

**DATED**

**2025**

**The provision of Emergency Hormonal Contraception (EHC) Services**

**between**

**NORTH NORTHAMPTONSHIRE COUNCIL**

**And**

**[INSERT PROVIDER]**

**Legal Services**

**North Northamptonshire Council**  
The Corby Cube, George Street,  
Corby, Northamptonshire, NN17 1QG  
Legal Ref: 24364

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This agreement is dated

2025

## **PARTIES**

- (1) North Northamptonshire Council of of Sheerness Road, 41 Meadow Road, Kettering NN16 8TL and whose address for service is at The Corby Cube, George Street, Corby, Northamptonshire, NN17 1QG (NNC) (**Council**)
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Provider**)

## **BACKGROUND**

- (A) The Council has responsibility for commissioning and providing public health services in line with the objectives of the national Public Health Outcomes Framework which includes reducing unwanted pregnancies and improving access to Emergency Hormonal Contraception (EHC) and sexual advice for all.
- (B) The Council sought proposals through a regulated procurement process under the Health Care Services (Provider Selection Regime) Regulations 2023, for the provision of EHC services through community pharmacies under a Patient Group Direction (PGD).
- (C) In reliance upon the skill, knowledge and experience of the Provider, the Council has selected the Provider to supply the Services described in Schedule 1.
- (D) The Provider is willing and able to deliver the Services described in Schedule 1.
- (E) The Council shall pay to the Provider the price in respect of the Services as set out in Schedule 2.
- (F) The Parties shall comply with their respective obligations under this agreement.

## **Agreed terms**

## 1. Definitions and Interpretation

1. The following definitions and rules of interpretation in this clause apply in this agreement.

**Authorised Representatives:** the persons respectively designated as such by the Council and the Provider.

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.

**Bribery Act:** the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Business Continuity Plan:** the plan required by the Council which requires the Provider to set out how it will continue to provide the Services, following a disruption or break in the Services, Serious Incident or disaster.

**Catastrophic Failure:** any action by the Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Council's Authorised Representative has or may cause significant harm to the reputation of the Council;

**Change:** any change to this agreement including to any of the Services.

**Change Control Note:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**Change Control Procedure:** the procedure for changing this agreement, as set out in [Schedule 4](#).

**Commencement Date:** [\[1 April 2025\]](#).

**Commercially Sensitive Information:** the information listed in the Providers Tender comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Provider significant commercial disadvantage or material financial loss.

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, Providers or plans of the disclosing party; and (ii) the

operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;

b) any information developed by the parties in the course of carrying out this agreement;

c) Personal Data;

d) any Commercially Sensitive Information.

**Contract Year:** any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

**Data Protection Legislation:** all applicable data protection legislation and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); any other directly applicable relating to privacy; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and the privacy of electronic communications.

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

**Default:** any breach of the obligations of the relevant party (including abandonment of this agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence of statement:

a) in the case of the Council, of its employees, servants, agents;

b) in the case of the Provider, of its Sub-contractors or any Provider Personnel,

in connection with or in relation to this agreement and in respect of which such party is liable to the other.

**Default Notice:** is defined in clause 5.2.

**Dispute Resolution Procedure:** the procedure set out in clause

**Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

**End Date:** 31 March 2027 (unless the agreement is extended in accordance with the provisions of clause 3.1)

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Equipment-** the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the agreement.

**FOIA:** the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or action taken by a government or public Council, including without limitation imposing an export or import restriction, quota or prohibition; and
- f) collapse of buildings, fire, explosion or accident.

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term:** the period commencing on the Commencement Date and ending on the End Date or such earlier date of termination of the agreement in accordance with the Law or provisions of the agreement.

**Insolvency Event:** where:

- a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company, limited liability partnership or partnership);
- d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company, partnership or limited liability partnership);

- e) the holder of a qualifying floating charge over the assets of the Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- g) the Provider (being an individual) is the subject of a bankruptcy petition or order;
- h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- i) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- k) the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Law:** the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Provider must comply.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

**Prohibited Act:** the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an



inducement or reward for any improper performance of a relevant function of activity;

b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;

c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Council;

d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

**Provider Party:** the Provider's agents and contractors, including each Sub-Contractor.

**Provider Personnel:** all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Provider's Premises:** the location at which the Services shall be provided as set out in Schedule 1.

**Provider's Tender:** the tender submitted by the Provider and other associated documentation set out in Schedule 3.

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Relevant Requirements:** all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

**Remediation Notice:** a notice served by the Council in accordance with clause 25.1(a).

**Representatives:** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Serious Incident:** within the context of the services and this contract an incident comparable to any of the incidents set out in the definition of serious

incident contained in the NHS Commissioning Board Serious Incident Framework March 2010.

**Services:** the services to be delivered by or on behalf of the Provider under this agreement, as more particularly described in the specification in Schedule 1

**Services Fee:** the fees which shall become due and payable by the Council to the Provider in respect of the Services in accordance with the provisions of this agreement.

**Service User:** means the person who will ultimately be receiving the Services provided by the Provider.

**Sub-Contract:** any contract or agreement, or proposed contract or agreement, between the Provider and a third party pursuant to which that third party agrees to provide to the Provider the Services or any part of the Services.

**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Provider.

**Term:** the period from the Commencement Date to the End Date unless terminated earlier in accordance with the terms of this agreement.

**Termination Date:** the date of expiry or termination of this agreement.

**VAT:** means value added tax chargeable under English Law for the time being and any additional tax.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
4. The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
6. Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.

7. A reference to **writing** or **written** includes fax and e-mail.
8. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
9. A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
10. References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
11. Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
12. If there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
  - (a) the clauses of the agreement;
  - (b) **Schedule 1** to this agreement;
  - (c) the remaining schedules to this agreement other than **Schedule 3**;
  - (d) **Schedule 3** to this agreement.

## **Commencement and duration**

### **2. Term**

This agreement shall take effect on the Commencement Date and shall continue for the Initial Term unless if it is otherwise terminated in accordance with the provisions of this agreement or otherwise lawfully terminated during this period.

### **3. Extending the initial term**

1. The Council may extend this agreement for a further period of not less than six (6) months and up to two (2) years beyond the Initial Term . by giving the Provider at least one months' written notice of such intention before the expiry of the Initial Term.

2. If the Council gives such notice, the End Date shall be extended by the period set out in the notice on the same terms and condition of this agreement.
3. If the Council does not wish to extend this agreement beyond the Initial Term, this agreement shall expire on the End Date and the provisions of clause 29 shall apply.

#### **4. Due diligence and Provider's warranty**

1. The Provider acknowledges and confirms that:
  - (a) the Council has delivered or made available to the Provider all of the information and documents that the Provider considers necessary or relevant for the performance of its obligations under this agreement;
  - (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 4.1(a);
  - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement; and
  - (d) it has entered into this agreement in reliance on its own due diligence.
2. Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
3. The Provider:
  - (a) warrants and represents that all information and statements made by the Provider as a part of the procurement process, including without limitation the Provider's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
  - (b) shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services.

4. The Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Provider in accordance with clause 4.3(b), save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
5. Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

## **The services**

### **5. Supply of services**

1. The Provider shall provide the Services to the Council with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation to Schedule 1 and Schedule 2.
2. In the event that the Provider does not comply with the provisions of clause 5.1 in any way, the Council may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**).

### **6. Service standards**

1. The Provider shall provide the Services, or procure that they are provided:
  - (a) with reasonable skill and care and in accordance with Best Industry Practice;
  - (b) in all respects in accordance with the Council's policies set out in Schedule 1; and
  - (c) in accordance with all applicable Law, codes of practice and national clinical guidance and standards set out in Schedule 1.

## **Business Continuity**

2. The Provider shall develop and continuously review Business Continuity Plans to ensure fitness for purpose and to minimise the impact of unforeseen events including but not limited to:
  - (a) damage by fire
  - (b) the effects of extreme weather conditions
  - (c) the effects of pandemic illness on staff or Service Individuals
  - (d) other failures affecting buildings, utilities or equipment (including ICT equipment)
3. The Provider shall ensure that their Business Continuity Plans set out how the Provider shall continue to provide Services following a disruption of or break in Services as a result of unforeseen events and/or a Serious Incident.
4. Within one (1) week of the Agreement Commencement Date the Provider shall send a copy of its Business Continuity Plan to the Authorised Representative in the Council and shall produce a copy of any updates or amendments on request by the Council at any time.

## **7. Compliance**

1. The Provider shall ensure that all Necessary Consents are in place to provide the Services and the installation of the Provider's Equipment (where applicable), and the Council shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
2. Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Provider has notified the Council in writing.
3. The Provider shall (and shall procure that the Provider Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with all applicable Law regarding health and safety; and
4. Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Provider's Premises of which it becomes aware, and which relate to or arise in connection with the performance of this agreement. The Provider shall instruct the Provider

Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

5. Without limiting the general obligation set out in clause 6, the Provider shall (and shall procure that the Provider Personnel shall):

- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
  - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - (ii) the Council's equality and diversity policy as provided to the Provider from time to time;
  - (iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law;
- (b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
- (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

6. The Provider must be registered with the Care Quality Commission (CQC) as a Provider of 'Regulated Activities.'

## **8. Payment**

1. In consideration of the provision of the Services by the Provider in accordance with the terms and conditions of this agreement, the Council shall pay the Services Fee as detailed in Schedule 1 to the Provider.

2. Payment is contingent upon activity being recorded on the PharmOutcomes system ('**PharmOutcomes**').

3. The Services Fee:

- (a) shall be reviewed annually and the council reserves the right to adjust the fee as necessary; and

- (b) are the entire price payable by the Council to the Provider in respect of the Services and include, without limitation, any royalties, licence fees, supplies and all consumables used by the Provider, travel costs, accommodation expenses and the cost of Provider Personnel.
- 4. The Provider shall submit an invoice to the Council for payment of the Services. All invoices shall be directed to the Council's Authorised Representative and shall contain such information as the Council may inform the Provider from time to time.
- 5. The Council shall accept and process for payment an electronic invoice submitted via PharmOutcomes by the Provider, where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 6. Where the Provider submits an invoice to the Council in accordance with clause 8.4, the Council will consider and verify that invoice in a timely fashion.
- 7. No payment shall be made if the Service has been provided by an un-trained EHC service pharmacist, non pharmacist staff, or if a supply is made outside of the conditions of the PGD.
- 8. The Council shall credit the Provider's account with any sums due under an invoice by the end of the month following entry into PharmOutcomes providing that that the invoice is valid and undisputed.
- 9. Where the Council fails to comply with clause 8.6, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 8.8 after a reasonable time has passed from the date on which it is received by the Council.
- 10. The Provider shall comply with any reasonable requests for alternative payment processes required by the Council.
- 11. Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
  - (a) provisions having the same effect as clause 8.6 to clause 8.9 of this agreement; and



- (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 8.6 to clause 8.9 of this agreement.

In this clause 8.11, "Sub-Contract" means a contract between two or more Providers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

- 12. Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 15. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 7 days after resolution of the dispute between the parties.
- 13. Subject to clause 8.12, interest shall be payable on the late payment of any undisputed Services Fee properly invoiced under this agreement in accordance with clause 9. The Provider shall not suspend the supply of the Services if any payment is overdue.
- 14. The Services Fee are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this agreement.
- 15. The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council for 6 years from the end of the Contract Year to which the records relate.
- 16. The Council may at any time, set off any liability of the Provider to the Council against any liability of the Council to the Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 17. All amounts due under this agreement from the Provider to the Council shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).

## **9. Interest**

1. Each party shall pay interest on any sum due under this agreement, calculated as follows:
  - (a) Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
  - (b) Period. From when the overdue sum became due, until it is paid.

## **Staff**

## **10. Personnel used to provide the EHC services**

1. At all times, the Provider shall ensure that:
  - (a) each of the Provider Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - (b) there is an adequate number of Provider Personnel to provide the Services properly;
  - (c) where applicable, Provider Personnel are registered with the appropriate professional regulatory body;
  - (d) each of the Provider Personnel are aware of and respect equality and human rights of colleagues and Service Users;
  - (e) it can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Provider's discretion) for each of the Provider Personnel engaged in the Services;
  - (f) only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
  - (g) all of the Provider Personnel comply with all of the Council's policies .
2. If requested by the Council, the Provider shall as soon as practicable and by no later than 20 Business Days following receipt of that request, provide the Council with evidence of the Provider's compliance with clause 10.1.
3. The Provider shall replace any of the Provider Personnel who the Council reasonably decides has failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

4. The Provider shall maintain up-to-date personnel records on the Provider Personnel engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Provider Personnel. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
5. The Provider shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

## **11. Safeguarding Children and Vulnerable Adults**

1. Where, in relation to the Services, the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of a Regulated Activity, in addition to the necessary checks dictated in Schedule 3 of the Health and Social Care Act 2008, it must:
  - (a) ensure that all Provider Personnel are subject to a valid enhanced disclosure check for regulated activity undertaken through DBS;
  - (b) monitor the level and validity of the checks under this clause 11 for all Provider Personnel; and
  - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
2. The Provider warrants that it has no reason to believe that any Relevant Staff are barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made under it, as amended from time to time.
3. The Provider must immediately provide to the Council any relevant information reasonably requested by the Council to enable the Council to be satisfied that the obligations of this clause 11 have been met.
4. The Recipient must refer to the DBS information about any person in respect of whom it declines or withdraws permission to be involved in the delivery of the Services (or would have done so, if that person had not otherwise ceased to be involved) because, in its opinion, that person has harmed or poses a risk of harm to Service Users.

5. The Regulated Activity Provider must comply with all relevant law and guidance in relation to the safeguarding of children and adults.

## **Contract management**

### **12. Reporting and meetings**

1. The Authorised Representatives shall meet on a 6 month to annual basis to discuss and monitor performance and the requirements of the Service.

### **13. Monitoring**

1. The Council may arrange visits to monitor the performance of the Services by the Provider. Performance and outcomes shall be monitored by the PharmaOutcomes monitoring system as set out in Schedule 1.
2. The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 13.1 at no additional charge to the Council.

### **14. Change control and continuous improvement**

1. Any requirement for a Change shall be subject to the Change Control Procedure.
2. The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Provider shall identify and report to the Council's Authorised Representative every six months to annually on:
  - (a) the emergence of new and evolving relevant technologies which could improve the Services;
  - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
  - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and

- (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.
- 3. Any potential Changes highlighted as a result of the Provider's reporting in accordance with clause 14.2 shall be addressed by the parties using the Change Control Procedure.

## **15. Dispute resolution**

- 1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
  - (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Assistant Director and the Provider's Senior Manager who shall attempt in good faith to resolve it; and
  - (c) if the Council's Assistant Director and the Provider's Senior Manager are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 28 days after the date of the ADR notice.
- 2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 38 which clause shall apply at all times.

## **16. Sub-Contracting and assignment**

- 1. Subject to clause 16.3, neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Provider sub-contract the whole or any part of its obligations under this agreement

except with the express prior written consent of the Council, such consent not to be unreasonably withheld.

2. In the event that the Provider enters into any Sub-Contract in connection with this agreement it shall:
  - (a) remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
  - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
3. The Council shall be entitled to novate (and the Provider shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.
4. Without prejudice to the generality of this clause 16, the Provider shall:
  - (a) subject to clause 16.6, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Term;
  - (b) within 90 days of awarding a Subcontract, update the notice on Contracts Finder with details of the Subcontractor;
  - (c) promote Contracts Finder to its Providers and encourage those organisations to register on Contracts Finder.
5. Each advert referred to at clause 16.4(a) shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Provider.
6. The obligation at clause 16.4 shall only apply in respect of subcontract opportunities arising after the Commencement Date.
7. Notwithstanding clause 16.4, the Council may by giving its prior written approval agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

## **Liability**

### **17. Indemnities**

1. The Provider shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:
  - (a) the Provider's breach or negligent performance or non-performance of this agreement;
  - (b) any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Provider or Provider Personnel;
  - (c) the enforcement of this agreement.
2. The indemnity under clause 17.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this agreement by the Council or its Representatives.

### **18. Limitation of liability**

1. Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.
2. The Provider assumes responsibility for and acknowledges that the Council may, amongst other things, recover:
  - (a) sums paid by the Council to the Provider pursuant to this agreement, in respect of any services not provided in accordance with the agreement;
  - (b) wasted expenditure;
  - (c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
  - (d) losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Provider Personnel, regulator or customer of the Council) against the Council caused by the act or omission of the Provider; and

- (e) any anticipated savings.
- 3. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.
- 4. Notwithstanding any other provision of this agreement neither party limits nor excludes its liability for:
  - (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
  - (c) breach of any obligation as to title implied by statute; or
  - (d) any other liability for which may not be limited under any applicable law.

## **19. Insurance**

- 1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
  - (a) public liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim or series of claims;
  - (b) employer's liability insurance of not less than £10,000,00 (ten million pounds) in relation to any one claim or series of claims;
  - (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000 (two million pounds) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
  - (d) product liability insurance with a limit of indemnity of not less than £10,000,000 (ten million) in relation to any one claim or series of claims, and
  - (e) (e) medical malpractice and negligence insurance with an indemnity limit of a minimum of £10,000,000 in respect of any occurrence and unlimited in the aggregate.

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the agreement, including death or personal injury, loss of or damage to property



or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

2. The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
3. If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
4. The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the agreement.
5. The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

## **Information**

### **20. Freedom of information**

1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Provider shall:
  - (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Council all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - (c) provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
  - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.
2. The Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive

Information) without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

3. Notwithstanding any other term of this agreement, the Provider consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
4. The Council shall, prior to publication, consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Provider shall assist and co-operate with the Council to enable the Council to publish this agreement.

## **21. Data processing**

1. The Services involve the processing of Personal Data and the parties agree that they will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this agreement and shall comply with their respective obligations as set out in Schedule 4.
2. This clause 21 is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

## **22. Confidentiality**

1. Subject to clause 22.2, each party shall keep the other party's Confidential Information confidential and shall not:
  - (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 22.
2. The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
  - (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including the FOIA or the EIRs;
  - (d) which is in or enters the public domain other than through any disclosure prohibited by this agreement;
  - (e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
  - (f) which is disclosed by the Council on a confidential basis to any central government or regulatory body.
3. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
  - (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 22.3.
4. The provisions of this clause 22 shall survive for a period of 6 years from the Termination Date.

## **23. Audit**

1. During the Term and for a period of 6 years after the Termination Date, the Council (acting by itself or through its Representatives) may conduct an audit of the Provider, including for the following purposes:
- (a) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
  - (b) to review the Provider's compliance with the Data Protection Legislation and the FOIA, in accordance with clause 21 (Data

Protection) and clause 20 (Freedom of Information) and any other legislation applicable to the Services;

- (c) to review any records created during the provision of the Services;
  - (d) to review any books of account kept by the Provider in connection with the provision of the Services;
  - (e) to carry out the audit and certification of the Council's accounts;
  - (f) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
  - (g) to verify the accuracy and completeness of the management reports delivered or required by this agreement.
2. Except where an audit is imposed on the Council by a regulatory body or where the Council has reasonable grounds for believing that the Provider has not complied with its obligations under this agreement, the Council may not conduct an audit under this clause 23 more than twice in any calendar year.
3. The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
4. Subject to the Council's obligations of confidentiality, the Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites and to any Equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Provider Personnel.
5. The Council shall endeavour to (but is not obliged to) provide at least 14 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
6. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Provider in which case the Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

7. If an audit identifies that:
- (a) the Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan.;
  - (b) the Council has overpaid any Services Fee, the Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Services Fee if the Provider fails to make this payment; and
  - (c) the Council has underpaid any Services Fee, the Council shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Provider in relation to invoicing within 20 days.

## **24. Intellectual property**

1. In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Provider or Provider Personnel:
- (a) in the course of performing the Services; or
  - (b) exclusively for the purpose of performing the Services,
- shall vest in the Council on creation.
2. The Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

## **Termination**

### **25. Termination for breach**

1. The Council may terminate this agreement in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:
- (a) if the Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Council may only terminate this agreement under this clause 25.1 if

the Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;

- (b) if a Catastrophic Failure has occurred;
- (c) if there is an Insolvency Event.
- (d) if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010.
- (e) the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

2. The Council may terminate this agreement in accordance with the provisions of clause 27 and clause 28.

3. If this agreement is terminated by the Council pursuant to this clause 25, such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination.

## **26. Termination on notice**

Without affecting any other right or remedy available to it, the Council may terminate this agreement at any time by giving 6 months' written notice to the Provider.

## **27. Force majeure**

1. Provided it has complied with the remaining provisions of this Clause 27, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.

2. The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

3. The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 4. An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Provider cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Provider should have foreseen and provided for the cause in question.
- 5. The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 6. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 1 weeks' notice to the Affected Party.
- 7. For the avoidance of doubt, flood, pandemic, flu, or any such like shall not be considered as a Force Majeure event and as such must be provided for in the Provider's Business Continuity Plan. The Provider shall use all reasonable endeavours to maintain the Service in this event.

## **28. Prevention of bribery**

- 1. The Provider represents and warrants that neither it, nor any Provider Personnel:
  - (a) has committed a Prohibited Act;
  - (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
  - (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

2. The Provider shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 28.1 at the relevant time.
3. The Supplier shall (and shall procure that its Provider Personnel shall) during the Term:
  - (a) not commit a Prohibited Act; and/or
  - (b) not do or omit to do anything that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
  - (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
  - (d) notify the Council (in writing) if it becomes aware of any breach of clause 28.3(a) or clause 28.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this agreement.
4. The Provider shall maintain appropriate and up to date records showing all payments made by the Provider in connection with this agreement and the steps taken to comply with its obligations under clause 28.3.
5. The Provider shall allow the Council and its third-party representatives to audit any of the Provider's records and any other relevant documentation in accordance with clause 23.
6. If the Provider is in Default under this clause 28 the Council may by notice:
  - (a) require the Provider to remove from performance of this agreement any Provider Personnel whose acts or omissions have caused the Default; or
  - (b) immediately terminate this agreement.
7. Any notice served by the Council under clause 28.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this agreement shall terminate).



## **29. Consequences of termination or expiry**

1. On termination or expiry of this agreement the Provider shall:
  - (a) procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Provider's Authorised Representative shall certify full compliance with this clause; and
  - (b) ensure that the safety and needs of the Service Users remain paramount during the termination period or any other period that may be agreed between the parties for the conclusion of the agreement. The Provider shall work with the Council to achieve an orderly conclusion to all its rights and obligations under the agreement. The Provider shall in all respects perform the agreement as has been agreed herein between the parties. The Council shall pay the Provider any amounts that are correctly due to it under the agreement up to the termination date.
2. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 16 (Indemnities), clause 18 (Limitation of Liability), clause 19 (Insurance), clause 20 (Freedom of Information), clause 21 (Data Processing), clause 22 (Confidentiality), clause 23 (Audit), clause 25 (Termination for Breach) and this clause 29 (Consequences of termination), shall remain in full force and effect.
3. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

## **General provisions**

### **30. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **31. Rights and remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **32. Severability**

1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
2. If any provision or part-provision of this agreement is deemed deleted under clause 32.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **33. Partnership or agency**

1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **34. Third party rights**

1. This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

### **35. Publicity**

The Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Council's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory Council, any court or other Council of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

### **36. Notices**

1. Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand, email or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
2. Any notice shall be deemed to have been received:
  - (a) if delivered by hand, at the time the notice is left at the proper address;  
or
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; and
  - (c) if sent by email, at the time of transmission
3. If deemed receipt under clause 35.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. Business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt
4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
5. For the purposes of clause 36.1, the address of each Party shall be:
  - (a) For the Council:  
North Northamptonshire Council,  
The Corby Cube, George Street, Corby, Northamptonshire, NN17 1QG

For the attention of: Yvonne Powell- Commissioning Manager

Email address: Yvonne.powell@northnorthants.gov.uk

- (b) For the Supplier:

[NAME OF SERVICE PROVIDER'S REPRESENTATIVE]

Address: [ADDRESS]

For the attention of: [POSITION OF CONTACT]

Email address: [EMAIL ADDRESS]

**37. Entire agreement**

1. This agreement and the documents referred to in it constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**38. Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**39. Transparency**

In order to comply with the Government's policy on transparency in the areas of procurement and contracts, the Provider consents to and agrees that this agreement and the Provider's Tender documents issued by the Council will be published by the Council on a designated website.

**40. Modern Slavery**

1. The parties agree to:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015;
- (b) have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance; and
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

#### **41. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Authorised to sign for and on behalf of **North Northamptonshire Council**

Signature.....

Date.....

Name in capitals.....

Address.....  
.....

Authorised to sign for and on behalf of **[Name of Provider]**

Signature.....

Date.....

Name in capitals.....

Address.....  
.....



North

## **Schedule 1 Specification**

Northamptonshire EH

## Schedule 2

### **Schedule 3 Provider's Tender**



## **Schedule 4 Change control**

### **1. General principles**

- 1.1 Where the Council or the Provider sees a need to change this agreement, the Council may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 4.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Provider and the Provider Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 4, shall be undertaken entirely at the expense and liability of the Provider.

### **2. Procedure**

- 2.1 Discussion between the Council and the Provider concerning a Change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this agreement by the Council; or
  - (c) a recommendation to change this agreement by the Provider.
- 2.2 Where a written request for a Change is received from the Council, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Council within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Provider shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Services Fee;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Council and the Provider; and
- (k) if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement under clause 25.1(e) will be apportioned.

2.5 For each Change Control Note submitted by the Provider the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information;
  - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Provider; or
  - (iii) notify the Provider of the rejection of the Change Control Note.

- 2.6 A Change Control Note signed by the Council and by the Provider shall constitute an amendment to this agreement.

## **Schedule 5 Data processing**