. to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
3. 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.

B40.3 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.

B40.4 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.

B40.5 Should the Provider become aware of or suspect any breach of this clause B40, 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.

**B41. FORCE MAJEURE**

B41.1 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.

B41.2 Subject to clause B41.1, 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.

B41.3 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.

B41.4 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.

B41.5 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.

**B42. INTELLECTUAL PROPERTY RIGHTS**

B42.1. The Provider in providing the Services shall not infringe the copyright design right patent or any other intellectual property right of any third party and indemnifies the Authority against any claim made against it arising from any infringement of any intellectual property right belonging to any third party.

B42.2. The copyright and any other intellectual property right in

(a) Material made available to the Provider by the Authority so that the Provider can perform this Contract, and

(b) Any material prepared by or for the Provider for use or intended for use in the performance of this Contract,

shall belong to the Authority. The Authority grants the Provider a perpetual non-exclusive licence to copy and use such materials for the purpose of the performance of the Services only. It is the condition of this licence that the material shall be kept safe by the Provider and its employees consultants agents or sub-contractors.

**B43. THIRD PARTY RIGHTS**

B43.1. 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 Save for the provisions made within Appendix T.

**B44. CAPACITY**

B44.1. 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.

B44.2. Neither the Provider nor its employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Authority.

B44.3. Neither the Provider nor its employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Authority or in any other way to bind the Authority to the performance variation release or discharge of any obligation

B44.4. Neither the Provider nor its employees shall in any circumstances hold itself or themselves out as having the power to make vary discharge or waive any by-law or regulation of any kind. During the Term the Provider shall be an independent provider and not the servant of the Authority

B44.5. In such capacity the Provider shall bear exclusive responsibility for the payment of all wages national contributions and all taxes for its employees

**B45. SEVERABILITY**

B45.1. 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.

**B46. WAIVER**

B46.1. 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.

**B47. PUBLICITY**

B47.1. Without prejudice to clause B39 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.

B47.2. The Provider must take all reasonable steps to ensure the observance of the provisions of clause B47.1 by all its staff, servants, agents, consultants and sub-contractors. Further, The Provider shall acknowledge the support of the Authority in any materials that refer to the Services and in any written or spoken public presentations about the Services. Such acknowledgements (where appropriate or as requested by the Authority) shall include the Authority's name and logo (or any future name or logo adopted by the Authority) using the templates provided by the Authority from time to time. In using the Authority's name and logo, the Provider shall comply with all reasonable branding guidelines issued by the Authority from time to time.

**B48. EXCLUSION OF PARTNERSHIP**

B48.1. 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.

**B49. GOVERNING LAW AND JURISDICTION**

B49.1. 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.

B49.2 Subject to the provisions of clause B31 (*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.

**B50. COUNTER-TERRORISM AND SECURITY ACT 2015**

B50.1 The Provider acknowledges that the Authority has a duty under the Counter-Terrorism and Security Act 2015 (“CTSA”) to have due regard to the requirement to prevent people from being drawn into terrorism. The Provider shall facilitate the Authority’s compliance with its duty pursuant to the CTSA and the Provider shall have regard to the statutory guidance issued under section 29 of the CTSA and in particular the Provider shall ensure that staff:-

1. understand what radicalisation means and why people may be vulnerable to being drawn into terrorism;
2. are aware of extremism and the relationship between extremism and terrorism;
3. know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extreme ideology that can be associated with it; and
4. obtain support for people who may be exploited by radicalising influences

Where the Provider identifies or suspects that someone may be engaged in illegal terror related activity, the Provider must refer such person or activity to the police. The Provider shall observe the Prevent Duty guidance: <https://www.gov.uk/government/publications/prevent-duty-guidance><https://www.gov.uk/government/organisations/national-counter-terrorism-security-office>

**B51. MENTAL CAPACITY ACT AND DEPRIVATION OF LIBERTY SAFEGUARDS**

B51.1 The Provider shall, and shall ensure that its Staff shall, comply with the provisions of the Mental Capacity Act 2005 and the guidance contained within the Mental Capacity Act 2005 Code of Practice as amended.

B51.2 The Provider shall at no point deprive a Service User of his/her liberty without having the necessary authorisation in place. The Provider shall ensure that its Staff shall comply with the provisions relating to Deprivation of Liberty Safeguard including, but without limitation s4A, Schedule A1, the Deprivation of Liberty Safeguards Code of Practice and any subsequent Code issued to accompany the Mental Capacity Act 2005 from time to time.

B51.3 The Provider shall in its role as Managing Authority make application(s) for Standard Authorisation to the Supervisory Body for the Administrative Area. The terms Managing Authority, Supervisory Body and Standard Authorisation within this Clause are as defined in the Mental Capacity Act 2005 and the Codes of Practices related to it.

**SECTION C: THE APPENDICES**

**APPENDIX A: SERVICE SPECIFICATION**

**To be inserted**

**APPENDIX B: CONDITIONS PRECEDENT**

1. The Provider must have in place an implementation plan and have systems in place for the submission of fortnightly updates.
2. If the Provider is part of a Consortium and is the lead Consortium Member it must have in place a Consortium Agreement approved by the Authority and signed by all Consortium Members prior to the Commencement Date.
3. The Provider must ensure that payment and monitoring systems are in place and operational at the Commencement Date.
4. The Provider must provide evidence that all staff who will be employed to deliver the Services prior to the Commencement Date are suitably qualified and experienced, adequately trained and capable of providing the Services.
5. The Provider shall provide evidence that in respect of any employees who are eligible to transfer under TUPE to the Provider on the Commencement Date it has prior to the Commencement Date complied with all its obligations in relation to pension arrangements set out in this Contract or required by Law.
6. The Provider shall provide evidence that where applicable staff are registered with the appropriate professional regulatory body at the Commencement Date
7. The Provider must provide DBS certificates where applicable for staff engaged in the service at the Commencement Date
8. The Provider must notify the Authority of the identity and contact details of their Caldicott Guardian at the Commencement Date.
9. The Provider must appoint and designate a suitable Data Protection Officer (‘DPO’) in accordance with the GDPR and comply with the requirements thereunder.
10. The Provider must prior to the Commencement Date provide evidence that it has procedures and systems in place for the safe recording and storage of service user information and for the recording and submission of accurate performance returns.
11. The Provider must provide the Authority with copies of the Required Insurances together with receipts or other evidence of payment of premiums prior to the Commencement Date.
12. The Provider must have in place a Business Continuity Plan at the Commencement Date.
13. The Provider shall demonstrate prior to the Commencement Date to the satisfaction of the Authority that it is able to deliver the Services from the premises it is required to maintain under the Specifications in accordance with the provisions of this Contract and all relevant regulations.
14. The Provider must provide evidence that is has all required policies and procedures in place at the Commencement Date. This includes the following polices but this is not exhaustive list;
    1. Serious Incident Policy
    2. Risk Management Policy
    3. Complaints Policy
    4. Safeguarding Policies
    5. Gifting policy
    6. Anti-bribery policy
    7. Service users Involvement policy
    8. Equality and Diversity and Human Rights policy
    9. Health and Safety,
    10. Whistleblowing,
    11. Quality Assurance
    12. Dignity and respect policy

**APPENDIX C: QUALITY SCHEDULE**

Set out in in Appendix A of the Specification.

Contract Monitoring Framework Guidance

****

**APPENDIX D SERVICE USER CARER AND STAFF SURVEYS**

To be inserted here

**APPENDIX E CHARGES**

1. The Authority shall pay the maximum sum for each element of the Service as per the table below:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Fitting | Incentive payments \* | Device Cost |
| IUS/IUD | Fitting £81.31  Removal | £8.00 per fit | Paid to CCG |
| Subdermal Implant | Fitting £45  Removal £45 | £5.00 per fit | LCC will reimburse £83.43 |
| Where a IUS/D is removed and a new one fitted | £90.00 | Not subject to an incentive payment | Paid to CCG |
| Where an SdI is removed and a new one fitted | £90.0 | Not subject to an incentive payment | LCC will reimburse £83.43 |

1. Devices:   
   1. IUS/IUD – These will be provided by prescription and the Authority will reimburse the CCG for these devices. Practices do not have to do anything regarding this.
   2. SdI – These should be purchased by the Practice / group of practices or sexual health provider and will be reimbursed on the electronic payment schedule at a sum of £83.43
   3. It should be noted that there is a new IUS which is lower cost and last up to 10 years. If this is clinically appropriate and offered as a choice to the patient the commissioners will pay the provider £4.00
2. Incentive payments will be paid for each LARC device (IUS/IUD or SdI) that is fitted for contraception or contraception and Menorrhagia, over the number fitted in the practice in the 2018/19 financial year and each year thereafter. Where a practice has not been fitting in 2018/19 this will be paid once it has fitted over 28 devices per 1000 women aged 15-44 in the practice. E.g. if the practice has 500 women and fitted 15 devices it would get the extra payment for 1 woman These extra payments will only be paid on receipt of the annual audit in May of each year.
3. The Provider must submit claims based on activity on a quarterly basis via the Authority’s Online Claim System. The Authority reserves the right to dispute claims that are inaccurate, or incomplete.
4. Payment will not be made to the Provider if an unaccredited practitioner delivers the service.
5. Claims submitted more than 30 days after the end of the Quarter or after Financial Year End will not be processed for payment.
6. Disputed Claims shall be dealt with in accordance with Clause B8 of the Contract
7. Any overpayment by the Authority shall be reimbursed by the Provider within 30 days of receiving written notice of the overpayment.
8. The Authority may set off any overpayment that it has notified to the Provider against any future instalment.
9. Extension Period(s): In the event the Contract is extended beyond the Initial Term, the Charges payable during any Extension Period will be agreed between the Parties at the time the Extension Period is agreed
10. Payment by BACS - the Authority will pay sums due to the Provider by BACS to the Provider’s nominated bank account quarterly in arrears within 30 days of receipt by the Authority of a valid claim from the Provider, always subject to the terms of Clause B8 (Charges and Payment) of the Contract. and will issue a remittance advice to an email address notified to it by the Provider.

**APPENDIX F SAFEGUARDING POLICIES**

The Provider shall adopt the Safeguarding Procedures for Children and Adults accessed via the links shown below (and any amendments thereto) and ensure that they have in place their own Safeguarding policies, procedures and processes which reflect these.

**Safeguarding Children Procedure:**

To access the Safeguarding Children Procedure follow the link below which takes you to the Leicester City, Leicestershire and Rutland Safeguarding Children Boards website procedures page. This procedure is in place for Leicester, Leicestershire and Rutland.

Leicester, Leicestershire and Rutland Safeguarding Children Board

<http://llrscb.proceduresonline.com/>

**Child Sexual Exploitation (CSE)**

The Provider will ensure that they are familiar with, and adhere to, the policies, procedures and guidance specific to Child Sexual Exploitation at <http://lrsb.org.uk/cse> including any necessary training for staff.

**Female Genital Mutilation**

Regulated health and social care professionals and teachers are required now to report cases of FGM in girls under 18s which they identify in the course of their professional work to the police

https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/525405/FGM\_mandatory\_reporting\_map\_A.pdf

**Safeguarding Adults Procedures:**

To access Safeguarding Adults Procedures for Leicester, Leicestershire and Rutland follow the link below which takes you to the Leicester, Leicestershire and Rutland Safeguarding Adults Board website procedures page.

<http://www.llradultsafeguarding.co.uk/>

**APPENDIX G: EQUIPMENT/ ASSET REGISTER**

NOT USED

**APPENDIX H: INFORMATION PROVISION**

**See Appendix A Specification**

**APPENDIX I: TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS**

NOT USED

**APPENDIX J: THE PUBLIC HEALTH INFORMATION STANDARD**

**Quality of End User Information: The Information Standard**

Providers should adhere broadly to the six general principles of the health and care Information Standard. These principles are:

1. Information Production – you have a defined and documented process for producing high quality information.

2. Evidence Sources – you only use current, balanced and trustworthy evidence sources.

3. User Understanding and Involvement – you understand your users and you user-test your information.

4. End Product – you double-check your end products.

5. Feedback – you manage comments/complaints/incidents appropriately.

6. Review – you review your products and process on a planned and regular basis.

There is not an expectation that any provider will meet all the detailed requirements of the standard.

However, there is a requirement that endeavours are made, in alignment with the six principles, to ensure the integrity of the information provided to end users (be they patients, clients, customers or members of the general public).

More about the principles and requirements of the Information Standard can be found on the NHS England Website. <https://www.england.nhs.uk/tis/about/the-info-standard/>

**APPENDIX K: DETAILS OF REVIEW MEETINGS**

**CONTRACT MANAGEMENT MEETINGS**

1. Contract Management Meetings will be held routinely at least quarterly or at a frequency that is in accordance with the Risk Management for Contracts assessment for the contracting authorities. A key Performance Indicator Workbook, as agreed by commissioning authorities and the Provider, will need to be completed and sent in by the Provider to the commissioners, contract managers (and other designated emails as required) in each of the Authorities, along with defined quality data such as complaints, case studies, etc. a week before the Contract Management Meetings. There is a set agenda for the meetings that the Contract Manager will follow, however, the Contract Manager is permitted to raise other issues as necessary.
2. Yearly end of year reports will also need to be provided, details of which will be discussed at the Contract Management meetings.
3. The timetable for each year will be agreed with the Provider at the start of the contract and each year thereafter.
4. As part of the contractual process it may be necessary for there to be sub-groups or task and finish groups. All such meetings would be required to report into the Contract Management Meeting. Sub-groups and task and finish groups will have formal terms of reference, have minutes or action logs recorded as appropriate and those minutes/action logs and any issues raised be brought to the Contract Management Meeting.
5. To facilitate such reporting such groups would need be scheduled at least one week prior to the Contract Management Meeting. Representatives of the Authorities may be present for this or other sections of the meeting if deemed necessary or advisable.

**CONTRACT MANAGEMENT AGENDA**

|  |  |
| --- | --- |
| **NAME OF PROVIDER** |  |
| **NAME OF SERVICE(S)** |  |
| **DATE OF MEETING** |  |

|  |  |  |
| --- | --- | --- |
| **Agenda No** | **Agenda Item** | **Suggested discussion Points** |
| 1 | Introduction/Apologies and Actions/Minutes of last meeting | Actions  Matters arising |
| 2 | The Organisation | * Significant changes/proposed changes to the organisation * Significant changes in the management structure * Changes to organisational or service contacts * Changes within the commissioning organisations |
| 3 | Performance Indicators | * Overall performance against Quality Outcome Indicators (QOI) trends and themes * Any issues or barriers impeding performance * Discuss actions to address these issues * Issues with submission of and/or receipt of QOI information including timely receipt of information * Any plans to validate QOI data (through Quality Audit) |
| 4 | Quality | * Overall performance against requirements of Quality Schedule as identified in Quality Audit * Check progress against any action plan or recommendations * Results of in service quality audits/reviews |
| 5 | Clinical Quality and Governance | * Issues around clinical quality and governance * Progress against investigations, actions plans or recommendations. |
| 6 | Payments | * Problems with receiving payment * Problems with submitting supporting data for payment * Problems with invoicing (submitting and receipt) * Review of expenditure and forecasting in relation to the maximum price payable |
| 7 | Service User Involvement | * How are service users consulted and involved in service development and delivery * What are the results of service user involvement and consultation (what activities have taken place?) * Complaints and compliments (including informal complaints) * Case studies * Survey results |
| 8 | Good Practice and Innovation | * Good practice or innovation that could be shared with other providers * Any needs information/gaps in service which can contribute to strategic reviews and service planning. |
| 9 | Feedback from Sub Groups/Task and Finish Groups or other Issues Raised Between CM meetings | * Subgroup/task and finish group minutes. * Subgroup/task and finish group issues/concerns * Issues/concerns that have been raised and not covered elsewhere on the agenda * Plans/progress against any action to address issues/concerns |
| 10 | AOB – Next Meeting | * Any matters to raise not covered by the agenda areas * D.O.N Meeting |

NB There may also be other meetings, such as of a strategic nature, where the Provider would be required to field appropriate representation, but such meetings would not be classified as a sub group of the Contract Management Meeting.

**APPENDIX L AGREED VARIATIONS**

*Insert here any agreed to inserted post award*

**APPENDIX M: DISPUTE RESOLUTION**

**Part 1 of Appendix M – Dispute Resolution Process**

1 ESCALATED NEGOTIATION

* 1. Except to the extent that any injunction is sought relating to a matter arising out of clause B37 (Confidentiality), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the 15 Business Days following receipt of the first such offer (the “Negotiation Period”) each of the Parties shall negotiate in good faith and be represented:
     1. 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
     2. for the last 5 Business Days, by its chief executive, director, or board member who has authority to settle the Dispute, provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

1. MEDIATION

2.1 If the Parties are unable to settle the Dispute by negotiation, they must within 5 Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in Part 2 of this Appendix M.

2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.

2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

3. EXPERT DETERMINATION

3.1 If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within 10 Business Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.

3.2 If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.

3.3 Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.

3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.

3.5 The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within 5 Business Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.

3.6 The Expert must produce a written decision with reasons within 30 Business Days of receipt of the statement of case referred to in paragraph 3.5, or any longer period as is agreed by the Parties after the Dispute has been referred.

3.7 The Expert will have complete discretion as to how to conduct the expert determination and will establish the procedure and timetable.

3.8 The Parties must comply with any request or direction of the Expert in relation to the expert determination.

3.9 The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties and the Expert agree are within the scope of the expert determination. The Expert must send his decision in writing simultaneously to the Parties. Within 5 Business Days following the date of the decision the Parties must provide the Expert and each other with any requests to correct minor clerical errors or ambiguities in the decision. The Expert must correct any minor clerical errors or ambiguities at his discretion within a further 5 Business Days and send any revised decision simultaneously to the Parties.

3.10 The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.

3.11 The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, or material breach of instructions on the part of the Expert at which point a Party will be permitted to apply to Court for an Order that:

3.11.1 the Expert reconsider his decision (either all of it or part of it); or

3.11.2 the Expert’s decision be set aside (either all of it or part of it).

3.12 If a Party does not abide by the Expert’s decision the other Party may apply to Court to enforce it.

3.13 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or ‘other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.

3.14 The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.

3.15 The Expert is appointed to determine the Dispute or Disputes between the Parties and his decision may not be relied upon by third parties, to whom he shall have no duty of care.

**Part 2 of Appendix M - Nominated Mediation Body**

Centre for Effective Dispute Resolution:

International Dispute Resolution Centre

70 Fleet Street

London

EC4Y 1EU

United Kingdom

Tel: 020 7536 6060

Fax: 020 7536 6061

**PART 3 of Appendix M – Recorded Dispute Resolutions**

**APPENDIX N: SUCCESSION PLAN**

* + - 1. The Provider will agree a succession plan with the Authority no later than six months following the Commencement Date of this Contract and will insert into this Appendix N.
      2. The Provider will update the succession plan following any notice of expiry, or notice to terminate the Contract in preparation for the transfer of the Services to an alternative provider

**APPENDIX O: CONSORTIUM ARRANGEMENTS**

To be inserted post-award

**APPENDIX P: TRANSITION ARRANGEMENTS**

To be inserted post-award

**APPENDIX Q: PROVIDER’S TENDER RESPONSE**

**APPENDIX R:** **PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

Any data sharing or processing agreements agreed between the Parties are to be inserted here

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

**APPENDIX S: SERIOUS INCIDENT PROTOCOL**

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**APPENDIX T: TUPE not used**

**APPENDIX U: DEFINITIONS AND INTERPRETATION**

1. The headings in this Contract shall not affect its interpretation.

2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.

4. References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.

5. References to any body, organisation or office shall include reference to its applicable successor from time to time.

6. Any references to this Contract or any other documents includes reference to this Contract or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.

7. Use of the singular includes the plural and vice versa.

8. References to “month” or “year” shall, unless the contrary intention appears, mean references to a calendar month or year.

9. The following terms shall have the following meanings:

**Adult First** is a service that allows an individual to be checked against the adults' barring list while waiting for the full DBS check to be completed. It can only be used where the registered umbrella body has payment on account arrangements with the DBS and email facilities. The DBS also needs to have received an application for an enhanced check with barred list information in order to process an Adult First check.

**Accessible Information Standard** means: SCCI1605 Amd 8/201 (Accessible Information Standard),

1.1The Accessible Information Standard (AIS) is a new national standard that has been introduced into health and adult social care to address the inequality in control, choice and access to care that can arise for individuals who have additional communication needs. Organisations in scope must comply with the standard by 31 July 2016.

1.2 The AIS aims to ensure that health and social care service users who have a disability, impairment or sensory loss that affects communication receive health and social care information that they can access and understand, and any communication support that they may need.

1.3 People may have additional communication needs for a wide range of reasons. For example, they may be partially or fully deaf or blind, deaf-blind, have learning disabilities, have a long term condition or have suffered a traumatic event such as a head injury or stroke that has affected their ability to communicate.

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

**Authorised Person** means: the Authority, officers of the Authority or any person duly authorised by the Authority to act on its behalf and any body or person concerned with the provision of the Service or care of a Service User

**Authority Representative** means: the person identified in clause A4.1 (*Representatives*) or their replacement

**Base Rate** means: the base rate of Bank of England

**Best Value Duty** means: the duty imposed by Part 1 of the Local Government Act 1999 (the ***LGA 1999***) 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 the guidance issued in connection with, the LGA 1999 from time to time

**Business Continuity Plan** means: the Provider’s plan referred to in Clause B35.2 (*Business Continuity*) relating to continuity of the Services, as agreed with the Authority and as may be amended from time to time

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

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

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

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

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

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

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

**Competent Body** means: any body that has authority to issue standards or recommendations with which either Party must comply and for the avoidance of doubt will include the Authority in exercise of its public health functions

**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 Appendix B (*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 required by Law for or in connection with the performance of Services; and/or

1. 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

**Consortium** means: a collaboration comprising of the following economic operators[insert] that have come together and have successfully bid for this Contract [in the name of the Provider, a legal entity formed for the purposes of delivering this Contract] [or] [and which is led by the Provider as the lead consortium member].

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

**Contract Management Meeting** means:a meeting of the Authority and the Provider held in accordance with clause B30.6 (*Contract Management*)

**Contract Monitoring Framework (CMF)** means the set of standards expected of the provider by the Council. It provides a method of evidencing contractual compliance. It involves a range of assessments which will include visits and checking of documentation. The guidance for which is set out in Appendix C.

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

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

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

**Data Controller**, **Data** **Processor**, **Data Subject**, **Personal Data**, **Personal Data Breach** **Data Protection Officer** take the meaning given in the GDPR.

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

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

**DPA 2018:** Data Protection Act 2018

**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 plus 4% per annum on a simple basis

**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

**Employment Checks** means: the pre-appointment checks that are required by law and applicable guidance, including without limitation, v[erification of identity checks](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/VerificationOfIdentityChecks.aspx), r[ight to work checks,](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/RightToWorkChecks.aspx) [registration and qualification checks,](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/Registrationandqualificationchecks.aspx) e[mployment history and reference checks, c](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/Employmenthistoryandreferencechecks.aspx)[riminal record checks](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/CriminalRecordChecks.aspx)and [occupational health checks](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/OccupationalHealthChecks.aspx)

**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 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

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

**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

**First Exception Report** means: a report issued in accordance with clause B30.13 (Contract Management) notifying the relevant Party’s chief executive and/or Board of Directors of that Party’s breach of a Remedial Action Plan and failure to remedy that breach

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

**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

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

**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

**Health Education England** means: a national organisation for clinical and NHS training

**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

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

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

**Local Authority Designated Officer (LADO):** <http://www.lcitylscb.org/about-the-lscb/local-authority-designated-officer-lado/> Leicester City Council LADO based within the Safeguarding Unit Tel: 0116 454 2440 Email (non-secure): [Lado-allegations-referrals@leicester.gov.uk](mailto:Lado-allegations-referrals@leicester.gov.uk)

**Law** means:

1. any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
2. any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
3. any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
4. National Standards;
5. The Health and Social Care Act 2012 including standards, recommendations and guidance issued under SCCI1605 Amd 8/201 (Accessible Information Standard),
6. Guidance; and
7. any applicable industry code

in each case in force in England and Wales and including any amendments thereof

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

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

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

**Local Education and Training Boards** means: a national organisation for clinical and NHS training

**Living Wage:** as set by the Living Wage Foundation or any successor body

**Living Wage Foundation:** Initiative of Citizens UK. Charity No. 1107264

**Mobilisation Process** means the period following contract award when the Council and the successful Provider work in partnership to ensure that all relevant documentations and identified Pre-Conditions set out in Appendix B have been met by the Provider

**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

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

**Notice to Remedy Breach/NTRB:** means: a written notice issued by the Authority setting out the nature of the Default committed and if the Default can be put right the action required to put it right and the timescale within which it is to be put right.

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

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

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

**Performance Measures** means: the agreed key performance indicators and outcomes to be achieved as set out in Appendix C

**Personal Data** has the meaning set out in the Data Protection Legislation

**Prohibited Acts** has the meaning given to it in clause B40.1 (*Prohibited Acts*)

**Provider Representative** means: the person identified in clause A4.2 (*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 Tender Response** means: the Provider’s response to the Authority’s invitation to tender (Appendix Q to Section C of the Contract)

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

**Receiving Party** means: the Party which has received 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

**Replacement Services:** any services that are fundamentally the same as any of the Services and which the Authority receive in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Authority internally or by any Replacement Provider.

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

**Review Meeting** means: a meeting to be held in accordance with clause B20 (*Review Meetings*) or as otherwise requested in accordance with clause B20.2 (*Review Meetings*)

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

**Second Exception Report** means: a report issued in accordance with clause B30.14 (Contract Management) notifying the recipients of a breach of a Remedial Action Plan and the continuing failure to remedy that breach

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

**Service Commencement Date** means: the date set out in clause A3.2 (*Commencement and Duration*)

**Service Specification** means: the service specification defined by the Authority and set out at Appendix A (*Service Specification*)

**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

**Services** means: the services (and any part or parts of those services) described in the Service Specification, as it shall be read together with the Provider’s Tender Response (subject to Clause A2.2) to be provided by the Provider under and in accordance with this Contract

**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 under this Contract together with the Provider’s servants, agents, suppliers, Sub-contractors and volunteers 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-contractor** means: any third party appointed by the Provider and approved by the Authority under clause B24.1 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

**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 as set out at Appendix N (*Succession Plan*)

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

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

**TUPE** means: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*), as amended

**Valid Service User Consent** means consent obtained from a Service User who has been informed of the

◦ nature and purpose of any proposed treatment

◦ likely outcome(s) / possible adverse outcomes

◦ likely result of not proceeding with proposed treatment

which enables the Service User to make an informed decision about and consent to the Service to be provided to them by the Provider.

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

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

**Variation Notice** means: a notice to vary a provision or part of a provision of this Contract issued under clause B23.2 (*Variation*).