

Dated 2015

DORSET COUNTY COUNCIL

AND

[]

CONTRACT

relating to

Provision of Community Health Improvement Services

Dynamic Purchasing System Reference: 9Q9H-XQYAXE

DYNAMIC PURCHASING SYSTEM - COMMUNITY HEALTH IMPROVEMENT SERVICES

CONTRACT TERMS AND CONDITIONS

The following terms and conditions are the terms and conditions that will apply to all contracts agreed pursuant to this Dynamic Purchasing System which will run for a maximum of four years.

These terms may not be qualified or amended with the submission of an application for selection to this Dynamic Purchasing System.

Where an invitation to tender from this Dynamic Purchasing System makes reference to these terms and conditions they will be wholly incorporated in the contract as defined in this document, unless otherwise amended by Dorset County Council in the invitation to tender.

Further conditions may be incorporated within specific contracts by Dorset County Council. Where this is the case, details of those further conditions will be included with the invitation to tender. It is a requirement that all tenders are submitted based on all incorporated conditions communicated in the invitation to tender.

It may be necessary for the provider and Dorset County Council to sign a written contract and for each party to retain a copy following an award of contract from this Dynamic Purchasing System.

It is NOT a requirement for organisations to sign these terms and conditions with their application for selection to this Dynamic Purchasing System.

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SECTION A: THE PARTICULARS

This Contract is made on

2015

PARTIES

- (1) **DORSET COUNTY COUNCIL** of County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ (the **Council**); and
- (2) [], company registration number: [] of []
(the **Provider**).

BACKGROUND

- (A) The Council must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2012. In order to satisfy these obligations the Council wishes to secure the provision of the Services and the Provider wishes to provide the Services.
- (B) The Council is host authority for the provision of public health functions in Dorset by Public Health Dorset which comprises three local authorities. Accordingly in setting up the Contract, the Council is contracting with the Provider on behalf of itself, Borough of Poole and Bournemouth Borough Council.
- (C) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.

IT IS AGREED

A1. CONTRACT

- A1.1. This Contract is comprised of:
- a) these Particulars (Section A);
 - b) the General Terms and Conditions (the 'General Conditions') in (Section B);
and
 - c) the Special Terms and Conditions (the 'Special Conditions') in (Section C), if any,
- as completed and agreed by the Parties and as varied from time to time in accordance with clause B22 (*Variations*) of the General Conditions.

A2. INTERPRETATION

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

A3. COMMENCEMENT AND DURATION

- A3.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the 'Commencement Date').

A3.2. The Provider shall provide the Services from the date agreed by the Parties when the Services are called off by the Council (the 'Service Commencement Date').

A3.3. This Contract shall expire automatically on the date agreed by the Parties when the Services are called off by the Council (the 'Expiry Date'), unless terminated earlier in accordance with the provisions of this Contract.

A4. REPRESENTATIVES

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

Name: Dawn Adams
Title: Senior Category Manager, Dorset Procurement acting on behalf of Public Health Dorset
Contact Details: Tel: 01305 221271
Email: d.d.adams@dorsetcc.gov.uk

A4.2. The person set out below is authorised from the Commencement Date to act on behalf of the Provider on all matters relating to this Contract (the 'Provider Representative').

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

A4.3. The Provider may replace the Provider Representative and the Council may replace the Council Representative at any time by giving written notice to the other Party.

A5. NOTICES

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

A5.2. Notices:

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

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

- a) For the Council:
Address: Dorset County Council, County Hall, Colliton Park, Dorset, DT1 1XJ
For the attention of: Dawn Adams, Dorset Procurement
Tel: 01305 221271
- b) For the Provider:
Address: [to be completed]

For the attention of: [to be completed]
Tel: [to be completed]

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

A6. ENTIRE CONTRACT

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

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

**SIGNED by
for and on behalf of
the COUNCIL**

.....
Authorised Signatory

.....
Name

.....
Title

**SIGNED by
for and on behalf of
the PROVIDER**

.....
Authorised Signatory

.....
Name

.....
Title

SECTION B: GENERAL TERMS AND CONDITIONS

B1. SERVICES

- B1.1. The Provider shall provide the Services in accordance with the Service Specification in Appendix A (*Service Specification*), including any service limitations set out in them, and in accordance with the provisions of this Contract.

B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

- B2.1. Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:

- a) who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
- b) who displays abusive, violent or threatening behaviour unacceptable to the Provider (acting reasonably and taking into account the mental health of that Service User);
- c) in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
- d) where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.

- B2.2. If the Provider proposes not to provide or to stop providing a Service to any Service User under clause B2.1:

- a) where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 2 Business Days);
- b) the Provider must tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
- c) the Provider must inform the Council in writing without delay and wherever possible in advance of taking such action;

provided that nothing in this clause B2.2 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

B3. SERVICE AND QUALITY OUTCOMES INDICATORS

- B3.1. The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Council in writing:

- a) comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;

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

B4. SERVICE USER INVOLVEMENT

- B4.1. The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.
- B4.2. As soon as reasonably practicable following any reasonable request from the Council, the Provider must provide evidence to the Council of the involvement of Service Users, Carers and Staff in the development of Services.
- B4.3. The Provider must carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Council in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in Appendix C (*Service User, Carer and Staff Surveys*) or as otherwise agreed between the Parties in writing from time to time.
- B4.4. The Provider must review and provide a written report to the Council on the results of each survey carried out under clause B4.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Council, the Provider must publish the outcomes and actions taken in relation to such surveys.

B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

- B5.1. The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- B5.2. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- B5.3. The Provider must provide to the Council as soon as reasonably practicable, any information that the Council reasonably requires to:
 - a) monitor the equity of access to the Services; and

- b) fulfil their obligations under the Law.

B6. MANAGING ACTIVITY

- B6.1. The Provider must manage Activity in accordance with any activity planning assumptions and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Council to assist it with understanding and managing the levels of Activity for the Services.

B7. STAFF

- B7.1. At all times, the Provider must ensure that:

- a) each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- b) there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;
- c) where applicable, Staff are registered with the appropriate professional regulatory body; and
- d) Staff are aware of and respect equality and human rights of colleagues and Service Users.
- e) it can provide a clear DBS Certificate as required by the Council for each of the Staff engaged in the Services

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

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

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

each in accordance with Good Clinical Practice and the standards of any applicable relevant professional body.

- B7.4. Where applicable under section 1(F)(1) of the NHS Act 2006, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.

- B7.5. The Provider must carry out Staff surveys in relation to the Services at intervals and in the form set out in Appendix C (*Service User, Carer and Staff Surveys*) or as otherwise agreed in writing from time to time.

- B7.6. Before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
- a) the Employment Checks; and
 - b) such other checks as required by the DBS.
- B7.7. Where the Council has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Council and in any event within 20 Business Days of that request (unless otherwise agreed in writing) provide the Council with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.
- B7.8. The Provider shall indemnify and keep indemnified the Council and any Successor Provider against any Losses incurred by the Council and/or the Successor Provider in connection with any claim or demand by any transferring employee under TUPE.

B8. CHARGES AND PAYMENT

- B8.1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Council shall pay the Provider the Charges.
- B8.2. The Parties shall to the extent reasonably practicable agree the Charges in a transparent and equitable manner and the Charges shall be set out at Appendix D (*Charges*). Payment shall unless otherwise stated be deemed to be inclusive of all costs, expenses and overheads of any kind incurred by the Provider.
- B8.3. The Provider shall invoice the Council for payment of the Charges at the end of each calendar month (or such other frequency agreed between the Parties in writing) which the Council shall pay within 30 Business Days of receipt.
- B8.4. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice.
- B8.5. In its performance of this Contract the Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).

- B8.6. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:
- a) the contesting Party shall within 10 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
 - b) any uncontested amount shall be paid in accordance with this Contract.
- B8.7. If a Party contests a payment under clause B8.6 and the Parties have not resolved the matter within 10 Business Days of the date of notification under clause B8.6, the contesting Party may refer the matter to dispute resolution under clause B30 and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.3.
- B8.8. Subject to any express provision of this Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B8.9. Each Party may retain or set off any sums owed to the other Party which have fallen due and payable against any sum due to the other Party under this Contract or any other agreement between the Parties.

B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY

- B9.1. The Provider must to the extent reasonably practicable co-operate with and assist the Council in fulfilling its Best Value Duty.
- B9.2. In addition to the Provider's obligations under clause B9.1, where reasonably requested by the Council, the 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 Council and shall assist the Council with the preparation of any Best Value performance plans.
- B9.3. During the term of this Contract at the reasonable request of the Council, the Provider must:
- a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;
 - b) implement such improvements; and
 - c) where practicable following implementation of such improvements decrease the price to be paid by the Council for the Services.
- B9.4. If requested by the Council, the Provider must identify the improvements that have taken place in accordance with clause B9.3, by reference to any reasonable measurable criteria notified to the Provider by the Council.

B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

B10.1. The Provider shall adopt safeguarding policies, if applicable, and such policies shall comply with the Council's safeguarding policy as set out in C.7.

B11. INCIDENTS REQUIRING REPORTING

B11.1. If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.

B11.2. If the Provider gives a notification to the CQC or any other Regulatory Body under clause B11.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council within 5 Business Days or within the timescale set out in Appendix E (*Incidents Requiring Reporting Procedure*).

B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Council and set out in Appendix E (*Incidents Requiring Reporting Procedure*).

B11.4. Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this clause B11.1 and Appendix E (*Incidents Requiring Reporting Procedure*).

B12. CONSENT

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

B13. SERVICE USER HEALTH RECORDS

B13.1. The Provider must create, maintain, store and retain Service User health records for all Service Users. The Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.

B13.2. The Provider must:

- a) use Service User health records solely for the execution of the Provider's obligations under this Contract; and
- b) give each Service User full and accurate information regarding his/her treatment and Services received.

B13.3. The Provider must at all times during the term of this Contract have a Caldicott Guardian and shall notify the Council of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this Contract, it shall promptly notify the Council of the identity and contact details of such replacements.

B13.4. Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.

B14. INFORMATION

- B14.1. The Provider must provide the Council the information specified in Appendix F (*Information Provision*) to measure the quality, quantity or otherwise of the Services.
- B14.2. The Provider must deliver the information required under clause B14.1 in the format, manner, frequency and timescales specified in Appendix F (*Information Provision*) and must ensure that the information is accurate and complete.
- B14.3. If the Provider fails to comply with any of the obligations in this clause B14 and/or Appendix F (*Information Provision*), the Council may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Appendix F (*Information Provision*).
- B14.4. In addition to the information required under clause B14.1, the Council may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

B15. EQUIPMENT

- B15.1. The Provider must provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services.

B16. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS

- B16.1. The Provider must comply with any Transfer of and Discharge from Care Protocols agreed by the Parties.

B17. COMPLAINTS

- B17.1. The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services.
- B17.2. If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Council may have under this Contract, the Council may, in its sole discretion, uphold the complaint and take any action specified in clause B28 (*Default and Failure to Supply*).

B18. SERVICE REVIEW

- B18.1. The Provider must deliver to the Council a Service Quality Performance Report against the factors set out in Appendix G (*Service Quality Performance Report*).
- B18.2. The Provider must submit each Service Quality Performance Report in the form and manner specified in Appendix G (*Service Quality Performance Report*).

B19. REVIEW MEETINGS

B19.1. The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals determined by the Council to be communicated to the Provider.

B19.2. Notwithstanding clause B19.1, if either the Council or the Provider:

- a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
- b) considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,

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

B20. CO-OPERATION

B20.1. The Parties must at all times act in good faith towards each other.

B20.2. The Provider must co-operate fully and liaise appropriately with:

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

in order to:

- 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 Council or members of the public.

B21. WARRANTIES AND REPRESENTATIONS

B21.1. The Provider warrants and represents that:

- a) It has full capacity and authority to enter into this Contract and all necessary Consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;

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

B21.2. The Council warrants and represents that:

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

B21.3. The warranties set out in this clause B21 are given on the Commencement Date and repeated on every day during the term of this Contract.

B22. VARIATIONS

- B22.1. This Contract may not be amended or varied other than in accordance with this clause B22.
- B22.2. Either Party may from time to time during the term of this Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).
- B22.3. If a Variation Notice is issued, the Council and the Provider must enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract.
- B22.4. No Variation to this Contract shall be valid or of any effect unless agreed in writing by the Council Representative (or his nominee) and the Provider Representative (or his nominee). All agreed Variations shall form an addendum to this Contract.

B23. ASSIGNMENT AND SUB-CONTRACTING

- B23.1. The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the Council 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 Council may reasonably require
- B23.2. The Council's consent to sub-contracting under clause B23.1 will not relieve the Provider of its liability to the Council for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.
- B23.3. Any Sub-contract submitted by the Provider to the Council for approval of its terms, must impose obligations on the proposed Sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.
- B23.4. The Council may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Provider.

B24. AUDIT AND INSPECTION

- B24.1. The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, the General Pharmaceutical Council, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.
- B24.2. Subject to Law and notwithstanding clause B24.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.
- B24.3. Within 10 Business Days of the Council's reasonable request, the Provider must send the Council a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- B24.4. The Council shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- B24.5. During any audit undertaken under clause B24.1 or B24.2, the Provider must provide the Council with all reasonable co-operation and assistance in relation to that audit, including:
- a) all reasonable information requested within the scope of the audit;
 - b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
 - c) access to the Staff.

B25. INDEMNITIES

- B25.1. The Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Contract, or breach of its statutory duty or breach of an obligation under the DPA, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or breach of statutory duty or breach of an obligation under the DPA by the Council.

B26. LIMITATION OF LIABILITY

- B26.1. Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract

- B26.2. Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.
- B26.3. Nothing in this Contract will exclude or limit the liability of either Party for:
- a) death or personal injury caused by its negligence; or
 - b) fraud or fraudulent misrepresentation.

B27. INSURANCE

- B27.1. The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- B27.2. The Provider must give the Council, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.
- B27.3. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

B28. DEFAULTS AND FAILURE TO SUPPLY

- B28.1. In the event that the Council is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Provider, then the Council may, without prejudice to any other rights or remedies it may have under this Contract including under clause B29, do any of the following:
- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 10 Business Days or such other period of time as the Council may direct;
 - b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B31;
 - c) without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause B32 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Council may supply or procure a third party to supply such part of the Services.
- B28.2. If the Council exercises any of its rights under clause B28.1, the Provider must indemnify the Council 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 Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

B29. CONTRACT MANAGEMENT

- B29.1. If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in Appendix B (*Quality Outcomes Indicators*) and the Provider fails to meet the Quality Outcomes Indicator, the Council may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Council may have under this clause B29.
- B29.2. The provisions of this clause B29 do not affect any other rights and obligations the Parties may have under this Contract.
- B29.3. Clauses B29.19, B29.23, B29.24 and B29.26 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Council.

Contract Query

- B29.4. If the Council has a Contract Query it may issue a Contract Query Notice to the Provider.
- B29.5. If the Provider has a Contract Query it may issue a Contract Query Notice to the Council.

Excusing Notice

- B29.6. The Receiving Party may issue an Excusing Notice to the Issuing Party within 5 Business Days of the date of the Contract Query Notice.
- B29.7. If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within 10 Business Days following the date of the Contract Query Notice.

Contract Management Meeting

- B29.8. Unless the Contract Query Notice has been withdrawn, the Council and the Provider must meet to discuss the Contract Query and any related Excusing Notice within 10 Business Days following the date of the Contract Query Notice.
- B29.9. At the Contract Management Meeting the Council and the Provider must agree either:
- a) that the Contract Query Notice is withdrawn; or
 - b) to implement an appropriate Remedial Action Plan; or
 - c) to conduct a Joint Investigation.
- B29.10. If a Joint Investigation is to be undertaken:
- a) the Council and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation.
 - b) the Council and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

Joint Investigation

B29.11. On completion of a Joint Investigation, the Council and the Provider must produce and agree a JI Report. The JI Report must include (without limitation) a recommendation to be considered at the next Review Meeting that either:

- a) the Contract Query be closed; or
- b) Remedial Action Plan be agreed and implemented.

B29.12. Either the Council or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Contract to consider a JI Report.

Remedial Action Plan

B29.13. If a Remedial Action Plan is to be implemented, the Council and the Provider must agree the contents of the Remedial Action Plan within:

- a) 5 Business Days following the Contract Management Meeting; or
- b) 5 Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause B29.11.

B29.14. The Remedial Action Plan must set out:

- a) milestones for performance to be remedied;
- b) the date by which each milestone must be completed; and
- c) subject to the maximum sums identified in clause B29.23, the consequences for failing to meet each milestone by the specified date.

B29.15. The Provider and the Council must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.

B29.16. The Council and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Council and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.

B29.17. If following implementation of a Remedial Action Plan:

- a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;
- b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Council or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

Withholding Payment for Failure to Agree Remedial Action Plan

B29.18. If the Council and the Provider cannot agree a Remedial Action Plan within the relevant period specified in clause B29.13, they must jointly notify the Boards of Directors (as applicable) of both the Provider and the Council.

- B29.19. If, 10 Business Days after notifying the Boards of Directors, the Council and the Provider still cannot agree a Remedial Action Plan, the Council may withhold up to 2% of the monthly sums payable by it under clause B8 (Charges and Payment) for each further month the Remedial Action Plan is not agreed.
- B29.20. The Council must pay the Provider any sums withheld under clause B29.19 within 10 Business Days of receiving the Provider's agreement to the Remedial Action Plan. Unless clause B29.25 applies, those sums are to be paid without interest.

Exception Reports

- B29.21. If a Party breaches a Remedial Action Plan and does not remedy the breach within 5 Business Days of its occurrence, the Provider or the Council (as the case may be) may issue a First Exception Report to that Party's chief executive and/or Board of Directors. If the Party in breach is the Provider, the Council may withhold payment from the Provider in accordance with clause B29.23.
- B29.22. 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 Council or the Provider (as the case may be) may issue a Second Exception Report to:
- a) the relevant Party's chief executive and/or Board of Directors; and/or;
 - b) CQC or any other Regulatory Body,
- in order that each of them may take whatever steps they think appropriate.

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

- B29.23. If the Provider breaches a Remedial Action Plan:
- a) the Council may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Council under clause B8 (Charges and Payment), from the date of issuing the First Exception Report and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Council under clause B8 (Charges and Payment) in relation to each Remedial Action Plan;
 - b) the Council must pay the Provider any sums withheld under clause B29.23(a) within 10 Business Days following the Council's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to clause B29.25, no interest will be payable on those sums.

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

- B29.24. If the Provider is in breach of a Remedial Action Plan the Council may, when issuing any Second Exception Report retain permanently any sums withheld under clause B29.23.

Unjustified Withholding or Retention of Payment

- B29.25. If the Council withholds sums under clause B29.19 or clause B29.23 or retain sums under clause B29.24, and within 20 Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Council that the relevant sums were withheld or retained unjustifiably, the Council must pay those sums to the Provider within 10 Business Days following the date of the Council'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 Council does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

Retention of Sums Withheld on Expiry or Termination of this Contract

- B29.26. If the Provider does not agree a Remedial Action Plan:
- a) within 6 months following the expiry of the relevant time period set out in clause B29.13; or
 - b) before the Expiry Date or earlier termination of this Contract,
- whichever is the earlier, the Council may retain permanently any sums withheld under clause B29.19.
- B29.27. If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Council may retain permanently any sums withheld under clause B29.23.

B30. DISPUTE RESOLUTION

- B30.1. If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix H (*Dispute Resolution*), unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.

B31. SUSPENSION AND CONSEQUENCES OF SUSPENSION

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

- B31.2. Where a Suspension Event occurs the Council:

- a) may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Council that it is able to and will perform the suspended Service, to the required standard; and
 - b) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.
- B31.3. During the suspension of any Service under clause B31.2, the Provider must comply with any steps the Council reasonably specifies in order to remedy the Suspension Event, including where the Council's decision to suspend pursuant to clause B31.2 has been referred to dispute resolution under clause B30 (*Dispute Resolution*).
- B31.4. During the suspension of any Service under clause B31.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:
 - a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B31.2; and/or
 - b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B31.5.
- B31.5. The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- B31.6. Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Council in respect of any Losses directly and reasonably incurred by the Council in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).
- B31.7. Following suspension of a Service the Provider must at the reasonable request of the Council and for a reasonable period:
 - a) co-operate fully with the Council 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 Council or members of the public; and
 - b) at the cost of the Provider:
 - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
 - (ii) deliver to the Council all materials, papers, documents and operating manuals owned by the Council and used by the Provider in the provision of the suspended Service.
- B31.8. As part of its compliance with clause B31.7 the Provider may be required by the Council to agree a transition plan with the Council and/or any alternative Successor Provider.

- B31.9. If it is determined, pursuant to clause B30 (*Dispute Resolution*), that the Council acted unreasonably in suspending a Service, the Council must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B31.10. During any suspension of a Service the Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.

B32. TERMINATION

- B32.1. Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 12 months' written notice at any time after the Service Commencement Date.
- B32.2. The Council may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:
- a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
 - b) the Provider is in persistent breach of its obligations under this Contract;
 - c) the Provider:
 - (i) fails to obtain any Consent;
 - (ii) loses any Consent; or
 - (iii) has any Consent varied or restricted,the effect of which might reasonably be considered by the Council to have a material adverse effect on the provision of the Services;
 - d) the Provider has breached the terms of clause B39 (*Prohibited Acts*);
 - e) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
 - f) the Provider materially breaches its obligations in clause B37 (*Data Protection*);
 - g) two or more Second Exception Reports are issued to the Provider under clause B29.22 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
 - h) the Provider breaches the terms of clause B23 (*Assignment and Sub-contracting*);
 - i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;

- j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 30 Business Days following receipt of notice from the Council identifying the breach.

B32.3. Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Council or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than 30 Business Days without the Parties agreeing alternative arrangements.

B32.4. The Provider may terminate this Contract or any Service with immediate effect by written notice to the Council if the Council is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B32.4 if the Council has failed to remedy such breach within 30 Business Days of receipt of notice from the Provider to do so.

B33. CONSEQUENCE OF EXPIRY OR TERMINATION

B33.1. Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.

B33.2. On the expiry or termination of this Contract or termination of any Service the Provider must co-operate fully with the Council to migrate the Services in an orderly manner to the successor provider.

B33.3. In the event of termination or expiry of this Contract, the Provider must cease to use the Council's Confidential Information and on the earlier of the receipt of the Council's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Council.

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

B33.5. The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B23 (*Assignment and Sub-contracting*), B24 (*Audit and Inspection*), B33 (*Consequence of Expiry or Termination*), B36 (*Confidentiality*) and B38 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.

B34. BUSINESS CONTINUITY

- B34.1. The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.
- B34.2. The Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify the Council as soon as reasonably practicable of its activation and in any event no later than 5 Business Days from the date of such activation.

B35. COUNTER-FRAUD AND SECURITY MANAGEMENT

- B35.1. The Provider must put in place and maintain appropriate counter fraud and security management arrangements.
- B35.2. The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Council.
- B35.3. The Provider must notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- B35.4. If the Provider or its Staff commits Fraud in relation to this or any other contract with the Council, the Council may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Council) and recover from the Provider the amount of any Loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

B36. CONFIDENTIALITY

- B36.1. Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.
- B36.2. Subject to Clauses B36.3 and B36.4, the Receiving Party agrees:
- a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
 - b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
 - c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- B36.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:
- a) in connection with any dispute resolution under clause B30 (*Dispute Resolution*);
 - b) in connection with any litigation between the Parties;
 - c) to comply with the Law;
 - d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B36.2;
 - e) to comply with a regulatory body request.
- B36.4. The obligations in clause B36.1 and clause B36.2 will not apply to any Confidential Information which:
- a) is in or comes into the public domain other than by breach of this Contract;

- b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
 - c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B36.5. The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B36.
- B36.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B36.
- B36.7. This clause B36 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- B36.8. The obligations in clause B36.1 and clause B36.2b) shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council 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 Council 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) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

B37. DATA PROTECTION

- B37.1. The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B37.2. To the extent that the Provider is acting as a Data Processor on behalf of the Council, the Provider shall, in particular, but without limitation:
- a) only process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instruction given by the Council under this Contract;
 - b) put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements in clause B37.3 below, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;

- c) take reasonable steps to ensure the reliability of Staff who will have access to such Personal Data, and ensure that such Staff are properly trained in protecting Personal Data;
 - d) provide the Council with such information as the Council may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;
 - e) promptly notify the Council of any requests for disclosure of or access to the Personal Data;
 - f) promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause B37;
 - g) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.
- B37.3. To the extent that any Council data is held and/or processed by the Provider, the Provider shall supply that Council data to the Council as requested by the Council.
- B37.4. The Provider and the Council shall ensure that Personal Data is safeguarded at all times in accordance with the Law.

B38. FREEDOM OF INFORMATION AND TRANSPARENCY

- B38.1. The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B38.2. If the Provider is not a Public Council, the Provider acknowledges that the Council is subject to the requirements of the FOIA and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:
- a) that this Contract and any other recorded information held by the Provider on the Council's behalf for the purposes of this Contract are subject to the obligations and commitments of the Council under the FOIA;
 - b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Council;
 - c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Council) and will promptly (and in any event within 2 Business Days) transfer the request to the Council;
 - d) that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and

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

B39. PROHIBITED ACTS

- B39.1. Neither Party shall do any of the following:
- a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and
 - b) in connection with this Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,
- (together "**Prohibited Acts**").
- B39.2. If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:

- a) to exercise its right to terminate under clause B32.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
 - b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
 - c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.
- B39.3. Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.
- B39.4. The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Council within 5 Business Days of the Council requesting it and enforced by the Provider where applicable.
- B39.5. Should the Provider become aware of or suspect any breach of this clause B39, it will notify the Council immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Council, co-operate with any investigation undertaken by the Council and allow the Council to audit any books, records and other relevant documentation.

B40. FORCE MAJEURE

- B40.1. Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.
- B40.2. Subject to clause B40.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.
- B40.3. The Party claiming relief as a result of an event of Force Majeure must serve an initial written notice on the other Party immediately it becomes aware of the event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief must then serve a detailed written notice within a further 15 Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform the relevant obligations under this Contract as is available, including the effect of the event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Services.
- B40.4. A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.
- B40.5. The Council 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.

B41. THIRD PARTY RIGHTS

B41.1. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract other than as explicitly provided for in this Contract.

B42. CAPACITY

B42.1. Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Contract, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon the Council or in any way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability on the part of the Council under this Contract (howsoever arising) in any capacity other than as contracting counterparty.

B43. SEVERABILITY

B43.1. If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Contract.

B44. WAIVER

B44.1. Any relaxation or delay by either Party in exercising any right under this Contract will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

B45. PUBLICITY

B45.1. Without prejudice to clause B38 (*Freedom of Information and Transparency*), except with the written consent of the Council, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.

B45.2. The Provider must take all reasonable steps to ensure the observance of the provisions of clause B45.1 by all its staff, servants, agents, consultants and sub-contractors.

B46. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

B46.1. Nothing in this Contract creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Council and the Provider.

B47. GOVERNING LAW AND JURISDICTION

B47.1. This Contract will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.

B47.2. Subject to the provisions of clause B30 (Dispute Resolution), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.

APPENDIX A
SERVICE SPECIFICATION

APPENDIX B
QUALITY OUTCOMES INDICATORS

APPENDIX C
SERVICE USER, CARER AND STAFF SURVEYS

APPENDIX D

CHARGES

As agreed at the point that the Services are called-off by the Council

APPENDIX E

INCIDENTS REQUIRING REPORTING PROCEDURE

APPENDIX F
INFORMATION PROVISION

APPENDIX G
SERVICE QUALITY PERFORMANCE REPORT

APPENDIX H

DISPUTE RESOLUTION

1. ESCALATED NEGOTIATION

- 1.1 Except to the extent that any injunction is sought relating to a matter arising out of clause B36 (Confidentiality), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the 15 Business Days following receipt of the first such offer (the "Negotiation Period") each of the Parties shall negotiate in good faith and be represented:
- 1.1.1 for the first 10 Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter that led to the Dispute and has Council to settle the Dispute; and
 - 1.1.2 for the last 5 Business Days, by its chief executive, director, or board member who has Council to settle the Dispute, provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

2. MEDIATION

- 2.1 If the Parties are unable to settle the Dispute by negotiation, they must within 5 Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties.
- 2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.
- 2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

3. EXPERT DETERMINATION

- 3.1 If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within 10 Business Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.
- 3.2 If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.
- 3.3 Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.
- 3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution

sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.

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

APPENDIX I

DEFINITIONS AND INTERPRETATION

1. The headings in this Contract shall not affect its interpretation.
2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
4. References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.
5. References to any body, organisation or office shall include reference to its applicable successor from time to time.
6. Any references to this Contract or any other documents includes reference to this Contract or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.
7. Use of the singular includes the plural and vice versa.
8. The following terms shall have the following meanings:

Activity means any levels of clinical services and/or Service User flows set out in a Service Specification

Authorised Person means the Council and any body or person concerned with the provision of the Service or care of a Service User

Council Representative means the person identified in clause A4.1 or their replacement

Best Value Duty means the duty imposed by section 3 of the Local Government Act 1999 (the **LGA 1999**) as amended, and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to any applicable guidance issued from time to time

Board of Directors means the executive board or committee of the relevant organisation

Business Continuity Plan means the Provider's plan referred to in Clause B34.2 (*Business Continuity*) relating to continuity of the Services, as agreed with the Council and as may be amended from time to time

Business Day means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London

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

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

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

CEDR means the Centre for Effective Dispute Resolution

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

Commencement Date means the date identified in clause A3.1.

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 Provider's obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract

Contract has the meaning given to it in clause A1.1

Contract Query means:

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

as appropriate

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

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

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

Data Processor has the meaning set out in the DPA

Data Subject has the meaning set out in the DPA

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

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

Default Interest Rate means LIBOR plus 2% per annum

Disclosing Party means the Party disclosing Confidential Information

Dispute means a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Contract

DPA means the Data Protection Act 1998

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

Equipment means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under this Contract

Excusing Notice means a notice setting out in reasonable detail the Receiving Party's reasons for believing that a Contract Query is unfounded, or that the matters giving rise to the Contract Query are:

- (i) due wholly or partly to an act or omission by the Issuing Party; or
- (ii) a direct result of the Receiving Party following the instructions of the Issuing Party; or
- (iii) due to circumstances beyond the Receiving Party's reasonable control but which do not constitute an event of Force Majeure

Expert means the person designated to determine a Dispute by virtue of paragraphs 1.6 or 1.7 of Appendix H (*Dispute Resolution*)

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

Expiry Date means the date set out in clause A3.3

First Exception Report means a report issued in accordance with clause B29.21 (*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 Council or relevant government department in relation to such legislation and the Environmental Information Regulations 2004

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

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

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

General Conditions has the meaning given to it in clause A1

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

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

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

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

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

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

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

Law means:

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

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

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

LIBOR means the London Interbank Offered Rate for 6 months sterling deposits in the London market

Local Healthwatch means the local independent consumer champion for health and social care in England

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

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

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

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

NHS Act 2006 means the National Health Service Act 2006

Parties means the Council and the Provider and “Party” means either one of them

Patient Safety Incident means any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to, harm to that Service User

Personal Data has the meaning set out in the DPA

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

Provider Representative means the person identified in clause A4.2 or their replacement

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

Public Council means as defined in section 3 of the FOIA

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

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

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

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

Required Insurances means the types of policy or policies providing levels of cover as specified in clause C2.1

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

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

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

Service Commencement Date means the date set out in clause A3.2.

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

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

Service Quality Performance Report means a report as described in Appendix G (*Service Quality Performance Report*)

Services means the services (and any part or parts of those services) described in each of, or, as the context admits, all of the Service Specification, and/or as otherwise provided or to be provided by the Provider under and in accordance with this Contract

Special Conditions has the meaning given to it in clause A1

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

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

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

Successor Provider means any provider to whom a member of Staff is transferred pursuant to TUPE in relation to the Services immediately on termination or expiry of this Contract

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006

VAT means value added tax in accordance with the provisions of the Value Added Tax Act 1994

Variation means a variation to a provision or part of a provision of this Contract

Variation Notice means a notice to vary a provision or part of a provision of this Contract issued under clause B22.2 (*Variations*).

SECTION C: SPECIAL TERMS AND CONDITIONS

C1. NOT USED

C2. INSURANCE

C2.1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10 million;
- (c) professional indemnity insurance with a limit of indemnity of not less than £1 million in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover; and
- (d) medical malpractice insurance in such sum as is appropriate to the Services.

(together the Required Insurances).

C2.2. If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

C3. CONTRACT BINDING ON SUCCESSORS

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

C4. AGENCY

C4.1. The Provider must not in any circumstances hold itself out as being the servant or agent of the Council. The Provider must not hold itself out as being authorised to enter into any agreement on behalf of the Council or in any way bind the Council to the performance, variation, release or discharge of any obligation to a third party. The Provider's Staff shall not hold themselves out to be and shall not be held out by the Provider as being servants or agents of the Council.

C5. HUMAN RIGHTS

C5.1. The Provider must not do or permit to allow anything to be done which is incompatible with the rights contained in the European Convention on Human rights and the Human Rights Act 1998. Without prejudice to the rights of the Council under clause B25 (*Indemnities*), the Provider must indemnify the Council against any loss, claims and expenditure resulting from the Provider's breach of this clause.

C6. HEALTH AND SAFETY

- C6.1. The Provider must promptly notify the Council of any health and safety hazards which may arise in connection with the performance of this Contract.
- C6.2. The Provider must comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders regulations and codes of practice relating to health and safety which may apply to the Provider's Staff and other persons working on the Provider's Premises in the performance of this Contract.
- C6.3. The Provider must on written request of the Council and in any event within 5 Business Days of that request, provide the Council with a copy of its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974).

C7. CONFLICTS OF INTEREST

- C7.1. If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on the other Party's decision whether or not to contract or continue to contract substantially on the terms of this Contract, the Party aware of the conflict must immediately declare it to the other. The other Party may then take whatever action under this Contract as it deems necessary.

C8. DISCLOSURE AND BARRING SERVICE

- C8.1 The Provider shall comply with the requirements of this clause if the performance of the Services requires the Provider or its Staff to work with, or in settings for, children and/or vulnerable adults or to access highly sensitive data on vulnerable groups. For the purposes of this clause, the term Staff shall include volunteers.
- C8.2 The Provider shall comply with all relevant legislation and government guidance for safeguarding children and vulnerable adults in performing the Services. This shall include, but shall not be limited to, the Protection of Freedoms Act 2012, the Safeguarding Vulnerable Groups Act 2006, the Rehabilitation of Offenders Act 1974 and all subsequent legislation, legislative amendments, sub-ordinate legislation, changes to government guidance and any additional government guidance that may be issued from time to time.
- C8.3 The Provider acknowledges that the Council has a criminal records checking policy which is available on the Council's website at www.dorsetforyou.com or can be supplied upon request. This policy may be subject to change to conform to changes in legislation, government guidance or changes in Council policy. The Provider's attention is drawn to the criminal records checking requirements in the policy.
- C8.4 If the Provider's Staff are required to work in settings for children or vulnerable groups, the Council's Code of Conduct for Providers Working in Settings for Children or Vulnerable Groups at Appendix J shall be issued by the Provider to all Staff engaged in the Services. The issue of the Code of Conduct to the Provider's Staff shall be recorded by the Provider with confirmation provided to the Council on request. The Council may require any of the Provider's Staff deployed in the Services to be withdrawn and an acceptable person substituted in the event of the Provider's Staff failing to comply with this Code of Conduct.
- C8.5 The Council shall, in accordance with its criminal records checking policy, determine whether criminal records checks are required and if so whether the

Provider's criminal records checking policy and procedures for conducting checks and determining the suitability of the Provider's Staff to be engaged in providing the Services are sufficient (in which case Clauses C8.8 and C8.9 shall apply) or whether criminal records checks must be conducted by the Council for this purpose (in which case Clauses C8.6 and C8.7 shall apply).

- C8.6 If the Council, in line with its criminal records checking policy, determines that the Provider's Staff require a criminal records check to be conducted by the Council, this shall be at the Provider's expense. The costs shall include the cost of the check, an administration fee (£12) per check, and a fee (£6) per check if an external identity validation check is required. The Provider acknowledges that the sums in brackets are subject to change as a result of legislation or policy change by the Disclosure and Barring Service (or its successor), Disclosure Scotland or the Council.
- C8.7 The Council shall make an assessment of suitability to work on the Contract. The Provider shall ensure that confirmation of suitability is obtained from the Council before its Staff perform the Services. The Provider shall also ensure that its Staff who are subject to criminal records checking are required to:
- a) discuss their disclosure with the Council if necessary to determine suitability; and
 - b) declare all convictions received during the course of their deployment to work on the Services. Where a declaration is made during the course of their deployment, the Provider shall either conduct an assessment of suitability or advise the Council which shall decide whether suitability to work on the Contract is affected and whether a new criminal records check is required to inform a reassessment of suitability.
- C8.8 If the Council accepts criminal records checks undertaken by the Provider (otherwise known as 'accepting portability'), which checks shall, for the avoidance of doubt, be undertaken by the Provider at the Provider's expense, the Provider shall provide the Council with evidence of its compliance with Clauses C8.2 to C8.4 above by way of a Register of Persons deployed on the Services, recording details of criminal records checks and recorded risk assessments undertaken on any conviction or other relevant information disclosed. These records shall be made available for inspection by the Council, in the format set out in Appendix J, at any time on request and as part of contract compliance monitoring.
- C8.9 If a conviction or other relevant information is disclosed, a Safeguarding Risk Assessment shall be conducted by the Provider to determine suitability to perform the Services. The assessment shall be undertaken and recorded in accordance with the process and format set out in Appendix J and will take account of the Council's policy on the employment of ex offenders.
- C8.10 The Provider shall ensure that checks and assessment of suitability are undertaken before its Staff perform the Services. The Provider shall ensure that its Staff who are subject to criminal records checking are required to declare all convictions received during the course of their deployment to work on the Services and that where a declaration is made, a further assessment of suitability is undertaken and recorded in the format set out at Appendix J.
- C8.11 The Council reserves the right, acting reasonably, to conduct additional criminal records checks on Staff deployed on the Services, where deemed necessary, at the Provider's cost. The Council shall provide an explanation for such action.

- C8.12 The Provider shall ensure that Staff who are deployed to work on the Service and who are subject to criminal records checking are in possession of a letter/ID badge from the Provider or written confirmation/ID badge from the Council confirming clearance (where checks and and//or an assessment of suitability are undertaken by the Council) for presentation on request from the manager of the site where the Service is performed or from a Service User.
- C8.13 The Provider shall not under any circumstances deploy to regulated activity (within the meaning of the Safeguarding Vulnerable Groups Act as amended by the Protection of Freedoms Act 2012) any person who is barred from working with children and/or vulnerable adults or deploy any person to the Services who is reasonably deemed by the Council to be unsuitable for deployment to the Services.
- C8.14 The Council may require any of the Provider's Staff deployed on the Services to be withdrawn and an acceptable person substituted in the event of:
- a) the Provider failing to comply with its obligations under this clause; or
 - b) the Provider's Staff refusing to complete a disclosure statement/application; or
 - c) the disclosure at any stage of information that in the reasonable opinion of the Council renders the Provider's Staff unsuitable for deployment to the Services;
- and any such decision shall be taken in accordance with the Council's policy on the employment of ex-offenders.
- C8.15 The Council shall under no circumstances be liable either to the Provider or the Provider's Staff in respect of any award, cost, expenses, liability, loss or damage occasioned by withdrawal of Staff from the Services in accordance with this clause and the Provider shall fully indemnify the Council in respect of any such claims made.
- C8.16 The Council reserves the right to monitor the suitability of the Provider's Staff to perform the Services.
- C8.17 The Council shall closely monitor the Provider's compliance with this clause to ensure that the Provider fully adheres to the legislation, procedures and policies referred to, and the Provider shall fully co-operate with the Council, at its own expense, to enable the Council to carry out such monitoring requirements.
- C8.18 The Provider shall be responsible for meeting any costs arising from changes in legislation, government guidance or Council policy relating to the carrying out of criminal records checks on its Staff.
- C8.19 If requested by the Council, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

C9. PAYMENTS TO SUB-CONTRACTORS

- C9.1 Where the Provider enters into a Sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-contract which requires payment to be made of all sums due by the Provider to the Sub-contractor within a specified period not exceeding 30 Business Days from the receipt of a valid claim.

C10. RETENTION OF RECORDS

C10.1 The Provider shall keep and maintain until six years after the Contract has ended full and accurate records of the Services provided, all expenditure reimbursed by the Council and all payments made by the Council.

C10.2 The Provider shall on request afford the Council or its representatives such access to those records as may be required by the Council in connection with the provision of the Services.

C11. CHANGE IN LAW

C11.1 The Provider shall not be relieved of its obligations to perform the Services under this Contract as a result of a change in Law if the change and its effect are known as the Commencement Date.

C11.2 If a change in Law occurs or is shortly to occur which shall significantly affect the provision of the Services or the cost of doing so, the Provider shall notify the Council to express an opinion of the likely effects of the change including:

- a) whether any change is required to the Services or the terms of this Contract; and
- b) whether the Provider requires any relief from compliance with its obligations.

C11.3 If the Parties to the Contract agree upon the effects of the change in Law and any financial consequences, such agreement shall be implemented through clause B22.

C11.4 In the case of any Dispute arising under this clause, it shall be resolved in accordance with clause B.30.

C12. TUPE

C12.1. If the Council has notified the Provider that it intends to tender or retender any Services, the Provider must within 20 Business Days following written request (unless otherwise agreed in writing) provide the Council with anonymised details of Staff engaged in the provision of the relevant Services who may be subject to TUPE. The Provider must indemnify and keep indemnified the relevant Commissioner and at the Co-ordinating Commissioner's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this clause.

C12.2. During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not and must procure that its sub-contractors do not, without the prior written consent of the Council, in relation to any persons engaged in the provision of the Services or the relevant Service:

- (a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);

- (b) increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any sub-contractor by more than 5% (except in the ordinary course of business);
 - (c) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
 - (d) replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
 - (e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.
- C12.3. The Provider must indemnify and keep indemnified the Council and, at the Council's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or any Service, against any Losses in respect of:
- (a) the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any sub-contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any sub-contractor;
 - (b) claims brought by any other person employed or engaged by the Provider and/or any sub-contractor who is found to or is alleged to transfer to the Council or new provider under TUPE; and/or
 - (c) any failure by the Provider and/or any sub-contractor to comply with its obligations under TUPE in connection with any transfer to the Council or new provider.
- C12.4. The Council must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any sub-contractor against any Losses in respect of:
- (a) any failure by the new provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new provider;
 - (b) any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service; and/or
 - (c) any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service.

C13. ACTION ON EXPIRY OR TERMINATION

- C13.1 The Provider acknowledges that on termination or expiry of the Contract, the continuity of the Service is of paramount importance. The Provider shall minimise disruption caused and assist the implementation of any contingency plan proposed by the Council to deal with the effect of such termination or expiry in so far as it is practicable to do so.
- C13.2 The Provider shall promptly provide such assistance and comply with such timetable as the Council may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or their equivalent) in the period immediately before the expiry or other termination of the Contract. The Provider shall ensure that its Sub-contractors are under a similar obligation. The Council shall be entitled to require the provision of such assistance both prior to and up to twelve months after the expiry or other termination of the Contract. If the Council requires such assistance after the expiry or other termination of the Contract and within twelve months of the expiry or other termination of the Contract, the Council shall reimburse any reasonable costs incurred by the Provider in the course of providing such assistance.
- C13.3 Such assistance may include, without limitation, delivery of documents and data in the possession or control of the Provider or its Sub-contractors which relate to the performance, monitoring, management and reporting of the Services, including the documents and data, if any, which the Provider may otherwise be obliged to disclose under this Contract or is otherwise beneficial to orderly transfer.
- C13.4 The Provider shall not knowingly or purposely obstruct the ability of the Council to ensure an orderly transfer of responsibility for service provision.
- C13.5 Within twenty one days of being so requested by the Council, the Provider shall provide and thereafter keep updated all the information necessary to enable the Council to issue tender documents for the future provision of the Services.
- C13.6 If the Council requests assistance from the Provider, where the expiry or earlier termination of the Contract arises due to the Provider's Default, the Provider shall provide such assistance free of charge. Otherwise the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take reasonable steps to mitigate such costs.
- C13.7 The Council shall take all necessary precautions to ensure that the information referred to in clause C13.5 above is given only to Providers who have qualified to tender or/have been successful in being selected as the provider following a tender exercise for the future provision of the Services. The Council shall require that such provider shall treat that information in confidence and that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Council and that they shall not use it for any other purpose.
- C13.8 The Provider shall indemnify the Council against any claim made against the Council at any time by any person in respect of any liability incurred by the Council arising from any deficiency or inaccuracy in information which the Provider is required to provide under clause C13.5 above.
- C13.10 On expiry or termination of the Contract, the Provider shall return all copies of data and/or if requested by the Council shall destroy the same and certify in writing to the Council that they have been destroyed.

C13.11 The Provider will be responsible for collecting and removing all data from its system within sixty days of the Contract end date.

C13.12 The provisions of this clause shall survive termination or expiry of the Contract.

APPENDIX J
DBS CHECKS DOCUMENTS