

PUBLIC HEALTH SERVICES CONTRACT

MILTON KEYNES COUNCIL (1)

AS AUTHORITY

AND

[Insert Name] (2)

AS PROVIDER

**CONTRACT FOR THE
PROVISION OF PUBLIC HEALTH SERVICES
FOR 0-19 Healthy Child Programme**

PUBLIC HEALTH SERVICES CONTRACT

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SECTION A: THE PARTICULARS

This Contract is made on 2017

PARTIES

- (1) Milton Keynes Council of Civic Offices, 1 Saxon Gate East, Milton Keynes, MK9 3EJ (the **Authority**); and
- (2) [insert name of Provider] of [insert address] (the **Provider**).

BACKGROUND

- (A) The Authority must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations. In order to satisfy these obligations the Authority wishes to secure the provision of the Services and the Provider wishes to provide the Services.
- (B) The Authority has through a competitive process, selected the Provider to provide the Services and the Provider is willing and able to provide the Services.
- (C) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract

IT IS AGREED

A1. CONTRACT

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

A2. INTERPRETATION

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

A3. COMMENCEMENT AND DURATION

- A3.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the 'Commencement Date').
- A3.2. The Provider shall, subject to having satisfied the Conditions Precedent where applicable, provide the Services from [1st April 2020] (the 'Service Commencement Date').
- A3.3. This Contract shall be for five years from the Service Commencement Date and shall expire automatically after such period, unless it is extended or terminated earlier in accordance with the provisions of this Contract.

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- A3.4. The Authority may, by giving written notice to the Service Provider extend the Contract by two further periods of 2 years each (2+2) provided that the aggregate term of the Contract, including the extension options shall not exceed 9 years. The provisions of the Contract will apply during any extension.

A4. REPRESENTATIVES

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

Name: Derys Pragnell
Title: Head of Public Health Programmes
(3) Contact Details:] Milton Keynes Council of Civic Offices, 1 Saxon Gate East,
Milton Keynes, MK9 3EJ

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

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

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

A5. NOTICES

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

- A5.2. Notices:

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

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

- a) For the Authority: Milton Keynes Council
Address: Civic Offices, 1 Saxon Gate East, Milton Keynes, MK9 3EJ
For the attention of: Muriel Scott, Director Public Health
Tel: Mobile 07702203441
- b) For the Provider:
Address: [to be completed]
For the attention of: [to be completed]
Tel: [to be completed]

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

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A6. ENTIRE CONTRACT

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

A7. COUNTERPARTS

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

IN WITNESS WHEREOF the Parties have signed and delivered this Contract as a deed on the date first before written:

Executed as a deed by the Authority

By affixing the Common Seal of MILTON KEYNES COUNCIL

in the presence of

Signature

Authorised Officer

Executed as a deed by [Insert NAME OF PROVIDER]

By the Signature of two Directors or Director and Company Secretary

.....
Director

.....
Director/ Company Secretary

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SECTION B: GENERAL TERMS AND CONDITIONS

B1. SERVICES

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

B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

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

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

B3. SERVICE AND QUALITY OUTCOMES INDICATORS

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

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- d) comply with any applicable recommendations issued from time to time by a Competent Body;
- e) comply with any applicable recommendations from time to time contained in guidance and appraisals issued by NICE;
- f) respond to any applicable reports and recommendations made by Local HealthWatch; and
- g) comply with any Quality Outcomes Indicators set out in Appendix C (*Contract Monitoring Framework*).

B4. SERVICE USER INVOLVEMENT

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

B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

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

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

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

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

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

B6. MANAGING ACTIVITY

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

B7. STAFF

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

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

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

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

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

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

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

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- B7.5. The Provider must carry out Staff surveys in relation to the Services at intervals and in the form set out in Appendix D (*Service User, Carer and Staff Surveys*) or as otherwise agreed in writing from time to time.
- B7.6. Subject to clause B7.7, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
- a) the Employment Checks; and
 - b) such other checks as required by the DBS.
- B7.7. Subject to clause B7.8, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.
- B7.8. Where clause B7.7 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
- a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
 - d) any other reasonable requirement of the Authority.
- B7.9. Where TUPE is applicable at the Service Commencement Date, the Provider shall ensure that it has complied with all the relevant requirements under **TUPE** (Transfer of Undertakings (Protection of Employment) Regulations 2006) including any consultation requirements. Where the Authority has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Authority and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the Authority with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE. The Provider shall further comply with the provisions contained in the TUPE and Pensions Schedule (at Section C Appendix 1) and shall provide any information specified therein and any further information requested by the Authority.
- B7.10. The Provider shall indemnify and keep indemnified the Authority and any Successor Provider against any Losses incurred by the Authority and/or the Successor Provider in connection with any claim or demand by any transferring employee under TUPE.
- B7.11. The Provider shall pay at least the Real Living Wage to all its Staff who are employed in the Services and shall procure that any of its Subcontractors pay the Real Living Wage to any persons who are employed in connection with the Services and who meet the Living Wage Criteria
- B7.12. The Provider acknowledges that the revised rates of the Real Living Wage are set annually (in November) and that this may mean an increase to the Real Living Wage rates. The Provider shall keep up to date with any such revised rates and where the rates increase, the Provider shall implement the same no later than six (6) months from the date of such increase.

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B8. CHARGES AND PAYMENT

- B8.1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Authority shall pay the Provider the Charges.
- B8.2. The Charges shall be as set out at Appendix E (*Charges*).
- B8.3. The Provider shall invoice the Authority for payment of the Charges Monthly in arrears (or such other frequency agreed between the Parties in writing) which the Authority shall pay within 30 days of receipt where the invoice is undisputed.
- B8.4. 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.
- B8.5. 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).
- B8.6. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:
- a) the contesting Party shall within 5 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
 - b) any uncontested amount shall be paid in accordance with this Contract.
- B8.7. If a Party contests a payment under clause B8.6 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.6, the contesting Party may refer the matter to dispute resolution under clause B30 and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.3.
- B8.8. 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.
- B8.9. Each Party may retain or set off any sums owed to the other Party which have fallen due and payable against any sum due to the other Party under this Contract or any other agreement between the Parties.

B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY

- B9.1. The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.
- B9.2. In addition to the Provider's obligations under clause B9.1, where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.
- B9.3. During the term of this Contract at the reasonable request of the Authority, the Provider must:

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

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

B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

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

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

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

B11. INCIDENTS REQUIRING REPORTING

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

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

B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix G (*Incidents Requiring Reporting Procedure*).

B11.4. Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause B11.1 and Appendix G (*Incidents Requiring Reporting Procedure*).

B12. CONSENT

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

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B13. SERVICE USER HEALTH RECORDS

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

B14. INFORMATION

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

B15. EQUIPMENT

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

B16. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS

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

B17. COMPLAINTS

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

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

B18. SERVICE REVIEW

- B18.1. The Provider must deliver to the Authority a Service Quality Performance Report against the factors set out in Appendix J (*Service Quality Performance Report*) in accordance with any frequency stated in Appendix J.
- B18.2. The Provider must submit each Service Quality Performance Report in the form and manner specified in Appendix J (*Service Quality Performance Report*).

B19. REVIEW MEETINGS

- B19.1. The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix K (*Details of Review Meetings*).
- B19.2. Notwithstanding clause B19.1, if either the Authority or the Provider:
- a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
 - b) considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,
- that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Business Days following that notice.

B20. CO-OPERATION

- B20.1. The Parties must at all times act in good faith towards each other.
- B20.2. The Provider must co-operate fully and liaise appropriately with:
- a) the Authority;
 - b) any third party provider who the Service User may be transferred to or from 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;

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- g) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Authority's or members of the public.

B21. WARRANTIES AND REPRESENTATIONS

B21.1. The Provider warrants and represents that:

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

B21.2. The Authority warrants and represents that:

- a) it has full power and authority to enter into this Contract and all necessary approvals and consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it;
- c) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract; and

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- d) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract.

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

B22. VARIATIONS

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

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

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

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

B23. ASSIGNMENT AND SUB-CONTRACTING

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

- a) consenting to the appointment of the Sub-contractor (such consent not to be unreasonably withheld or delayed); and
- b) approving the Sub-contract arrangements (such approval not to be unreasonably withheld or delayed) which shall include the addition of any of the clauses in this Contract to the Sub-contract as the Authority may reasonably require

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

B23.3. Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.

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

B24. AUDIT AND INSPECTION

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- B24.1. The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, the General Pharmaceutical Authority, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.
- B24.2. Subject to Law and notwithstanding clause B24.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.
- B24.3. Within 10 Business Days of the Authority's reasonable request, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- B24.4. The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- B24.5. During any audit undertaken under clause B24.1 or B24.2, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:
- a) all reasonable information requested within the scope of the audit;
 - b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
 - c) access to the Staff.

B25. INDEMNITIES

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

B26. LIMITATION OF LIABILITY

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

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B27. INSURANCE

- B27.1. The Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Contract, or breach of its statutory duty or breach of an obligation under the Data Protection Legislation, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or breach of statutory duty or breach of an obligation under the Data Protection Legislation by the Authority.
- B27.2. The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- B27.3. The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.
- B27.4. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

B28. DEFAULTS AND FAILURE TO SUPPLY

- B28.1. In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Contract including under clause B29, consult with the Provider and then do any of the following:
- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 10 Business Days or such other period of time as the Authority may direct;
 - b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B31;
 - c) without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause B32 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.
- B28.2. If the Authority exercises any of its rights under clause B28.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

B29. CONTRACT MANAGEMENT

- B29.1. If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in Appendix C (*Quality Outcomes Indicators*) and the Provider fails to meet the Quality Outcomes Indicator, the Authority may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Authority may have under this clause B29.
- B29.2. The provisions of this clause B29 do not affect any other rights and obligations the Parties may have under this Contract.

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

Contract Query

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

Excusing Notice

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

Contract Management Meeting

- B29.8. Unless the Contract Query Notice has been withdrawn, the Authority and the Provider must meet to discuss the Contract Query and any related Excusing Notice within 10 Business Days following the date of the Contract Query Notice.
- B29.9. At the Contract Management Meeting the Authority and the Provider must agree either:
- a) that the Contract Query Notice is withdrawn; or
 - b) to implement an appropriate Remedial Action Plan; or
 - c) to conduct a Joint Investigation.
- B29.10. If a Joint Investigation is to be undertaken:
- a) the Authority and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation.
 - b) the Authority and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

Joint Investigation

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

Remedial Action Plan

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

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- a) 5 Business Days following the Contract Management Meeting; or
 - b) 5 Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause B29.11.
- B29.14. The Remedial Action Plan must set out:
- a) milestones for performance to be remedied;
 - b) the date by which each milestone must be completed; and
 - c) subject to the maximum sums identified in clause B29.23, the consequences for failing to meet each milestone by the specified date.
- B29.15. The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.
- B29.16. The Authority and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.
- B29.17. If following implementation of a Remedial Action Plan:
- a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;
 - b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

Withholding Payment for Failure to Agree Remedial Action Plan

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

Exception Reports

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

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b) CQC or any other Regulatory Body,

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

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

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

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

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

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

Unjustified Withholding or Retention of Payment

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

Retention of Sums Withheld on Expiry or Termination of this Contract

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

- a) within 6 months following the expiry of the relevant time period set out in clause B29.13; or
- b) before the Expiry Date or earlier termination of this Contract,

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

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

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B30. DISPUTE RESOLUTION

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

B31. SUSPENSION AND CONSEQUENCES OF SUSPENSION

- B31.1. A suspension event shall have occurred if:
- a) the Authority reasonably considers that a breach by the Provider of any obligation under this Contract:
 - (i) may create an immediate and serious threat to the health or safety of any Service User; or
 - (ii) may result in a material interruption in the provision of any one or more of the Services; or
 - b) clause B31.1 does not apply, but the Authority, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of a Service or Services; or
 - c) the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,
- (each a **Suspension Event**).
- B31.2. Where a Suspension Event occurs the Authority:
- a) may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Authority that it is able to and will perform the suspended Service, to the required standard; and
 - b) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.
- B31.3. During the suspension of any Service under clause B31.2, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to clause B31.2 has been referred to dispute resolution under clause B30 (*Dispute Resolution*).
- B31.4. During the suspension of any Service under clause B31.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:
- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B31.2; and/or
 - b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B31.5.
- B31.5. The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- B31.6. Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).

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- B31.7. Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:
- a) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
 - b) at the cost of the Provider:
 - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
 - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B31.8. As part of its compliance with clause B31.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.
- B31.9. If it is determined, pursuant to clause B30 (*Dispute Resolution*), that the Authority acted unreasonably in suspending a Service, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B31.10. During any suspension of a Service the Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.

B32. TERMINATION

- B32.1. Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 12 months' written notice at any time after the Service Commencement Date.
- B32.2. The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:
- a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
 - b) the Provider is in persistent breach of its obligations under this Contract;
 - c) the Provider:
 - (i) fails to obtain any Consent;
 - (ii) loses any Consent; or
 - (iii) has any Consent varied or restricted,the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;
 - d) the Provider has breached the terms of clause B39 (*Prohibited Acts*);
 - e) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
 - f) the Provider materially breaches its obligations in clause B37 (*Data Protection*);

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- g) two or more Second Exception Reports are issued to the Provider under clause B29.22 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
- h) the Provider breaches the terms of clause B23 (*Assignment and Sub-contracting*);
- i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 30 Business Days following receipt of notice from the Authority identifying the breach.

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

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

B33. CONSEQUENCE OF EXPIRY OR TERMINATION

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

B33.2. On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.

B33.3. On the expiry or termination of this Contract or termination of any Service the Provider must co-operate fully with the Authority to migrate the Services in an orderly manner to the successor provider.

B33.4. In the event of termination or expiry of this Contract, the Provider must immediately cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 3 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.

B33.5. If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B32.4, B32.3 or if the Authority terminates under clause B32.1 (*Termination*), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.

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- B33.6. The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B23 (*Assignment and Sub-contracting*), B24 (*Audit and Inspection*), B33 (*Consequence of Expiry or Termination*), B36 (*Confidentiality*) and B38 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.

B34. BUSINESS CONTINUITY

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

B35. COUNTER-FRAUD AND SECURITY MANAGEMENT

- B35.1. The Provider must put in place and maintain appropriate counter fraud and security management arrangements.
- B35.2. The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Authority.
- B35.3. The Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- B35.4. If the Provider or its Staff commits Fraud in relation to this or any other contract with the Authority, the Authority may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

B36. CONFIDENTIALITY

- B36.1. Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.
- B36.2. Subject to Clauses B36.3 and B36.4, the Receiving Party agrees:
- a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
 - b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
 - c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- B36.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:
- a) in connection with any dispute resolution under clause B30 (*Dispute Resolution*);
 - b) in connection with any litigation between the Parties;
 - c) to comply with the Law;
 - d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B36.2;
 - e) to comply with a regulatory bodies request.
- B36.4. The obligations in clause B36.1 and clause B36.2 will not apply to any Confidential Information which:
- a) is in or comes into the public domain other than by breach of this Contract;

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- b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
 - c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B36.5. The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B36.
- B36.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B36.
- B36.7. This clause B36 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- B36.8. The obligations in clause B36.1 and clause B36.2B shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

B37. DATA PROTECTION

Information Governance – General Responsibilities

- 37.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Schedule A2 by the Authority and may not be determined by the Provider
- 37.2 The Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation
- 37.3 The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- 37.4 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

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- (a) process that Personal Data only in accordance with Schedule A2 unless the Provider is required to do otherwise by Law. If it is so required, the Provider shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
- (c) ensure that:
 - (i) the Provider Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule A2);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Provider Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Provider's duties under this clause 37;
 - (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-Processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data.
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;

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- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data.
 - (e) at the written direction of the Authority, delete, destroy, or return Personal Data (and any copies of it) to the Authority at any time during the contract period or on termination or expiry of the Contract unless the Provider is required by Law to retain the Personal Data;
 - (f) where the Provider is destroying Personal Data pursuant to clause 37.4 (e) above, it shall do so in a secure manner and it shall provide certificated evidence of secure destruction to the required standards (HMG Information Security Standards)
- 37.5 Subject to clause 37.6 the Provider shall notify the Authority immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event; Personal Data Breach or any breach of data protections obligations under this Contract or under the Data Protection Legislation.
- 37.6 The Provider's obligation to notify of the Authority under clause 37.5 shall include the provision of further information to the Authority in phases, as details become available.
- 37.7 The Provider shall provide the Authority with full assistance in relation to either party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 37.5 (within the timescales reasonably required by the Authority) including promptly providing:
- (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

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- (d) assistance as requested by the Authority following any Data Loss Event;
 - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office.
- 37.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause 37.
- 37.9 The Provider shall allow and shall procure that all Sub-Processors allow for audits of their Data processing activity by the Authority or the Authority's designated auditor. The Provider shall comply with and shall procure that the Sub-Processors comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Provider and the Sub-Processors are in full compliance with the obligations under this Contract.
- 37.10 The Provider shall designate a data protection officer if required by the Data Protection Legislation to do so.
- 37.11 The Provider shall nominate a data protection lead to be responsible for data protection and for providing the Authority with regular reports on information security matters, including details of all incidents of Data Loss Event and breach of confidence. The Provider shall ensure that the Authority is at all times kept informed of the identity and contact details of the data protection lead.
- 37.12 The Provider agrees to indemnify and keep the Authority indemnified and to defend the Authority at its own expense against all losses, costs, claims, damages or expenses incurred by the Authority or for which the Authority may become liable due to any failure by the Provider or its Staff or Provider party to comply with any of their obligations under this Clause 37 and/or under the Data Protection Legislation and/or under any other provision of this Contract. The Authority may recover as a debt from the Provider any sums owed under this indemnity provision.

Responsibilities when engaging Sub-Contractors as a Sub-processor

- 37.13 In addition to the provisions of clause B23 (Assignment and Sub-Contracting), if the Provider is to require any Sub-Contractor to be a Sub-processor, and before allowing the processing of Personal Data by such a Sub-Contractor, the Provider must:
 - (a) notify the Authority in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Authority;
 - (c) where the Authority consent is given, enter into a written Contract with the Sub-processor which give effect to the terms set out in this clause 37 such that they apply to the Sub-processor; and
 - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 37.14 The Provider shall remain fully liable for all acts or omissions of any Sub-processor
- 37.15 The Authority may at any time on not less than thirty (30) days' notice to the Provider revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract)
- 37.16 The Authority may at any time on not less than thirty (30) days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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- 37.17 The Provider shall comply with and shall ensure that any Sub-processor complies with all relevant obligations under the Data Protection Legislation.
- 37.18 The provision of this clause 37 shall apply during the contract period and indefinitely after its expiry.

B38. FREEDOM OF INFORMATION AND TRANSPARENCY

- B38.1. The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B38.2. If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:
- a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
 - b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
 - c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within 2 Business Days) transfer the request to the Authority;
 - d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
 - e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within 5 Business Days of such request and without charge.
- B38.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.
- B38.4. Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- B38.5. In preparing a copy of this Contract for publication pursuant to clause B38.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.
- B38.6. The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.

PUBLIC HEALTH SERVICES CONTRACT

- B38.7. In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

B39. PROHIBITED ACTS

- B39.1. Neither Party shall do any of the following:

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

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

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

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

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

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

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

B40. FORCE MAJEURE

PUBLIC HEALTH SERVICES CONTRACT

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

B41. THIRD PARTY RIGHTS

- B41.1. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

B42. CAPACITY

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

B43. SEVERABILITY

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

B44. WAIVER

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

B45. PUBLICITY

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

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

B46. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

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

B47. GOVERNING LAW AND JURISDICTION

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

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

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APPENDIX A

SERVICE SPECIFICATION (Included as a separate document)

1. The provider must comply with content of this service specification

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APPENDIX A2

INSTRUCTIONS FOR PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

Description	Details
Subject Matter of the Processing	O-19 Healthy Child Programme (HCP) (incorporating school nursing, health visiting and National Childhood Measurement Programme)
Duration of the Processing	For the duration of the contract, including possible extension periods Expected start date: 1 st April 2020. Five year contract with option to extend for 2+ 2 years (maximum term to 31 st March 2029).
Location of Processing	Within the European Economic Area
Nature and Purposes of the Processing	Purpose: So that an effective Child Health service for 0 - 19 can be delivered. The service acts as a point of access for 0 19 HCP in Milton Keynes. Nature: processing will involve collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means)
Type of Personal Data	Names, addresses, relationship status, age, GP details. Child details, health issues and health outcomes.
Categories of Data Subject	Children and young people who are service users, families of CYP, Authority's and other service staff (including volunteers, agents, and temporary workers).
Plan for return and/or destruction of the data once the processing is complete UNLESS required under union or member state law to preserve that type of data.	Data will only be retained for the duration of the Contract. At the end of the Contract including where the Contract is terminated earlier, the Provider will delete; destroy by secure shredding, or

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	<p>return Personal Data (and any copies of it) to the Authority if return is requested by the Authority unless the Service Provider is required by law to retain the Personal Data in which case, the Provider may only retain such Data for the minimum period required by the law. The Provider will notify the Authority of any Personal Data which is to be retained pursuant to law.</p> <p>Where the Provider is destroying Personal Data, it shall do so in a secure manner that is compliant with required standards (HMG Information Security Standards) and it shall confirm the same to the Authority.</p>
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APPENDIX B

CONDITIONS PRECEDENT

1. Provide the Authority with a copy of the Provider's registration with the CQC where the Provider must be so registered under the Law.
2. Provide the Authority with evidence that the Required Insurances are in place.
3. Provide all supporting information in accordance with section 26.1 DRAFT SERVICE SPECIFICATION 0-19 Healthy Child Programme (HCP) Service (Health Visiting and School Nursing) Services in Milton Keynes. Other information provision as follows:
 - The provider must share all inspection reports, CQC periodic and special reviews, national/local audit reports and service user/staff surveys relevant to the service.
 - The provider must notify the commissioner if any clinician's professional registration lapses, is suspended, removed or conditions added; or the clinician has a hearing with the Professional Regulatory Body.
 - In order for the local authority to comply with the terms of the Public Health Grant (PHG) the provider will make available a breakdown of expenditure through its open book reporting.
 - All local authority commissioned services are scrutinised and held to account by the local authority and, where appropriate, relevant partnerships. Therefore, summaries of performance will be shared with relevant boards which have a scrutiny or oversight role for public health, crime reduction or local authority commissioned services. On this basis, performance information may reach the public domain and is therefore not considered to be commercially sensitive or confidential. Performance information is also subject to Freedom of Information requests

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APPENDIX C

CONTRACT MONITORING FRAMEWORK

1. Provide all supporting information in accordance with section 26.0 DRAFT SERVICE SPECIFICATION 0-19 Healthy Child Programme (HCP) Service (Health Visiting and School Nursing) Services in Milton Keynes. Other information provision as follows:

Performance Management and information provision:

Reporting for the HCP 0-5 mandated checks should follow national guidance <https://www.gov.uk/government/publications/childrens-public-health-0-to-5-years-national-reporting>

Information sharing must comply with the requirements of the Child Health Information Services (CHIS) and Community Services Minimum Data Set (CSMDS) as set out in the Information Standards Notice (ISN) Phase 1 and 2 <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/dcb3009-healthy-child-programme>.

The overall performance of the service will be monitored through a combination of:

- Quantitative measures (outputs/activity and key performance indicators)
- Qualitative measures (outcomes and quality assurance)
- Progress against SMART service development plan and objectives
- Open book financial reporting
- Service user feedback

Performance monitoring will be undertaken on a quarterly basis. A monitoring workbook will be provided for the provider to complete which will form the basis of contract monitoring meetings held once per quarter and the provider will ensure the individuals responsible for the service are present. The workbook will be regularly reviewed and updated to take account of service developments and changes over the contract term.

Failure to supply complete monitoring information within deadline may be interpreted as a material breach of the Agreement terms and conditions.

See Key Performance Indicators (KPI's) additional document (submitted with tender documentation)

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APPENDIX D

SERVICE USER, CARER AND STAFF SURVEYS

1. Patient and public involvement is vital to the successful delivery of this contract. The Provider will involve service users and non-service users, taking account of their views, in the development of services to ensure the needs of the population are being met.
2. The Provider will provide quarterly written reports on service user feedback and annual written reports on non-service user feedback. The latter will focus on members of the public in the key target groups who are not currently utilising the service and the reasons why.
3. Written reports will contain details of the methodology used (to be agreed with the commissioner in advance and include a mixture of qualitative and quantitative feedback), the findings and an action plan detailing how the findings will be utilised to improve service delivery.

This is in addition to the indicator on service user evaluations. 1. Please refer to content within Appendix B & C of this document

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APPENDIX E

CHARGES

1. The Charges payable by the Authority shall be in accordance with the Provider's tender pricing and the provisions below.

2. Frequency of payments:

Payments will be made by the Authority monthly in arrears within 30 days upon receipt of a valid invoice

Payment process:

To ensure prompt payment of your invoices, invoices should be sent to mkc.invoices@lgss.co.uk

A compliant invoice should include:

- your full company name and address
- an invoice date so our system calculates your invoice due date correctly
- a unique invoice number which we will record on our system and quote on your remittance advice or during any other correspondence with you
- a clear description of the goods and/or services provided
- accurate quantities, prices and amount due
- your VAT registration number (if registered for VAT)
- the date of supply (also known as tax point) if this is different from the invoice date
- a breakdown of the goods and/or services clearly showing the net price, the VAT rate, the VAT amount and the total amount for each line on the invoice
- a valid purchase order number for the goods/services – your invoice will be returned unpaid if a valid purchase order number is not quoted
- your bank details including sort code and account number

3. Payment by Outcomes

From year 2 we will introduce a 5% payment by outcomes element to be divided equally between approximately 10 indicators (see example indicators in table below). This will increase to 10% in year 3 and will be maintained for the duration of the contract.

Table 1; Percentage distribution between Block Payment and PbO

	Year 1	Year 2	Years 3 - 5	Extension Years
Block Payment	100%	95%	90%	TBA
Payment by Outcomes	0%	5%	10%	TBA
Total	100%	100%	100%	TBA

The Block element of the contract will be paid to the provider on a monthly basis in arrears. The PbO element (5% in year 2 and 10% in years 3-5) will be paid once achievement is evidenced and reconciled against official data and will be paid to the provider quarterly or at the end of each financial year depending on whether the KPI outcome is quarterly or annual.

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3.1 Example PbO indicators from KPIs

The chosen indicators below are indicative and will to be confirmed upon contract award

No.	PBO Indicator	Target
KPI 1	No. (and %) of mothers who received a first face-to-face antenatal contact with a Health Visitor at 28 weeks or above	90%
KPI 2	% of New Birth Visits (NBVs) completed within 14 days	90%
KPI 4	4% of 6 to 8 week reviews completed	90%
KPI 5	Breastfeeding prevalence at 6 to 8 weeks after birth	60% first year Targets TBA with 90% as long term goal
KPI 6	% of 12 month development reviews completed by the time the child turned 12 months	90%
KPI 8	No. and % of 2 to 2 1/2 year reviews completed (and proportion of these that were integrated reviews)	90%
KPI 9	9 -% of 2 to 2 1/2 year reviews completed using ASQ-3 (Ages and Stages Questionnaire)	90%
KPI 25	NCMP Year R	95%
KPI 26	NCMP Year 6	95%
KPI 27	Comprehensive Review Year R	90%

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APPENDIX F

PROVIDER'S SAFEGUARDING POLICIES

(These policies will be provided by the successful tenderer and they will be incorporated into this appendix F of the Contract. The Authority may require the Provider to amend its policies to comply with Authority requirements and the Provider shall comply).

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APPENDIX G

INCIDENTS REQUIRING REPORTING PROCEDURE

1. Provide Serious Incidents updates immediately alerting lead commissioner and lessons learned reports from learning and sharing lessons learned from serious incidents
2. Provide Compliments, complaints and comments updates within quarterly monitoring reporting, unless serious complaints which commissioner should be informed at time of notification to provider

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APPENDIX H

INFORMATION PROVISION

1. Adhere to and Provide all supporting information in accordance with section 26.0 DRAFT SERVICE SPECIFICATION 0-19 Healthy Child Programme (HCP) Service (Health Visiting and School Nursing) Services in Milton Keynes. Other information provision as follows:

Performance Management and information provision

Reporting for the HCP 0-5 mandated checks should follow national guidance <https://www.gov.uk/government/publications/childrens-public-health-0-to-5-years-national-reporting>

Information sharing must comply with the requirements of the Child Health Information Services (CHIS) and Community Services Minimum Data Set (CSMDS) as set out in the Information Standards Notice (ISN) Phase 1 and 2 <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/dcb3009-healthy-child-programme>

The overall performance of the service will be monitored through a combination of:

- Quantitative measures (outputs/activity and key performance indicators)
- Qualitative measures (outcomes and quality assurance)
- Progress against SMART service development plan and objectives
- Open book financial reporting
- Service user feedback

Performance monitoring will be undertaken on a quarterly basis. A monitoring workbook will be provided for the provider to complete which will form the basis of contract monitoring meetings held once per quarter and the provider will ensure the individuals responsible for the service are present. The workbook will be regularly reviewed and updated to take account of service developments and changes over the contract term.

Failure to supply complete monitoring information within deadline may be interpreted as a material breach of the Agreement terms and conditions.

2. Adhere to and provide all supporting information in accordance with section 26.1 DRAFT SERVICE SPECIFICATION 0-19 Healthy Child Programme (HCP) Service (Health Visiting and School Nursing) Services in Milton Keynes. Other information provision as follows.
 - The provider must share all inspection reports, CQC periodic and special reviews, national/local audit reports and service user/staff surveys relevant to the service.
 - The provider must notify the commissioner if any clinician's professional registration lapses, is suspended, removed or conditions added; or the clinician has a hearing with the Professional Regulatory Body.
 - In order for the local authority to comply with the terms of the Public Health Grant (PHG) the provider will make available a breakdown of expenditure through its open book reporting.
 - All local authority commissioned services are scrutinised and held to account by the local authority and, where appropriate, relevant partnerships. Therefore, summaries of performance will be shared with relevant boards which have a scrutiny or oversight role for public health, crime reduction or local authority commissioned services. On this basis, performance information may reach the public domain and is therefore not considered to be commercially sensitive or confidential. Performance information is also subject to Freedom of Information requests

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APPENDIX I

TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS

1. Adhere to and provide all supporting information in accordance with sections:
 - 10.0 section 6
 - 11.1 0-5 Years HCP Provision
 - 11.23 Other Core Elements of the 0-5 Universal Offer h) New-born Bloodspot (NBBS)
 - 12.1 Referrals to Other Services
 - 12.2 Referrals into the Service
 - 15.4 Transfers In and Out within DRAFT SERVICE SPECIFICATION 0-19 Healthy Child Programme (HCP) Service

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APPENDIX J

SERVICE QUALITY PERFORMANCE REPORT

1. As per 26.0 of DRAFT SERVICE SPECIFICATION 0-19 Healthy Child Programme (HCP) Service available in Section A: Performance Management and information provision

Reporting for the HCP 0-5 mandated checks should follow national guidance <https://www.gov.uk/government/publications/childrens-public-health-0-to-5-years-national-reporting>

Information sharing must comply with the requirements of the Child Health Information Services (CHIS) and Community Services Minimum Data Set (CSMDS) as set out in the Information Standards Notice (ISN) Phase 1 and 2 <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/dcb3009-healthy-child-programme>

The overall performance of the service will be monitored through a combination of:

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- Open book financial reporting
- Service user feedback

Performance monitoring will be undertaken on a quarterly basis. A monitoring workbook will be provided for the provider to complete which will form the basis of contract monitoring meetings held once per quarter and the provider will ensure the individuals responsible for the service are present. The workbook will be regularly reviewed and updated to take account of service developments and changes over the contract term.

Failure to supply complete monitoring information within deadline may be interpreted as a material breach of the Agreement terms and conditions.

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APPENDIX K

DETAILS OF REVIEW MEETINGS

Please see appendix J for details of review meetings

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APPENDIX L

AGREED VARIATIONS

These are any variations agreed during the term of the contract in accordance with variations provisions. Any such variations shall be incorporated into this Appendix L at a later date.

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APPENDIX M: DISPUTE RESOLUTION

Part 1 of Appendix M – Dispute Resolution Process

1. ESCALATED NEGOTIATION

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

2. MEDIATION

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

3. EXPERT DETERMINATION

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

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

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Part 2 of Appendix M - Nominated Mediation Body

[If other mediation body is agreed under paragraph 2.1 of Part 1 of Appendix M, insert details of body here]

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Part 3 of Appendix M - Recorded Dispute Resolutions

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APPENDIX N: SUCCESSION PLAN

To be agreed at later date

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APPENDIX O: DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

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

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

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

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

CEDR means the Centre for Effective Dispute Resolution

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

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

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

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

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

Consents means:

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

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

Contract Query means:

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

as appropriate

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

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

CQC means the Care Quality Commission

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

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

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

Data Protection Impact means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

Data Protection Legislation means (i) the General Data Protection Regulations 2016/679, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Subject Access Request means 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.

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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 LIBOR plus 2% per annum

Disclosing Party means the Party disclosing Confidential Information

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

DPA 2018 means the Data Protection Act 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (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 means the General Data Protection Regulation 2016/679 and any subordinate legislation made under such Regulation from time to time as may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

General Conditions has the meaning given to it in clause A1

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

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

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

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

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

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

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

Law means:

- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;

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

LED means the Law Enforcement Directive (Directive (EU) 2016/680)

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

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

LIBOR means the London Interbank Offered Rate for 6 months sterling deposits in the London market

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

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

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

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

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

NHS Act 2006 means the National Health Service Act 2006

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

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

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

Process and Processing has the meaning given to it under the Data Protection Legislation and for the purposes of this Contract, it shall include both manual and automated processing.

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

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

Protective Measures means 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.

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Public Authority means as defined in section 3 of the FOIA

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

Real Living Wage means the figure set annually for areas outside of London by the Centre for Research and Social Policy currently at Loughborough University or its successor or anybody which subsequently takes up the responsibility for setting the figure

Real Living Wage Criteria means circumstances where an individual works at any of the Authority's premises, and/or property owned or occupied by the Authority, and/or land on which the Authority is responsible for maintaining or on which it is required to work, for at least 2 hours per day over a period of 8 consecutive weeks

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

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

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

Required Insurances means the types of policy or policies providing levels of cover as specified in the Service Specification(s)

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

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

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

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

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

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

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

Service Quality Performance Report means a report as described in Appendix J (*Service Quality Performance Report*)

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

Special Conditions has the meaning given to it in clause A1

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

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

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

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

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

Sub-processor means any third party appointed to process Personal Data on behalf of the Service Provider in relation to this Contract

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*)

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

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

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

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

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

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

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SECTION C: SPECIAL TERMS AND CONDITIONS

C1. INSURANCE

- C1.1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the following levels of cover:
- (a) employer's liability insurance with a limit of indemnity of not less than £5 million pounds in relation to any one claim or series of claims;
 - (b) public liability insurance with a limit of indemnity of not less than £5 million pounds in relation to any one claim or series of claims;
 - (c) professional indemnity insurance with unlimited indemnity in relation to any one claim or series of claims and shall ensure that all staff and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;
- (together the Required Insurances).
- C1.2. If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

C2. AGENCY

- C2.1. The Provider must not in any circumstances hold itself out as being the servant or agent of the Authority. The Provider must not hold itself out as being authorised to enter into any agreement on behalf of the Authority or in any way bind the Authority to the performance, variation, release or discharge of any obligation to a third party. The Provider's staff shall not hold themselves out to be and shall not be held out by the Provider as being servants or agents of the Authority.

C3. HUMAN RIGHTS

- C3.1. The Provider must not do or permit to allow anything to be done which is incompatible with the rights contained in the European Convention on Human rights and the Human Rights Act 1998. Without prejudice to the rights of the Authority under clause B25 (*Indemnities*), the Provider must indemnify the Authority against any loss, claims and expenditure resulting from the Provider's breach of this clause.

C4. HEALTH AND SAFETY

- C4.1. The Provider must promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.
- C4.2. The Provider must comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders regulations and codes of practice relating to health and safety which may apply to the Provider's staff and other persons working on the Provider's Premises in the performance of this Contract.
- C4.3. The Provider must on written request of the Authority and in any event within 5 Business Days of that request, provide the Authority with a copy of its health and safety policy statement (as required by the Health and Safety at Work Act 1974).

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C5. COSTS RELATING TO PREMISES

C5.1. The Provider shall be responsible for all costs relating to Provider's Premises.

C6. PERFORMANCE BOND AND PARENT COMPANY GUARANTEE

C6.1 Where the Provider is a subsidiary of another company in a group of companies, the Provider shall by the Commencement Date provide to the Authority a parent company guarantee in the form set out in Appendix 2 to this Section C.

C6.2 The Provider shall by the Commencement Date provide to the Authority a performance bond on the terms set out in Appendix 3 to this Section C.

C7. PENSIONS

C7.1. The Provider shall comply with the provisions contained in the appendix to this section c (TUPE and Pensions provision Schedule).

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SECTION C- APPENDIX 1 - TUPE AND PENSION PROVISION SCHEDULE

PENSIONS

1. DEFINITIONS

1.1. In this Schedule the following words and expressions shall have the meanings set out below -

PHRASE	MEANING
Appropriate Pension Protection	means in respect of Eligible Employees, the protection referred to in Annex A of the Cabinet Office Statement entitled 'Staff Transfers in the Public Sector Statement of Practice 2000' (as interpreted/updated by the HM Treasury Guidance Note dated June 2004) and the Best Value Authorities staff Transfers (Pensions) Direction 2007.
Directive Eligible Employees	means the European Directive 2001/23/EC as amended; <ul style="list-style-type: none"> • Transferring Employees who are active members of or eligible to join the LGPS on the date of a Relevant Transfer; or • Transferring Original Employees who are active or eligible to join the LGPS or a broadly comparable scheme provided by their existing employer on the date of a Relevant Transfer; or • any other individuals nominated by the Service Provider or Sub-contractor (as applicable) for so long as they are employed in connection with the provision of the Services or part of it.
First Contractor	means the person or entity with whom the Authority initially contracted for the provision of services which were the equivalent of or similar to the Services;
Intervening Contract	means a contract with the Authority for the provision of services which were the equivalent of or similar to the Services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Contractor;
Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or modified from time to time;
Relevant Employees	means the employees who are the subject of a Relevant Transfer including any Transferring Employee and Third Party Employees;
Relevant Transfer	means a relevant transfer for the purposes of the Regulations;
Successor Provider	has the same meaning as attributed to it in Appendix O;
Sub-contractor	has the same meaning as attributed to it in Appendix O;;
Third Party Employees	means employees of Third Party Employers whose contracts of employment transfer with effect from the Transfer Date to the Provider by virtue of the application of the Regulations.
Third Party Employer	means a Provider engaged by the Authority to provide the service or any part of it to the Authority before the Commencement Date and whose employees will transfer to the Provider on the Transfer Date.
Transfer Date	means any date when any of the Relevant Employees are transferred to the employment of the Provider or a Sub-contractor;
Transferring Employee	means an employee of the Authority whose contract of employment, by virtue of the application of the Regulations, becomes a contract of employment with someone other than the Authority, including the Provider, by reason of what is done for the purposes of carrying out this Contract;
Transferring Original Employee LGPS	means employees who are former employees of the Authority and who were active members (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer;
LGPS Regulations	means the relevant fund of the Local Government Pension Scheme.

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PHRASE	MEANING
	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) as may be amended from time to time.

2. TUPE COMPLIANCE (GENERAL) EMPLOYEES AND EMPLOYMENT MATTERS

2.1. Application of TUPE

- 2.1.1. The Authority and the Provider agree subject to the provisions of any relevant legislation that where the identity of a provider (including the Authority) of any service which constitutes or which will constitute part of the Services is changed pursuant to this Contract then the change shall constitute a Relevant Transfer.
- 2.1.2. On the occasion of each Relevant Transfer the Contractor shall comply and shall ensure that each Sub-contractor shall comply with all of its obligations under the Regulations and the Directive in respect of the Relevant Employees. The first Relevant Transfer shall occur on the Service Commencement Date.

2.2. Emoluments and Outgoings

- 2.2.1. The Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Transfer Date.

2.3. Pension Protection

- 2.3.1. The Provider shall ensure, and shall procure in relation to any Sub-contractor that all Eligible Employees are offered Appropriate Pension Provision with effect from the Transfer Date up to and including the Expiry Date or the date of termination or any later completion of the provision of the Services.
- 2.3.2. The provision of this paragraph 2.3 shall be directly enforceable by an affected employee against the Provider.

2.3.3. Admission to the LGPS

- 2.3.4. Where the Provider wishes to offer the Eligible Employees membership to the LGPS, the Provider shall procure that it shall prior to the Transfer Date enter into an admission agreement to have effect from and including the Transfer Date. The Provider shall comply with the terms of such admission agreement and all the regulations governing the LGPS, including any requirement to provide such information as may be requested by the administering authority of the LGPS in respect of participation in the LGPS. The Provider shall bear the costs of any actuarial assessment required in order to assess the employer's contribution rate (including any bond value) in respect of Eligible Employees.

- 2.3.5. The Provider shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where Eligible Employees would have received such benefits had they been employed by the Authority. The Provider shall be responsible for meeting all costs associated with the award of such benefits.

2.3.6. Broadly Comparable Scheme

- 2.3.7. Where the Provider does not offer the Eligible Employees membership to or continued membership of the LGPS, the Provider shall with effect from the Transfer Date;
- Offer the Eligible Employees membership of an occupational pension scheme that is certified by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS or such other broadly comparable scheme in which the Eligible Employees may have participated prior to the Relevant Transfer;
 - Provide benefit credits for Eligible Employees who transfer their accrued benefits to the Provider's broadly comparable scheme which in the view of the

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actuary will be equivalent in value to the rights that such employees had prior to the transfer.

- Procure that any subsequent bulk transfer from the Provider's broadly comparable scheme will be calculated on the basis that is equal or no less favourable (as determined by the actuary to the LGPS) to the calculation of the transfer value to the broadly comparable scheme. If the transfer amount payable under the broadly comparable scheme is less (in the opinion of the actuary to the LGPS) than the transfer amount calculated on this basis, the Provider will procure payment to the broadly comparable scheme of the larger amount in a manner determined by the Authority in consultation with the Provider.
- The Provider shall award benefits (where permitted) to the Eligible Employees in circumstances where the Eligible Employees would have received such benefits prior to the transfer.
- The Provider will comply with the guidance set out in the HM Treasury guidance note dated June 2004 in respect of the provision of the broadly comparable scheme.
- The Provider shall produce evidence of compliance with this paragraph 2.3 to the Authority and shall be responsible for the costs of obtaining the necessary certificate of comparability.

2.3.8. Where the employment of an Eligible Employee transfers to a Sub-contractor, the Provider shall procure and shall ensure that the Sub-contractor complies with the provisions of this paragraph 2.3 as if it were the Provider in respect of the Eligible Employees transferring to it.

2.3.9. Without prejudice to any other rights of the Authority, the Authority shall have the right to set off against any payments due to the Contractor under this Contract or any other contract with the Authority, an amount equal to any unpaid employer and employee contributions including pension contributions for which the Provider or any of its Sub-Contractors is responsible under the Contract.

2.4. Provision of Information

The Authority has facilitated the provision of information relating to the Relevant Employees from the current Providers but does not warrant that the information is accurate and complete as at the Commencement Date of this Contract. The Authority will endeavour to advise the Contractor up to the Transfer Date of any changes in the information provided, but again will not warrant the accuracy or completeness of such changed information.

2.5. Provider to Inform Authority of any Measures

The Provider shall within 10 (ten) days of receiving a request from the Authority, furnish to the Authority any information deemed by the Authority necessary concerning any measures (within the meaning of the Regulations and the Directive) that the Provider intends to take in relation to any Relevant Employee and shall indemnify the Authority against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.

2.6. Indemnities

2.6.1. The Authority shall indemnify the Provider from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses), which the Provider shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, negligence, fault or omission of the Authority in relation to any such Transferring Employee prior to the Transfer Date and any such claim is not in connection with the Relevant Transfer.

2.6.2. The Provider shall indemnify and keep indemnified the Authority and/or any Successor Provider and in each case, their Providers from and against all direct losses suffered or incurred by it or them which arises from the failure by the Provider to comply with the

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provisions of this schedule . The limitations set out in Section 14 of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the extent necessary to enable any Successor Provider to enforce this indemnity in its own right.

- 2.6.3. The Provider shall indemnify and hold harmless the Authority from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Authority shall take all reasonable steps to mitigate, in connection with or as a result of any claim including a claim by any trade union or staff association or employee representative (whether or not recognised by the Provider in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Provider to comply with any legal obligation to such trade union staff associated or other employee representative whether under Regulation 10 of the Regulations, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.
- 2.6.4. The Provider shall indemnify the Authority from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Authority shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the Provider or Sub-contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Provider or any Sub-contractor or any proposed measures of the Provider or any Sub-contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

3. TUPE COMPLIANCE ON TERMINATION

3.1. Handover on Termination

- 3.1.1. During the 12 months preceding the expiry of this Contract or after the Authority has given notice to terminate this Contract or at any other time as directed by the Authority, and within 15 (fifteen) Business Days of being so requested by the Authority, the Provider shall fully and accurately disclose to the Authority any and all information in relation to all personnel engaged in providing the Service including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may reasonably request, in particular but not necessarily restricted to any of the following:-
 - 3.1.1.1. a list of employees employed by the Provider in the provision of the Service ;
 - 3.1.1.2. a list of agency workers, agents and independent contractors engaged by the Provider in the provision of the Service and who may transfer pursuant to any Relevant Transfer;
 - 3.1.1.3. the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of the personnel to which paragraphs 3.1.1.1 and 3.1.1.2 refer;
 - 3.1.1.4. the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- 3.1.2. The Provider shall warrant the accuracy and completeness of all the information provided to the Authority pursuant to paragraph 3.1.1 and authorises the Authority to use any and all the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Service (or any part thereof).
- 3.1.3. During the 12 months preceding the expiry of the Contract or at any time where notice to terminate this Contract for whatever reason has been given, the Provider shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.
- 3.1.4. During the 12 months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Provider shall not without the

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prior written consent of the Authority unless bona fide in the ordinary course of business:

- 3.1.4.1. vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Service;
- 3.1.4.2. increase or decrease the number of employees employed in connection with the Service; or
- 3.1.4.3. assign or redeploy any employee employed in connection with the Service to other duties unconnected with the Service.

3.2. Indemnities

The Provider shall indemnify the Authority and any Successor Provider appointed by the Authority and keep the Authority and any Successor Provider appointed by the Authority indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Authority and the Successor Provider shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Authority or any Successor Provider as a result of or in connection with the employment or termination of employment of any employee of the Provider during any period prior to the date of expiry or termination of this Contract.

3.3. Sub-contractors

In the event that the Provider enters into any Sub-Contract in connection with this Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this paragraph 3 and shall procure that the Sub-contractor complies with such terms. The Provider shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Authority as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.

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SECTION C- APPENDIX 2 – FORM OF PARENT COMPANY GUARANTEE
(included as a separate document)

SECTION C APPENDIX 3 – FORM OF PERFORMANCE BOND
(included as a separate document).