

**CONTRACT NUMBER: 00653059**

**(1)  
LONDON BOROUGH OF EALING  
AS AUTHORITY**

**AND**

**(2)  
[Insert Name]  
AS PROVIDER**

---

**CONTRACT FOR THE PROVISION OF  
Health Visiting, School Nursing, Family  
Nurse Partnership and the Health Visitor  
Advisory Services**

---

---

## CONTENTS

<b>A1</b>	<b>Contract</b>
<b>A2</b>	<b>Interpretation</b>
<b>A3</b>	<b>Commencement and Duration</b>
<b>A4</b>	<b>Representatives</b>
<b>A5</b>	<b>Notices</b>
<b>A6</b>	<b>Entire Contract</b>
<b>A7</b>	<b>Counterparts</b>
<b>B1</b>	<b>Services</b>
<b>B2</b>	<b>Withholding and/or Discontinuation of Service</b>
<b>B3</b>	<b>Service and Quality Outcomes</b>
<b>B4</b>	<b>Service User Involvement</b>
<b>B5</b>	<b>Equity of Access, Equality and no Discrimination</b>
<b>B6</b>	<b>Managing Activity</b>
<b>B7</b>	<b>Staff</b>
<b>B8</b>	<b>Charges and Payment</b>
<b>B9</b>	<b>Service Improvements and Best Value Duty</b>
<b>B10</b>	<b>Safeguarding Children and Vulnerable Adults</b>
<b>B11</b>	<b>Incidents Requiring Reporting</b>
<b>B12</b>	<b>Consent</b>
<b>B13</b>	<b>Service User Health Records</b>
<b>B14</b>	<b>Information</b>
<b>B15</b>	<b>Equipment</b>
<b>B16</b>	<b>Complaints</b>
<b>B17</b>	<b>Service Review</b>
<b>B18</b>	<b>Review Meetings</b>
<b>B19</b>	<b>Co-operation</b>
<b>B20</b>	<b>Warranties and Representations</b>
<b>B21</b>	<b>Variations</b>
<b>B22</b>	<b>Assignment and Sub-Contracting</b>
<b>B23</b>	<b>Audit and Inspection</b>
<b>B24</b>	<b>Indemnities</b>
<b>B25</b>	<b>Limitation of Liability</b>
<b>B26</b>	<b>Insurance</b>
<b>B27</b>	<b>Remedy of Defaults</b>
<b>B28</b>	<b>Defaults and Failure to Supply</b>
<b>B29</b>	<b>Suspension and Consequences of Suspension</b>
<b>B30</b>	<b>Dispute Resolution</b>
<b>B31</b>	<b>Termination</b>
<b>B32</b>	<b>Consequence of Expiry or Termination</b>
<b>B33</b>	<b>Business Continuity</b>
<b>B34</b>	<b>Counter-Fraud and Security Management</b>
<b>B35</b>	<b>Confidentiality</b>
<b>B36</b>	<b>Data Protection</b>
<b>B37</b>	<b>Freedom of Information and Transparency</b>
<b>B38</b>	<b>Prohibited Acts</b>
<b>B39</b>	<b>Force Majeure</b>
<b>B40</b>	<b>Third Party Rights</b>
<b>B41</b>	<b>Capacity</b>
<b>B42</b>	<b>Severability</b>
<b>B43</b>	<b>Waiver</b>
<b>B44</b>	<b>Publicity</b>
<b>B45</b>	<b>Exclusion of Partnership, Joint Venture or Agency</b>
<b>B46</b>	<b>Governing Law and Jurisdiction</b>
<b>Appendix A</b>	<b>Service Specification</b>
<b>Appendix B</b>	<b>Conditions Precedent</b>
<b>Appendix C</b>	<b>Quality Outcomes Indicators</b>
<b>Appendix D</b>	<b>Service User, Carer and Staff Surveys</b>
<b>Appendix E</b>	<b>Charges</b>
<b>Appendix F</b>	<b>Safeguarding Policies</b>

---

<b>Appendix G</b>	<b>Not Used</b>
<b>Appendix H</b>	<b>Information Sharing Agreement</b>
<b>Appendix I</b>	<b>Not Used</b>
<b>Appendix J</b>	<b>Service Quality Performance Report and Information Provision</b>
<b>Appendix K</b>	<b>Details of Review Meetings</b>
<b>Appendix L</b>	<b>Not Used</b>
<b>Appendix M</b>	<b>Dispute Resolution</b>
<b>Appendix N</b>	<b>Not Used</b>
<b>Appendix O</b>	<b>Definitions and Interpretation</b>
<b>Appendix P</b>	<b>The Tender and Tender Documents</b>
<b>Section C</b>	<b>Special Terms and Conditions</b>

**draft**

---

## SECTION A: THE PARTICULARS

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

### PARTIES

- (1) **THE COUNCIL OF THE LONDON BOROUGH OF EALING** of Town Hall, New Broadway, Ealing, London, W5 2BY (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 2012 as amended by the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) and Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment) Regulations 2015. In order to satisfy these obligations the Authority wishes to secure the provision of and the Provider wishes to provide the Services of:
  - a. Health Visiting Service;
  - b. Family Nurse Partnership;
  - c. School Nursing Services; and
  - d. Health Visitor Advisory Service
- (B) The Authority placed a contract notice **[INSERT OJEU NOTICE REFERENCE]** on **[INSERT DATE]** in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of the Services.
- (C) The Authority has, through a competitive process, selected the Provider to provide these Services and the Provider is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

### IT IS AGREED

#### A1. CONTRACT

- A1.1. This Contract is comprised of:
  - a) these Particulars (Section A);
  - b) the General Terms and Conditions (the 'General Conditions') in (Section B); and
  - c) the Special Terms and Conditions (the 'Special Conditions') in (Section C), where any such terms have been agreed,as completed and agreed by the Parties and as varied from time to time in accordance with clause B21 (*Variations*) of the General Conditions.

#### A2. INTERPRETATION

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

#### A3. COMMENCEMENT AND DURATION

- A3.1. This Contract shall take effect on 1<sup>st</sup> October 2018 (the 'Commencement Date').

---

A3.2. The Provider shall, subject to having satisfied the Conditions Precedent provide the Services from 1<sup>st</sup> October 2018 (the 'Service Commencement Date').

A3.3. This Contract shall expire automatically on 30<sup>th</sup> September 2021 (the 'Expiry Date'), unless it is extended or terminated earlier in accordance with the provisions of this Contract. Both parties have agreed to a mid-year review of the service delivery in case any further adjustments are required to the specification or KPI's in light of changes to the service funding and model.

#### **A4. EXTENDING THE DURATION OF THE CONTRACT**

A4.1 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 twelve (12) months' written notice of such intention before the Expiry Date set out in clause A3.3 (*Commencement and Duration*).

A4.2 If the Authority gives such notice, the Expiry Date will be extended by the period set out in the notice.

#### **A5. REPRESENTATIVES**

A5.1. 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: [Name to be inserted]  
Title: Head of Children's Commissioning, Ealing Council  
Contact Details: Tel: [insert]  
Email: [insert]

A5.2. The person set out below is authorised from the Commencement Date to act on behalf of the Provider on all matters relating to this Contract (the 'Provider Representative').

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

A5.3. The Provider may replace the Provider Representative and the Authority may replace the Authority Representative at any time by giving written notice to the other Party.

#### **A6. NOTICES**

A6.1. 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.

A6.2. Notices:

- a) by post and correctly addressed shall be effective upon the earlier of actual receipt, or 2 Business Days after mailing; or
- b) by hand shall be effective upon delivery.

A6.3. For the purposes of clause A6.2, the address for service of notices on each Party shall be as follows:

- a) For the Authority:  
Address: The Council of the London Borough of Ealing  
Perceval House, 14-16 Uxbridge Road  
Ealing  
London  
W5 2HL

---

For the attention of: [To be inserted, Head of Children's Commissioning,  
London Borough of Ealing]

Tel: [insert]

b) For the Provider:  
Address: [to be completed]

For the attention of: [to be completed]

Tel: [to be completed]

A6.4. Either Party may change its address for service by serving a notice in accordance with this clause A6.

**A7. 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.

**A8. COUNTERPARTS**

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

**IN WITNESS** whereof the Council and the Provider have executed this Agreement as a deed the day and year first above-written

**THE COMMON SEAL of THE COUNCIL OF** )  
**THE LONDON BOROUGH OF EALING** was )  
hereunto affixed in the presence of:- )

**Authorised Officer**

<sup>1</sup>[The COMMON SEAL of  
**[PROVIDER]**  
 was hereunto affixed in the presence of :

<b><u>DIRECTOR</u></b>	Signature
Name IN CAPITALS	

<b>DIRECTOR / COMPANY SECRETARY</b>	Signature
Name IN CAPITALS	

<sup>2</sup>[EXECUTED AS A DEED by  
**[PROVIDER]**  
 acting by :

<b><u>DIRECTOR</u></b>	Signature
Name IN CAPITALS	

<b>DIRECTOR / COMPANY SECRETARY</b>	Signature
Name IN CAPITALS	

<sup>3</sup>[SIGNED AS A DEED by  
**[PROVIDER]**

.....

**in the presence of :**

Witness Signature : .....

Witness Name IN CAPITALS : .....

Witness Address : .....

.....

.....

Witness Occupation : .....

---

<sup>1</sup> Attestation clause if Provider is a limited company having a Common Seal. Deeds only  
<sup>2</sup> Attestation clause if Provider is a limited company without a Common Seal. Deeds only  
<sup>3</sup> Attestation clause if Provider is not a limited company. If Provider is a partnership, an attestation clause is required for each partner, unless the partnership deed allows otherwise

---

## **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;
  - 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; or
  - e) in respect of whom no valid consent (where required) has been given in accordance with the Service User consent policy to be implemented by the Provider under clause B12.1
- 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, Carer or Legal Guardian (as relevant) 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, Carer or Legal Guardian (as relevant) 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 shall accept Referrals of Service Users in accordance with any Service Specification.
- B3.2. The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Authority in writing:
- a) comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;

- 
- b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
  - c) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
  - 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*).

#### **B4. SERVICE USER INVOLVEMENT**

- B4.1. The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.
- B4.2. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide evidence to the Authority of the involvement of Service Users, Carers and Staff in the development of Services.
- B4.3. The Provider must carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Authority in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in Appendix D (*Service User, Carer and Staff Surveys*) or as otherwise agreed between the Parties in writing from time to time.
- B4.4. The Provider must review and provide a written report to the Authority on the results of each survey carried out under clause B4.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions within a reasonable timescale. 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, their Carers or Legal Guardians, 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 reasonable appropriate assistance and make reasonable adjustments for Service Users, Carers or Legal Guardians who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- B5.3. In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
  - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
  - c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

---

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

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

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

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

## **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 and where required have completed their revalidations by the appropriate professional regulatory body; and
- d) Staff are aware of and respect equality and human rights of colleagues and Service Users.
- e) it can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Provider's discretion) for each of the Staff engaged in the Services, or where a DBS is in process, staff to be accompanied and appropriate supervision to be provided at all times

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

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

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

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.
- 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 Provider engages agency staff in order to fulfil its obligations under this clause B7 it shall ensure that the total number of agency staff does not exceed 10% of the total Staff employed or engaged in providing the Services. Should it need to exceed this level of agency staff the Authority must be consulted and must give its permission in writing, such permission not to be unreasonably withheld.

## **B7.10 TUPE**

- B7.10.1 If the Authority has notified the Provider that it intends to tender or retender any Services, the Provider must within 20 Business Days following written request (unless otherwise agreed in writing) provide the Authority with anonymised details of Staff engaged in the provision of the relevant Services who may be subject to TUPE. The Provider must indemnify and keep indemnified the Authority or any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this clause.
- B7.10.2 During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not and must procure that its Sub-contractors do not, without the prior written consent of the Authority, in relation to any persons engaged in the provision of the Services or the relevant Service:

- 
- (a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);
  - (b) increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any Sub-contractor by more than 5% (except in the ordinary course of business);
  - (c) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
  - (d) replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
  - (e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.

B7.10.3 The Provider must indemnify and keep indemnified the Authority and, at the Authority's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or any Service, against any Losses in respect of:

- (a) the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any Sub-contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any Sub-contractor;
- (b) claims brought by any other person employed or engaged by the Provider and/or any Sub-contractor who is found to or is alleged to transfer to the Authority or new provider under TUPE; and/or
- (c) any failure by the Provider and/or any Sub-contractor to comply with its obligations under TUPE in connection with any transfer to the Authority or new provider.

B7.10.4 The Authority must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any Sub-contractor against any Losses in respect of:

- (a) any failure by the new provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new provider;
- (b) any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service; and/or
- (c) any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service.

## **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 invoice the Authority for payment of the Charges at the end of each calendar month (or such other frequency agreed between the Parties in writing) which the Authority shall pay within 30 calendar days of receipt. Where the Provider is a voluntary organisation, the Authority shall pay the Charges to the Provider quarterly in advance in accordance with the amounts and dates in Appendix E (*Charges*).
- B8.4. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- B8.5. In its performance of this Contract the Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).
- B8.6. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:
- a) the contesting Party shall within 5 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
  - b) any uncontested amount shall be paid in accordance with this Contract.
- B8.7. If a Party contests a payment under clause B8.6 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.6, the contesting Party may refer the matter to dispute resolution under clause B30 and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.3.
- B8.8. Subject to any express provision of this Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B8.9. Each Party may retain or set off any sums owed to the other Party which have fallen due and payable against any sum due to the other Party under this Contract or any other agreement between the Parties.
- B8.10. The Provider acknowledges that the Charges payable under this Contract are fully inclusive of all payments required to provide the Services to the Authority and that no additional payments above the Charges detailed shall be paid whether for the provision of additional agency staff to provide the Service or any other costs, the Provider is to ensure the Charges detailed allow the provision of the Services for the entire contract term.
- B8.11. The Authority and the Provider agree to review the Charges at least two (2) years following the Commencement Date, and prior to any extension options being exercised by the Authority. Any changes to the Charges agreed to between the Parties shall take effect following any extension options being exercised by the Authority in accordance with Clause B.21 (Variations).

---

## **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, subject to it agreeing to the associated costs within the mutually agreed time period, shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans. Any dispute in respect of the costs shall be referred for resolution in accordance with clause B30 (*Dispute Resolution*).
- 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 adopt Safeguarding Policies and such policies shall comply with the Authority's safeguarding policy as amended from time to time and may be appended at Appendix F (*Safeguarding Policies*).
- B10.2. At the reasonable written request of the Authority and by no later than 10 Business Days following receipt of such request, the Provider must provide evidence to the Authority that it is addressing any safeguarding concerns.
- B10.3. If reasonably requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

## **B11. INCIDENTS REQUIRING REPORTING**

- B11.1. If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
- B11.2. If the Provider gives a notification to the CQC or any other Regulatory Body under clause B11.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within 5 Business Days.
- B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority.
- B11.4. Subject to the Law, the Authority shall have discretion to use the information provided by the Provider under this clause B11.1 for appropriate purposes linked to the subject matter of this Contract.

---

**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 Service Users. The Provider must retain Service User health records for the periods of time required by Law and/or by national retention schedules published by the Department of Health or the NHS CB HSCIC, 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;
- b) give each Service User full and accurate information regarding his/her treatment and Services received; and
- c) at the Authority's request, promptly transfer the Service User health record held by the Provider for any Service User for whom the Authority is responsible for commissioning and/or providing services the same as or similar as the Services to the Service User (or deliver a copy of it) to a third party provider of healthcare or social care services nominated by the Authority.

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 C (*Quality Outcomes Indicators*) to measure the quality, quantity or otherwise of the Services and acknowledges that the submission of complete and accurate data in accordance with this clause B14 is necessary to support the commissioning of all health and social care services in England.

B14.2. The Provider must deliver the information required under clause B14.1 in the format, manner, frequency and timescales specified in Appendix C (*Quality Outcomes Indicators*) 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 C (*Quality Outcomes Indicators*), 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 Sharing Agreement*).

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.

B14.5. The Provider shall comply with the guidance relating to clinical coding published by the NHS Classifications Service and with the definitions of activity maintained under the NHS Data Model and Dictionary

---

**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.
- B15.2. The Provider must ensure that all Staff using Equipment, and all Service Users and Carers using Equipment independently as part of the Service User's care or treatment, have received appropriate and adequate training and have been assessed as competent in the use of that Equipment.

**B16. COMPLAINTS**

- B16.1. The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services and ensure that Service Users are made aware of the Provider's complaints procedure and how to use it effectively.
- B16.2. If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in clause B28 (*Default and Failure to Supply*).

**B17. SERVICE REVIEW**

- B17.1. The Provider must each month of this Contract or otherwise as agreed deliver to the Authority a Service Quality Performance Report against the factors set out in Appendix C (*Quality Outcome Indicators*).
- B17.2. The Provider must submit each Service Quality Performance Report in the form and manner specified in Appendix C (*Quality Outcome Indicators*).

**B18. REVIEW MEETINGS**

- B18.1. The Parties shall hold Review Meetings in the form and at intervals as set out in Appendix K (*Details of Review Meetings*). At each Review Meeting, the Parties shall review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters listed in Appendix K.
- B18.2. Notwithstanding clause B18.1, if either the Authority or the Provider:
- a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
  - b) considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,

that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Business Days following that notice.

**B19. CO-OPERATION**

- B19.1. The Parties must at all times act in good faith towards each other.
- B19.2. The Provider must co-operate fully and liaise appropriately with:

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

in order to:

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

B19.3. The Provider must ensure that its provision of any activity to any third party does not hinder or adversely affect its delivery of the Services or its performance of this Contract.

## **B20. WARRANTIES AND REPRESENTATIONS**

B20.1. The Provider warrants and represents that:

- a) It has full capacity and authority to enter into this Contract and all necessary Consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- c) in entering this Contract it has not committed any Fraud;
- d) all reasonably material information supplied by it to the Authority during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Authority which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract;
- e) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract;
- f) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract;
- g) in the 3 years prior to the Commencement Date:
  - (i) It has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) It has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) It has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on going business

---

concern or its ability to fulfil its obligations under this Contract; and

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

B20.2. 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.

B20.3. The warranties set out in this clause B20 are given on the Commencement Date and repeated on every day during the term of this Contract.

## **B21. VARIATIONS**

B21.1. This Contract may not be amended or varied other than in accordance with this clause B21.

B21.2. 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).

B21.3. 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.

B21.4. 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 A6 (*Notices*).

## **B22. ASSIGNMENT AND SUB-CONTRACTING**

B22.1. 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

---

B22.2. The Authority's consent to sub-contracting under clause B22.1 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.

B22.3. 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.

B22.4. 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.

### **B23. AUDIT AND INSPECTION**

B23.1. The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, the General Pharmaceutical 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.

B23.2. Subject to Law and notwithstanding clause B23.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor with a minimum of 24 hours' notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services during working hours. 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.

B23.3. 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.

B23.4. 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.

B23.5. During any audit undertaken under clause B23.1 or B23.2, 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.

---

**B24. INDEMNITIES**

B24.1. 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.

**B25. LIMITATION OF LIABILITY**

B25.1. 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

B25.2. Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.

B25.3. 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.

**B26. INSURANCE**

B26.1. Subject to clause B26.4, the Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

B26.2. Subject to clause B26.4, 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.

B26.3. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

B26.4. If the Provider is a member, and maintains membership, of the NHS Litigation Authority indemnity schemes Clinical Negligence Scheme for Trusts, Liabilities to Third Parties Scheme and the Property Expenses Scheme, the Provider shall be under no obligation to comply with clause B26.1 and B26.2.

**B27. REMEDY OF DEFAULTS**

B27.1. If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in Appendix C (*Quality Outcomes Indicators*) and the Provider fails to meet the Quality Outcomes Indicator, the Authority may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Authority may have under this clause B27. The Authority will immediately inform the Provider that it is exercising the agreed consequence as detailed in Appendix C.

B27.2. The provisions of this clause B27 do not affect any other rights and obligations the Parties may have under this Contract.

B27.3. Clauses B27.19, B27.23, B27.24 and B27.26 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Authority.

---

### **Contract Query**

- B27.4. If the Authority has a Contract Query it may issue a Contract Query Notice to the Provider.
- B27.5. If the Provider has a Contract Query it may issue a Contract Query Notice to the Authority.

### **Excusing Notice**

- B27.6. The Receiving Party may issue an Excusing Notice to the Issuing Party within 5 Business Days of the date of the Contract Query Notice.
- B27.7. If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within 10 Business Days following the date of the Contract Query Notice.

### **Contract Management Meeting**

- B27.8. Unless the Contract Query Notice has been withdrawn, the Authority and the Provider must meet to discuss the Contract Query and any related Excusing Notice within 10 Business Days following the date of the Contract Query Notice.
- B27.9. At the Contract Management Meeting the Authority and the Provider must agree either:
- a) that the Contract Query Notice is withdrawn; or
  - b) to implement an appropriate Remedial Action Plan; or
  - c) to conduct a Joint Investigation.
- B27.10. If a Joint Investigation is to be undertaken:
- a) the Authority and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation.
  - b) the Authority and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

### **Joint Investigation**

- B27.11. On completion of a Joint Investigation, the Authority and the Provider must produce and agree a JI Report. The JI Report must include (without limitation) a recommendation to be considered at the next Review Meeting that either:
- a) the Contract Query be closed; or
  - b) Remedial Action Plan be agreed and implemented.
- B27.12. Either the Authority or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Contract to consider a JI Report.

### **Remedial Action Plan**

- B27.13. If a Remedial Action Plan is to be implemented, the Authority and the Provider must agree the contents of the Remedial Action Plan within:
- a) 5 Business Days following the Contract Management Meeting; or
  - b) 5 Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause B27.11.
- B27.14. The Remedial Action Plan must set out:

- 
- a) milestones for performance to be remedied;
  - b) the date by which each milestone must be completed; and
  - c) subject to the maximum sums identified in clause B27.23, the consequences for failing to meet each milestone by the specified date.
- B27.15. The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.
- B27.16. The Authority and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.
- B27.17. If following implementation of a Remedial Action Plan:
- a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;
  - b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

#### **Withholding Payment for Failure to Agree Remedial Action Plan**

- B27.18. If the Authority and the Provider cannot agree a Remedial Action Plan within the relevant period specified in clause B27.13, they must jointly notify the Boards of Directors of both the Provider and the Authority.
- B27.19. If, 10 Business Days after notifying the Boards of Directors, the Authority and the Provider still cannot agree a Remedial Action Plan, the Authority may withhold up to 2% of the monthly sums payable by it under clause B8 (Charges and Payment) for each further month the Remedial Action Plan is not agreed.
- B27.20. The Authority must pay the Provider any sums withheld under clause B27.19 within 10 Business Days of receiving the Provider's agreement to the Remedial Action Plan. Unless clause B27.25 applies, those sums are to be paid without interest.

#### **Exception Reports**

- B27.21. If a Party breaches a Remedial Action Plan and does not remedy the breach within 5 Business Days of its occurrence, the Provider or the Authority (as the case may be) may issue a First Exception Report to that Party's chief executive and/or Board of Directors. If the Party in breach is the Provider, the Authority may withhold payment from the Provider in accordance with clause B27.23.
- B27.22. If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Authority or the Provider (as the case may be) may issue a Second Exception Report to:
- a) the relevant Party's chief executive and/or Board of Directors; and/or;
  - b) CQC or any other Regulatory Body,

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

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

- B27.23. If the Provider breaches a Remedial Action Plan:

- 
- a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority under clause B8 (Charges and Payment), from the date of issuing the First Exception Report and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority under clause B8 (Charges and Payment) in relation to each Remedial Action Plan;
  - b) the Authority must pay the Provider any sums withheld under clause B27.23(a) within 10 Business Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to clause B27.25, no interest will be payable on those sums.

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

- B27.24. If the Provider is in breach of a Remedial Action Plan the Authority may, when issuing any Second Exception Report retain permanently any sums withheld under clause B27.23.

**Unjustified Withholding or Retention of Payment**

- B27.25. If the Authority withholds sums under clause B27.19 or clause B27.23 or retain sums under clause B27.24, and within 20 Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld or retained unjustifiably, the Authority must pay those sums to the Provider within 10 Business Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld or retained. If the Authority does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

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

- B27.26. If the Provider does not agree a Remedial Action Plan:
- a) within 6 months following the expiry of the relevant time period set out in clause B27.13; or
  - b) before the Expiry Date or earlier termination of this Contract,
- whichever is the earlier, the Authority may retain permanently any sums withheld under clause B27.19.

- B27.27. If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Authority may retain permanently any sums withheld under clause B27.23.

**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 B27, 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 B29;

- 
- 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 B31 (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. SUSPENSION AND CONSEQUENCES OF SUSPENSION**
- B29.1. A suspension event shall have occurred if:
- a) the Authority reasonably considers that a breach by the Provider of any obligation under this Contract:
    - (i) may create an immediate and serious threat to the health or safety of any Service User; or
    - (ii) may result in a material interruption in the provision of any one or more of the Services; or
  - b) clause B29.1a) 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**).
- B29.2. 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.
- B29.3. During the suspension of any Service under clause B29.2, 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 B29.2 has been referred to dispute resolution under clause B30 (*Dispute Resolution*).
- B29.4. During the suspension of any Service under clause B29.2, 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 B29.2; 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 B29.5.
- B29.5. 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.

- 
- B29.6. 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).
- B29.7. Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:
- a) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
  - b) at the cost of the Provider:
    - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
    - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B29.8. As part of its compliance with clause B29.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.
- B29.9. 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.
- B29.10. 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.

### **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. TERMINATION**

- B31.1. Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than six (6) months' written notice at any time after the Service Commencement Date.
- B31.2. The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:
- a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
  - b) the Provider is in persistent breach of its obligations under this Contract;
  - c) the Provider:
    - (i) fails to obtain any Consent;
    - (ii) loses any Consent; or
    - (iii) has any Consent varied or restricted,

---

the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;

- d) the Provider has breached the terms of clause B38 (*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 B36 (*Data Protection*);
- g) two or more Second Exception Reports are issued to the Provider under clause B27.22 (*Remedy of Defaults*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
- h) the Provider breaches the terms of clause B22 (*Assignment and Sub-contracting*);
- i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- j) the Provider ceases or threatens to cease to carry on business in the United Kingdom;  
or
- k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 30 Business Days following receipt of notice from the Authority identifying the breach.

B31.3. 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.

B31.4. 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 B31.4 if the Authority has failed to remedy such breach within 30 Business Days of receipt of notice from the Provider to do so.

## **B32. CONSEQUENCE OF EXPIRY OR TERMINATION**

B32.1. 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.

B32.2. 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.

B32.3. For a reasonable period before and after termination of this Contract or of any Service, and where reasonable and appropriate before and after the expiry of this Contract, the Provider must:

- a) Co-operate fully with the Authority and any successor provider of the terminated Services in order to ensure continuity and an orderly transfer of the expired or terminated Services, and to avoid any inconvenience or any risk to the health and safety of Service Users or employees of the Authority or members of the public; and
- b) at the reasonable cost and reasonable request of the Authority;

- 
- i) promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of the terminated Services by a successor provider
  - 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 any terminated Services; and
  - iii) use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the Provider and any third party which relate to or are associated with the terminated Services.

B32.4. In the event of termination or expiry of this Contract, the Parties must cease to use each others Confidential Information and on the earlier of the receipt of the other Party's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to that Party.

B32.5. If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B31.4, B31.3 or if the Authority terminates under clause B31.1 (*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.

B32.6. The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B22 (*Assignment and Sub-contracting*), B23 (*Audit and Inspection*), B32 (*Consequence of Expiry or Termination*), B35 (*Confidentiality*) and B37 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.

### **B33. BUSINESS CONTINUITY**

B33.1. The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.

B33.2. 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.

### **B34. COUNTER-FRAUD AND SECURITY MANAGEMENT**

B34.1. The Provider must put in place and maintain appropriate counter fraud and security management arrangements.

B34.2. 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.

B34.3. 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.

B34.4. 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.

---

**B35. CONFIDENTIALITY**

- B35.1. 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.
- B35.2. Subject to Clauses B35.3 and B35.4, 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.
- B35.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:
- a) in connection with any dispute resolution under clause B30 (*Dispute Resolution*);
  - b) in connection with any litigation between the Parties;
  - c) to comply with the Law;
  - d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B35.2;
  - e) to comply with a regulatory bodies request.
- B35.4. The obligations in clause B35.1 and clause B35.2 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.
- B35.5. 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 B35.
- B35.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B35 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 B35.
- B35.7. This clause B35 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- B35.8. The obligations in clause B35.1 and clause B35.2B 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, 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.

---

**B36. DATA PROTECTION**

- B36.1. 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.
- B36.2. 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;
  - 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 B36.3 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 B36;
  - 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.
- B36.3. 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.
- B36.4. The Provider and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law.
- B36.5. The Provider shall have a policy that supports the Provider's obligations under the NHS Care Records Guarantee.

**B37. FREEDOM OF INFORMATION AND TRANSPARENCY**

- B37.1. 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.
- B37.2. If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:
- a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;

- 
- b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
  - c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within 2 Business Days) transfer the request to the Authority;
  - d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
  - e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within 5 Business Days of such request and without charge.

B37.3. 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.

B37.4. 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.

B37.5. In preparing a copy of this Contract for publication pursuant to clause B37.4 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.

B37.6. The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.

B37.7. 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.

### **B38. PROHIBITED ACTS**

B38.1. 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**").

- 
- B38.2. If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:
- a) to exercise its right to terminate under clause B31.2 (*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.
- B38.3. 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.
- B38.4. 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.
- B38.5. Should the Provider become aware of or suspect any breach of this clause B38, 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.
- B39. FORCE MAJEURE**
- B39.1. Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate (including in the case of the Provider, implementation of its Business Continuity Plan) 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.
- B39.2. Subject to clause B39.1, 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.
- B39.3. 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.
- B39.4. 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.
- B39.5. The Authority shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

---

**B40. THIRD PARTY RIGHTS**

B40.1. 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.

**B41. CAPACITY**

B41.1. 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.

**B42. SEVERABILITY**

B42.1. 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.

**B43. WAIVER**

B43.1. 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.

**B44. PUBLICITY**

B44.1. Without prejudice to clause B37 (*Freedom of Information and Transparency*), except with the written consent of the other Party, (such consent not to be unreasonably withheld or delayed), neither Party shall make any press announcements in relation to this Contract in any way.

B44.2. The Parties must take all reasonable steps to ensure the observance of the provisions of clause B44.1 by all their staff, servants, agents, consultants and sub-contractors.

**B45. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY**

B45.1. 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.

**B46. GOVERNING LAW AND JURISDICTION**

B46.1. 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.

B46.2. 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.

---

**APPENDIX A**  
**SERVICE SPECIFICATION**

**draft**

---

## APPENDIX B

### CONDITIONS PRECEDENT

1. Provide the Authority with a copy of the Provider's registration with the CQC where the Provider must be so registered under the Law

The Provider will supply the Authority with a copy of insurance certificates – public liability, Employers liability and professional indemnity.

The Provider will supply the Authority with a copy of the Provider's Children's Safeguarding Policy and Procedures. **The Provider must be compliant with Working Together 2013. The Provider also needs to work within the framework of Local Safeguarding policies and procedures**

The Provider will supply the Authority with a copy of the Provider's information sharing policies and procedures and information management and storage policies or protocols

The Provider will supply the Authority with a copy of the Provider's incident reporting protocols or policies, where the Provider must have adequate systems in place for reporting incidents.

The Provider will supply the Authority with a copy of the Provider's annual financial statement.

draft

---

**APPENDIX C**

**QUALITY OUTCOMES INDICATORS**

**[TO BE INSERTED]**

**draft**

---

## APPENDIX D

### SERVICE USER, CARER AND STAFF SURVEYS

The Provider will undertake and complete service user, carer and staff survey on a regular basis as agreed between the Provider and Authority.

draft

---

**APPENDIX E**

**CHARGES**

*[Please list the price(s) for the Services or set out the total charges to be paid]*

**draft**

---

**APPENDIX F**

**SAFEGUARDING POLICIES**

*[Please append safeguarding children and vulnerable adults policy of Provider]*

**draft**

---

**APPENDIX G: INCIDENTS REQUIRING REPORTING PROCEDURE**

***[Insert pursuant to clause B11 (Incidents Requiring Reporting) procedure for reporting, investigating, and implementing and sharing Lessons Learned from: (1) Serious Incidents (2) reportable Patient Safety Incidents; and (3) Non-Service User incidents]***

**NOT USED**

**draft**

---

## APPENDIX H

### INFORMATION SHARING AGREEMENT

#### Information Sharing Agreement (ISA)

This is an agreement between the Provider and the Authority.

It is made under the auspices of the Ealing Information Sharing Protocol as attached to this Appendix.

In order to share appropriate information between partners there must be a lawful, defined and justifiable purpose(s) which supports the effective delivery of service or policy or that respects people's expectations about the privacy and confidentiality of their personal information but also considers the consequences of a failure to act. This, in turn must be supported by robust governance processes.

#### 1. PURPOSE OF THIS INFORMATION SHARING AGREEMENT

The purpose of this ISA is to provide a support service for children, young people and their families. This document is to provide an overarching framework between the Provider and the Authority, which will allow the safe and confidential sharing of Service User, family and carers information between agencies/organisations to enable the provision of the most effective and efficient care and support for the needs of service user/s. This framework will be in accordance with and take account of legal and other government agency requirements surrounding the security and confidentiality of person identifiable information.

The purpose of this Agreement is to document the terms and conditions of the exchange of certain personal information between the Provider and the Authority, in compliance with the *Data Protection Act 1998*, the *Freedom of Information Act 2000* and other applicable legislation. This ISA is aimed at ensuring that only the relevant information is shared on a need to know basis in order to ensure the efficient delivery of service and safeguarding of children and young people.

It is also to ensure that there are no boundaries surrounding the ownership and use of information about children and young people that will restrict the ability to share information that will otherwise compromise their safety and well being.

Under the *Data Protection Act 1998*, the *Human Rights Act 1998* and the *Caldicott* requirements, the Service User, and their families or carers, must be fully informed or given a leaflet outlining the proposed uses of their information and with whom their information may be shared. Express consent is to be sought by your organisation where this is practically possible. Arrangements must be in place to handle objections to information sharing including reasons for any overriding objections and the practical implications of observing the objection.

#### 2. EXTENT AND TYPE OF INFORMATION TO BE SHARED

The information to be shared between the Provider and the Authority would be for the purposes of the provision of care and treatment and the management of healthcare services. This also includes any relevant information to ensure the protection, safety and wellbeing of Service Users. Any such information would be shared with the relevant agencies on a need to know basis only, to mitigate risk, injury and or death.

Service Users must be informed of the reasons their information is collected, recorded, used and shared to comply with legal requirements surrounding individual's rights to privacy and confidentiality of their information. How the information sharing will be implemented, managed, monitored and reviewed will also need to be detailed by the Provider in its procedures to implement the *Caldicott* requirements. The data exchanged between the Authority and the Provider would be the minimum amount necessary for the performance of the health visiting and family nurse partnership service. Information sharing should not contravene any legislation (such as *Human Rights Act 1998* or Common law principles of confidentiality).

Some information will be provided by the Provider to the Authority in an anonymised format and therefore consent may not be applicable.

---

### **3. HOW THE INFORMATION MAY BE USED**

The information shared would be used for the purposes of improving the health visiting and family nurse partnership service, the provision of care and the management of social and healthcare services to prevent harm and danger and to ensure their safeguarding and wellbeing of Service Users, to mitigate risk, injury and or death.

Only staff and relevant professionals (Social Care, Medical, etc) will have access to the Service User's information and they will be bound by a duty of confidentiality through their contract of employment and the terms and conditions of the service contract. And, for health and social care professionals through their code of ethics and code of conduct through membership of their professional regulatory body. Neither party will use personal data for a secondary purpose if this would mean they are acting ultra-vires.

For persons who lack capacity to make to take a particular decision, such as young people - their parent, carer or legal guardian will give consent to the sharing of their information on their behalf. The Provider and the Authority will ensure that the integrity of the data held, shared or given is accurate.

The legislation listed below does require the disclosure of personal identifiable information. This means that an individual's consent is not required as there is an overriding legal requirement to make the disclosure. However, it must be noted that not all of the Service User records would need to be disclosed as only certain data items are covered by the legislation.

- Births and Deaths Act 1984
- Police and Criminal Evidence Act 1984
- Public Health (Control of Diseases) Act 1984 & Public Health (Infectious Diseases) Regulations 1985
- Education Act 1944 (for immunisations and vaccinations to NHS
- Trusts from schools)

### **4. INFORMATION TO DATA SUBJECTS**

The Data Protection Act 1998, the Human Rights Act 1998 and the Caldicott requirements, gives the data subject, (and if a minor/lacks capacity), their families or carers the right of access to any personal information held about them by the Provider.

Data subjects must be fully informed verbally or given a leaflet outlining the purposes for which information collected about them will be used and with whom this information may be shared. It must be fully explained that information may be shared with agencies with statutory responsibility, and may include but will not be limited to – the Authority, NHS Ealing, the Police and any other relevant statutory agency.

Data subjects will be informed that they are entitled to have access to the information held about them if they request this. If requested, information must be provided within 40 days or sooner.

Before data is handed over, the Provider must request the data subject to provide satisfactory identification to indicate they are who they say they are before any information is given out. The Provider may ask for evidence of their identity and address such as passport, or driving licence

The data subject will have cause to complain where they feel wronged, and the Provider complaint process must be fully complied with and advised to the complainant.

### **5. BREACHES OF CONFIDENTIALITY**

Breaches of confidentiality will be recorded, investigated and the findings noted (this includes advice about disciplinary action) by the respective Officer(s). Any such events must be brought to the attention of the other party's senior member of staff.

Each party (if they are not covered by indemnity) would have in place indemnities for claims, losses, liability or costs suffered as a consequence of any information being wrongly disclosed, or as a result of any negligent act, or omission by any other party.

Complaints about data sharing will be notified to the Authority's contract manager within 48 hours or sooner if possible.

---

## **6. STAFF AWARENESS AND TRAINING**

Training must be provided which includes confidentiality and security standards of the Provider and employees individual responsibilities. Contracts of employment should have an up-to-date confidentiality provision. The staff of each party to this agreement will undertake a comprehensive training program in the subject of information security and confidentiality. At an operational level, staff should be made aware of procedures. A staff handbook and a checklist for disclosing data and obtaining consent, should help maintain a level of consistency and confidence that the correct procedures are being followed.

Both parties will arrange joint-training sessions to allow people from the different organisations to meet each other, to build co-operation between partners, and to promote a better understanding of the objectives of this ISA.

The success of this ISA will depend upon visible high level support from senior managers within each party's organisation.

## **7. GOVERNANCE**

Each organisation/agency wishing to participate in the project will need to ensure that they have mechanisms in place to enable them to address the issues of physical security, security awareness and training, service user access to information, security management, confidentiality management, systems development, site-specific information systems policies and system specific policies.

Each partner organisation will maintain accurate records and develop information systems to record any given, or refused consent, data transfers (faxes, email and other electronic exchanges, conversations) and deletion and / or amendment to data.

The disclosure of information will be authorised by an appropriate senior level officer/professional and will be provided on a need to know basis only. Each partner organisations will keep an up-to-date list of authorising officers and their contact details. The role of the officer/professional and understood by all staff involved in data sharing.

Any inaccuracies in data should be reported to the relevant partner organisation(s). The data controller responsible for the information will take appropriate steps to amend the details and inform partners within reasonable time, that the data has changed.

The named individual to lead on and monitor compliance with the ISA on behalf of the Authority will be [Name to be inserted], Head of Children's Commissioning (or her designated delegate).

## **8. REVIEW OF INFORMATION SHARING AGREEMENT**

This ISA will last for the duration of this Contract (including any possible extensions) and will be reviewed on an annual basis or sooner if needed.

The success of this ISA will depend upon visible high level support from the senior management within each party's organisation. Each party will ensure that appropriate officers/professionals at senior level will make the final decisions about data sharing, unless there is serious injury or death.

## **9. CLOSURE/TERMINATION OF AGREEMENT**

This agreement will terminate at the end of the term of the contract, or by giving 15 days notice of termination of this protocol by either party.

---

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

***[Insert any locally agreed protocols including contents for discharge correspondence and relevant timescales for delivering such correspondence]***

**draft**

---

APPENDIX J

SERVICE QUALITY PERFORMANCE REPORT and INFORMATION PROVISION

***[Insert format and manner of provision of the Service Quality Performance Report, together with the factors to be measured and reported on]***

**PLEASE REFER TO APPENDIX C – QUALITY OUTCOMES INDICATORS**

**draft**

---

APPENDIX K  
DETAILS OF REVIEW MEETINGS

***[Insert frequency and manner of Review Meetings]***

draft

---

APPENDIX L: [Work Related Road Risk – Enforcement Procedure]

NOT USED

draft

---

## 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.

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

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

##### 3. EXPERT DETERMINATION

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

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

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

3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the

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

---

**APPENDIX N: SUCCESSION PLAN**

***NOT USED***

**draft**

---

## 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 any body or person concerned with the provision of the Service or care of a Service User

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

**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

---

**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

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

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

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

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

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

**Consents means:**

- (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or
- (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*)

**Contract Query** means:

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

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

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

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

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

---

**Data Protection Legislation** means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner

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

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

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

**Default Interest Rate** means 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

**Effective Date** means the date on which the Services (or any part of the Services), transfer from the Authority or any of its contractors to the Provider

**Employee Liability Information** means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- a) the identity and age of the employee; and
- b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Successor Provider arising out of the employee's employment with the Provider; and
- e) information about any collective agreement that will have effect after the Service Transfer Date in relation to the employee under regulation 5(a) of TUPE

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

**Employment Liabilities** means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses

---

**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*)

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

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

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

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

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

- (i) any industrial action occurring within the Provider's or any Sub-contractor's organisation; or
- (ii) the failure by any Sub-contractor to perform its obligations under any Sub-contract

---

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

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

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

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

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

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

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

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

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

**Law** means:

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

---

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

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

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

**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’s Final Staff List** means the list of all the Provider’s and sub-contractor’s personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date

**Provider’s Provisional Staff List** means the list prepared and updated by the Provider of all the Provider’s and sub-contractor’s personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list

**Provider Representative** means the person identified in clause A4.2 (*Representatives*) or their replacement

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

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

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

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

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

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

**Required Insurances** means those insurances as listed in clause C2

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

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

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

---

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

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

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

**Service Transfer Date** means the date on which the Services (or any part of the Services), transfer from the Provider to the Authority or any Successor Provider

**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 and Information Provision*)

**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 A1.1(c) (*Contract*)

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

**Staffing Information** means in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services

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

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

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

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

**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

**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*).

---

**APPENDIX P: THE TENDER AND TENDER DOCUMENTS**

**draft**

---

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

draft

---

## **C1. SECTION 75 AGREEMENT**

- C1.1 The Parties agree that a section 75 agreement (as set out in section 75 of the NHS Act 2006) ("the S75 Agreement") is to be entered into in respect of the Services being provided under this Contract.
- C1.2 The Parties agree that this is a fundamental condition of this Contract and will ensure the S75 Agreement is entered into by no later than six 6 months after signature of this Contract.
- C1.3 If the S75 Agreement is not entered into in the timeframe detailed in C1.2 above the Authority has the right to terminate this Contract upon six 6 months written 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 five million pounds (£5,000,000) in relation to any one claim or series of claims;
  - (b) employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000);
  - (c) professional indemnity insurance with a limit of indemnity of not less than two million pounds (£2,000,000) 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.

## **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:
- (a) require the Provider (at the Provider's expense) to restore or procure the restoration of such data and the Provider must do so as soon as practicable but not later than [insert long stop date – the latest date by which it must be done] and/or
  - (b) Itself restore or procure the restoration of such data. The Provider must reimburse the Authority for any reasonable expenses incurred in doing so.

- 
- 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 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 2 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, 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. CHANGE IN CONTROL**

C12.1 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.

C12.2 The Provider must:

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

(d) 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.

C12.3 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 B21 (*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 B21 (*Variations*) in respect of that intended or proposed change.

C12.4 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.

C12.5 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:

(e) 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

(f) 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 transaction resulting in Change of Control.

---

C12.6 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.

C12.7 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.

C12.8 If:

- (a) there is a Sub-contractor Change in Control; and
- (b) following consideration of the information provided to the Authority in the Change in Control Notification or under clause C12.6, 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:

- (c) the Authority may, by serving a written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within 10 Business Days (or other period reasonably specified by the Authority taking into account the interests of Service Users and the need for the continuity of Services); and
- (d) the Provider must duly replace the relevant Sub-contractor within the period specified under clause C12.8.(c).

C12.9 Notwithstanding any other provision of this Contract:

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

C12.10 If the Provider breaches clause C12.9.(b), the Authority may by serving written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within:

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

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

---

C12.11 Nothing in this clause will prevent or restrict the Provider from discussing with the Coordinating 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.

C12.12 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.

C12.13 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

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