



# CONTRACT

**BETWEEN**

**[Insert Name] (1)**

**AS AUTHORITY**

**AND**

**[Insert Name] (2)**

**AS PROVIDER**

**CONTRACT FOR THE PROVISION OF PUBLIC  
HEALTH SERVICES**

**Standing List of Approved Providers for  
General Practice Based Public Health  
Services**

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**SECTION A: THE PARTICULARS**

This Contract is made on [insert date of the last signature to this Contract 20[ ]]

**PARTIES**

- (1) [insert name of Authority] of [insert address] (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 Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.
- (C) The Authority put this Standing List of Approved Providers for General Practice Based Public Health Services in place through an invitation to General Practices based with the Torbay Council local authority boundary to bid via 'Open' domestic request for quote process. The award of a place on this Standing List does not guarantee any activity or income to the Provider.

**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**

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- 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 01 April 2016 (the 'Service Commencement Date').
- A3.3. This Contract shall expire automatically on 31 March 2018 (the 'Expiry Date'), unless it is extended or terminated earlier in accordance with the provisions of this Contract.

**A4. REPRESENTATIVES**

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

Name: [insert name]

Title: [insert title]

Contact Details: [insert]

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]

- A4.2. The Provider may replace the Provider Representative and the Authority may replace the Authority Representative at any time by giving written notice to the other Party.

**A5. NOTICES**

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

- A5.2. Notices:

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

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

- a) For the Authority:

Address: [to be completed]

For the attention of: [to be completed]

Tel: [to be completed]

- b) For the Provider:

Address: [to be completed]

For the attention of: [to be completed]

Tel: [to be completed]

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

**A6. ENTIRE CONTRACT**

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

**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.

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

SIGNED by [Insert Authorised Signatory's Name]

for and on behalf of

the AUTHORITY

.....

Signature

.....

Title

.....

Date

SIGNED by [Insert Authorised Signatory's Name]

for and on behalf of

the AUTHORITY

.....

Signature

.....

Title

.....

Date

SIGNED by [Insert Authorised Signatory's Name]

for and on behalf of

the PROVIDER

.....

Signature

.....

Title

.....

Date



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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;

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- c) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
- d) comply with the recommendations issued from time to time by a Competent Body;
- e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
- f) respond to any reports and recommendations made by Local HealthWatch; and
- g) comply with the Quality Outcomes Indicators set out in Appendix C (*Quality Outcomes Indicators*).

B3.2. The Provider shall display its CQC rating in a place easily seen by Service Users and members of the public, including on the Provider's website.

**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 and other appropriate Stakeholders 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;

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and

- c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

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

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

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

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

**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) The Provider ensures that all applicable staff are fit for the purposes for which they are employed i.e. suitably qualified and appropriately trained and vetted for the roles they are undertaking (for example DBS checks as per organisational requirements).

~~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

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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.
- 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.
  - c) appropriate regulatory body checks for individuals applying for roles that necessitate professional membership.
- 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 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.
- 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.

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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 Parties shall to the extent reasonably practicable agree the Charges in a transparent and equitable manner and the Charges shall be set out at Appendix E (*Charges*).
- B8.3. The Provider shall record all applicable activity in regards to each commissioned Service area on the appropriate local activity monitoring proforma on a quarterly basis. .
- ~~B8.4.~~ Payments will be made for activities ~~up to a maximum of three months in arrears~~ within 30 days of receipt of an undisputed invoice or claim.
- B8.5. 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 {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 B8.6.9 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.6.9, 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 B8.3.4 or B8.5 as appropriate.
- 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

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for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.

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

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

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

**B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

B10.1. The Provider shall have clear Safeguarding Policies in line with those from the Local Safeguarding Boards for Adults and Children. 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. The Provider shall have in place arrangements that reflect the importance of safeguarding, including a clear line of accountability for the provision of safeguarding services, and a senior board level lead to take leadership responsibility for the organisation's safeguarding arrangements.

B10.3. The Provider shall have clear whistle blowing procedures, which reflect the principles in Sir Robert Francis' Freedom to Speak Up Review, and shall clearly articulate to staff these whistle blowing procedures. The Provider shall support a culture that enables people to speak freely at every level in the organisation and have confidence their concerns are acted on appropriately.

B10.4. The Provider shall implement its responsibilities in Section 11 of Children Act (2004) to ensure its functions, and any services it may contract out to others in line with the provisions contained in this Contract, are discharged having due regard to the need to safeguard and promote the welfare of children.

B10.5. The Provider shall have clear local arrangements which set out the processes for sharing information with other professionals and with the local safeguarding board.

B10.6. The Provider is responsible for ensuring their staff are competent to carry out their responsibilities in terms of safeguarding, and feel supported to do so.

B10.7. The Provider shall be able to demonstrate the support staff are given to fulfil their safeguarding responsibilities, including but not limited to, mandatory induction including the Provider's safeguarding practice and standards, and effective safeguarding supervision.

B10.8. The Provider shall have policies in line with those from the local children and adults Safeguarding Boards, in order that it might act appropriately when it receives allegations

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against staff or volunteers who work directly with their service users, including children and vulnerable adults.

- B10.9. The Provider shall 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*).
- B10.10. 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.
- B10.11. If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

**B11. CLINICAL GOVERNANCE AND INCIDENTS REQUIRING REPORTING**

- B11.1. The Provider shall have an overarching clinical governance framework in place, to contribute to the cost-effectiveness, safety and quality of Services the Provider delivers, with a named director taking responsibility for clinical governance at Board Level. Clinical Governance systems must help the Provider to improve Services and reduce risk to the health, safety and welfare of Service Users.
- B11.2. There must be systems and policies in place in order that the Provider can learn from incidents and near misses in Services.
- B11.3. The Provider is expected to be open and transparent with Service Users about their care and treatment and, if something goes wrong, to comply with their duty of candour to tell the Service User what has happened, to provide support and to apologise.
- B11.3. 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.
- B11.4. If the Provider gives a notification to the CQC or any other Regulatory Body under clause B11.3 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*).
- B11.5. 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*).
- B11.6. Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause B11.3 and Appendix G (*Incidents Requiring Reporting Procedure*).

**B12. CONSENT**

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

**B13. SERVICE USER HEALTH RECORDS**

- B13.1. The Provider must create, maintain, store and retain Service User health records for all

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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.

B17.2. If a complaint is received about the standard of the provision of the Services or about the



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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 each year of this Contract complete and deliver to the Authority a completed audit as specified in the LARC/Implants and IUD/IUS specifications. 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 – NOT APPLICABLE**

**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:

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

- e) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
- f) 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;

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

B21.2. The Authority warrants and represents that:

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

B21.3. The warranties set out in this clause B21 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).

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- 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**

- B24.1. The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, the General Medical Council, 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

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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 DPA, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or breach of statutory duty or breach of an obligation under the DPA by the Authority.

**B26. LIMITATION OF LIABILITY**

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

**B27. INSURANCE**

- B27.1. The Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Contract, or breach of its statutory duty or breach of an obligation under the DPA, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or breach of statutory duty or breach of an obligation under the DPA by the Authority.

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- B27.2. The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances (see SECTION C). 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 – NOT APPLICABLE**

**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:

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

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

- a) may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Authority that it is able to and will perform the suspended Service, to the required standard; and
- b) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

B31.3. During the suspension of any Service under clause B31.2, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to clause B31.2 has been referred to dispute resolution under clause B30 (*Dispute Resolution*).

B31.4. During the suspension of any Service under clause B31.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B31.2; and/or
- b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B31.5.

B31.5. The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.

B31.6. Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).

B31.7. Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:

- a) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and

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- 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 1 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 expectations with the service specifications (including accreditation criteria) or the principles contained within Appendix G Incidents Requiring Reporting Procedure;
  - b) the Provider is in persistent breach of its obligations under this Contract;
  - c) the Provider:
    - (i) fails to obtain any Consent;
    - (ii) loses any Consent; or
    - (iii) has any Consent varied or restricted,the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;
  - d) the Provider has breached the terms of clause B39 (*Prohibited Acts*);
  - e) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
  - f) the Provider materially breaches its obligations in clause B37 (*Data Protection*);
  - g) the Provider breaches the terms of clause B23 (*Assignment and Sub-contracting*);
  - h) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative

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receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;

- i) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- j) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 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 cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.

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

B33.6. The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), **Appendix G** (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B23 (*Assignment and Sub-contracting*), B24 (*Audit and Inspection*), B33 (*Consequence of*



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*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

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Information be under a duty no less onerous than the Receiving Party's duty set out in clause B36.2;

- e) to comply with a regulatory bodies request.
- B36.4. The obligations in clause B36.1 and clause B36.2 will not apply to any Confidential Information which:
- a) is in or comes into the public domain other than by breach of this Contract;
  - b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
  - c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B36.5. The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B36.
- B36.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B36.
- B36.7. This clause B36 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- B36.8. The obligations in clause B36.1 and clause B36.2B shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

**B37. DATA PROTECTION**

- B37.1. The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B37.2. To the extent that the Provider is acting as a Data Processor on behalf of the Authority, the Provider shall, in particular, but without limitation:
- a) only process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instruction given by the Authority under this Contract;

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- b) put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements in clause B37.3 below, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;
- c) take reasonable steps to ensure the reliability of Staff who will have access to such Personal Data, and ensure that such Staff are properly trained in protecting Personal Data;
- d) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;
- e) promptly notify the Authority of any requests for disclosure of or access to the Personal Data;
- f) Promptly notify the Authority of any breach of the security measures required to be put in place pursuant to this clause B37;
- g) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

B37.3. To the extent that any Authority data is held and/or processed by the Provider, the Provider shall supply that Authority data to the Authority as requested by the Authority.

B37.4. The Provider and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law.

**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

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Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and

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

**B39. PROHIBITED ACTS**

- B39.1. 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

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knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:

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

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

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

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

**B40. FORCE MAJEURE**

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

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

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

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

B40.5. The Authority shall not be entitled to exercise its rights to withholdings and/or deduction of

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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.

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.

**SECTION C: SPECIAL TERMS AND CONDITIONS**

**C1 EXTENDING THE DURATION OF CONTRACT**

- C1.1 The Authority may extend the term of this Contract by a further period of up to two (2) years (the Extension Period). If the Authority wishes to extend this Contract, it shall give the Provider at least three (3) months' written notice of such intention before the Expiry Date set out in clause A3.3 (*Commencement and Duration*).
- C1.2 If the Authority gives such notice, the Expiry Date will be extended by the period set out in the notice.

**C2 INSURANCE**

- C2.1 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) public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
  - (b) employer's liability insurance with a limit of indemnity of not less than £5 million;
  - (c) professional indemnity insurance / medical negligence (malpractice) indemnity or equivalent (such as that offered as an extension to MDU/DDU or MPS membership) with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;
- (together the Required Insurances).
- C2.2 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.
- C2.3 Clause B27.1 (Insurance) will not apply to this Contract.

**C3 CONTRACT BINDING ON SUCCESSORS**

- C3.1 This Contract will be binding on and will be to the benefit of the Authority and Provider and their respective successors and permitted transferees and assigns.

**C4 DATA PROTECTION**

- C4.1 If Authority data is corrupted, lost or sufficiently degraded as a result of the Provider's omission or negligence so as to be unusable, the Authority may:
- (d) require the Provider (at the Provider's expense) to restore the restoration of such data and the Provider must do so as soon as practicable but not later than 2 weeks after identification of the issue and/or
  - (e) Itself restore the restoration of such data. The Provider must reimburse the Authority for any reasonable expenses incurred in doing so.
- C4.2 If at any time the Provider suspects or has reason to believe that Authority data has or may become corrupted, lost or degraded in any way for any reason, the Provider must notify the Authority immediately and inform the Authority of the remedial action the Provider proposes

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to take.

**C5 AGENCY**

- C5.1 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.

**C6 HUMAN RIGHTS**

- C6.1 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.

**C7 SCRUTINY BOARD/EXECUTIVE BOARD ASSISTANCE**

- C7.1 If required or reasonably requested by the Authority to do so, the Provider must throughout the period of this Contract and for a period of six (6) years after the expiry of this Contract give all reasonable assistance to the Authority's Security Board and/or Executive Board and to any other board with a similar status, including attending the Authority's Scrutiny and/or Executive Board in order to answer questions pertaining to this Contract.

**C8 HEALTH AND SAFETY**

- C8.1 The Provider must promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.
- C8.2 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.
- C8.3 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).

**~~C9 DISCLOSURE AND BARRING SERVICE~~**

- ~~C9.1 The Provider must have policies and procedures which acknowledge and provide for ongoing monitoring of the Staff, including undertaking further DBS disclosures every three years.~~

- ~~C9.2 The Provider must keep and must procure that the Authority is kept advised at all times of any Staff who, subsequent to their commencement of employment, receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider (or any employee of a Sub-Contractor involved in the provision of the Services).~~

**C10 BRANDING POLICY**

- C10.1 The Provider must comply with the Authority's local brand policy and guidelines, as revised,



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updated or re-issued from time to time.

**C11 CONFLICTS OF INTEREST**

- C11.1 If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on the other Party's decision whether or not to contract or continue to contract substantially on the terms of this Contract, the Party aware of the conflict must immediately declare it to the other. The other Party may then take whatever action under this Contract as it deems necessary.

**C12 INTELLECTUAL PROPERTY – NOT APPLICABLE**

**C13 CHANGE IN CONTROL**

- C13.1 This clause applies to any Provider Change in Control and/or any Material Sub-Contractor Change in Control, but not to a Change in Control of a company which is a Public Company.

- C13.2 The Provider must:

(f) as soon as possible on, and in any event within 5 Business Days following, a Provider Change in Control; and/or

(g) immediately on becoming aware of a Sub-contractor Change in Control, notify the Authority of that Change in Control and submit to the Authority a completed Change in Control Notification.

- C13.3 If the Provider indicates in the Change in Control Notification an intention or proposal to make any consequential changes to its operations then, to the extent that those changes require a change to the terms of this Contract in order to be effective, they will only be effective when a Variation is made in accordance with clause B22 (Variations). The Authority will not and will not be deemed by a failure to respond or comment on the Change in Control Notification to have agreed to or otherwise to have waived its rights under clause B22 (Variations) in respect of that intended or proposed change.

- C13.4 The Provider must specify in the Change in Control Notification any intention or proposal to make a consequential change to its operations which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract. If the Provider does not do so it will not be entitled to propose a Variation in respect of that for a period of 6 months following the date of that Change in Control Notification, unless the Authority agrees otherwise.

- C13.5 If the Provider does not specify in the Change in Control Notification an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Provider's Premises as a result of or in connection with the Change in Control then, unless the Authority provides its written consent to the relevant action, the Provider must:

(h) ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract; and

(i) continue providing the Services from the Provider's Premises, in each case for at least 12 months following the date of that Change in Control Notification. The provisions of this clause will not apply to an assignment by way of security or the grant of any other similar rights by the Provider consequent upon a financing or re-financing of the

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transaction resulting in Change of Control.

- C13.6 The Provider must supply (and must use its reasonable endeavours to procure that the relevant Sub-contractor supplies) to the Authority, whatever further information relating to the Change in Control the Authority may, within 20 Business Days after receiving the Change in Control Notification, reasonably request.
- C13.7 The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Sub-contractor include a provision obliging the Sub-contractor to inform the Provider in writing on, and in any event within 5 Business Days following, a Sub-contractor Change in Control in respect of that Sub-contractor.
- C13.8 If:
- (j) there is a Sub-contractor Change in Control; and
  - (k) following consideration of the information provided to the Authority in the Change in Control Notification or under clause C14.6, the Authority reasonably concludes that, as a result of that Sub-contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Sub-contractor to provide Services in accordance with this Contract (and, in reaching that conclusion, the Authority may consider any factor, in its absolute discretion, that it considers relevant to the provision of Services),
- then:
- (l) the Authority may, by serving a written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within 10 Business Days (or other period reasonably specified by the Authority taking into account the interests of Service Users and the need for the continuity of Services); and
  - (m) the Provider must duly replace the relevant Sub-contractor within the period specified under clause C14.8.(c).
- C13.9 Notwithstanding any other provision of this Contract:
- (n) a Restricted Person must not hold, and the Provider must not permit a Restricted Person to hold, at any time 5% or more of the total value of any Security in the Provider or in the Provider's Holding Company or any of the Provider's subsidiaries (as defined in the Companies Act 2006); and
  - (o) a Restricted Person must not hold, and the Provider must not permit (and must procure that a Sub-contractor must not at any time permit) a Restricted Person to hold, at any time 5% or more of the total value of any Security in a Sub-contractor or in any Holding Company or any of the subsidiaries (as defined in the Companies Act 2006) of a Sub-contractor.
- C13.10 If the Provider breaches clause C14.9.(b), the Authority may by serving written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within:
- (p) 5 Business Days; or
  - (q) whatever period may be reasonably specified by the Authority (taking into account any factors which the Authority considers relevant in its absolute discretion, including the interests of Service Users and the need for the continuity of Services),

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

C13.11 Nothing in this clause will prevent or restrict the Provider from discussing with the Co-ordinating Commissioner a proposed Change in Control before it occurs. In those circumstances, all and any information provided to or received by the Authority in relation to that proposed Change in Control will be Confidential Information.

C13.12 Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.

C13.13 For the purposes of this clause:

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

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

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

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

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

**Public Company** means:

a company which:

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

**Restricted Person** means:

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

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

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

**C14 TUPE – NOT APPLICABLE**

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APPENDIX A  
SERVICE SPECIFICATIONS

Insert an overarching table of General Practice Sites and commissioned services the relevant Specifications.

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**APPENDIX B**

**CONDITIONS PRECEDENT**

1. The Provider is required to hold the following insurances and provide a copy of the current insurance certificate(s):
  - a. public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
  - b. employer's liability insurance with a limit of indemnity of not less than £5 million;
  - c. professional indemnity insurance / medical negligence (malpractice) indemnity or equivalent (such as that offered as an extension to MDU/DDU or MPS membership) with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;
2. The Provider is required to evidence on an annual basis that they continue to hold the above insurances.
3. The Provider is required to meet the accreditation requirements for each Service commissioned and as set out in the tender documents as part of the contract.

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**APPENDIX C  
QUALITY OUTCOMES INDICATORS**

To be confirmed and inserted as appropriate

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

**Not applicable.**



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**APPENDIX E**

**CHARGES**

Insert the Pricing Schedule below relates to the Services put in place at Contract Award.

Applicants should refer to the tender documents for the pricing schedule – pricing in relation to the specific services commissioned to be inserted as per the schedule set out in the tender documents

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It should be noted that charges above will only apply for services that General Practices are accredited and commissioned to provide and therefore all services in the above may not be available for all General Practices. See **APPENDIX A** for the contracted services for your General Practice sites.

Payments will be made for activities up to a maximum of three months in arrears.

The Provider shall record all applicable activity in regards to each commissioned Service area on the appropriate local activity monitoring proforma on a quarterly basis.

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**APPENDIX F**

**SAFEGUARDING POLICIES**

The Provider will adhere to the Authority safeguarding policies.

The monitoring of safeguarding policies, including staff training will be undertaken through the regular contracting and quality meetings.

Providers should take action to implement:

**1. Safeguarding Adults**

- Department of Health 'No Secrets 2000'
- Clinical Governance and Adult Safeguarding: An integrated process, (DH, February 2010);
- Safeguarding Adults: The Role of Health Service Managers and their Boards,  
(DH, March 2011);
- Safeguarding Adults: The Role of Health Service Practitioners, (DH, March 2011);
- Safeguarding adults: The Role of NHS Commissioners, (DH, March 2011)
- Safeguarding Vulnerable People in the Reformed NHS Accountability and Assurance Framework  
(NHS Commissioning Board, 2013)
- The Care Act (2014)
- The House of Lords select committee on the Mental Capacity Act (2005) Report 2014
- The Supreme Court Judgement in PV – Cheshire West & Chester Council 2014

**2. Safeguarding Children**

- The Needs of Looked After Children PH Guidance 28 (NICE, 2013)
- Statutory Guidance on Promoting the Health and Wellbeing of Looked After Children (DH, 2009)
- Working Together to Safeguard Children (HM Government, 2013).

**APPENDIX G**

**INCIDENTS REQUIRING REPORTING PROCEDURE**

**Clinical governance**

Clinical governance is a term used to describe the systems and processes used to ensure that organisations deliver safe high quality and cost-effective services. These systems and processes (often called a 'clinical governance framework') assure the Supplier – and the Commissioner – that:

- Service users are safe
- Service users receive treatment which is effective for them, *and*
- Service users have good experiences of their treatment.

The Supplier is expected to ensure that a systematic approach to clinical governance is adopted, in order to maintain and improve the quality of treatment service users receive. There is an expectation that the Supplier engenders a culture of continuous improvement in both the standards of service delivery and experience of service users and their families.

The clinical governance framework of the Supplier is expected to:

- Be rigorous enough to ensure the objectives of maintaining and improving quality, safety and effectiveness of provision and reducing risk.
- Accomplish the above aims and objectives, both independently and in partnership, to the satisfaction of:
  - The service users, their families and communities that are served
  - The Commissioners
  - The senior management, or parent organisation, of the Supplier itself
- Responsive enough to avoid being so slow, bureaucratic or burdensome that the potential benefits are not realised in practice.

The clinical governance framework must ensure that the Supplier is able to:

- Support an organisational and system-wide awareness of, and commitment to, clinical governance issues
- Ensure that clinical governance is monitored and issues addressed effectively, i.e. quality and safety are increased and risk reduced
- Provide assurance that all the components of clinical governance are being addressed effectively.

The Supplier will be accountable for the professional practice within their respective service. This includes such clinical and specialist activities as:

- Risk assessment and management
- Safeguarding
- Preventing harm and promoting health and well being
- Disposal of hazardous waste.

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The framework of clinical governance responsibilities that the Supplier is expected to provide includes, but is not limited to:

- Supervision of clinical practice. This will include facilitating reflections on clinical risk and vulnerability management
- Implementation of, and monitoring concordance to, policies, protocols, procedures
- Staff management and development: including appraisal and CPD, sickness absence management, staff performance including disciplinary procedures that are relevant to the commissioned services
- Promoting 'service user' and community involvement in services as appropriate
- Risk and vulnerability management, including safeguarding
- Assessing and monitoring the quality of service provision
- Addressing poor performance of staff
- Safety and suitability of premises and / or equipment,
- Responsibility for the complaints process, risk management and quality improvement initiatives
- Ensuring that complaints and adverse events are investigated and resolved in a timely manner
- Detection of adverse events, including substance or service-specific events
- Conducting internal audit, including clinical audit
- Conducting a significant event investigation, including those that involve clinical judgement and practice
- Learning from complaints, compliments and untoward incidents and implementing change to prevent recurrence and improve practice
- On-going monitoring and management of high-quality data and record keeping
- Dissemination of good practice, ideas and innovation within the service
- Providing evidenced assurance in the safety, effectiveness and quality of delivery to the Commissioners
- Ensuring staff are professionally accredited to carry out their role.

### **Reporting**

The Provider/Supplier must act in an open and transparent way in relation to services provided to service users/patients. Robert Francis QC statement that, "a relentless focus on the patient's best interests and obligation to keep patients safe and protected from substandard care" is the basis for expecting openness, transparency and candour in the relationships covered in this contract.

Serious incidents requiring reporting which occur in General Practice settings are notifiable to NHS England, as outlined in the NHS England GP commissioning contract. The purpose of reporting incidents is for the identification of trends, specific incidents of concern or emerging risks to patient safety. Information will be treated confidentially and securely.

Serious incidents that have been reported to NHS England and/or local Clinical Commissioning Group should be simultaneously notified to the local Public Health Commissioner by the Supplier.

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**Incident reporting process**

Incidents should be reported to the Public Health commissioner subsequent to, and not in replacement of, any internal organisational incident reporting procedures. Incidents that involve controlled drugs should also be reported to the Controlled Drugs Accountable Officer in NHS England, in addition to Public Health and internal organisational mechanisms.

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**APPENDIX H**

**INFORMATION PROVISION**

1. The Provider shall record all applicable activity in regards to each commissioned Service area on the appropriate local activity monitoring proforma on a quarterly basis.
2. Failure to submit data will result in there being no corresponding payment.
3. Data can be submitted up to a maximum of three months in arrears. Data which relates to activity completed more than three months previously can be submitted for activity monitoring, but will not result in a payment being made.

**Local activity reporting**

1. The Supplier will be expected to use and collaborate in the development of any local data recording system, and submit local data returns as required.

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**APPENDIX I**

**TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS**

**Not applicable.**



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**APPENDIX J  
SERVICE QUALITY PERFORMANCE REPORT**

**Not applicable.**

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**APPENDIX K  
DETAILS OF REVIEW MEETINGS**

**Not applicable.**

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**APPENDIX L  
AGREED VARIATIONS**

*[Insert agreed Variations]*

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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

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nominated by CEDR will be appointed as the Expert.

- 3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.
- 3.5 The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within 5 Business Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.
- 3.6 The Expert must produce a written decision with reasons within 30 Business Days of receipt of the statement of case referred to in paragraph 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

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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**

None.

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**Part 3 of Appendix M - Recorded Dispute Resolutions**

None.



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**APPENDIX N: SUCCESSION PLAN**

Not applicable.

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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  
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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)

**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 (*Contract Management*)~~

**CQC** means the Care Quality Commission

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

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

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

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

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**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** means the Data Protection Act 1998

**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~~**Error! Reference source not found.** ~~(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

**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

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**Law** means:

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

in each case in force in England and Wales

**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

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

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

**Provider Representative** means the person identified in clause 0 or their replacement

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

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

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

**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 ~~Error! Reference source not found.~~ (*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 (*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

**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

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**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

**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*).