

## **APPENDIX 1**

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### **FORM OF CONTRACT, ORDER FORM AND GENERAL TERMS AND CONDITIONS**

## **The Customer**

-and-

## **SH:24 CIC**

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**Call-Off Contract relating to the provision of  
the HIV self-sampling service**

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# FORM OF CONTRACT

## CONTRACT REFERENCE C76219

**BETWEEN**

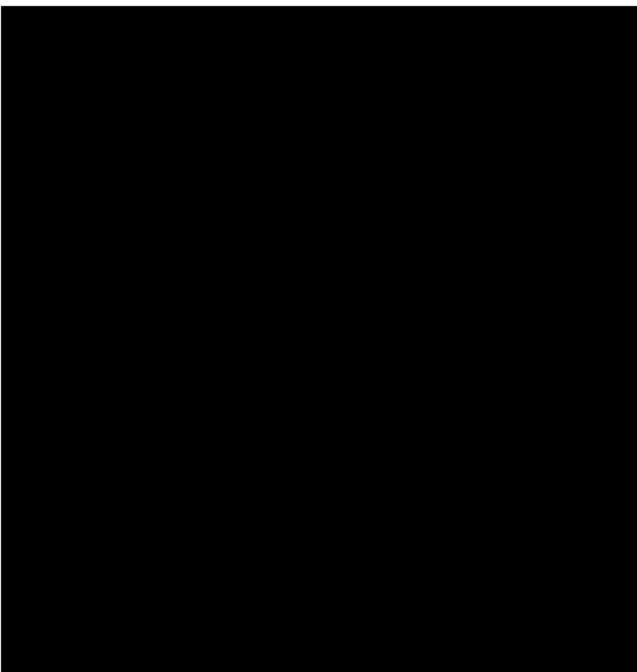
- (1) The Secretary of State for Health and Social Care acting as part of the Crown of 39 Victoria Street London SW1H 0EU (the "Customer"); and
- (2) SH:24 CIC a company registered in England and Wales under company number 08737119 whose registered office is at 35a Westminster Bridge Road, London, England, SE1 7JB (the "Service Provider")

**WHEREAS** the Customer wishes to have supplied the HIV self-sampling services by the Service Provider pursuant to the PHE Framework Agreement (reference 3173\_19A HIV Self Sampling Service).

**NOW IT IS AGREED THAT**

1. The Service Provider will supply the goods and/or services in accordance with the terms of the Contract Documents.
2. The Customer will pay the Service Provider the amount due in accordance with the terms of the Contract Documents.
3. Subject always to paragraph 5 below, the following documents comprise the Contract Documents and shall be deemed to form and be read and construed as part of the Contract:
  - (a) this Form of Contract;
  - (b) the Order Form;
  - (c) the applicable provisions of the Framework Agreement (excluding Framework Schedules 1 and 2);
  - (d) the Call-Off General Terms and Conditions including the appendices; and
  - (e) any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.
4. If there is an inconsistency between any of the documents listed above, the order of priority for construction purposes shall be that a higher listed document shall prevail over a lower listed document, i.e. document (a) shall prevail over all other documents; document (b) shall prevail over document (c) etc.
5. Where there is a conflict between the Service Provider's tender submission document (set out as part of Appendix A to the Call-Off General Terms and Conditions) and any other part of this Contract, such other part of this Contract shall prevail.
6. Where it reads Public Health England it would now refer to the Department of Health and Social Care

**IN WITNESS** of which the Contract has been duly executed by authorised representatives of the Customer and the Service Provider:



## This document relates to and forms part of the Contract Documents

(Document Reference [ECM\\_7064](#))

## ORDER FORM

(ESPO / PHE Framework Reference 3173\_19A)

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| <b>1. TERM</b>   |
| <b>Service Commencement Date</b><br><b>21<sup>st</sup> October 2021</b>  |
| <b>Expiry Date</b><br><p>This Contract shall expire on <b>20<sup>th</sup> October 2022</b> with the option to extend up to <b>30<sup>th</sup> December 2022</b> unless terminated earlier pursuant to this Contract or in accordance with the automatic termination provisions of Section 2 below.</p> <p>Subject to earlier termination of the Contract in accordance with clause 25 of the Framework Agreement or clause B33 of the Call-Off General Terms and Conditions, the Contract shall expire on the Expiry Date provided.</p>  |
| <b>2. GOODS AND/OR SERVICES REQUIREMENTS</b>   |
| <b>Limit or expenditure</b><br><p>The Customer commits to purchase goods and services under the Framework Agreement up to a total sum not exceeding £390,000 expenditure during the Term defined in Section 1 above. In the event that the committed level of expenditure is reached before the Expiry Date shown above the Contract shall automatically expire at that point and the Customer shall not be liable to pay for any Goods and/or Services supplied by the Service Provider following such automatic expiry.</p> <p>The Goods and/or Services shall be supplied in accordance with the specification set out in Appendix A to the Call-Off General Terms and Conditions, unless and to the extent that the following variation applies:</p> <p><i>Note: There are separate prices for kit issue and for the subsequent processing of returned kits. Please note that kits issued during the period of the contract, but returned and processed after the contract expires (whilst still in date) must be paid for up until a final cut off point which is agreed between the steering group and the provider at the end of the framework.</i></p> <p>Variation: <i>None</i></p> |
| <b>Geographical locations</b><br><p>The Customer shall be liable to pay only for Goods and/or Services supplied to those service users who when placing their order do so using a postcode which defines their location as within the boundaries of the Customer area.</p>   |
| <b>3. CHARGES AND PAYMENT</b>  |
| <p>The charges made and methods of payment for Goods and/or Services supplied shall be as set out in Appendix B to the Call-Off General Terms and Conditions.</p>  |
| <b>4. CONFIDENTIAL INFORMATION</b>   |
| <p>The following information shall be deemed Commercially Sensitive Information:</p> <div style="background-color: black; height: 20px; width: 100%;"></div> <div style="background-color: black; height: 20px; width: 100%;"></div>   |
| <b>5. PERFORMANCE AND MANAGEMENT INFORMATION</b>   |
| <p><i>The KPIs as set out in the framework agreement will be the information used to manage performance.</i></p>   |
| <b>6. SERVICE REVIEW AND REVIEW MEETINGS</b>   |
| <p><i>No additional requirement for contract review.</i></p>   |
| <b>7. SAFEGUARDING</b>   |
| <p>No additional safeguarding provisions are required to those identified within the Framework agreement</p>   |
| <b>8. INCIDENT REPORTING</b>   |

*B12.3. 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 Service Provider and the Customer and set out in Section 8 of the Order Form.*

## **9. NOTICES**

In accordance with clause 35 of the Framework Agreement the address for notices to the Customer shall be:

Address: 39 Victoria Street London SW1H 0EU

For the attention of:

[REDACTED]

[REDACTED]

[REDACTED]

## CALL-OFF GENERAL TERMS AND CONDITIONS

### B1. INTERPRETATION AND DEFINITIONS

B1.1. 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 Customer and any body or person concerned with the provision of the Service or care of a Service User;

**"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 Customer (where the Customer is a local 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 Service Provider's plan referred to in clause B35.2 (*Business Continuity*) relating to continuity of the Services, as agreed with the Customer and as may be amended from time to time;

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

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

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

**"CEDR"** means the Centre for Effective Dispute Resolution;

**"Charges"** means the charges which shall become due and payable by the Customer to the Service 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 B;

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

**"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 on 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 Service Provider's obligations under this Contract or for the provision by the Service Provider of the Services in accordance with this Contract;

**"Contract"** means the call-off contract entered into by the Customer with the Service Provider under the Framework Agreement;

**"Contract Query"** means, as appropriate:

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

**"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 Customer and the Service Provider held in accordance with clause B30.8 (*Contract Management*);

**"Controller"** has the meaning given in the GDPR;

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

**"Customer"** means the public body or contracting authority which is eligible to access the Framework Agreement and has elected to do so by means of a call-off contract (the Contract);

**"Customer Representative"** means the person identified by the Customer as its formal representative for the purpose of the Contract;

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

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

**"Data Protection Legislation"** means:

- (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
- (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy;
- (iii) all applicable Law about the processing of personal data and privacy;

**"Data Protection Officer"** has the meaning given in the GDPR;

**"Data Subject"** has the meaning given in the GDPR;

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

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

**"Default"** means any breach of the obligations of the Service 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 Service Provider or the Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Service Provider is liable to the Customer;

**"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;

**"Dispute Resolution"** means the process for resolving disputes set out in clause B31;

**"DPA 2018"** means the Data Protection Act 2018;

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

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

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

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

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

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

**"Enhanced DBS Position"** means any position listed in the Rehabilitation of Offenders Act 1974 (Excepted) 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 Service Provider's equipment, plant, materials and such other items supplied and used by the Service 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;

**"Expiry Date"** means the date identified in Section 1 of the Order Form;

**"First Exception Report"** means a report issued in accordance with clause B30.21 (*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 act on occurring within the Service Provider's or any Sub-contractor's organisation; or

- (ii) the failure by any Sub-contractor to perform its obligations under any Sub-contract;

**"Framework Agreement"** means framework agreement reference 3173\_19A between PHE and the Service Provider for the supply of the goods and services as further described in Appendix A of the 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 Customer;

**"GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679);

**"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 Customer and/or the Service 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 Service 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 product on, 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;

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

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

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

**"LIBOR"** means the London Interbank Offered Rate for six (6) months sterling deposits in the London market;

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

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

**"NICE"** means National Institute for Health and Care Excellence being the non-departmental public body 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 Service Provider under the Law and/or Guidance as amended from time to time;

**"NHS Act 2006"** means the National Health Service Act 2006;

**"Parties"** means the Customer and the Service 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 could lead to, harm to that Service User;

**"Personal Data"** has the meaning given in the GDPR;

**"Personal Data Breach"** has the meaning given in the GDPR;

**"PHE"** means Public Health England, an executive agency of the Department of Health and Social Care;

**"Processor"** has the meaning given in the GDPR;

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

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

**"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 Section 5 of the Order Form or Framework Schedules 7 or 9;

**"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 Service Provider and/or the Services;

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

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

**"Review Meeting"** means a meeting to be held in accordance with clause B20 (*Review Meetings*);

**"Safeguarding Policies"** means the Service Provider's written policies for safeguarding children and adults, as amended from time to time, and as may be referred to in Section 7 of the Order Form;

**"Second Exception Report"** means a report issued in accordance with clause B30.22 (*Contract Management*) notifying the recipients of a breach of a Remedial Act on 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 Service Provider's Premises or where the actions of the Service

Provider, the Staff or the Customer are likely to be of significant public concern;

**"Service Commencement Date"** means the date identified in Section 1 of the Order Form;

**"Service Provider Representative"** means the person identified by the Service Provider formally to represent it for the purpose of the Contract;

**"Service Provider"** means the organisation appointed by PHE to the Framework Agreement to provide to Customers the goods and services detailed in Appendix A to the Contract;

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

**"Service Specification"** means the description of the required services provided in Appendix A of the Contract;

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

**"Services"** means the services specified in Appendix A of the Contract;

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

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

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

**"Sub-contract"** means a contract approved by the Customer between the Service Provider and a third party for the provision of part of the Services;

**"Sub-contractor"** means any third party appointed by the Service Provider and approved by the Customer under clause B24 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification;

**"Sub-processor"** means any third party appointed to process Personal Data on behalf of that Processor related to this Contract;

**"Succession Plan"** has the meaning given to it in clause B34.2;

**"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 on this Contract;

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

**"Working Day"** means any day other than a Saturday, Sunday or public holiday in England and Wales.

- B1.2. The headings in this Contract shall not affect its interpretation.
- B1.3. References to any statute or statutory provision include a reference to that statute

- or statutory provis on as from time to time amended, extended or re-enacted.
- B1.4. References to a statutory provision shall include any subordinate legislat on made from time to time under that provision.
- B1.5. References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.
- B1.6. References to any body, organisation or office shall include reference to ts appl cable successor from time to time.
- B1.7. 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.
- B1.8. Use of the singular includes the plural and vice versa.
- B2. SERVICES**
- B2.1. The Service Prov der shall provide the Serv ces in accordance with the Serv ce Specification(s) in Appendix A, including any service lim tations set out in them, and in accordance w th the provisions of this Contract.
- B2.2. The Service Prov der shall satisfy any conditions precedent set out in Section 1 of the Order Form pr or to commencing provision of the Services.
- B3. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE**
- B3.1. Except where required by the Law, the Serv ce Provider shall not be required to prov de or to continue to provide Services to any Serv ce User:
- a) who in the reasonable profess onal opinion of the Serv ce Prov der is unsuitable to receive the relevant Service, for as long as such unsuitabil ty remains;
  - b) who displays abusive, v olent or threatening behaviour unacceptable to the Service Provider (acting reasonably and taking into account the mental health of that Serv ce 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 Serv ce Provider reasonably considers to be unacceptable; or
  - d) where expressly instructed not to do so by an emergency serv ce prov der who has authority to give such instruction, for so long as that instruction applies.
- B3.2. If the Serv ce Prov der proposes not to prov de or to stop providing a Service to any Service User under clause B3.1:
- a) where reasonably possible, the Serv ce Provider must explain to the Service User, taking into account any communication or language needs, the action that t is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing w thin two (2) Working Days);
  - b) the Service Provider must tell the Service User of the right to challenge the Service Provider's decis on through the Service Provider's complaints procedure and how to do so;
  - c) the Service Provider must inform the Customer in wr ting w thout delay and wherever possible in advance of taking such action;
- provided that nothing in this clause B3.2 ent tles the Service Prov der not to prov de or to stop providing the Services where to do so would be contrary to the Law.
- B4. COMPLIANCE WITH THE LAW AND GOOD CLINICAL PRACTICE**
- B4.1. The Serv ce Provider must carry out the Services in accordance w th the Law and Good Clinical Pract ce and must, unless otherwise agreed (subject to the Law) w th the Customer in wr ting:
- a) comply, where appl cable, w th the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
  - b) respond, where applicable, to all requirements and enforcement act ons issued from time to time by CQC or any other Regulatory Body;
  - c) consider and respond to the recommendat ons arising from any aud t, death, Serious Inc dent report or Patient Safety Incident report;
  - d) comply with the recommendat ons issued from time to time by a Competent Body;
  - e) comply with the recommendat ons from time to time contained in guidance and appraisals issued by NICE; and
  - f) respond to any reports and recommendat ons made by Local HealthWatch.
- B5. SERVICE USER INVOLVEMENT**
- B5.1. The Serv ce Provider shall engage, liaise and commun cate w th Service Users, their Carers and Legal Guardians in an open and clear manner in accordance w th the Law, Good Clinical Pract ce and their human rights.
- B5.2. As soon as reasonably practicable following any reasonable request from the Customer, the Service Prov der must provide ev dence to the Customer of the involvement of Service Users, Carers and Staff in the development of Services.
- B5.3. The Serv ce Provider must carry out Serv ce User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Customer in relation to the Services. The form (if any), frequency and method of reporting such surveys shall be agreed between the Parties in writing from time to time.
- B5.4. The Serv ce Provider must review and prov de a wr tten report to the Customer on the results of each survey carried out under clause B5.3 and identify any actions reasonably required to be taken by the Service Prov der in response to the surveys. The Serv ce Provider must implement such act ons as soon as pract cable. If required by the Customer, the Serv ce Provider must publish the outcomes and actions taken in relation to such surveys.
- B6. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**
- B6.1. The Parties must not discriminate between or against Serv ce Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, relig on or belief, sex, sexual orientation or any other non-med cal characterist cs except as permitted by the Law.
- B6.2. The Serv ce Provider must prov de appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have commun cat on difficulties (including w thout limitation hearing, oral or learning impairments).
- B6.3. In performing this Contract the Service Prov der must comply w th the Equal ty Act 2010 and have due regard to the obligat ons contemplated by section 149 of the Equality Act 2010 to:
- a) eliminate discriminat on, harassment, v ctimisat on and any other conduct that is prohib ted by the Equality Act 2010;
  - b) advance equality of opportunity between persons who share a relevant protected characterist c (as defined in the Equal ty Act 2010) and persons who do not share it; and
  - c) foster good relat ons between persons who share a relevant protected characterist c (as defined in the Equal ty
- Act 2010) and persons who do not share it,
- and for the avo dance of doubt this obligation shall apply whether or not the Serv ce Prov der is a public authority for the purposes of section 149 of the Equality Act 2010.
- B6.4. As soon as reasonably practicable following any reasonable request from the Customer, the Service Prov der must provide the Customer with a plan detailing how t will comply with its obligations under clause B6.3.
- B6.5. The Service Prov der must prov de to the Customer as soon as reasonably pract cable, any informat on that the Customer reasonably requires to:
- a) monitor the equ ty of access to the Services; and
  - b) fulfil their obligat ons under the Law.
- B7. MANAGING ACTIVITY**
- B7.1. The Service Prov der must manage Activity in accordance w th any activ ty planning assumptions and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Customer to assist it with understanding and managing the levels of Activity for the Services.
- B8. STAFF**
- B8.1. At all times, the Service Prov der 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 Serv ces properly in accordance with the provisions of the applicable Service Specification;
  - c) where applicable, Staff are registered w th the appropriate professional regulatory body;
  - d) Staff are aware of and respect equal ty and human rights of colleagues and Service Users; and
  - e) it can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Serv ce Provider's discret on) for each of the Staff engaged in the Serv ces.
- B8.2. If requested by the Customer, the Service Prov der shall as soon as practicable and by no later than twenty (20) Working Days following receipt of that request, prov de the Customer with evidence of the Service Prov der's compliance with clause B8.1.
- B8.3. The Service Prov der must have in place systems for seeking and recording specialist profess onal advice and must ensure that every member of Staff involved in the provision of the Services receives:
- a) proper and suff cient continuous professional and personal development, training and instruction; and
  - b) full and detailed appraisal (in terms of performance and on-going educat on and training),
- each in accordance w th Good Clin cal Practice and the standards of any applicable relevant profess onal body.
- B8.4. Where applicable under sect on 1(F)(1) of the NHS Act 2006, the Service 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 educat on and training.
- B8.5. The Service Prov der must carry out Staff surveys in relation to the Services at intervals and in the form agreed in wr ting from time to time.
- B8.6. Subject to clause B8.7, before the Service Prov der engages or employs any person in the provis on of the Services, or in any activ ty related to, or connected with, the

|                                |   |  |   |
|--------------------------------|---|--|---|
|                                | provis on of the Serv ces, the Serv ce Provider must without lim tat on, complete:  | contested and wh ch are not contested;   | CQC Regulations and if the Service Provider is not CQC registered it shall notify Ser ous Incidents to any Regulatory Body as appl cable, in accordance w th the Law.   |
|                                | a) the Employment Checks; and   | b) any uncontested amount shall be pa d in accordance with this Contract.  | B12.2. If the Service Provider gives a notification to the CQC or any other Regulatory Body under clause B12.1 wh ch directly or indirectly concerns any Service User, the Serv ce Provider must send a copy of it to the Customer w thin five (5) Working Days.  |
| B8.7.                          | Subject to clause B8.8, the Service Prov der may engage a person in a Standard DBS Position or an Enhanced DBS Pos tion (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 Customer.  | B9.7. If a Party contests a payment under clause B9.6 and the Parties have not resolved the matter within twenty (20) Working Days of the date of notif cat on under clause B9.6, the contesting Party may refer the matter to dispute resolut on under clause B31 and following the resolut on of any dispute referred to dispute resolution, where appl cable the relevant party shall pay any amount agreed or determined to be payable in accordance w th clause B9.3. | B12.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Inc dents, Patient Safety Inc dents and non-Service User safety inc dents that are agreed between the Serv ce Provider and the Customer and set out in Sect on 8 of the Order Form.  |
| B8.8.                          | Where clause B8.7 applies, the Serv ce 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:  | B9.8. Subject to any express provision of this Contract to the contrary each Party shall be entitled, w thout prejud ce 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.  | B12.4. Subject to the Law, the Customer shall have complete discretion to use the informat on prov ded by the Serv ce Provider under this clause B12.1.   |
|                                | a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and  | B9.9. 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.   | <b>B13. CONSENT</b>   |
|                                | b) wherever t is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and   |  | B13.1. The Service Provider must publish, maintain and operate a Serv ce User consent policy which complies w th Good Clinical Practice and the Law.  |
|                                | 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  | <b>B10. SERVICE IMPROVEMENTS AND BEST VALUE DUTY</b>   | <b>B14. SERVICE USER HEALTH RECORDS</b>   |
|                                | d) any other reasonable requirement of the Customer.  | B10.1. The Service Prov der must to the extent reasonably practicable co-operate w th and assist the Customer (where the Customer is a local author ty) in fulfilling ts Best Value Duty.  | B14.1. The Service Provider must create, maintain, store and retain Serv ce User health records for all Service Users. The Serv ce Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any appl cable Gu dance.  |
| B8.9.                          | Where the Customer has notified the Service Provider that it intends to tender or retender any of the Services, the Service Prov der must on wr tten request of the Customer and in any event w thin twenty (20) Working Days of that request (unless otherwise agreed in writing), provide the Customer w th all reasonably requested informat on on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE. | B10.2. In addition to the Service Prov der's obligations under clause B10.1, where reasonably requested by the Customer, the Serv ce Provider at ts own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without lim tat on providing informat on for such purposes) conducted by the Customer and shall assist the Customer w th the preparation of any Best Value Duty performance plans.                         | B14.2. The Service Provider must:   |
| B8.10.                         | The Serv ce Provider shall indemnify and keep indemnified the Customer and any Successor Provider against any Losses incurred by the Customer and/or the Successor Prov der in connect on w th any claim or demand by any transferring employee under TUPE.   | B10.3. During the term of this Contract at the reasonable request of the Customer, the Serv ce Provider must:  | a) use Serv ce User health records solely for the execut on of the Serv ce Provider's obligat ons under this Contract; and  |
| <b>B9. CHARGES AND PAYMENT</b> |   | a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combinat on of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;   | b) give each Serv ce User full and accurate informat on regarding his/her treatment and Services received.  |
| B9.1.                          | Subject to any provision of this Contract to the contrary (including w thout lim tation those relating to w thholding and/or retent on), in cons deration for the provis on of the Services in accordance with the terms of this Contract, the Customer shall pay the Service Prov der the Charges.   | b) implement such improvements; and  | B14.3. The Service Provider must at all times during the term of this Contract have a Caldicott Guardian and shall notify the Customer of their ident ty and contact details prior to the Service Commencement Date. If the Service Prov der replaces its Caldicott Guardian at any time during the term of this Contract, t shall promptly notify the Customer of the ident ty and contact details of such replacements. |
| B9.2.                          | The Parties shall to the extent reasonably practicable agree the Charges in a transparent and equ table manner and the Charges shall be set out at Appendix B.  | c) where pract cable following implementat on of such improvements decrease the price to be pa d by the Customer for the Serv ces.   | B14.4. Subject to Gu dance and where appropriate, the Service User health records should include the Service User's verified NHS number.  |
| B9.3.                          | The Serv ce Provider shall invoice the Customer for payment of the Charges at the end of each quarter (3 calendar month) per od (or such other frequency agreed between the Parties in writing) which the Customer shall pay w thin ten (10) Working Days of receipt.   | B10.4. If requested by the Customer, the Serv ce Provider must identify the improvements that have taken place in accordance with clause B10.3, by reference to any reasonable measurable criteria notified to the Serv ce Provider by the Customer.   | <b>B15. INFORMATION</b>   |
| B9.4.                          | The Charges are stated exclusive of VAT, wh ch shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a val d VAT invoice.  | <b>B11. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS</b>  | B15.1. The Service Provider must provide the Customer the information (if any) specified by the Customer in Section 5 of the Order Form.  |
| B9.5.                          | In its performance of this Contract the Serv ce Provider shall not prov de or offer to a Service User any clinical or med cal services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Gu dance).   | B11.1. The Service Prov der shall adopt Safeguarding Pol cies and such policies shall comply w th the Customer's safeguarding policy as amended from time to time and may be appended to the Contract.   | B15.2. The Service Provider must deliver the informat on (if any) required under clause B15.1 in the format, manner, frequency and timescales specified in Section 5 of the Order Form.   |
| B9.6.                          | If a Party, acting in good faith, contests all or any part of any payment calculated in accordance w th this clause B9:   | B11.2. At the reasonable wr tten request of the Customer and by no later than ten (10) Working Days following receipt of such request, the Service Prov der must provide ev dence to the Customer that it is addressing any safeguarding concerns.   | B15.3. If the Service Provider fails to comply with any of the obligat ons in this clause B15 and/or Sect on 5 of the Order Form the Customer may (without prejudice to any other rights t may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Sect on 5 of the Order Form.  |
|                                | a) the contesting Party shall within five (5) Working Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in part ular identifying which elements are   | B11.3. If requested by the Customer, the Serv ce Provider shall part cipate in the development of any local multi-agency safeguarding qual ty indicators and/or plan.  | B15.4. In addit on to the information required under clause B15.1, the Customer may request from the Service Prov der any other informat on it reasonably requires in relat on to this Contract and the Serv ce Provider must deliver such requested informat on in a timely manner.  |
|                                |   | <b>B12. INCIDENTS REQUIRING REPORTING</b>  | <b>B16. EQUIPMENT</b>   |
|                                |   | B12.1. If the Service Prov der is CQC registered t shall comply w th the requirements and arrangements for notification of deaths and other incidents to CQC in accordance w th  | B16.1. The Service Provider must provide and maintain at ts 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 f t for the   |



purpose of providing the applicable Services.

**B17. NOT USED**

**B18. COMPLAINTS**

B18.1. The Service Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services.

B18.2. If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under this Contract, then the Customer may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Service Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Customer may have under this Contract, the Customer may, in its sole discretion, uphold the complaint and take any act on specified in clause B29 (*Default and Failure to Supply*).

**B19. SERVICE REVIEW**

B19.1. If the Customer has specified in Section 6 of the Order Form that it requires a formal service review process in addition to the contract management activity conducted by PHE under the Framework Agreement, and such requirements are reasonable, then the Service Provider shall accommodate such requirements.

**B20. REVIEW MEETINGS**

B20.1. If the Customer has specified in Section 6 of the Order Form that as part of its service review process it has a reasonable requirement that periodic review meetings be held, then the Service Provider shall cooperate with such requirements.

**B21. CO-OPERATION**

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

B21.2. The Service Provider must co-operate fully and liaise appropriately with:

- a) the Customer;
- b) any third party provider who the Service User may be transferred to or from the Service Provider;
- c) any third party provider which may be providing care to the Service User at the same time as the Service 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 Customer or members of the public.

**B22. WARRANTIES AND REPRESENTATIONS**

B22.1. The Service 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 Customer 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 Customer 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 Service 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 Service 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 ongoing business concern or its ability to fulfil its obligations under this Contract; and
- h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge are threatened) for the winding up of the Service 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 Service Provider's assets or revenue.

B22.2. The Customer 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.

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

**B23. VARIATIONS**

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

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

B23.3. If a Variation on Notice is issued, the Customer and the Service Provider must enter into good faith negotiations for a period of not more than thirty (30) Working 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 on within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract.

B23.4. No Variation to this Contract will be valid or of any effect unless agreed in writing by the Customer Representative (or his nominee) and the Service Provider Representative (or his nominee). All agreed Variations shall form an addendum to this Contract.

**B24. ASSIGNMENT AND SUB-CONTRACTING**

B24.1. The Service 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 Customer 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 Customer may reasonably require.

B24.2. The Customer's consent to sub-contracting under clause B24.1 will not relieve the Service Provider of its liability to the Customer for the proper performance of any of its obligations under this Contract and the Service 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 Service Provider.

B24.3. Any sub-contract submitted by the Service Provider to the Customer for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.

B24.4. The Customer may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Service Provider.

**B25. AUDIT AND INSPECTION**

B25.1. The Service 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 Service 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 Service Provider may refuse such request to enter the Service 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.

B25.2. Subject to Law and notwithstanding clause B25.1, an Authorised Person may enter the Service Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Service Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.

B25.3. Within ten (10) Working Days of the Customer's reasonable request, the Service Provider must send the Customer 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 Service Provider, to which the Service Provider has access and which it can disclose in accordance with the Law.

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| B25.4.                                     | The Customer shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.  | Days or such other period of time as the Customer may direct;  | B30.10. | If a Joint Investigation is to be undertaken:  |
| B25.5.                                     | During any audit undertaken under clause B25.1 or B25.2, the Service Provider must provide the Customer and any Authorised Person with all reasonable co-operation and assistance in relation to that audit, including:  | b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B32;<br>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 B33 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Customer may supply or procure a third party to supply such part of the Services.  | a)      | the Customer and the Service Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than four (4) weeks) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation.        |
|  | a) all reasonable information requested within the scope of the audit;   |  | b)      | the Customer and the Service Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.  |
|  | b) reasonable access to the Service Provider's Premises and/or the premises of any Sub-contractor; and   |  |         |  |
|  | c) access to the Staff.  |  |         |  |
| <b>B26. INDEMNITIES</b>                    |  |  |         |  |
| B26.1.                                     | The Service Provider shall indemnify and keep indemnified the Customer against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Contract, or breach of its statutory duty or breach of an obligation under the Data Protection Legislation, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or breach of statutory duty or breach of an obligation under the Data Protection Legislation by the Customer. | B29.2. If the Customer exercises any of its rights under clause B29.1, the Service Provider must indemnify the Customer 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 Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services. | B30.11. | On completion of a Joint Investigation, the Customer and the Service 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.  |
|  |  |  | B30.12. | Either the Customer or the Service 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.  |
| <b>B27. LIMITATION OF LIABILITY</b>        |  | <b>B30. CONTRACT MANAGEMENT</b>  |         | <b>Remedial Action Plan</b>  |
| B27.1.                                     | 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.   | B30.1. If the Parties have agreed a consequence in relation to the Service Provider failing to meet a Quality Outcomes Indicator (as set out in Section 5 of the Order Form or Framework Schedules 7 or 9) and the Service Provider fails to meet the Quality Outcomes Indicator, the Customer may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Customer may have under this clause B30.   | B30.13. | If a Remedial Action Plan is to be implemented, the Customer and the Service Provider must agree the contents of the Remedial Action Plan within:  |
| B27.2.                                     | Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.  | B30.2. The provisions of this clause B30 do not affect any other rights and obligations the Parties may have under this Contract.  | a)      | five (5) Working Days following the Contract Management Meeting; or  |
| B27.3.                                     | Nothing in this Contract will exclude or limit the liability of either Party for:  |  | b)      | five (5) Working Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause B30.11.  |
|  | a) death or personal injury caused by its negligence; or   | B30.3. Clauses B30.19, B30.23, B30.24 and B30.26 will not apply if the Service 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 Customer.  | B30.14. | The Remedial Action Plan must set out:   |
|  | b) fraud or fraudulent misrepresentation.  |  | a)      | milestones for performance to be remedied;   |
| <b>B28. INSURANCE</b>                      |  | <b>Contract Query</b>  | b)      | the date by which each milestone must be completed; and  |
| B28.1.                                     | The Service 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 Service Provider, arising out of the Service 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 Service Provider.  | B30.4. If the Customer has a Contract Query, it may issue a Contract Query Notice to the Service Provider.   | c)      | subject to the maximum sums identified in clause B30.23, the consequences for failing to meet each milestone by the specified date.  |
| B28.2.                                     | The Service Provider must give the Customer, 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.   | B30.5. If the Service Provider has a Contract Query, it may issue a Contract Query Notice to the Customer.   | B30.15. | The Service Provider and the Customer must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.  |
| B28.3.                                     | The provision of any insurance or the amount or limit of cover will not relieve or limit the Service Provider's liabilities under this Contract.   | <b>Excusing Notice</b>   | B30.16. | The Customer and the Service Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Customer and the Service Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting. |
|  |  | B30.6. The Receiving Party may issue an Excusing Notice to the Issuing Party within five (5) Working Days of the date of the Contract Query Notice.  | B30.17. | If following implementation of a Remedial Action Plan:   |
| <b>B29. DEFAULTS AND FAILURE TO SUPPLY</b> |  | B30.7. If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within ten (10) Working Days following the date of the Contract Query Notice.  | 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;   |
| B29.1.                                     | In the event that the Customer is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Service Provider, then the Customer may, without prejudice to any other rights or remedies it may have under this Contract including under clause B30, consult with the Service Provider and then do any of the following:  | <b>Contract Management Meeting</b>   | b)      | any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Customer or the Service Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.  |
|  | a) require the Service Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within ten (10) Working  | B30.8. Unless the Contract Query Notice has been withdrawn, the Customer and the Service Provider must meet to discuss the Contract Query and any related Excusing Notice within ten (10) Working Days following the date of the Contract Query Notice.  | B30.18. | If the Customer and the Service Provider cannot agree a Remedial Action Plan within the relevant period specified in clause B30.13, they must jointly notify the Boards of Directors of both the Service Provider and the Customer.  |
|  |  | B30.9. At the Contract Management Meeting the Customer and the Service 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.   |         |  |

B30.19. If, ten (10) Working Days after notifying the Boards of Directors, the Customer and the Service Provider still cannot agree a Remedial Action Plan, the Customer may withhold up to 2% of the monthly sums payable by it under clause B9 (*Charges and Payment*) for each further month the Remedial Action Plan is not agreed.

B30.20. The Customer must pay the Service Provider any sums withheld under clause B30.19 within ten (10) Working Days of receiving the Service Provider's agreement to the Remedial Action Plan. Unless clause B30.25 applies, those sums are to be paid without interest.

#### Exception Reports

B30.21. If a Party breaches a Remedial Action Plan and does not remedy the breach within five (5) Working Days of its occurrence, the Service Provider or the Customer (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 Service Provider, the Customer may withhold payment from the Service Provider in accordance with clause B30.23.

B30.22. 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 Customer or the Service 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

B30.23. If the Service Provider breaches a Remedial Action Plan:

- a) the Customer may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Customer under clause B9 (*Charges and Payment*), from the date of issuing the First Exception Report and for each month the Service Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Customer under clause B9 (*Charges and Payment*) in relation to each Remedial Action Plan;
- b) the Customer must pay the Service Provider any sums withheld under clause B30.23(a) within ten (10) Working Days following the Customer's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to clause B30.25, no interest will be payable on those sums.

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

B30.24. If the Service Provider is in breach of a Remedial Action Plan the Customer may, when issuing any Second Exception Report retain permanently any sums withheld under clause B30.23.

#### Unjustified Withholding or Retention of Payment

B30.25. If the Customer withholds sums under clause B30.19 or clause B30.23 or retain sums under clause B30.24, and within twenty (20) Working Days of the date of that withholding or retention (as the case may be) the Service Provider produces evidence satisfactory to the Customer that the relevant sums were withheld or retained unjustifiably, the Customer must pay those sums to the Service Provider within ten (10) Working Days following the date of the Customer'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 Customer does not accept the Service Provider's evidence the Service Provider may refer the matter to Dispute Resolution.

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

B30.26. If the Service Provider does not agree a Remedial Action Plan:

- a) within six (6) months following the expiry of the relevant time period set out in clause B30.13; or
  - b) before the Expiry Date or earlier termination of this Contract,
- whichever is the earlier, the Customer may retain permanently any sums withheld under clause B30.19.

B30.27. If the Service Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Customer may retain permanently any sums withheld under clause B30.23.

#### B31. DISPUTE RESOLUTION

B31.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of the Customer Representative and the Service Provider Representative.

B31.2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

B31.3. If the dispute cannot be resolved by the Parties pursuant to clause B31.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause B31.5 unless:

- a) the Customer considers that the dispute is not suitable for resolution by mediation; or
- b) the Service Provider does not agree to mediation.

B31.4. The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.

B31.5. The procedure for mediation is as follows:

- a) a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;
- b) the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediator appointed by CEDR to provide guidance on a suitable procedure;
- c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion on writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

f) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

#### B32. SUSPENSION AND CONSEQUENCES OF SUSPENSION

B32.1. A suspension event shall have occurred if:

- a) the Customer reasonably considers that a breach by the Service 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 on in the provision of any one or more of the Services; or
- b) clauses B32.1(a) and B32.1(c) do not apply, but the Customer, 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 Service Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each a **Suspension Event**).

B32.2. Where a Suspension Event occurs the Customer:

- a) may by written notice to the Service Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Service Provider demonstrates to the reasonable satisfaction of the Customer 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.

B32.3. During the suspension of any Service under clause B32.2, the Service Provider must comply with any steps the Customer reasonably specifies in order to remedy the Suspension Event, including where the Customer's decision to suspend pursuant to clause B32.2 has been referred to dispute resolution under clause B31 (*Dispute Resolution*).

B32.4. During the suspension of any Service under clause B32.2, the Service 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 B32.2; and/or
- b) all or part of the suspended Service which the Service Provider continues to deliver during the period of

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|                         | suspension in accordance with clause B32.5.  |  | material adverse effect on the provision of the Services;   |   | receipt of the Customer's written instructions or twelve (12) months after the date of expiry or termination, return all copies of the Confidential Information to the Customer.   |
| B32.5.                  | The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.  | d)   | the Service Provider has breached the terms of clause B40 ( <i>Prohibited Acts</i> );   |   |  |
| B32.6.                  | Except where suspension occurs by reason of an event of Force Majeure, the Service Provider must indemnify the Customer in respect of any Losses directly and reasonably incurred by the Customer in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service). | e)   | any of the Service Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;  | B34.5.  | If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B33.4, B33.3 or if the Customer terminates under clause B33.1 ( <i>Termination</i> )), the Customer 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 Service Provider for providing the same Service, then the Customer, acting reasonably, will be entitled to recover from the Service Provider (in addition to any other sums payable by the Service Provider to the Customer in respect of that termination) the excess cost and all reasonable related professional and administrative costs incurred (in each case) for a period of six (6) months following termination. |
| B32.7.                  | Following suspension of a Service the Service Provider must at the reasonable request of the Customer and for a reasonable period:   | f)   | the Service Provider materially breaches its obligations in clause B38 ( <i>Data Protection</i> );  |   |  |
|                         | a) co-operate fully with the Customer 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 Customer or members of the public; and            | g)   | two or more Second Exception Reports are issued to the Service Provider under clause B30.22 ( <i>Contract Management</i> ) within any rolling six (6) month period which are not disputed by the Service Provider, or if disputed, are upheld under Dispute Resolution;   | B34.6.  | The provisions of clauses B8 ( <i>Staff</i> ), B9 ( <i>Charges and Payment</i> ), B12 ( <i>Incidents Requiring Reporting</i> ), B14 ( <i>Service User Health Records</i> ), B15 ( <i>Information</i> ), B24 ( <i>Assignment and Sub-contracting</i> ), B25 ( <i>Audit and Inspection</i> ), B34 ( <i>Consequence of Expiry or Termination</i> ), B37 ( <i>Confidentiality</i> ) and B39 ( <i>Freedom of Information and Transparency</i> ) will survive termination or expiry of this Contract.  |
|                         | b) at the cost of the Service Provider:  | h)   | the Service Provider breaches the terms of clause B24 ( <i>Assignment and Sub-contracting</i> );  |   |  |
|                         | (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  | i)   | a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service 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 Service Provider's property or equipment;  | <b>B35. BUSINESS CONTINUITY</b>                   |  |
|                         | (ii) deliver to the Customer all materials, papers, documents and operating manuals owned by the Customer and used by the Service Provider in the provision of the suspended Service.  | j)   | the Service Provider ceases or threatens to cease to carry on business in the United Kingdom; or  | B35.1.  | The Service Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.   |
| B32.8.                  | As part of its compliance with clause B32.7 the Service Provider may be required by the Customer to agree a transition plan with the Customer and/or any alternative Successor Provider.   | k)   | the Service 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 Service Provider has not remedied that breach within thirty (30) Working Days following receipt of notice from the Customer identifying the breach.   | B35.2.  | The Service Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify the Customer as soon as reasonably practicable of its activation and in any event no later than five (5) Working Days from the date of such activation.  |
| B32.9.                  | If it is determined, pursuant to clause B31 ( <i>Dispute Resolution</i> ), that the Customer acted unreasonably in suspending a Service, the Customer must indemnify the Service Provider in respect of any Loss directly and reasonably incurred by the Service Provider in respect of that suspension.                       | B33.3.   | Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Customer or the Service Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than thirty (30) Working Days without the Parties agreeing alternative arrangements.   | <b>B36. COUNTER-FRAUD AND SECURITY MANAGEMENT</b> |  |
| B32.10.                 | During any suspension of a Service the Service Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.   | B33.4.   | The Service Provider may terminate this Contract or any Service with immediate effect by written notice to the Customer if the Customer is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Service Provider may only terminate this Contract under this clause B33.4 if the Customer has failed to remedy such breach within thirty (30) Working Days of receipt of notice from the Service Provider to do so. | B36.1.  | The Service Provider must put in place and maintain appropriate counter fraud and security management arrangements.  |
| <b>B33. TERMINATION</b> |  | <b>B34. CONSEQUENCE OF EXPIRY OR TERMINATION</b> |   | B36.2.  | The Service Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Service Provider in connection with the receipt of monies from the Customer.   |
| B33.1.                  | Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than three (3) months' written notice at any time after the Service Commencement Date.  | B34.1.   | Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.  | B36.3.  | The Service Provider must notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.   |
| B33.2.                  | The Customer may terminate this Contract in whole or part with immediate effect by written notice to the Service Provider if:  | B34.2.   | On the expiry or termination of this Contract or termination of any Service for any reason the Customer, the Service Provider, and if appropriate any successor provider, will agree a succession plan (the " <b>Succession Plan</b> ") and the Parties will comply with the provisions of the Succession Plan.   | B36.4.  | If the Service Provider or its Staff commits Fraud in relation to this or any other contract with the Customer, the Customer may terminate this Contract by written notice to the Service Provider with immediate effect (and terminate any other contract the Service Provider has with the Customer) and recover from the Service Provider the amount of any Loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.   |
|                         | a) the Service Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;  | B34.3.   | On the expiry or termination of this Contract or termination of any Service the Service Provider must co-operate fully with the Customer to migrate the Services in an orderly manner to the successor provider.  | <b>B37. CONFIDENTIALITY</b>                       |  |
|                         | b) the Service Provider is in persistent breach of its obligations under this Contract;  | B34.4.   | In the event of termination or expiry of this Contract, the Service Provider must cease to use the Customer's Confidential Information and on the earlier of the  | B37.1.  | Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the " <b>Disclosing Party</b> ") and the Party that receives it (the " <b>Receiving Party</b> ") has no right to use it.   |
|                         | c) the Service Provider:   |  |   | B37.2.  | Subject to clauses B37.3 and B37.4, the Receiving Party agrees:  |
|                         | (i) fails to obtain any Consent;   |  |   | a)  | to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;  |
|                         | (ii) loses any Consent; or   |  |   | b)  | not to disclose the Disclosing Party's Confidential Information to any third   |
|                         | (iii) has any Consent varied or restricted,  |  |   |   |  |
|                         | the effect of which might reasonably be considered by the Customer to have a   |  |   |   |  |

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|                             | party or to use it to the detriment of the Disclosing Party; and  |        | in Appendix C by the Customer and may not be determined by the Service Provider.  |        | (i)   | the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;   |
|                             | 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.  | B38.2. | The Service Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.  |        |       |   |
| B37.3.                      | The Receiving Party may disclose the Disclosing Party's Confidential Information on:  | B38.3. | The Service Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:                               |        | (ii)  | the Data Subject has enforceable rights and effective legal remedies;   |
|                             | a) in connection with any dispute resolution under clause B31 ( <i>Dispute Resolution</i> );  |        | a) a systematic description of the envisaged processing operations and the purpose of the processing;   |        | (iii) | the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and  |
|                             | b) in connection with any litigation between the Parties;   |        | b) an assessment of the necessity and proportionality of the processing operations;   |        |       |   |
|                             | c) to comply with the Law;  |        | c) an assessment of the risks to the rights and freedoms of Data Subjects; and  |        |       |   |
|                             | 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 B37.2; or   |        | d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.   |        | (iv)  | the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;  |
|                             | e) to comply with a regulatory body's request.  |        |   |        |       |   |
| B37.4.                      | The obligations in clause B37.1 and clause B37.2 will not apply to any Confidential Information which:  | B38.4. | The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:  |        | e)    | at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Contract unless the Service Provider is required by Law to retain the Personal Data.  |
|                             | a) is in or comes into the public domain other than by breach of this Contract;   |        | a) process that Personal Data only in accordance with Appendix C unless the Service Provider is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law; | B38.5. |       | Subject to clause B38.6, the Service Provider shall notify the Customer immediately if it:  |
|                             | b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or  |        | b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:  |        | a)    | receives a Data Subject Access Request (or purported Data Subject Access Request);  |
|                             | 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.   |        | (i) nature of the data to be protected;   |        | b)    | receives a request to rectify, block or erase any Personal Data;  |
| B37.5.                      | The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B37.  |        | (ii) harm that might result from a Data Loss Event;   |        | c)    | receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;  |
| B37.6.                      | The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B37 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B37.  |        | (iii) state of technological development; and   |        | d)    | receives any communication from the Information Customer or any other regulatory authority in connection with Personal Data processed under this Contract;  |
|                             |   |        | (iv) cost of implementing any measures;   |        |       |   |
|                             |   | c)     | ensure that:  |        | e)    | receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or   |
| B37.7.                      | This clause B37 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.  |        | (i) Staff do not process Personal Data except in accordance with this Contract (and in particular Appendix C);  |        | f)    | becomes aware of a Data Loss Event.   |
| B37.8.                      | The obligations in clause B37.1 and clause B37.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Customer or of any committee, sub-committee or joint committee of the Customer or is related to an executive decision of the Customer and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Customer 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 Service Provider and where reasonably practicable shall consider any representations made by the Service Provider. |        | (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:  | B38.6. |       | The Service Provider's obligation to notify under clause B38.5 shall include the provision of further information to the Customer in phases, as details become available.   |
|                             |   |        | A. are aware of and comply with the Service Provider's duties under this clause;  | B38.7. |       | Taking into account the nature of the processing, the Service Provider shall provide the Customer with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause B38.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing: |
|                             |   |        | B. are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;  |        | a)    | the Customer with full details and copies of the complaint, communication or request;   |
|                             |   |        | C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and                     |        | b)    | such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;   |
|                             |   |        | D. have undergone adequate training in the use, care, protection and handling of Personal Data; and   |        | c)    | the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;  |
|                             |   | d)     | not transfer Personal Data outside of the United Kingdom or the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:   |        |       |   |
| <b>B38. DATA PROTECTION</b> |   |        |   |        |       |   |
| B38.1.                      | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Service Provider is the Processor under the Contract. The only processing that the Service Provider is authorised to do is listed  |        |   |        |       |   |

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|   | <p>d) assistance as requested by the Customer following any Data Loss Event;</p> <p>e) assistance as requested by the Customer with respect to any request from the Information Customer's Office, or any consultation by the Customer with the Information Customer's Office.</p>  | <p>behalf for the purposes of this Contract are subject to the obligations and commitments of the Customer under the FOIA;</p>  | <p>not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and</p>   |
| B38.8.  | <p>The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:</p> <p>a) the Customer determines that the processing is not occasional;</p> <p>b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR;</p> <p>c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.</p> | <p>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 Customer;</p> <p>c) that if the Service Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Customer) and will promptly (and in any event within two (2) Working Days) transfer the request to the Customer;</p> <p>d) that the Customer, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the Freedom of Information Act 2000, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Service Provider and this Contract either without consulting with the Service Provider, or following consultation with the Service Provider and having taken its views into account; and</p> <p>e) to assist the Customer 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 five (5) Working Days of such request and without charge.</p> | <p>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").</p>   |
| B38.9.  | <p>The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.</p>  |   | <p>B40.2. If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:</p> <p>a) to exercise its right to terminate under clause B33.2 (<i>Termination</i>) and to recover from the defaulting Party the amount of any loss resulting from the termination; and</p> <p>b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and</p> <p>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.</p>  |
| B38.10.   | <p>The Service Provider shall designate a Data Protection Officer if required by the Data Protection Legislation.</p>   |   | B40.3.  |
| B38.11.   | <p>Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:</p> <p>a) notify the Customer in writing of the intended Sub-processor and processing;</p> <p>b) obtain the written consent of the Customer;</p> <p>c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause B38 such that they apply to the Sub-processor; and</p> <p>d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.</p>  |   | <p>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.</p>  |
| B38.12.   | <p>The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.</p>   | B39.3.  | B40.4.  |
| B38.13.   | <p>The Customer may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).</p>   | B39.4.  | B40.5.  |
| B38.14.   | <p>The Parties agree to take account of any non-mandatory guidance issued by the Information Customer's Office. The Customer may on not less than thirty (30) Working Days' notice to the Service Provider amend the Contract to ensure that it complies with any guidance issued by the Information Customer's Office.</p>   | B39.5.  |   |
| <b>B39. FREEDOM OF INFORMATION AND TRANSPARENCY</b> |   | B39.6.  | <b>B41. FORCE MAJEURE</b>   |
| B39.1.  | <p>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.</p>  | B39.7.  | B41.1.  |
| B39.2.  | <p>If the Service Provider is not a Public Authority, the Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and will assist and co-operate with the Customer to enable the Customer to comply with its disclosure obligations under the FOIA. Accordingly the Service Provider agrees:</p> <p>a) that this Contract and any other recorded information held by the Service Provider on the Customer's</p>  |   | <p>Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.</p>  |
|   |   | <b>B40. PROHIBITED ACTS</b>   | B41.2.  |
|   |   | B40.1.  | B41.3.  |
|   |   | <p>Neither Party shall do any of the following:</p> <p>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</p>  | <p>Subject to clause B41.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.</p> <p>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 fifteen (15) Working 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.</p> |

|        |  |   |   |
|--------|--|---|---|
| B41.4. | A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.   | any way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability on the part of the Customer under this Contract (howsoever arising) in any capacity other than as contracting counterparty.   | must not make any press announcements in relation to this Contract in any way.  |
| B41.5. | The Customer shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.  |   |   |
| B42.   | THIRD PARTY RIGHTS   | B44. SEVERABILITY   | B47. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY  |
| B42.1. | No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract, save that PHE shall be entitled to exercise its rights to receive management information from the Service Provider in respect of this Contract and the Customer acknowledges and agrees to this provision. | B44.1. 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. | B47.1. Nothing in this Contract creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Customer and the Service Provider.   |
| B43.   | CAPACITY   | B45. WAIVER   | B48. GOVERNING LAW AND JURISDICTION   |
| B43.1. | Without prejudice to the contractual rights and/or remedies of the Service Provider expressly set out in this Contract, the obligations of the Customer under this Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon the Customer or in    | B45.1. 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.   | B48.1. 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. PUBLICITY  | B48.2. Subject to the provisions of clause B31 ( <i>Dispute Resolution</i> ), 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. |
|        |  | B46.1. Without prejudice to clause B39 ( <i>Freedom of Information and Transparency</i> ), except with the written consent of the Customer (such consent not to be unreasonably withheld or delayed), the Service Provider  |   |

# CALL-OFF GENERAL TERMS AND CONDITIONS APPENDIX A

## THE GOODS AND/OR SERVICES

### REQUIREMENT (including Specification as published in the ITT)

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#### 1. Population Needs

##### 1.1 National/Local Context and Evidence Base

Sexual health is an important area of public health. Most of the adult population in England are sexually active and access to good quality sexual health services improves the health and wellbeing of both individuals and populations. The Government has set out its ambitions for improving sexual health in its publication, A Framework for Sexual Health Improvement in England<sup>1</sup>. Sexual ill-health is not equally distributed within the population. Some groups are at higher risk of poor sexual health and may face stigma and discrimination, which can restrict their ability to access services.

##### 1.2 HIV

In the UK there are an estimated 101,600 people living with HIV of whom an estimated 7,800 (8%) are unaware of their infection<sup>2</sup>. The two populations affected by HIV infection in the UK are men who have sex with men (MSM) and black African heterosexuals.

Gay, bisexual and other MSM are advised to test for HIV at least annually and every three months if having sex without condoms with new or casual partners. Black African men and women are advised to have an HIV test and repeat this every year if having unprotected sex with new or casual partners from countries where HIV is common. Despite recent declines in the numbers of new diagnoses in England late diagnosis remains a challenge. In 2017 43% of all HIV diagnoses were made at a late stage of infection<sup>2</sup>.

In order to achieve the ultimate goal of the elimination of HIV transmission in England, HIV testing, including frequent testing of key populations is an important component of the combination prevention approach required. Providing a range of testing options and approaches in a variety of settings, including online will be key to maximising rates of HIV testing.

##### 1.3 The National HIV Self-Sampling Service

In November 2015, based on the success of two national pilots, Public Health England and local authorities co-commissioned and launched a nation-wide HIV Self-Sampling Service for most at-risk populations for HIV acquisition. The current framework 3173\_15 has shown that the demand for HIV Self-Sampling Service is relatively constant, but high numbers of kits are ordered during national campaign periods e.g. the weeks immediately before during and after National HIV Testing Week. By April 2019, more than 150,000 kits have been ordered, with just under 86,000 returned for testing (56%). In 2018, quarterly return rates rose to between 62-64%. The Service Provider will be expected to maintain the quarterly return rate at at least 60%, and work towards improving upon this. During periods of normal activity the estimated number of kits requested is approximately 2,000 per month. This compares to periods around national campaigns, particularly between October and December when kit orders peak at around 12,000 in November.

The Service has been successful at engaging key populations including those who have never tested for HIV before<sup>3</sup>. The current Framework Agreement comes to an end on 29 October 2019 and following a review, the multi-disciplinary Steering Group has decided to proceed with procuring a new Framework Service Provider.

A single Service Provider will be appointed to provide a remote HIV Self-Sampling Service to the most at risk adult populations across England. As already outlined in the introduction to this document, the Service will be procured and performance managed by Eastern Shires Purchasing Organisation (ESPO), acting on behalf of Public Health England and the individual Customers. It is recognised that the Service Provider will need to work collaboratively across a number of national, regional and local providers as well as organisations responsible for both commissioning and delivery of different elements of the HIV clinical pathway.

#### 2. Key Service Outcomes

**2.1** The Service Provider will support delivery against one of three main sexual health Public Health Outcomes Framework indicators:

- People presenting with HIV at a late stage of infection
- In addition it will deliver the following outcomes to improve the sexual health in the populations as a whole:

##### 2.1.1 Direct Outcomes:

- Improved access to HIV Self-Sampling Service for those most affected by sexual ill health

<sup>1</sup> Department of Health (2013). A Framework for Sexual Health Improvement in England.

<https://www.gov.uk/government/publications/a-framework-for-sexual-health-improvement-in-england>

<sup>2</sup> PHE (2018). Progress towards ending the HIV epidemic in the United Kingdom

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/759408/HIV\\_annual\\_report\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759408/HIV_annual_report_2018.pdf)

<sup>3</sup> PHE (2018). National HIV Self-Sampling Service Two year service report.

<https://www.gov.uk/government/publications/national-hiv-self-sampling-service>



- Increased uptake of HIV testing with particular emphasis on those who have not accessed other sexual health services in the last year, first time Service Users, and repeat testing of those that remain at risk
- Reduced sexual health inequalities amongst communities most at risk of HIV infection including black Africans, MSM, sex workers, drug users and trans communities
- Reduced number of undiagnosed cases of HIV
- Reduced late diagnoses of HIV

### **2.1.2. Indirect Outcomes:**

- Increased number of those newly diagnosed routinely accessing treatment and care
- Reduced onward transmission of HIV and other sexual transmitted infections
- Improved health and wellbeing of people living with HIV
- Increased development of evidence-based practice
- Increased knowledge and awareness of HIV

## **3. Scope**

### **3.1 Aims and Objectives of Service**

The aim of this Service is to provide a cost effective and clinically robust remote HIV Self- Sampling Service for sexually active individuals aged 16 years and over. Emphasis will be placed on increasing testing for HIV amongst most key populations including MSM and black African populations. The Service will operate at no financial expense to the Service User and will run independently from all other STI home/remote sampling services.

Service objectives include but are not limited to:

- Access to free remote sampling services that allows people to self-sample independently with limited clinical involvement unless considered necessary.
- Appropriate onward referral for treatment and care following diagnosis with timely initiation of treatment when clinically indicated<sup>4</sup>.
- Rapid referral and signposting to free services for the prevention, detection and management (treatment and partner notification) of HIV, BBVs and other STIs to reduce population prevalence and onward transmission.

appropriate sexual health and Service information is provided to all Service Users including those not eligible to access the Service and following non-reactive result.

- Ensuring services are acceptable and accessible to people disproportionately affected by sexual ill health.
- Engaging national prevention bodies and non-governmental organisations to facilitate promotion, Service delivery and development
- Supporting evidence-based practice in sexual health including participation in audits and external Service evaluations and may include research.

### **3.2 Service Description/Pathway**

The Service will be provided exclusively to sexually active individuals aged 16 years and over residing in the localities as specified by the Customers (or Public Health England during times of national campaign such as National HIV Testing Week during which times Service Users can reside anywhere in England).

The Service is characterised by the following:

#### **User Interface and Access**

- Designing, hosting, managing and maintaining a secure and accessible<sup>5</sup> user- friendly interface that facilitates remote online ordering of an HIV self-sampling kit without the need to see a healthcare practitioner. The security, accessibility and user experience will be assessed by the steering group.
- In partnership with Public Health England the Service Provider will develop a brand for the platform using branding guidelines supplied by Public Health England.
- Public Health England will own the brand developed for the Service but not the platform through which the Service is delivered. [www.freetesting.hiv](http://www.freetesting.hiv) will be the URL used to access the Service.
- Signposting individuals residing outside of the local authorities that are co-investing in the Service to obtain an HIV test from an alternative provider – this should include signposting to sexual and reproductive health services as well as other options for free self-sampling
- Providing information in a format designed to inform and support decision making by Service Users.

- The platform should be accessible 24 hours a day, 7 days a week with the exception of planned downtime for maintenance. Any periods of downtime should be kept to a reasonable minimum, and a suitable message should be displayed to Service Users visiting the site during this period.
- To encourage uptake of the self-sampling offer, the Service Provider should undertake focused marketing activities (for example, social marketing and search engine optimisation). All activities will complement nationally, regionally and locally commissioned campaigns promoting testing for HIV.
- Online information and guidance for using the self-sampling kits including an instructional video.
- The option for Customers to add syphilis testing into the Service.

5 For the purposes of this contract "accessible to all Service Users" including those with limited literacy, visual impairments, learning difficulties and those with a preference for information in other languages other than English. This may include but will not be limited to the following for Service Providers considering digital platforms: The ability to change text size; Instructions in video form; Use standard UK Government Access Keys Systems; Is compatible with any browser; Web Accessibility Initiative's (WAI) conformance to level 'A' standard; Embed a multilingual translator into the website with English as the default language. Where communication with Service Users is via a telephone, services for the purpose of language translation would be acceptable.

## **Kit Order Fulfilment**

### **i) Online Ordering of Self-Sampling Kits**

- Supply of self-sampling kits containing: in-date consumables for capillary or finger-tip blood sampling; easy-to-read and comprehend sampling instructions; sexual health promotion messaging and Service information leaflets; branded microbiology form; prepaid postage return envelope suitable for Category B UN 3373, diagnostic and clinical specimens containing biological and infectious substances.
- Facility for local Customers to add in local information leaflets (provided by Customer) on request.
- Delivery of a sampling kit to the Service Users' preferred address which may, given the option, differ from their place of residence, in discrete and unbranded packaging. Fulfilment of HIV self-sampling kit orders free of charge to the Service User.
- Collation of adequate Service User information to facilitate remote HIV-sampling, pathology, reactive and negative results notification, recall and repeat testing.
- Facility to provide syphilis screening on the same specimen and reactive and negative result management.

### **ii) Supply of Kits for Offline Distribution**

Supply of kits for offline distribution where requested by Customers. These kits will be identical to the online kits but will contain a paper questionnaire to allow for the collection of all relevant personal and epidemiological information. The Service Provider will enter this information onto their laboratory information management system on receipt of the returned kit

## **Pathology**

- CE marked 4th generation assay testing for HIV antibody and p24 antigens simultaneously as a minimum
- The Service Provider must provide details of the testing algorithm for HIV screening that will be employed and provide evidence of how the algorithm maximises both its Positive Predictive Value & Sensitivity and minimizes the frequency of ambiguous/ equivocal results. Tenderers should refer to the national HIV testing algorithm when preparing responses.
- CE marked total antibody testing for syphilis to report reactive results requiring further tests, or non-reactive results.
- 24 hour capacity to perform pathology on a high volume of specimens (around 40 000 tests per year)

## **Results Management**

Following a result that has been confirmed reactive as per section 4.4 of this requirement the Service Provider must provide the following:

- Secure return of Service User results to the part of the service that delivers the results to the Service User and to the Service User themselves, through agreed methods of communication, in an appropriate manner.
- Provision of reactive results (with health promotion advice and referral pathways) by trained and clinically competent advisory services.
- Pro-active referral (with the Service User's consent which the Service Provider must obtain) for confirmatory testing to the HIV and/or sexual health service chosen by the patient, with service user confirmation of attendance
- Standard operating procedures for issues that may arise when informing Service Users of their results including (but not limited to) child protection and safeguarding, human trafficking, A&E and sexual assault services.

Following a result that has returned as non-reactive as per section 4.4 the Service Provider must provide the following:

- Provision of negative results via text message with signposting to appropriate local sexual health services local to the address the kit was ordered to and further sexual health and HIV information sources.

## **Management Information**

- Provision of information and data in accordance with the specification for contract monitoring, invoicing and evaluation of the Service.
- Provision of real-time management information at upper tier local authority/Customer level, to include:
  - Number of Service Users ordering a HIV sampling kit and how they ordered.
  - Service User demography, sexual orientation, ethnicity and sexual behaviour.
  - Number of specimens not viable for processing.
  - Number of HIV samples returned and processed.
  - Number of reactive samples including syphilis reactive samples if relevant.
  - Number of individuals contacted with reactive results and referred to specialist services.
  - Percentage of referred Service Users that self-report attendance at specialist services.

The Service will be delivered in accordance with the quality outcomes indicators stipulated in section 8 of this specification.

### **3.3 Population Covered**

The Service Provider must lead on the co-ordination, development and operation of HIV Self- Sampling Service for sexually active individuals aged 16 years and over. The Service will target mainly two key populations: MSM and black African populations (and other black communities at increased risk of HIV) however this may be varied based upon local need identified by a commissioning Customer. This will operate at no expense to the Service User and will run independently from all other online STI remote sampling services. All Service Users must reside within the geographical locality stipulated by the relevant Customer (i.e. the body with whom the Service Provider has entered a Call-Off agreement under the Framework Agreement or Public Health England during times of national campaign such as National HIV Testing Week, during which times Service Users can reside anywhere in England).

### **3.4 Dependencies and Interdependencies**

The Service Provider shall ensure that Service Users receive consistent and continuous care through the establishment of data and care pathways. Data and information needs to flow rapidly and seamlessly between the user interface, order fulfilment, pathology services and the results advisory function.

The Service will need to interface with local specialised HIV services, local sexual health services as well as locally driven campaigns and activities. To achieve this, the Service is dependent upon up to date lists of local sexual health services and specialised HIV services within and beyond commissioned localities. The Service Provider will source these lists from approved sources e.g. NHS choices and supplemented by the Steering Group and Customers. The Service Provider is expected to actively participate in regional and national networks, relevant trials, training, as well as research and audit programmes where applicable.

### **3.5 Relevant Organisations and Anticipated Usage**

The Framework is primarily intended for use by Public Health England and local authorities in

England; however it will be open for use by the following:

- Public Health England;
- any local authority in England; or
- the NHS Commissioning Board;
- any clinical commissioning group, NHS Trust or NHS Foundation Trust in England

Between November 2015 and April 2019 more than 150,000 kits were ordered of which just under 86,000 (56%) kits were returned through the current National HIV Self-Sampling Service. The Service Provider must have the flexibility to adapt to surges in demand. During periods of normal activity the estimated number of kits requested will be approximately 2,000 per month. This compares to periods of peak demand between October and December when the number of kits requested peaks at around 12,000 in November. The Service Provider will be expected to maintain the quarterly return rate at at least 60% and work towards improving on this. Over the lifetime of the current framework a total of 87 Local Authorities have entered into a Call-Off agreements under the Framework. Findings from a survey of Customers demonstrated that most intended to continue to sign-up to the Framework. Tenderers should however note that this information is provided for guidance and does not constitute a binding commitment at this stage. Such binding agreements will be created by each Customer at the point at which it enters into a Call-Off agreement under the Framework.

### **3.6 Acceptance and Exclusion Criteria and Thresholds**

Service User exclusion criteria include:

- Those under the age of 16 years.
- Those without a valid postcode of residence within the relevant Customer area.
- Those unwilling to provide at least one means of contact for their results.
- Optional if applicable: Those who are not identified as either MSM or black African (or others identified as being at increased risk of HIV). (It is recognised that the Service Provider can only take reasonable steps to apply this exclusion criterion, and is expected to work cooperatively with the relevant Customers to agree such steps).

### 3.7 Activity Planning Assumptions

Service planning and improvement should always include Service Users and public engagement.

### 3.8 Sampling Methodologies

The Framework will include from the outset one type of blood sample collection methodology. Alternative testing and sampling collection methodologies may be considered and permitted by the Steering Group and Customers at a later stage in the Framework term depending on the merits of doing so.

## 4. Applicable Service Standards

**4.1** The Service is to be underpinned by the following national standards and guidelines:

- HIV testing: increasing uptake among people who may have undiagnosed HIV (NICE 2016)
- Service Standards for Sexual and Reproductive Healthcare (FSRH 2013)
- British HIV Association Standards of Care for People Living with HIV (BHIVA 2013)
- UK National Guideline on Safer Sex Advice (BASHH & BHIVA 2012)
- Standards for psychological support for adults living with HIV (British Psychological Society, BHIVA & MEDFASH 2011)
- PH34 Increasing the uptake of HIV testing among men who have sex with men (NICE 2011)
- PH33 Increasing the uptake of HIV testing among black Africans in England (NICE 2011)
- Standards for the Management of Sexually Transmitted Infections (BASHH & MEDFASH 2010)
- UK National Guidelines for HIV Testing (BHIVA 2008)
- Progress and Priorities - Working Together for High Quality Sexual Health (MEDFASH 2008)
- Recommended Standards for Sexual Health Services (MEDFASH 2005)
- Research Governance Framework for Health and Social Care (Department of Health 2005)
- Government Service Design Manual: Digital By Default Service Standard
- UK national guidelines on the management of syphilis (BASHH 2015)
- Standards for Online and Remote Providers of Sexual and Reproductive Health Services (FSRH/BASHH 2019)

Relevant UK clinical guidance covering the specialities of Sexual & Reproductive Healthcare and Genitourinary Medicine can be found at [www.fsrh.org](http://www.fsrh.org) and [www.bashh.org](http://www.bashh.org). The Service Provider must ensure Services reflect updates in guidance and recommendations as and when produced.

The Service Provider will be required to demonstrate that they have a named lead, together with systems, processes and plans to ensure sound clinical governance. These systems, processes and plans should be in line with and adhere to NHS Clinical Governance Frameworks.

### 4.2 User Interface of the Service

The Service User interface must be fit for purpose on the day it is launched (1 October 2019) and will include, but not be limited to the following requirements:

- Be able to process high volumes of kit requests simultaneously and be able to accept orders from Service Users 24 hours a day, 360 days a year.
- Comply with security standards at all times and should be registered with the Information Customers' Office (ICO).
- Comply with the General Data Protection Regulation 2018.
- Be accessible to all Service Users including those with visual impairments, learning difficulties and those with a preference for information in other languages other than English
- Must assure and inform Service Users of their privacy and confidentiality
- For the Service Provider and/or relevant parties under this contract to be certified members of The Information Standard, NHS England

### 4.3 Link into Clinical Services

The Service Provider must provide an efficient and effective method for the follow-up of Service Users with reactive results. Those with reactive specimens should be contacted by telephone at the earliest opportunity followed by multiple attempts should the Service User not answer the call. The Service Provider may use discreet text messaging and letters to contact Service Users if telephone contact proves difficult. The Service Provider must facilitate the transfer of Service User into a clinical service most convenient for the Service User, liaising with the Service User to remove or reduce barriers to this transfer. The Service Provider will provide general support throughout this process as required. The Service Provider will request confirmation from the Service User of their attendance at clinical services.

### 4.4 Remote Self-Sampling Consumables and Pathology

The pathology services must be fit for purpose on the day the Service is launched and will include, but not be limited to the following requirements:

- The pathology provider must have capacity to perform high volume pathology on specimens with capability to cope with surges in demand during peak times such as National HIV Testing Week. The Service delivers around 2,000 kits per month during normal service, which increases between October and December, peaking to around 12,000 in the month of November.
- CE marked 4th generation assay testing for HIV antibody and p24 antigens simultaneously as a minimum.
- A testing algorithm that maximises both its Positive Predictive Value & Sensitivity and minimizes the frequency of ambiguous/ equivocal results.
- The pathology provider must have capacity to include serology tests for Syphilis at the request of the National HIV Self-Sampling Steering Group.
- Full participation in the UK NEQAS for HIV serology.
- Full participation in the UK NEQAS for syphilis microbiology
- The pathology provider must be accredited with either ISO 15189 or ISO 17025 under the United Kingdom Accreditation Service (UKAS) and shall comply with all requirements for the handling, processing and storage of samples.
- The provider must quality assure and evidence pre and post analytical elements of the service.
- In line with The Service Provider should seek registration with the Care Quality Commission (CQC) for provision of the entire Service and adhere to its incidence reporting policy.
- Compliant with UK Standards for Microbiology Investigations – Anti-HIV Screening<sup>6</sup>.

#### **4.5 Results Management Including Clinical Advice**

The results management services must be fit for purpose on the day the Service is launched and will include, but not be limited to the following requirement:

- Where the Service Provider is responsible for transport services, triage and medical advice provided remotely, they will also need to seek registration under the Health and Social Care Act (HSCA) with the Care Quality Commission (CQC) and adhere to its incidence reporting policy.
- Where the Service Provider is an NHS body they should participate in NHS system reporting.

#### **4.6 Service Availability**

The Service Provider is required to accept inbound calls from Service Users (e.g. to answer questions about the ordering process or for advice about how to collect and return samples) during normal working hours Monday to Friday 9am – 5pm), at least one evening a week until 9pm, and 9am – 12noon on Saturdays.

The Service Provider is required to operate the results management function during the same operating hours as above.

Service Users who contact the Service out of hours should be sign posted to an appropriate 24 hour service such as NHS 111 or equivalent, and in case of emergency, sign posted to where Post-exposure Prophylaxis (PEP) is available for free on the NHS.

Coordination and management functions of the Service (including dispatch of kits) should be delivered, as a minimum, during business operating hours 9am-5pm (GMT) Monday to Friday.

#### **4.7 Applicable Local Standards**

Individual Customers may require the Service Provider to operate in accordance with their own (i.e. the Customer's) local standards. Unless such standards are demonstrably outside whatever would reasonably have been taken into account by the Service Provider in Tendering, then the Service Provider must comply with such standards.

#### **4.8 Data Requirements**

Provision of data within the Service should flow securely. Service Users must be advised of appropriate care as swiftly as possible.

The appointed Service Provider will also ensure data (including aggregate Service User demography and diagnoses, including confirmed diagnoses) is provided to the relevant Customer via an online portal or platform controlled by usernames and passwords. These data should be for contract monitoring and evaluative purposes and will include, but is not limited to, the number of website visits, number of kit requests, number of kits returned and the number of reactive results and the demographic details of the services users (see section 9.4).

#### **4.9 Multiple Orders from the Same Service User**

The Service Provider must contact an individual that has accessed the Service more than four times in a six month period. Where this is the case, the Service Provider is required to intervene not in order to prevent them using the Service, but to facilitate a one-to-one consultation for an individual who appears to be at a very high risk of infection.

#### **4.10 Multiple Orders from the Same Address**

The Service Provider must alert the Customer concerned in the event that a non-residential address is used multiple times to place a kit order. Where a Customer has set their testing threshold at less than 500 per annum, no more than 10% of the kit orders should have the same commercial address recorded as a residential address. Should a testing threshold exceed 500 per annum no more than 5% of the kit orders should have the same commercial address recorded as a residential

address. The purpose is not to prevent the Service being used by residents, but to encourage local conversations between Customers and the Service User about self-sampling provisions.

## **5. Location of Service Provider Premises and Liability for Sub-contractors**

The location of the Service Provider's premises (including the location of premises at which any subcontracted components of the Service are provided) is not critical to this contract. It is however essential that regardless of such locations, the Service is delivered entirely in accordance with this specification. This includes an obligation on the Service Provider to ensure that any sub-contractors comply fully with the requirements of the specification and the contract (the Service Provider will be held liable for the failure to comply by any sub- contractor). The Service Provider will be required to attend quarterly Framework management meetings with the National HIV Self-Sampling Service Steering Group. The Steering Group will also pay a visit to the Service Provider site at least once during the period of the Framework.

## **6. Safeguarding Policies**

- 6.1.** The service must have a safeguarding policy. This policy must include clear protocols to deal with dangerous, exploitative or unsafe behaviour and practice and provide training to all of the Provider's Staff to develop appropriate skills and knowledge. The Service Provider shall have in place and implement robust up-to-date procedures, (including, disciplinary procedures, whistle-blowing policy and recruitment checks), for avoiding and responding to actual or suspected physical, sexual, psychological, financial or material and discriminatory abuse and acts of neglect or omission. Such procedures shall be reviewed at least once every year.
- 6.2.** The Service Provider will be required to ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the barred lists. The provider will be responsible for ensuring that it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006.
- 6.3.** In dealing with Service Users under the age of 16, the provider must ensure that they adhere to the Department of Health's guidance document "Best practice guidance for doctors and other health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health". The Service Provider should put in place reasonable steps agreed with the service steering group to facilitate the identification of under-age service users. In the event it is discovered a Service User is under the age of 16, practitioners also need to be aware of the specific responsibilities that they have for young people aged 13-15 and for those under the age of 13.
- 6.4.** The provider must ensure that they adhere to Department of Health's guidance document Safeguarding adults: The role of Health Service Practitioners. The provider should put in place reasonable steps agreed with the service steering group to facilitate the identification of vulnerable service users over the age of 16.
- 6.5.** The Provider shall have in place a robust safeguarding training programme for all Staff (including volunteers) appropriate to their level of responsibility. Further the Provider shall maintain appropriate records of training for audit purposes.

## **7. Incidents Requiring Reporting Procedure**

All safeguarding incidents should be reported immediately to PHE and the authority under which the care was provided i.e. the Local Authority from which the kit was ordered. In participating in the framework, Customers may acquaint the Provider with their own safeguarding protocols and requirements, with which the Provider must act in accordance.

The Service Provider will produce a quarterly summary report providing full details of all complaints and how they were resolved. The Service Provider will have awareness of, and will respond to, infectious diseases outbreaks and other threats to health. A clinical governance report will be submitted to Public Health England on an annual basis and full details of any Serious Incidents (SIs) will be communicated to the relevant Local Authority and Public Health England without delay.

## **8. Quality Outcomes Indicators**

In order to secure maximum effectiveness from the Framework in terms of delivering against its overarching objectives, the Service Provider's performance will be monitored against relevant quality outcomes indicators. The following table sets out various such indicators, based on national standards and experience from the current Framework. Reporting against these indicators will be as per the requirements of paragraph 8 of this specification.

| Quality outcomes indicator   | Threshold              | Technical guidance reference  | Method of measurement                | Consequence of breach |
|--|------------------------|-------------------------------|--------------------------------------|-----------------------|
| <b>Clinical Management</b>   |                        |                               |                                      |                       |
| Percentage of individuals accessing the Service who have sexual history and STI/HIV risk assessment <sup>4</sup> undertaken  | >85%                   | BASHH Standard 1 <sup>5</sup> | Contract monitoring                  | Remedial Action Plan  |
| Percentage of kits packaged and posted to Service User within 2 working days of request.   | >95%                   | N/A                           | Contract monitoring                  | Remedial Action Plan  |
| Percentage of specimens to be returned to the laboratory by Service User for processing within 30 days of receipt  | >60%                   | N/A                           | Contract monitoring                  | Remedial action plan  |
| Percentage of specimens that could not be processed by the laboratory due to sampling error  | <5%                    | N/A                           | Contract monitoring                  | Remedial action plan  |
| Percentage of HIV-negative Service Users receiving sexual health promotion messaging and signposting where to access information for other sexual health services                        | 100%                   | N/A                           | Clinical Audit                       | Remedial action plan  |
| Percentage of Service Users with negative results that received their results through their preferred method of contact within 5 working days of receiving sample                        | 100%                   |                               | Audit and feedback from Service User | Remedial Action Plan  |
| Percentage of reactive results attempted to be communicated to Service Users within 5 working days of receiving the sample   | 100%                   | N/A                           | Contract monitoring                  | Remedial Action Plan  |
| Percentage of reactive results actually communicated to Service Users within 5 working days of receiving sample.   | 75%                    | N/A                           | Contract monitoring                  | Remedial Action Plan  |
| Percentage of reactive Service Users self-reporting attendance at chosen sexual health service in less than 10 working days from being informed  | >80% patient confirmed | N/A                           | Audit                                | Remedial action plan  |
| Percentage of HIV-negative Service Users invited to retest annually  | 100%                   | N/A                           | Contract monitoring<br>Audit         | Remedial action plan  |
| <b>Improving Productivity</b>  |                        |                               |                                      |                       |
| Percentage of staff delivering Services who have successfully completed nationally accredited training, according to their scope of practice, and fulfilled relevant update requirements | 100%                   | BASHH Standard 2              | Audit                                | Remedial action plan  |
| <b>Service User Experience</b>   |                        |                               |                                      |                       |
| Evidence of at least one Service User experience survey annually   | 100%                   | N/A                           | Annual Report                        | Remedial action plan  |
| Percentage of Service User feedback on surveys that rates satisfaction as good or excellent (see paragraph 10 of this specification)   | >70%                   | N/A                           | Ongoing<br>Annual report             | Remedial action plan  |

<sup>4</sup> STI/HIV risk assessment as requested under Section 9: Sexual History and Risk Assessment Questions in this service agreement  
<http://www.medfash.org.uk/publications>.

<sup>5</sup> BASHH (British Association Sexual Health & HIV) and MEDFASH (2010). *Standards for the Management of Sexually Transmitted Infections*)

| Quality outcomes indicator  | Threshold  | Technical guidance reference | Method of measurement           | Consequence of breach |
|---|--|------------------------------|---------------------------------|-----------------------|
| Evidence of improvements made to Service as a result of Service User feedback                           | Demonstrable evidence of improvements and changes made to Service delivery in response to feedback | BASHH Standard 9             | Ongoing                         | Remedial action plan  |
| Number of Service Users making formal complaints about the Service (verbal or written)                  | Service Provider to notify the Customer  | BASHH Standard 9             | Ongoing                         | Remedial action plan  |
| <b>Access</b>   |  |                              |                                 |                       |
| Accessibility of kit ordering services 24 hours a day 7 days a week                                     | 100% outside of planned downtime for maintenance   | N/A                          | Ongoing                         | Remedial Action Plan  |
| <b>Reducing Inequalities</b>  |  |                              |                                 |                       |
| An Equality Impact Assessment (EIA) is undertaken and outcomes utilised to inform forward year planning | Completion of EIA annually   | N/A                          | Audit and Service User feedback | Remedial action plan  |
| Contactor to demonstrate that all functions and policies are equality impact assessed                   | Agreed programme to achieve compliance   | Locally determined           | For local determination         | Remedial action plan  |

## 9. Information Provision and Contract Monitoring

**9.1** On a quarterly basis, the Service Provider will be required to report progress against all the Quality Outcome Indicators detailed under clause 8 above (or as otherwise agreed within the Framework Agreement) to ESPO (the Framework manager) who will gather such information on behalf of Public Health England.

The information will also be available to the Customers who participate in the Framework.

**9.2** Separately, reports may be required by individual Customers detailing activity within the areas for which they are each responsible.

**9.3** Where any Customer (including Public Health England) has stipulated a maximum level of expenditure or maximum number of test kits to be returned, the Service Provider shall provide a monthly report to that Customer detailing recent and cumulative activity under the Framework payment for which that Customer is responsible. Additionally, an alert shall be sent to the Customer when such activity reached 95% of the specified maximum.

**9.4** Customers and ESPO shall have secure access (controlled by logins and passwords) to an online database so that they may monitor Framework usage. Levels of access shall be controlled to limit the data visible (in particular such access shall automatically manage controls required under relevant legislation e.g. as applies to data protection and patient confidentiality).

The Service Provider will meet quarterly with ESPO and the National HIV Self-Sampling Service Steering Group to review performance, and at least ten working days ahead of such meetings provide or provide access to disaggregate data for all Service Users to the Public Health England service manager. Five working days ahead of each such meeting the Service Provider shall also send to ESPO a report which includes at least the following information:

- 1) How the Service User had found out about the Service
- 2) Where there is an online Service provision:
  - List of referrers and their volume of click-throughs to website
  - Total number of website visitors
  - Proportion of website visitors that result in a kit being requested
  - Aggregate summary of where ineligible Service Users reside by Lower-tier Local Authority of residence
- 3) Number of first and follow up Service Users ordering a HIV sampling kit and how they ordered
- 4) Number of Service Users ordering and returning HIV sampling kits by:
  - Kit ordering channel
  - Age (Bands)
  - Gender
  - Ethnicity



- Sexual orientation
  - Lower-tier Local Authority of residence
- 5) Sexual History and Risk Assessment Questions
    - Number and gender of recent sexual partners
    - Number of recent unprotected sexual partners
    - Last time of an HIV test
  - 6) Number of HIV samples processed by the Service
  - 7) Number of reactive samples
  - 8) Provision of data on discrepant HIV laboratory results
  - 9) Number of referrals of individuals with reactive results to sexual health services
  - 10) Total referrals by sexual health service
  - 11) Percentage of Service Users referred to chosen sexual health services as confirmed by the Service
  - 12) Quarterly NEQAS reports on laboratory performance
  - 13) Quarterly Laboratory summary report on the rate of initial 'Reactive' HIV test results and the rate of 'repeat reactives' found from among the initially 'reactives'
  - 14) Outcome of additional analysis on specimens undertaken in a recognised reference laboratory

#### 10. Service User Survey

The Service Provider will conduct an annual anonymised survey with a sample of Service Users to assess both Service satisfaction and trends in relation to uptake of the Service. The survey will assess Service User satisfaction with the Service provided and the results are to be made available in a timely manner to ESPO for dissemination to the Customers as part of the process of evaluating the Service and to inform and reshape this specification and Service delivery.

Whilst the use of Patient Reported Experience Measures (PREMs) would be preferred, the appropriate methodology for the survey will be agreed via ESPO acting with and on behalf of Public Health England and the Customers. This will include setting adequate sample sizes to provide statistical confidence in the results.

#### 11. Prices and Costs

Tenderers are advised that the ONLY costs which Customers will pay will be the costs per test kit issued (Note: Customers will consider a different cost for online and offline kits), and the costs per returned samples analysed and results-managed. No separate payment will be made for any other elements of the Service (for instance, setting up the necessary infrastructure, creating a website, promotional activity, etc). All costs associated with setting up and providing the entire Service, as described in this invitation to Tender, must be included within the unit costs Tendered.

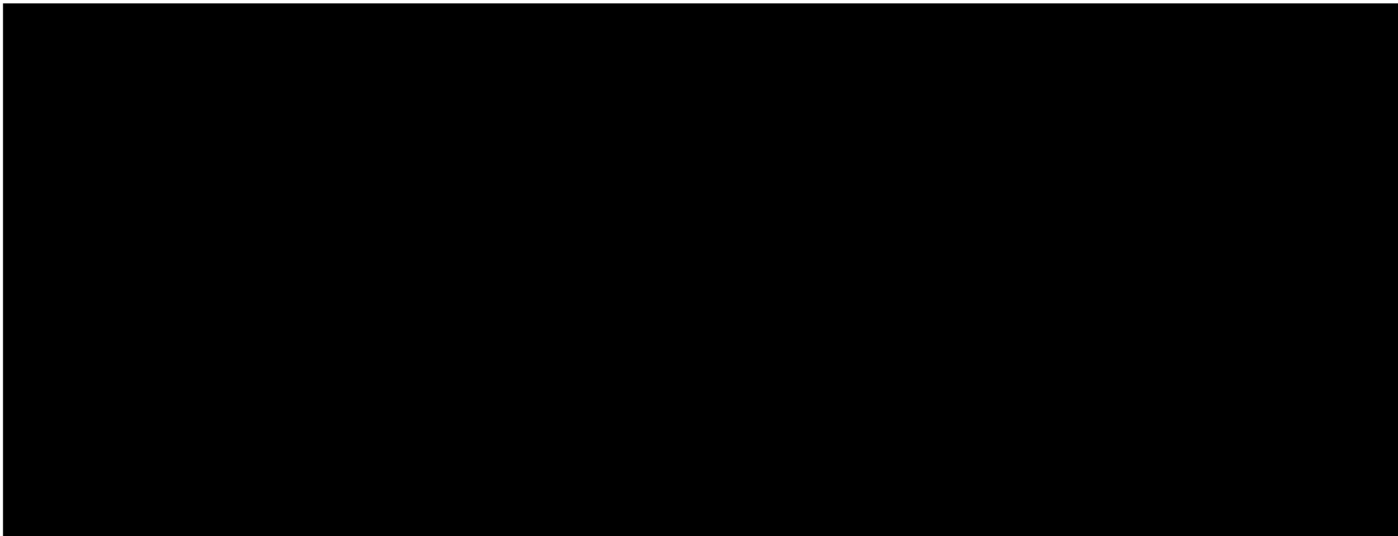
#### 12. Service Quality Performance Reports

ESPO, acting on behalf of Public Health England and the Customers, will require the Service Provider to produce and submit reports detailing their performance against the parameters shown below, at the frequency shown in each case. The right is reserved to amend the indicators from time to time to monitor different aspects of the Service and also to undertake verification audits if required.

|                        | Indicator   | Method of measurement | Threshold  | Frequency |
|------------------------|---|-----------------------|--|-----------|
| Information Governance | Record keeping: Completion of the Care Quality Commission Essential standards of quality and safety 2010 Provider Compliance Assessment tool for Outcome 21 (Records) | Annual notes audit    | Meets in full the CQC Provider Compliance Assessment tool for Outcome 21 | Annually  |
|                        | Information governance: Compliance with the requirements of the DH/HSCIC information governance assessment  |                       | Meets annually in full the DHSC information governance assessment tool   | Annually  |

|                             | Indicator   | Method of measurement  | Threshold  | Frequency                                     |
|-----------------------------|---|--|--|---|
| Clinical Governance         | Completion of the Care Quality Commission Essential standards of quality and safety 2010 Provider Compliance Assessment tool for: <ul style="list-style-type: none"> <li>• Outcome 4 (Care and welfare of people who use services)</li> <li>• Outcome 15 (Statement of purpose)</li> <li>• Outcome 16 (Assessing and monitoring the quality of service provision)</li> <li>• Outcome 17 (Complaints)</li> <li>• Outcome 20 (Notification of other incidents)</li> <li>• Outcome 21 (Records)</li> </ul> | Organisational compliance, Annual PPI plan and survey reports, quarterly complaints and incidents (and exception reporting), notes audit<br>SCC quality reviews and visits | Meets in full the CQC Provider Compliance Assessment tool for Outcomes 4, 15, 16, 17, 20 and 21                    | Annually                                      |
|                             | Number of Serious Incidents within Services<br>Evidence of learning resulting from incident review  | Service Provider to notify Customer in accordance with Incidents Requiring Reporting Procedure   |  | Real time/<br>Monthly review<br><br>Quarterly |
|                             | Incidences of implementing safeguarding children & vulnerable adults protocols – , plus update on training for staff  | Protection incident reports  |  | Monthly                                       |
|                             | Clinical governance structure, updates on changes and improvements  |  |  | 6 Monthly                                     |
|                             | Evidence of appropriate Insurance cover   | Copies of insurance documentation  |  | Annually                                      |
|                             | Evidence of maintaining Service risk register   | Service clinical risk register   | High level risks and mitigation to be discussed<br>Action plans and ongoing monitoring to be shared with Customers | Quarterly                                     |
| Appropriately Trained Staff | Competence to deliver services: Completion of the Care Quality Commission Essential standards of quality and safety 20101 Provider Compliance Assessment tool for: <ul style="list-style-type: none"> <li>• Outcome 12 (Requirements relating to workers)</li> <li>• Outcome 13 (Staffing)</li> <li>• Outcome 14 (Supporting workers)</li> </ul>  | Organisational compliance and self-assessments. Annual service staff survey. SCC quality reviews and visits  | Meets in full the CQC Provider Compliance Assessment tool for Outcomes 12, 13, and 14                              | Annually                                      |
|                             | Percentage of Service Provider staff delivering HIV & STI services who have successfully completed nationally accredited training, according to their scope of practice, and fulfilled relevant update requirements   |  | Training Plan & thresholds to be agreed  | Quarterly                                     |
|                             | Percentage of staff undertaken safeguarding training  |  | Trajectory from baseline to be agreed  | Quarterly                                     |
| Links to other Services     | Care pathways/referral protocols linking all providers of sexual health provision across commissioning Local Authorities  | Evidence of documented local care pathways or a sexual health network  | Threshold to be agreed   | Quarterly                                     |
|                             | Completion of the Care Quality Commission Essential standards of quality and safety 2010 Provider Compliance Assessment tool for Outcome 6 (Co-operating with other providers)  |  | Meets in full the CQC Provider Compliance Assessment tool for Outcome 6  | Annually                                      |

CALL-OFF GENERAL TERMS AND CONDITIONS APPENDIX B



[Redacted]

| [Redacted] | [Redacted] | [Redacted] | [Redacted] |
|------------|------------|------------|------------|
| [Redacted] | [Redacted] | [Redacted] | [Redacted] |
|            | [Redacted] | [Redacted] | [Redacted] |
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| [Redacted] | [Redacted] | [Redacted] | [Redacted] |

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| [Redacted] | [Redacted] | [Redacted] | [Redacted] |
|------------|------------|------------|------------|
| [Redacted] | [Redacted] | [Redacted] | [Redacted] |

## CALL-OFF GENERAL TERMS AND CONDITIONS APPENDIX C-NA

### SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS under the contract

1. The contact details of the Service Providers Data Protection Officer are: **DPO centre - 02037971289**
2. The contact details of the Customer's Data Protection Officer are: **data\_protection@dhsc.gov.uk**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

| Description   | Details   |
|---|---|
| Identity of the Controller and Processor  | The Parties acknowledge that for the purposes of the Data Protection Legislation, <b>the Customer is the Controller and the Service Provider is the Processor</b> in accordance with clause B38.1.  |
| Subject matter of the processing  | The processing is needed in order to ensure that the Service Provider can effectively deliver the contract to provide the services to members of the public.  |
| <b>[REDACTED]</b>   | <b>[REDACTED]</b>   |
| <b>[REDACTED]</b> purposes of the processing  | <p>To ensure a safe and seamless experience for users, SH:24 has developed its own clinical record system 'Admin' (Admin CRS). This web-based system provides a comprehensive clinical record of all orders, detailing:</p> <ul style="list-style-type: none"> <li>- Users contact details</li> <li>- Testing history</li> <li>- Risk assessment data</li> <li>- Safeguarding flags</li> <li>- All communications/contacts with SH:24 clinicians</li> <li>- Reactive results, treatment and referral into clinic</li> </ul> |
| Type of Personal Data being Processed   | <p>Personal identifiable data (PID) and order information collected via SH:24 are stored separately within the HSCN Network within different tables (also encrypted), associated via a third "lookup" table which is itself encrypted. See below for a list of data fields captured (this may not include all data fields captured):</p> <div style="border: 1px solid black; height: 100px; width: 100%; background-color: black; margin-top: 10px;"></div>  |
| Categories of Data Subject  | <b>Personal identifiable data (PID) and order information</b>   |
| Plan for return and destruction of the data once the processing is complete<br><br>UNLESS requirement under union or member state law to preserve that type of data | <p><b>AWS:</b></p> <p>Decommissioned servers are wiped with Shred before being officially decommissioned by AWS, who are ISO 27001 certified and security destroy any hard disks at end of life.</p> <p><b>SH:24:</b></p>   |

|  |   |
|--|---|
|  | <p>SH:24's Record Management and Retention Policy, sets out a framework within which the staff responsible for SH:24's records can manage and control records effectively commensurate with legal, operational and information needs.</p> <p><b>Retention and disposal schedules:</b></p> <p>It is a fundamental requirement that all of SH:24's records are retained for a minimum period of time for legal, operational, research and safety reasons. The length of time for retaining records will depend on the type of record and its importance to SH:24's business functions.</p> <p><b>Service user records</b></p> <p>SH:24 has adopted the retention periods set out in the Records Management: NHS Code of Practice and latest BASHH Guidance which states that the minimum retention period for health records is as follows</p> <p>Adults: 8 years after the last attendance</p> <p>Children: until the service user's 25th birthday or 26th if the young person was 17 at the conclusion of treatment, or 8 years after death</p> <p>Family planning: 10 years after the closure of the case</p> <p>Litigation dossiers (this strictly refers to complaints and legal claims, but could include patients presenting with a history of sexual assault): 10 years or as advised by legal representatives</p> <p>SH:24 will not adopt a shorter retention period to any user record than the minimum set out above. If the service ceases to trade arrangements will be put in place to provide access to the data for the organisations with a statutory duty to deliver services to those users. SH:24 has put in place funds to provision access for the periods set out above being its lifetime if it ceases to trade.</p> <p>The retention schedule will be reviewed annually. Retention periods are recorded in the asset inventory, which link directly to the articles of GDPR. SH:24 has hardwired the right to be forgotten (Article 17) into its website so that any data subject has the right to withdraw consent during the ordering process; SH:24 has processes in place to respond to the right to be forgotten.</p> <p>Disposal encompasses archiving or destruction of the records. SH:24 records that have reached their minimum retention period to decide whether or not a record is worthy of archival preservation, whether it needs to be retained for a longer period as it is still in use, or whether it should be destroyed.</p> <p><b>When SH:24 deems that a record should be destroyed it follows the steps below:</b></p> <p>SH:24 does not keep paper records of its users' data. If a packing label has been erroneously printed with their name and address on it should be shredded using the company shredder.</p> <p>For the destruction of electronically stored records, SH:24 will work with its hosting providers (AWS) to take the necessary measures.</p> <p>SH:24 maintains a log of the disposal decisions taken regarding user records, showing the unique identifier number and date of destruction so that it is aware of those records that have been archived or destroyed and are therefore no longer available in the organization.</p> |
|--|---|

