

APPENDIX 1

FORM OF CONTRACT, ORDER FORM AND GENERAL TERMS AND CONDITIONS

The Customer

-and-

SH:24 CIC

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

FORM OF CONTRACT

This Form of Contract is made on the 21st day of October 2020

BETWEEN

- (1) The Secretary of State for Health and Social Care acting as part of the Crown through Public Health England of Wellington House, 135-155 Waterloo Road, London, SE1 8UG (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.

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

Signed for and on behalf of

PUBLIC HEALTH ENGLAND

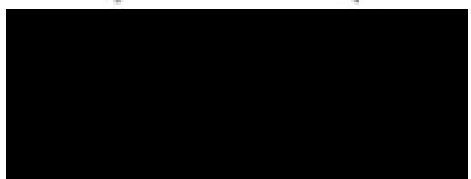
by (print name)

on (date)

) Signature:

)

)



.....
Authorised Signatory

Signed for and on behalf of

SH24 CIC

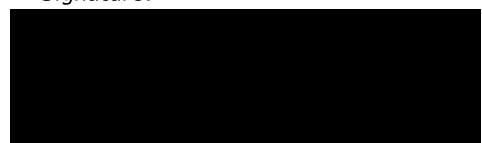
by (print name)

on (date)

) Signature:

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.....
Director

This document relates to and forms part of the Contract Documents

(Document Reference *ECM_7945*)

ORDER FORM

(ESPO /PHE Framework Reference 3173_19A)

1. TERM
Service Commencement Date
Expiry Date This Contract shall expire on20 October 2021..... unless terminated earlier pursuant to this Contract or in accordance with the automatic termination provisions of Section 2 below. <i>Note: The framework expiry date is 31 March 2022, with an option to extend up to a further 18 months. Whilst it is permissible in law to have a call off contract that exceeds the framework dates, on this occasion it is recommended that contracts under the framework do not out live the framework itself, as this is the period for which the steering group have given their commitment to support and contract manage the framework.]</i> 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.
2. GOODS AND/OR SERVICES REQUIREMENTS
Limit or expenditure The Customer commits to purchase goods and services under the Framework Agreement up to a total sum not exceeding £500,000 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. 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: <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> Variation: <i>None</i>
Geographical locations 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.
3. CHARGES AND PAYMENT
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.
4. CONFIDENTIAL INFORMATION
The following information shall be deemed Commercially Sensitive Information: <i>(During the tendering process, SH:24 CIC identified all information relating to the laboratory subcontractors to be treated as confidential until 10/12/2021)</i>
5. PERFORMANCE AND MANAGEMENT INFORMATION
<i>The KPIs as set out in the framework agreement will be the information used to manage performance.</i>
6. SERVICE REVIEW AND REVIEW MEETINGS
<i>No additional requirement for contract review.</i>

[In the event that the Customer has a reasonable requirement for formal contract review directly with the Service Provider, in addition to the contract review process being carried out by PHE, then such requirements should be set out here, including expectations as to any review meetings which may be called for.]

7. SAFEGUARDING

No additional safeguarding provisions are required to those identified within the Framework agreement

8. INCIDENT REPORTING

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:

For the attention of:

Tel:

Email:

Name :

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 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, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;

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

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

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

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

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

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

“**Equipment**” means the 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 action 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 production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

“Issuing Party” means the Party which has issued a Contract Query Notice;

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

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

“Law” means:

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

in each case in force in England and Wales;

“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 did 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 Action Plan and the continuing failure to remedy that breach;

“Serious Incident” means an incident or accident or near-miss where a patient (whether or not a Service User), member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the 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 (Exceptions) 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 of 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 provision as from time to time amended, extended or re-enacted.	B4.1.	The Service Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Customer in writing:	Act 2010) and persons who do not share it,	
B1.4.	References to a statutory provision shall include any subordinate legislation made from time to time under that provision.			and for the avoidance of doubt this obligation shall apply whether or not the Service Provider is a public authority for the purposes of section 149 of the Equality Act 2010.	
B1.5.	References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.	a)	comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;	B6.4.	As soon as reasonably practicable following any reasonable request from the Customer, the Service Provider must provide the Customer with a plan detailing how it will comply with its obligations under clause B6.3.
B1.6.	References to any body, organisation or office shall include reference to its applicable successor from time to time.	b)	respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;	B6.5.	The Service Provider must provide to the Customer as soon as reasonably practicable, any information that the Customer reasonably requires to:
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.	c)	consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;	a)	monitor the equity of access to the Services; and
B1.8.	Use of the singular includes the plural and vice versa.	d)	comply with the recommendations issued from time to time by a Competent Body;	b)	fulfil their obligations under the Law.
B2. SERVICES		e)	comply with the recommendations from time to time contained in guidance and appraisals issued by NICE; and	B7. MANAGING ACTIVITY	
B2.1.	The Service Provider shall provide the Services in accordance with the Service Specification(s) in Appendix A, including any service limitations set out in them, and in accordance with the provisions of this Contract.	f)	respond to any reports and recommendations made by Local HealthWatch.	B7.1.	The Service Provider must manage Activity in accordance with any activity planning assumptions and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Customer to assist it with understanding and managing the levels of Activity for the Services.
B2.2.	The Service Provider shall satisfy any conditions precedent set out in Section 1 of the Order Form prior to commencing provision of the Services.	B5. SERVICE USER INVOLVEMENT		B8. STAFF	
B3. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE		B5.1.	The Service Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.	B8.1.	At all times, the Service Provider must ensure that:
B3.1.	Except where required by the Law, the Service Provider shall not be required to provide or to continue to provide Services to any Service User:	B5.2.	As soon as reasonably practicable following any reasonable request from the Customer, the Service Provider must provide evidence to the Customer of the involvement of Service Users, Carers and Staff in the development of Services.	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;
a)	who in the reasonable professional opinion of the Service Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;	B5.3.	The Service Provider must carry out Service 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.	b)	there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;
b)	who displays abusive, violent or threatening behaviour unacceptable to the Service Provider (acting reasonably and taking into account the mental health of that Service User);	B5.4.	The Service Provider must review and provide a written 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 Provider in response to the surveys. The Service Provider must implement such actions as soon as practicable. If required by the Customer, the Service Provider must publish the outcomes and actions taken in relation to such surveys.	c)	where applicable, Staff are registered with the appropriate professional regulatory body;
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 Service Provider reasonably considers to be unacceptable; or	B6. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION		d)	Staff are aware of and respect equality and human rights of colleagues and Service Users; and
d)	where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.	B6.1.	The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.	e)	it can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Service Provider's discretion) for each of the Staff engaged in the Services.
B3.2.	If the Service Provider proposes not to provide or to stop providing a Service to any Service User under clause B3.1:	B6.2.	The Service Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).	B8.2.	If requested by the Customer, the Service Provider shall as soon as practicable and by no later than twenty (20) Working Days following receipt of that request, provide the Customer with evidence of the Service Provider's compliance with clause B8.1.
a)	where reasonably possible, the Service Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Working Days);	B6.3.	In performing this Contract the Service Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:	B8.3.	The Service Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:
b)	the Service Provider must tell the Service User of the right to challenge the Service Provider's decision through the Service Provider's complaints procedure and how to do so;	a)	eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;	a)	proper and sufficient continuous professional and personal development, training and instruction; and
c)	the Service Provider must inform the Customer in writing without delay and wherever possible in advance of taking such action;	b)	advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and	b)	full and detailed appraisal (in terms of performance and on-going education and training),
	provided that nothing in this clause B3.2 entitles the Service Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.	c)	foster good relations between persons who share a relevant protected characteristic (as defined in the Equality		each in accordance with Good Clinical Practice and the standards of any applicable relevant professional body.
B4. COMPLIANCE WITH THE LAW AND GOOD CLINICAL PRACTICE				B8.4.	Where applicable under section 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 education and training.
				B8.5.	The Service Provider must carry out Staff surveys in relation to the Services at intervals and in the form agreed in writing from time to time.
				B8.6.	Subject to clause B8.7, before the Service Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the

provision of the Services, the Service Provider must without limitation, complete:	contested and which are not contested;	CQC Regulations and if the Service Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
<ul style="list-style-type: none"> a) the Employment Checks; and b) such other checks as required by the DBS. 	<ul style="list-style-type: none"> b) any uncontested amount shall be paid in accordance with this Contract. 	B12.2.
B8.7. Subject to clause B8.8, the Service Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the 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 notification under clause B9.6, the contesting Party may refer the matter to dispute resolution under clause B31 and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B9.3.	If the Service Provider gives a notification to the CQC or any other Regulatory Body under clause B12.1 which directly or indirectly concerns any Service User, the Service Provider must send a copy of it to the Customer within five (5) Working Days.
B8.8. Where clause B8.7 applies, the Service 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, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.	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.
<ul style="list-style-type: none"> a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and d) any other reasonable requirement of the Customer. 	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.	B12.4. Subject to the Law, the Customer shall have complete discretion to use the information provided by the Service Provider under this clause B12.1.
B8.9. Where the Customer has notified the Service Provider that it intends to tender or retender any of the Services, the Service Provider must on written request of the Customer and in any event within twenty (20) Working Days of that request (unless otherwise agreed in writing), provide the Customer with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.		B13. CONSENT
B8.10. The Service Provider shall indemnify and keep indemnified the Customer and any Successor Provider against any Losses incurred by the Customer and/or the Successor Provider in connection with any claim or demand by any transferring employee under TUPE.		B13.1. The Service Provider must publish, maintain and operate a Service User consent policy which complies with Good Clinical Practice and the Law.
B9. CHARGES AND PAYMENT	B10. SERVICE IMPROVEMENTS AND BEST VALUE DUTY	B14. SERVICE USER HEALTH RECORDS
B9.1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Customer shall pay the Service Provider the Charges.	B10.1. The Service Provider must to the extent reasonably practicable co-operate with and assist the Customer (where the Customer is a local authority) in fulfilling its Best Value Duty.	B14.1. The Service Provider must create, maintain, store and retain Service User health records for all Service Users. The Service Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
B9.2. The Parties shall to the extent reasonably practicable agree the Charges in a transparent and equitable manner and the Charges shall be set out at Appendix B.	B10.2. In addition to the Service Provider's obligations under clause B10.1, where reasonably requested by the Customer, the Service Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Customer and shall assist the Customer with the preparation of any Best Value Duty performance plans.	B14.2. The Service Provider must:
B9.3. The Service Provider shall invoice the Customer for payment of the Charges at the end of each quarter (3 calendar month) period (or such other frequency agreed between the Parties in writing) which the Customer shall pay within ten (10) Working Days of receipt.	B10.3. During the term of this Contract at the reasonable request of the Customer, the Service Provider must:	<ul style="list-style-type: none"> a) use Service User health records solely for the execution of the Service Provider's obligations under this Contract; and b) give each Service User full and accurate information regarding his/her treatment and Services received.
B9.4. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.	<ul style="list-style-type: none"> a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose; b) implement such improvements; and c) where practicable following implementation of such improvements decrease the price to be paid by the Customer for the Services. 	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 identity and contact details prior to the Service Commencement Date. If the Service Provider replaces its Caldicott Guardian at any time during the term of this Contract, it shall promptly notify the Customer of the identity and contact details of such replacements.
B9.5. In its performance of this Contract the Service Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).	B10.4. If requested by the Customer, the Service 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 Service Provider by the Customer.	B14.4. Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.
B9.6. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B9:		B15. INFORMATION
<ul style="list-style-type: none"> 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 particular identifying which elements are 		B15.1. The Service Provider must provide the Customer the information (if any) specified by the Customer in Section 5 of the Order Form.
		B15.2. The Service Provider must deliver the information (if any) required under clause B15.1 in the format, manner, frequency and timescales specified in Section 5 of the Order Form.
		B15.3. If the Service Provider fails to comply with any of the obligations in this clause B15 and/or Section 5 of the Order Form the Customer may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Section 5 of the Order Form.
		B15.4. In addition to the information required under clause B15.1, the Customer may request from the Service Provider any other information it reasonably requires in relation to this Contract and the Service Provider must deliver such requested information in a timely manner.
		B16. EQUIPMENT
	B12. INCIDENTS REQUIRING REPORTING	B16.1. The Service Provider must provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and must ensure that all Equipment is fit for the
	B12.1. If the Service Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with	

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 action 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 Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

B23.3. If a Variation 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 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.

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;	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;	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.	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	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.	Joint Investigation	
	c) access to the Staff.	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:	
B26. INDEMNITIES				a)	the Contract Query be closed; or
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.			b)	Remedial Action Plan be agreed and implemented.
B27. LIMITATION OF LIABILITY			B30. CONTRACT MANAGEMENT	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.
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.	Remedial Action Plan	
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.	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:
B27.3.	Nothing in this Contract will exclude or limit the liability of either Party for:			a)	five (5) Working Days following the Contract Management Meeting; or
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.	b)	five (5) Working Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause B30.11.
b)	fraud or fraudulent misrepresentation.			B30.14.	The Remedial Action Plan must set out:
B28. INSURANCE			Contract Query	a)	milestones for performance to be remedied;
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.	b)	the date by which each milestone must be completed; and
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.	c)	subject to the maximum sums identified in clause B30.23, the consequences for failing to meet each milestone by the specified date.
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.	Excusing Notice		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.
		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.	B30.16.	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.
		B30.7.	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.	B30.17.	If following implementation of a Remedial Action Plan:
B29. DEFAULTS AND FAILURE TO SUPPLY			Contract Management Meeting	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:	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.	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	B30.9.	At the Contract Management Meeting the Customer and the Service Provider must agree either:	Withholding Payment for Failure to Agree Remedial Action Plan	
		a)	that the Contract Query Notice is withdrawn; or	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.
		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 (<i>Charges and Payment</i>) for each further month the Remedial Action Plan is not agreed.	Retention of Sums Withheld on Expiry or Termination of this Contract	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;
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.	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.	e)	failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in 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
	Exception Reports	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.	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.
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.	B31. DISPUTE RESOLUTION	B32.	SUSPENSION AND CONSEQUENCES OF SUSPENSION
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.	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.	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 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 <i>Suspension Event</i>).
	Withholding of Payment at First Exception Report for Breach of Remedial Action Plan	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 mediation provider 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;		
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 (<i>Charges and Payment</i>), 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 (<i>Charges and Payment</i>) 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.		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.
	Retention of Sums Withheld at Second Exception Report for Breach of Remedial Action Plan		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 (<i>Dispute Resolution</i>).
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.		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
	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.			

	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>);	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 administration costs it incurs (in each case) for a period of six (6) months following termination.
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;		
		f)	the Service Provider materially breaches its obligations in clause B38 (<i>Data Protection</i>);		
B32.7.	Following suspension of a Service the Service Provider must at the reasonable request of the Customer and for a reasonable period:	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.
	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	h)	the Service Provider breaches the terms of clause B24 (<i>Assignment and Sub-contracting</i>);		
	b) at the cost of the Service Provider:	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;		
	(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	j)	the Service Provider ceases or threatens to cease to carry on business in the United Kingdom; or	B35. BUSINESS CONTINUITY	
	(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.	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.	B35.1.	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.			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.	B36. COUNTER-FRAUD AND SECURITY MANAGEMENT	
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.
B33. TERMINATION		B34. CONSEQUENCE OF EXPIRY OR TERMINATION		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 " Succession Plan ") 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.	B37. CONFIDENTIALITY	
	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 " Disclosing Party ") and the Party that receives it (the " Receiving Party ") 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				

	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:	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		(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;
	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.			
	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;		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.		c) ensure that:		f)	becomes aware of a Data Loss Event.
			(i) Staff do not process Personal Data except in accordance with this Contract (and in particular Appendix C);	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.
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:	B38.7.		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:
			A. are aware of and comply with the Service Provider's duties under this clause;		a)	the Customer with full details and copies of the complaint, communication or request;
			B. are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;		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;
			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		c)	the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
			D. have undergone adequate training in the use, care, protection and handling of Personal Data; and			
B38.	DATA PROTECTION					
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		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:			

	<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>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>			
B38.8.	<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>		B40.2.	<p>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>		
B38.9.	<p>The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.</p>					
B38.10.	<p>The Service Provider shall designate a Data Protection Officer if required by the Data Protection Legislation.</p>		B40.3.	<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>		
B38.11.	<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>	B39.3.	<p>The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.</p>			
		B39.4.	<p>Notwithstanding any other provision of this Contract, the Service Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.</p>	B40.4.	<p>The Service Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Customer within five (5) Working Days of the Customer requesting it and enforced by the Service Provider where applicable.</p>	
B38.12.	<p>The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.</p>				B40.5.	<p>Should the Service Provider become aware of or suspect any breach of this clause B40, it will notify the Customer immediately. Following such notification, the Service Provider must respond promptly and fully to any enquiries of the Customer, co-operate with any investigation undertaken by the Customer and allow the Customer to audit any books, records and other relevant documentation.</p>
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>	B39.5.	<p>In preparing a copy of this Contract for publication pursuant to clause B39.4 the Customer may consult with the Service Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Customer's absolute discretion.</p>	B41. FORCE MAJEURE		
		B39.6.	<p>The Service Provider must assist and co-operate with the Customer to enable the Customer to publish this Contract.</p>	B41.1.	<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>	
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 Officer.</p>	B39.7.	<p>In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Customer will be disclosing information on its website in relation to expenditure in relation to this Contract. The information will include the Service Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.</p>	B41.2.	<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>	
B39. FREEDOM OF INFORMATION AND TRANSPARENCY				B41.3.	<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>	
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>	B40. PROHIBITED ACTS				
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>	B40.1.	<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>			

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.		B46.2. The Service Provider must take all reasonable steps to ensure the observance of the provisions of clause B46.1 by all its staff, servants, agents, consultants and sub-contractors.
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	