Hampshire County Council

HAMPSHIRE COUNTY COUNCIL

AS AUTHORITY

AND

AS PROVIDER

AGREEMENT FOR THE PROVISION OF PUBLIC HEALTH PRIMARY CARE SERVICES FOR —

LONG-ACTING REVERSIBLE CONTRACEPTION (LARC) LOT 1

AND

NHS HEALTH CHECKS (LOT 2)

CONTENTS

SECTION A – THE PARTICULARS

A1. AGREEMENT

A2. INTERPRETATION

A3. COMMENCEMENT AND DURATION

A4. PAYMENT

A5. CONDITIONS PRECEDENT

A6. REPRESENTATIVES

A7. NOTICES

A8. COUNTERPARTS

SECTION B – GENERAL TERMS AND CONDITIONS

B1. SERVICES

B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

B3. SERVICE AND QUALITY OUTCOMES INDICATORS

B4. SERVICE USER INVOLVEMENT

B5. HUMAN RIGHTS, EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

B6. MANAGING ACTIVITY

B7. STAFF

B8. CHARGES AND PAYMENT

B9. BEST VALUE DUTY AND SERVICE IMPROVEMENTS

B10. SAFEGUARDING CHILDREN AND ADULTS

B11. INCIDENTS REQUIRING REPORTING

B12. CONSENT

B13. SERVICE USER HEALTH RECORDS

B14. INFORMATION

B15. EQUIPMENT AND ESTATES

B16. HEALTH AND SAFETY

B17. PREVENT DUTY

B18. COMPLAINTS

B19. SERVICE REVIEW

B20. REVIEW MEETINGS

B21. CO-OPERATION

B22. WARRANTIES AND REPRESENTATIONS

B23. VARIATIONS

B24. ASSIGNMENT AND SUB-CONTRACTING

B25. AUDIT AND INSPECTION

B26. INDEMNITIES
B27. LIMITATION OF LIABILITY
B28. INSURANCE
B29. DEFAULTS AND FAILURE TO SUPPLY
B30. CONTRACT MANAGEMENT
B31. DISPUTE RESOLUTION
B32. SUSPENSION AND CONSEQUENCES OF SUSPENSION
B33. TERMINATION
B34. CONSEQUENCE OF EXPIRY OR TERMINATION
B35. BUSINESS CONTINUITY AND EMERGENCIES
B36. INTELLECTUAL PROPERTY
B37. CONFIDENTIALITY
B38. DATA PROTECTION
B39. FREEDOM OF INFORMATION AND TRANSPARENCY
B40. PROHIBITED ACTS
B41. CONFLICTS OF INTEREST
B42. FORCE MAJEURE
B43. THIRD PARTY RIGHTS
B44. CAPACITY
B45. SEVERABILITY
B46. WAIVER
B47. PUBLICITY AND BRANDING POLICY
B48. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY
B49. CHANGE IN CONTROL
B50. ENTIRE CONTRACT
B51. GOVERNING LAW AND JURISDICTION
B52. DEFINITIONS AND INTERPRETATION

SCHEDULES

SCHEDULE A. SERVICE SPECIFICATION
SCHEDULE B. PAYMENT AND INVOICING
SCHEDULE C. ACTIVITY PLAN
SCHEDULE D. POLICIES AND PROCEDURES
SCHEDULE E. RETENDERING AND TUPE
SCHEDULE F. APPROVED SUB-CONTRACTOR
SCHEDULE G. SUCCESSION PLAN
SCHEDULE H. PROVIDER'S PROPOSALS
SCHEDULE I. TENDER CLARIFICATIONS AND RESPONSES

SECTION A

THE PARTICULARS

THIS AGREEMENT is made the day of 2025

PARTIES

(1) **Hampshire County Council** of The Castle, Winchester, Hampshire, SO23 8UJ (the ***Authority***); and

(2) **----------**incorporated and registered in England and Wales with company number **--------** whose registered office is ----------("the ***Provider***").

BACKGROUND

A The Authority must exercise a number of health service functions set out in section 2B of the National Health Service Act 2006 ("NHS Act 2006"), Health and Social Care Act 2012 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013. In order to satisfy these obligations, the Authority wishes to secure the provision of the Services to improve the health of its residents and the Provider wishes to provide the Services.

B The Authority is procuring Long-Acting Reversible Contraception (LARC) and NHS Health Checks services in Hampshire to meet its statutory duties and strategic priorities. Schedule A provides details about the services.

C The NHS Health Check programme is a nationally mandated public health service which aims to prevent heart disease, stroke, type 2 diabetes and kidney disease, and raise awareness of dementia both across the population and within high risk and vulnerable groups.

The Long-Acting Reversible Contraception (LARC) service will provide a fitting and removal service for LARC methods of contraception (Intrauterine Contraception (IUD/S) & sub-dermal contraceptive implant only) licensed in the UK for contraceptive purposes only

D The Authority's requirement is divided into Two Lots:

LOT 1 deals with LARC. The full details and requirement is in the specification in Schedule A Annex 1.

LOT 2 deals with NHS Health Checks . The full details and requirement is in the specification in Schedule A Annex 2.

E The Authority has determined these services qualify to be procured under the Health Care Services (Provider Selection Regime) Regulations 2023 as the services are for health care services for the purpose of health care in England. The procurement under the Provider Selection Regime is by Direct Award B. Direct Award Process B allows for a direct award for such Services (specified in Schedule A) as competition has already been achieved when a patient chooses their provider.

F Following the Provider Selection Regime Direct Award B procurement process, the Provider submitted an Enrolment Application in response to the contract notice. The Provider represented to the Authority that it is capable of providing the Services in accordance with the requirements as set out in this Agreement, and the Provider has made representations to the Authority in relation to its competence, professionalism and ability to provide the Services. On this basis, the

Authority appointed the Provider along with other service providers to deliver the Services in accordance with the terms and conditions of this Agreement.

(D) This Agreement sets out the terms and conditions governing the Provider's appointment and for the delivery of the Services.

IT IS AGREED

A1. AGREEMENT

A1.1 This Agreement (the "***Agreement"***) comprises of:

(a) Section A: the Particulars ("***Section A***"); and
(b) Section B: the General Terms and Conditions (the "***Section B***")

as completed and agreed by the Parties including the Schedules, and as varied from time to time in accordance with clause B23 (*Variations*) of Section B.

A2. INTERPRETATION

A2.1 Unless the context requires otherwise this Agreement shall be interpreted in accordance with clause B52 (*Definitions and Interpretation*).

A2.2 If there is any conflict or inconsistency between the provisions of this Agreement, such conflict or inconsistency must be resolved according to the following order of priority:

(a) Section B;
(b) Section A;
(c) Schedule A (Specification) to G other than Schedule H and I; and
(d) Schedule H and I.

A3. COMMENCEMENT AND DURATION

A3.1 This Agreement shall take effect on the date it is executed by or on behalf of the Parties (the "**Commencement Date**"), but it shall be binding on the Parties if the Services are provided prior to the execution of this Agreement.

A3.2. Subject to having satisfied the Conditions Precedent, where applicable, the Provider shall provide the Services from and including 1st April 2026 (the "**Service Commencement Date**").

A3.3. This Agreement shall continue and remain in force for the initial period of five (5) years from the Service Commencement Date (the Initial Term) and shall expire automatically on 31st March 2031 (the "**Expiry Date**"), unless the Initial Term is extended in accordance with clause A3.4 or it is terminated earlier in accordance with clause B32.

A3.4. The Authority may extend this Agreement in whole or in part beyond the Initial Term by a further period or periods of up to two (2) years (each such extension together with any such extensions, being the "Extension Period"), up to a maximum period of seven (7) Years. If the Authority wishes to extend this Agreement, it shall give the Provider at least two (2) months' written notice of such intention before the expiry of the Initial Term or before the end of any previous Extension Period (as the case may be).

If the Authority serves notice in accordance with clause this A3.4 then the Agreement shall be extended by the period set out in the notice.

Any such Extension Period shall be on the same terms and conditions as under the Agreement unless otherwise agreed in writing by the Parties in accordance with B23 (Variation).

If the Authority does not wish to extend this Agreement beyond the Initial Term or any Extension Period (as applicable) this Agreement shall expire on the Expiry Date in accordance with clause A3.3 or the expiry of the relevant Extension Period (as applicable) and the provisions of B 34 (Consequences of Termination) shall apply.

A.4 PAYMENT

A4.1 Payment shall be made in accordance with clause B8 (*Charges and Payment*) together with Schedule B (*Payment and Invoicing*).

A5. CONDITIONS PRECEDENT

A5.1 The following shall be provided prior to the Commencement Date and copies shall be added to Schedule D (Policies and Procedures) where applicable:

(a) A certificate setting out the Required Insurances;
(b) A copy of the Business Continuity Plan;
(c) Details of Caldicott Guardian and Chief Information Officer or equivalent;
(d) Full details of sub-contracting arrangements; and
(e) produce evidence of any required registration for the provision of the Services with the applicable Regulatory Body.

A6. REPRESENTATIVES

A6.1 The person set out below is authorised from the Commencement Date to act on behalf of the Authority on all matters relating to this Agreement (the "***Authority Representative***").

Title: Consultant in Public Health
Contact Details: Hampshire County Council
3rd Floor, EII Court West, The Castle,
Winchester, Hampshire SO23 8UQ

Tel:
Email:

A6.2 The person set out below is authorised from the Commencement Date to act on behalf of the Provider on all matters relating to this Agreement (the "***Provider Representative***").

Name:
Title:

Contact Details:
Tel:
Email:

A6.3 Either Party may at any time, by giving further written notice to the other Party, revoke or amend the authority of its nominated representative or appoint a new nominated representative.

A7. NOTICES

A7.1 Any notices given under this Agreement shall be in writing and shall be served by hand, post or email by sending the same to the address for the relevant Party set out in clause A7.3.

A7.2 Notices:

(a) by post and correctly addressed shall be effective upon the earlier of actual receipt, or 5 Business Days after mailing; or
(b) by hand shall be effective on signature of a delivery receipt; or
(c) if by email, at the time of transmission, or if this time falls outside working hours (9.00am – 5.00pm), at 9.00am on the next Business Day after transmission.

A7.3 For the purposes of clause A7.2 above, the address for service of notices on each Party shall be as follows:

(a) For the Authority:

Address: Hampshire County Council
3rd Floor, EII Court West, The Castle,
Winchester, Hampshire SO23 8UQ

For the attention of: Adults' Health and Care Contracts Team
Tel: 01962 826922
Email: as.contracts@hants.gov.uk

(b) For the Provider:
Address:
For the attention of:
Tel:
Email:

A7.4 Either Party may change its address for service by serving a notice in accordance with this clause A7.

A7.5 This clause A7 does not apply to the service of any proceedings or other documents in any legal action.

A8. COUNTERPARTS

A8.1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

IN WITNESS whereof this document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by Hampshire County Council.

THE COMMON SEAL OF HAMPSHIRE COUNTY COUNCIL OF was affixed in the presence of:

……

Authorised signatory

Executed as a deed for and on behalf of **----------**
----
acting by

…….
Name of Director 1

.....

Authorised Signatory

…….
Name of Director 2

.....

Authorised Signatory

OR

Deed executed on behalf of partnership by one partner acting under a power of attorney

Signed as a deed by [NAME OF PARTNERSHIP] through its agent [NAME OF PARTNER]
under a power of attorney dated [DATE]
.....
[SIGNATURE OF PARTNER]
Partner, as agent for, and attorney of the partners in, [NAME OF PARTNERSHIP]
in the presence of:
.....
[SIGNATURE OF WITNESS]
[NAME OF WITNESS]
[ADDRESS OF WITNESS]
[OCCUPATION OF WITNESS]

OR

Deed executed by all the partners: individual partner

Signed as a deed by [NAME OF PARTNERSHIP] through its agent [NAME OF PARTNER], a partner

.....

[SIGNATURE OF PARTNER]
in the presence of Partner

.....

[SIGNATURE OF WITNESS]
[NAME OF WITNESS]
[ADDRESS OF WITNESS]
[OCCUPATION OF WITNESS]

SECTION B

GENERAL TERMS AND CONDITIONS

B1. SERVICES

B1.1 The Provider shall provide the Services in accordance with the Service Specification in Schedule A (*Service Specification*) and Schedule C (*Activity Plan) if required*, including any service level, criteria or limitations set out, and in accordance with the provisions of this Agreement and the Schedules herein.

B1.2 The Provider shall satisfy any Conditions Precedent set out in clause A5 (*Conditions Precedent*) prior to commencing provision of the Services.

B1.3 The Provider shall at all times:

(a) provide the Services in accordance with Best Industry Practice and follow the standards, best practice guidance and policies as set out in the Service Specification;

(b) obtain, maintain and comply with all Consents;

(c) comply with all applicable Laws (including Care Act 2014)

(d) allocate sufficient resources to provide the Services in accordance with the terms of this Agreement and work cooperatively with the Authority to deliver a high-quality Service;

(e) ensure that any of the Provider's employees who are engaged in the provision of any of the Services shall, if required by the Authority, attend such meetings at the premises of the Authority or elsewhere as may be reasonably required by the Authority;

(f) provide such reasonable co-operation and information in relation to the Services and any future service development to the Authority, and to such of the Authority's other contractors or agents as the Authority may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that the Authority may reasonably require; and

(g) continually review and evaluate the Services, implement Lessons Learned from those reviews, evaluations, and from any feedback, complaints, Serious Incidents or Adverse Events, and where applicable, must demonstrate at Review Meetings the extent to which Service improvements have been made as a result.

B1.4 If any services, functions or responsibilities not specifically described in this Agreement are an inherent, necessary or customary part of the Services and are required for proper performance or provision of the Services in accordance with this Agreement or are required or are reasonably necessary for the proper performance and provision of the Services, they shall be deemed to be included within the scope of the Services to be delivered in consideration for the Agreement price as set out in Schedule B, as if such services, functions or responsibilities were specifically described in this Agreement.

B1.5 The Provider shall deal promptly with complaints, queries or problems relating to the use or performance of the Services and shall use all reasonable endeavours promptly to correct or procure the correction of any failure to perform the Services in accordance with the terms of this Agreement (including any defective or delayed provision of the Services).

B1.6 The Provider shall allow, without delay, the Authority or any person authorised by them, together with appropriate staff, at all reasonable times to inspect or witness the provision of the Services.

B1.7 In the event that the Provider does not comply with the provisions of clause B1 in any way, the Authority may regard non-compliance as a Default.

B1.8 The Provider acknowledges that it is not being appointed as an exclusive supplier of any of the Services and the Authority may at any time perform any part of the Services itself or procure them from a third party.

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 or others 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 Authority in writing without delay and wherever possible in advance of taking such action;

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

B3. SERVICE AND QUALITY OUTCOMES INDICATORS

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

(a) comply, where applicable, with all relevant registration matters, requirements, compliance guidance, and enforcement actions issued from time to time by CQC and/or any other Regulatory Body;

(b) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Service User Safety Incident report;

(c) comply with the recommendations issued from time to time by a Competent Body and where notified by the Authority those contained in guidance and appraisals issued by NICE;

(d) deliver the Services in a timely manner and within any relevant timescales set out in the Service Specification;

(e) comply with any reporting requirements, with the Quality Outcomes Indicators set out in the Service Specifications and Schedule C (*Activity Plan*); and

(f) adopt, apply and implement the NHS Constitution and its Public Health supplement to the delivery of the Services.

B4. SERVICE USER INVOLVEMENT

B4.1 The Provider shall, and in accordance with the Service Specification, engage, liaise and communicate with Service Users, their Carers and Legal Guardians (including obtaining any Consent or conducting any surveys) in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.

B4.2 As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide evidence to the Authority of the involvement of Service Users, Carers and Staff in the development and adaptation of the Services to the changing needs and requirements of the Service Users and delivery of Services.

B4.3 In accordance with the Service Specification, the Provider must carry out Service User surveys and carry out any other surveys reasonably required by the Authority in relation to the Services. The frequency and method of reporting to the Authority on the results of such surveys must comply with the requirements set out in Service Specification or as otherwise agreed between the Parties in writing from time to time. The Provider agrees that the written reports on the results shall not contain any Personal Data, unless agreed with the Authority in writing and in compliance with the Data Protection Legislation.

B4.4. The Provider must review and provide a written report (which shall not contain any Personal Data) to the Authority on the results 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 Authority, the Provider must publish the outcomes and actions taken in relation to such surveys.

B5. HUMAN RIGHTS, EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

B5.1 The Provider must not do or permit to allow anything to be done which is incompatible with the rights contained in the European Convention on Human Rights and the Human Rights Act 1998. Without prejudice to the rights of the Authority under clause B26 (*Indemnities*), the Provider must indemnity the Authority against any loss, claims and expenditure resulting from the Provider's breach of this clause.

B5.2 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.

B5.3 The Provider must provide appropriate assistance including any required professional translation services 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).

B5.4 In performing this Agreement, the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;

(b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and

(c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

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

B5.5 As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide the Authority with a plan detailing how it has and will comply with its obligations under clause B5.4.

B5.6 The Provider must provide to the Authority as soon as reasonably practicable:

(a) any information to monitor the equity of access to the Services; and

(b) any information that the Authority reasonably requires to fulfil its obligations under the Law.

B5.7 The Authority has signed the Armed Forces Covenant. In the performance of the Services and in its dealing with Staff, Service Users and members of the general public, the Provider shall comply and ensure that its representatives comply with the Armed Forces Covenant. In particular, the Provider shall ensure that:

(a) those who have served in the past, and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services;

1.1.1 where appropriate, they take appropriate actions to support the transition from military to civilian life; and

1.1.2 where appropriate, they work with partners to make efficient use of available resources to deliver the best possible outcomes for members of the armed forces community.

B6. MANAGING ACTIVITY

B6.1 The Provider must:

(a) manage and deliver Activity in accordance with any activity planning assumptions and any standards set out in the Service Specification, and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services; and

and

(b) notify the Authority, by the next service Review Meeting or as set out in the Service Specification, after becoming aware of any unexpected or unusual patterns of Activity specifying the nature of the unexpected pattern and the initial opinion as to its likely clause.

B6.2 Where the Provider has notified the Authority of unusual or unexpected patterns of Activity, the Parties shall use best endeavours to agree a report to include the following:

(a) an analysis of the causes and factors that contribute to the unexpected or unusual patterns of Activity;

(b) specific agreed actions and timescales by which those actions must be met and completed by the Provider and/or Authority in order to restore levels of Activity to within agreed thresholds;

(c) the consequences for the Provider and/or Authority for breaching or failing to implement the actions within the report; and

(d) may specify the immediate consequences (whether in relation to payment for Services delivered or to be delivered or otherwise) in relation to the identified unexpected or unusual patterns of Activity.

B6.3 If the Authority and the Provider fail to agree on the contents of the report either Party may refer the matter to dispute resolution. If any Party breaches the terms of the report, the Authority or the Provider (as appropriate) may exercise any consequences set out in the report.

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 with all due skill, care and diligence and as set out in the Service Specification in respect of which they are engaged;

(b) there is an adequate number of Staff (including sufficient reserve of Staff is available to provide the Services in accordance with the Agreement during staff holidays or absence through sickness or any other cause) to manage, supervise (including where relevant any professional supervision) and provide the Services properly in accordance with the provisions of the applicable Service Specification;

(c) staff (including any volunteers) are sufficiently trained and instructed regarding all relevant rules and procedures concerning the Service requirement, safeguarding and health and safety at work legislation and are able to identify risks or potential safety hazards including any risks or potential safety hazards to Service User;

(b) where applicable, Staff (including any volunteers) are sufficiently trained and instructed in the use of any specialist equipment required for the provision of the Services and in the moving and handling of equipment and people;

(c) where applicable, Staff are registered with the appropriate professional regulatory body; and

(d) Staff (including any volunteers) are aware of and respect equality and human rights (including any Data Protection Legislation rights) of colleagues and Service User.

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

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

(a) full and detailed appraisal (in terms of performance and on-going education and training); and

(b) proper and sufficient continuous professional and personal development, training and instruction

each in accordance with Good Clinical Practice, the standards of any applicable relevant professional body or where necessary the requirements of the Authority.

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 NHS England to help them secure an effective system for the planning and delivery of education and training.

B7.5 Except where clauses B7.6 and B7.7 apply, 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) where required by the Service Specification and/or the Safeguarding Vulnerable Groups Act 2006, if the Services are or include activity that is defined as regulated activity under the Safeguarding Vulnerable Groups Act 2006, then such Standard DBS Check or Enhanced DBS Check (as appropriate) as required by this Act.

B7.6 Where applicable and provided the provisions of clause B7.7 are satisfied, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check (as appropriate) with the agreement of the Authority.

B7.7 Where clause B7.6 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check (as appropriate) is obtained, the following safeguards will be put in place:

(a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff (including any volunteers, where applicable); and

(b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff (including any volunteers, where applicable), or is available to be consulted; and

(c) the new member of Staff (including any volunteers, where applicable) is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Agreement; and

(d) any other reasonable requirement of the Authority.

B7.8 The Provider must have policies and procedures which acknowledge and provide for on going monitoring of the Staff, including undertaking further DBS disclosures and policies to support the employment/engagement of ex-offenders.

B7.9 The Provider must keep and must procure that the Authority:

(a) is kept advised at all times of any Staff who, subsequent to their commencement of employment, receives a relevant conviction, caution, reprimand; and/or

(b) where the Services constitute regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006, is warned of previous relevant convictions, cautions, reprimands or warnings, which become known to the Provider (or any employee of a Sub-contractor involved in the provision of the Services).

B7.10 The Provider must retain overall control and full responsibility of the Provider's Staff (and any volunteers) so that they are not considered to be employees, workers, agents or contractors of the Authority. The Provider shall be solely responsible for their supervision, daily direction and control, payment of income including income tax, insurance contributions and levies of any kind, relating to or arising out of the employment of any person engaged by the Provider.

B7.11 The Provider shall ensure that any of its Sub-contractors under the provision of this Agreement are subject to provisions substantially the same as clause B7.

Retendering, TUPE and Pensions

B7.12 Subject to clauses 36 (*Confidentiality*) and 38 (*Data Protection*), where the Authority has notified the Provider that it intends to tender or retender any of the Services then the provisions of Schedule E (*Retendering and TUPE*) shall apply.

B7.13 The Provider must indemnify and keep indemnified the Authority and, at the Authority's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Agreement 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 Agreement or of any Service which arise from the acts or omissions of the Provider and/or any Sub-contractor;

(b) claims brought by any other person employed or engaged by the Provider and/or any Sub-contractor who is found to or is alleged to transfer to the Authority or new provider under TUPE;

(c) any failure by the Provider and/or any Sub-contractor to comply with its obligations under TUPE in connection with any transfer to the Authority or new provider; and

B8. CHARGES AND PAYMENT

Charges and Payment

B8.1 In consideration for the provision of the Services in accordance with the terms of this Agreement, the Authority shall pay the Provider the Charges as set out in Schedule B (*Payment and Invoicing*) and the Service Specification following the Service Commencement Date, and the Provider shall provide to the Authority the required information and documentation (including invoices) in accordance with Schedule B (*Payment and Invoicing*) for the relevant period.

B8.2 The Authority reserves the right to review the Charges in accordance with clause B23 (Variation).

B8.3 Where the Parties have agreed that the Charges may increase or decrease within the duration of this Agreement then they may be reviewed by the Authority by serving no less than 3 months written notice. The Authority shall notify the Provider in advance and in writing of the amount of any increase or decrease (if any) to apply to the Charges.

B8.4 The Charges are stated exclusive of VAT, which if applicable shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

B8.5 In its performance of this Agreement 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 Agreement, the Law and/or Guidance).

Reconciliation

B8.6 The Authority shall carry out reconciliation against the Charges paid and the Services actually delivered and:

(a) the reconciliation shall be every quarter or as agreed between the Parties time to time;

(b) the Provider shall provide such information as specified in the Service Specification and such other information as is reasonably necessary within 15 Business Days from the end of the relevant period to enable the Authority to carry out such reconciliation. For quality payment claims, information must be provided by 30th April for the preceding financial year ;

(c) following reconciliation the Provider shall be paid in accordance with the Service Specification unless the Authority disputes the Charges. If the Authority disputes the Charges, the Provider would be notified of the result of the reconciliation; and

(d) In the event that the Provider does not agree the reconciliation then the provisions of clauses B8.7 and B8.11 shall apply.

Contesting Charges

B8.7 If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:

(a) the contesting Party shall within 5 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested; and

(b) the relevant invoice or request for payment shall not be paid by the Authority.

B8.8 If a Party contests a payment under clause B8.7 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.7, the contesting Party may refer the matter to dispute resolution under clause B31 (*Dispute Resolution*) 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 B8.4.

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 Agreement or any other agreement between the Parties.

B8.10 The Provider shall not suspend delivery of the Services or any part of the Services or any part of the Services where it exercises its rights under either clause B8.7 or B8.9.

Interest

B8.11 Except where it is contested pursuant to clause B8.7 when interest will not be payable until it has been resolved pursuant to clause B8.8 and subject to any other express provision of this Agreement to the contrary, each Party shall be entitled, without prejudice to any other right or remedy it has under this Agreement, 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.

Recovery of Sums Due

B8.12.1 The Authority reserves the right to reclaim from the Provider any monies that have been wrongly paid to the Provider under this Agreement. The Authority also reserves the right to reclaim any monies that have been paid in advance or otherwise to the Provider for the Services where the Provider has failed to deliver or complete the Services or to deliver the Services to the level required by this Agreement or on termination of this Agreement. Any overpayment by the Authority, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Authority from the Provider.

B8.12.2 Wherever under this Agreement any sum of money is recoverable from or payable by the Provider (including any sum that the Provider is liable to pay to the Authority in respect of any breach of this Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under this Agreement or contract with the Authority.

B8.12.3 The Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.

B8.13 Where the Provider enters into a Sub-contract for the purpose of performing its obligations under the Agreement, 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 days from the receipt of a valid invoice and the Provider shall report to the Authority of any late payment to the Sub-contractor.

B9. BEST VALUE DUTY AND SERVICE IMPROVEMENTS

B9.1 The Provider acknowledges that the Authority is required to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness ("**Best Value**"). Where reasonably requested by the Authority, the Provider at its own cost agrees to take reasonable steps to co-operate with and assist the Authority in fulfilling this duty. In particular the Provider will participate in any relevant Best Value reviews and benchmarking exercises (including providing information) conducted by the Authority and assist with the preparation of any performance plans.

B9.2 In the course of the term of the Agreement, the Provider must demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to Best Value and where possible without increasing the cost to the Authority, implement such improvements and show the Authority that improvements have taken place, by reference to any measurable criteria notified to the Provider by the Authority Representative.

B9.3 As part of the Services, the Provider shall where possible and at no extra cost to the Authority identify and report to the Authority Representative throughout the term of the Agreement on:

(a) the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Provider and the Authority which the parties may wish to adopt; and/or

(b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services; and/or

(c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and/or

(d) changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Authority; or

(e) changes in premises or service delivery that reduce premises cost and/or service overheads.

B9.4 If not identified and set out in the Service Specification then if the Authority wishes to incorporate any improvement identified by the Provider during the term, the Authority shall send to the Provider a Variation Notice and the Parties shall develop, implement and test the improvements within a reasonable period. Following implementation of such improvements, the Parties may decrease the Agreement value to be paid by the Authority for the Services.

B9.5 If requested by the Authority, the Provider must identify the improvements that have taken place in accordance with clause B9.3, by reference to any reasonable measurable criteria notified to the Provider by the Authority and quantify any cost savings.

B10. SAFEGUARDING CHILDREN AND ADULTS

B10.1. The Parties acknowledge that the Provider, in delivering the Services pursuant to this Agreement have ultimate responsibility for the management and control of the Services provided under this Agreement and must comply with any relevant safeguarding obligations under the Safeguarding Vulnerable Groups Act 2006/Children Act 2004 (as applicable).

B10.2. The Provider shall have systems and procedures in place to safeguard children, young people and vulnerable adults from abuse, exploitation and neglect, including but not limited to those referred to in this clause.

B10.3. The Provider shall have in force and shall maintain a safeguarding Children's, Young People and vulnerable Adults policy which shall set out and require compliance by its Staff with the obligations detailed in this clause and the principles and procedures laid down in the policies cited in the following clause B10.4 in order that there can be effective joint action to protect children, young people and vulnerable adults from abuse.

B10.4. The Provider shall hold a copy of, be familiar with and comply with the Hampshire Safeguarding Adults Board's Hampshire (https://www.hampshiresab.org.uk/), IOW, Portsmouth and Southampton 4LSAB Multi-Agency Safeguarding Adults Policy and Guidance (https://www.hampshiresab.org.uk/professionals-area/hampshire_4lsab_multiagency_safeguarding_adults_policy_guidance/) and Local Safeguarding Children Board Partnership policy and procedures (HIPS Safeguarding Children Procedures) (https://hipsprocedures.org.uk/) recognising the duty that all Providers have to safeguard https://www.gov.uk/government/publications/working-together-to-safeguard-children--2)
These policies can be viewed at:

http://www.hampshiresab.org.uk/professionals-area/hampshire_4lsab_multiagency_safeguarding_adults_policy_guidance/

https://www.hampshirescp.org.uk/

http://www.workingtogetheronline.co.uk

and collectively known as "Multi-Agency Safeguarding Policy".

B10.5. A copy of these documents shall be held by all Provider Staff and the Provider shall ensure that its Staff, understand and comply with the Chapter 2 Section 7 of the guidance, as previously referred to in clause B10.4, regarding notification of allegations to the Local Authority Designated Officer ("LADO").

B10.6. Where an allegation has been made against the Provider's Staff, the Provider shall refer to the Hampshire, Isle of Wight, Portsmouth and Southampton (HIPS) safeguarding children procedures manual at: https://hipsprocedures.org.uk/lkyyst/adults-who-pose-a-risk-of-harm-to-children/allegations-against-staff-or-volunteers/#s3807, as may be updated from time to time, and contact the relevant LADO for the Council.

B10.7. The Provider shall have internal procedures in place and a robust safeguarding training programme for all Provider Staff (including, but not limited to agents, Sub-Contractors and volunteers) appropriate to their level of responsibility and respond effectively, efficiently and professionally to safeguarding concerns relating to all Service Users to whom they provide the Services. The Provider shall maintain appropriate records of Provider Staff training for the Authority's audit purposes and shall ensure all Provider Staff receive refresher training in respect of safeguarding as a minimum every two (2) years.

B10.8. The Provider shall ensure that its disciplinary procedures are compatible with the responsibility to protect children, young people and vulnerable adults in line with the Multi Agency Safeguarding Policy. Decisions on whether or not to suspend an employee will be the responsibility of the Provider and must be fully documented by them and communicated to the Authority in writing within twenty-four (24) hours of a decision.

B10.9. The Provider shall operate in accordance with the requirements of the DBS Service in relation to both checking potential staff and reporting concerns and the provisions of clause B7 (Staff and DBS Check) shall apply.

B10.10. The Provider's measures to safeguard Service Users shall include, but shall not be limited to:

(a) robust employment procedures including references and DBS checks (see clause B7(Staff and the DBS Check) for further details on these);
(b) robust procedures and guidelines for the management of activities which could present risks of abuse;
(c) safeguarding procedures compatible with the policies and procedures detailed in clause B10.4 above, with a clear statement of rights and zero tolerance of abuse;
(d) up to date procedures for avoiding and responding to actual or suspected physical, sexual, psychological, financial or material abuse, discriminatory abuse, domestic abuse, organisational abuse, modern slavery, self-neglect and acts of neglect or omission with such procedures reviewed at least once every year;
(e) clear policies to deal with dangerous, exploitative or unsafe behaviour and practice and provide training to all the Provider Staff to develop appropriate skills and knowledge;
(f) a clear and well publicised whistle blowing policy and procedure and code of conduct for Staff;
(g) procedures that clearly state the response to any act of discrimination and harassment;
(h) protocol and systems for referral of Staff to Regulatory Bodies when there is evidence of misconduct that has harmed, or is likely to harm, Service Users;

(i) safeguarding training that promotes awareness of abuse and how to respond and report concerns;

(j) training for Staff that supports good practice in all areas described under policies and procedures; and

(k) clear and accessible information describing the service standards, how to complain and how to report abuse.

B10.11. The Provider shall co-operate with representatives of the Council in any investigation carried out in relation to the Authority's statutory duties including in respect of safeguarding children, young people and vulnerable adults.

B10.12. In the event that a Safeguarding Inquiry is initiated by the Council it will be conducted in accordance with the Multi-Agency Safeguarding Policy. The Authority may initiate a Safeguarding Inquiry without prejudice to any action anticipated to be taken by any applicable Regulatory Body. The Provider agrees and acknowledges that any action taken by any applicable Regulatory Body, which does not result in deregistration of the Provider, will not be binding upon the Authority nor require the Authority to conclude its own Safeguarding Inquiry. For the avoidance of doubt the Council shall be under no obligation to provide prior written or other notification of a Safeguarding Inquiry by the Authority to the Provider. The Provider undertakes a duty to complete any Safeguarding Inquiries required by the Authority and in partnership with the Authority.

B10.13. The Provider undertakes to co-operate with any Safeguarding Inquiry which the Authority, or other applicable professional or Regulatory Body may carry out into a complaint referred to them. This shall include:

(a) allowing any officer(s) involved in the Safeguarding Inquiry free access to Staff and Service Users to facilitate the swift and efficient conduct of the inquiry; and

(b) providing information about Service Users, to the Authority, next of kin and general practitioners and to facilitate the communication with all involved and safeguarding of Service Users at risk.

B10.14. In the event that the Authority acting reasonably decides in its absolute discretion that it is no longer in the interests of individual Service Users to continue to receive the Services, it may reallocate or transfer those Service Users to an alternative Provider and the Provider shall not interfere with or obstruct such a reallocation and the Authority may terminate this Agreement (in whole or in part) in accordance with clauseB32 and B33. (Termination (B33) and Suspension and Consequences of Suspension (B32)).

B10.15. The Provider shall comply with the Multi-Agency Statutory Guidance on Female Genital Mutilation, issued under Section 5C of the Female Genital Mutilation Act 2003 recognising the statutory duties of those exercising a public functions to make arrangements to discharge their functions having regard to the need to safeguard and promote the welfare of children and vulnerable adults. See further Female Genital Mutilation (FGM) - Hampshire SCP for further details.

B10.16. In the event that the Authority through the course of a safeguarding investigation identifies that remedial action is required in respect of the Agreement, the Authority will follow the procedures set out in clauses B29 (*Defaults and Failure to* Supply) and B30 (*Contract Management*).

B10.17. In the event that the Authority receives any written notification from the CQC, any Regulatory Body or other interested stakeholder concerning the Provider in relation to suspected or actual safeguarding issues, the Authority reserves the right to issue any relevant notice under clauses B29 (*Defaults and Failure to* Supply) and B30 (*Contract Management*) or to request further information under clause B10.11 to carry out further investigations, and a risk assessment of the Provider, its premises and the Services.

Safeguarding - Large Scale Enquiries (LSEs)

B10.18. The Authority shall respond to the most serious of circumstances where there is a high level of risk, alleged organisational abuse and/or complexity under an LSE.

B10.19. Where the Authority conducts an LSE, the Provider shall:

(a) allow any officer involved in the enquiry free access to Staff, Service Users to facilitate the swift and efficient conduct of the enquiry;

(b) upon being informed by the Authority that it is necessary to communicate with all Service Users, their next of kin, commissioners, and medical general practitioners, to assist the Authority by supplying a full list of the same with contact details. The Authority shall comply with the Data Protection Legislation in relation to any information supplied; and

(c) allow the Authority and its officers free and unfettered access to any Service User believed by the Authority to be at risk.

(d) write a letter to other commissioners who are in receipt of services from the Provider, including local authority's and/or NHS organisations, detailing the LSE and what it entails. This may be a joint letter in consultation with the Authority.

B10.20. The Provider shall immediately upon request provide such information and evidence as the Authority may require to enable it to be satisfied that the obligations of this clause B10 (Safeguarding) and clause B7 (Staff and DBS Checks) have been met.

B10.21. The Provider shall co-operate, at no additional cost to the Authority, with representatives of the Authority in any investigation carried out in relation to the Authority's statutory duties including in respect of safeguarding vulnerable adults, children and young people.

B10.22. The Provider shall at all times co-operate with the Authority's processes for inspection, monitoring, evaluations, quality audit and safeguarding in whatever way is reasonably requested by the Authority.

B10.23. The Authority reserves the right to undertake its own safeguarding investigation without prejudice to any investigation undertaken by CQC or any Regulatory Body. In the event that a safeguarding investigation is initiated by the Authority it will be conducted in accordance with the Multi-Agency Safeguarding Policy. The Provider agrees and acknowledges that any action taken by the CQC or Regulatory Body and which does not result in the deregistration of the Provider by the CQC will not be binding upon the Authority nor require the Authority to conclude its own investigation. For the avoidance of doubt the Authority shall be under no obligation to provide prior written or other notification of a safeguarding investigation by the Authority to the Provider.

B10.24. The Authority may require the Provider's Staff to be withdrawn and an acceptable person substituted in the event of:

(a) the Provider failing to comply with the provisions set out in this Agreement in relation to the protection of adults at risk; or

(b) the Provider's Staff refuses to complete a disclosure statement/application; or

(c) the disclosure at any stage of information that in the reasonable opinion of the Authority renders the Provider's Staff unsuitable for the work involved; and

any such decision by the Authority will be taken in compliance with Rehabilitation of Offenders Act 1974.

B10.25. The Authority reserves the right to share any information received as part of any investigation with the CQC, relevant Regulatory Body, partners, other commissioners of health and social care services, the police and the emergency services where it is reasonably appropriate to do so.

MODERN SLAVERY

B10.26. The Provider undertakes, warrants and represents that:

(a) neither the Provider nor any of its Staff, officers, employees, volunteers, agents or Sub-contractors has:

(i) committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**"); or

(ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(iii) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

(b) it shall comply with the Modern Slavery Act 2015; and

(c) it shall notify the Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its Staff, officers, employees, volunteers, agents or Sub-contractors have, breached or potentially breached any of Provider's obligations under this clause B10.26 such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations.

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 the Care Quality Commission (Registration) Regulation 2009 ("**CQC Regulations**"); 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 notify the Authority of such notification immediately and no later than 5 Business Days.

B11.3 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Service User Safety Incidents and non-Service User safety incidents having regard to the Authority's Public Health Standard Operating Procedure for Serious Incidents Requiring Investigation, including The NHS England » Patient Safety Incident Response Framework (PSIRF) and any other arrangements that are agreed between the Provider and the Authority. In addition to the minimum requirements, Providers should:

(a) Work collaboratively with Commissioners, informing them of an incident or theme of learning (e.g. record keeping) at the earliest opportunity, involving them in any investigations as appropriate, and keeping them abreast of progress.

(b) Be open to incident response being the subject of routine quality assurance visits.

(c) Address the recommendations from all individual learning reviews and inspections and report the impact of embedded learning through routine contract management approaches (e.g. CQRM).

(d) Work with Commissioners to identify population level themes from PSIRF reports, agree appropriate actions and review quarterly.

B11.4 Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider and reasonably request any further information reasonably required by the Authority under this clause B11.

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. For the avoidance of doubt this obligation to retain is not dependent on the expiry or termination of this Agreement.

B13.2 The Provider must:

(a) use Service User health records as appropriate for the execution of the Provider's obligations under this Agreement; 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 Agreement have a Caldicott Guardian and a Chief Information Officer or equivalent and shall notify the Authority of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Caldicott Guardian and a Chief Information Officer or equivalent at any time during the term of this Agreement, it shall promptly notify the Authority of the identity and contact details of such replacements.

B14. INFORMATION

B14.1 The Provider must provide the Authority with the information specified in the Agreement, Schedule A (*Service Specification*) and if applicable, Schedule C (*Activity Plan*) 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 the Service Specification and Schedule C *(Activity Plan) (*if applicable*)* or as may be agreed between the Parties from time to time 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, the Authority may (without prejudice to any other rights it may have under this Agreement including issuing a Contract Query Notice or exercise its rights under clause B29 (*Defaults and Failure to Supply)* exercise any consequence for the Provider failing to satisfy the relevant obligations specified in this Agreement or the Service Specification.

B14.4 In addition to the information required under clause B14.1, the Authority may request from the Provider any other information it reasonably requires in relation to this Agreement and the Provider must deliver such requested information in a timely manner.

Information Governance

B14.5 Information governance is the management of all information by an organisation in order to meet its immediate and future regulatory, legal, risk and environmental obligations including under this Agreement.

B14.6 The Provider shall ensure that in order to discharge its obligations under this Agreement especially those in relation to information that its information governance meets all reasonable standards under Law, Good Clinical Practice, National Standards, Guidance or as directed by the Authority or any Regulatory Body or CQC as applicable to the Provider and/or the Services.

B15. EQUIPMENT AND ESTATES

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

B16. HEALTH AND SAFETY

B16.1 If reasonably requested by the Authority, the Provider must promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of this Agreement.

B16.2 The Provider must comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders regulations and codes of practice relating to health and safety which may apply to the Staff and other persons working on the Provider's Premises in the performance of this Agreement.

B16.3 The Provider must on written request of the Authority and in any event within 5 Business Days of that request, provide the Authority with a copy of its health and safety policy statement (as required by the Health and Safety at Work Act 1974).

Infection prevention and control

B16.4 The Provider shall:

(a) meet the requirements detailed in the Health and Social Care Act 2008 Code of Practice on the prevention and control of infections (https://www.gov.uk/government/publications/the-health-and-social-care-act-2008-code-of-practice-on-the-prevention-and-control-of-infections-and-related-guidance) and related guidance and any other relevant national or local policies and guidance as they arise or as they may be updated from time to time. The Provider will be required to demonstrate to the Authority compliance with the Health and Social Care Act 2008 and related guidance;

(b) ensure that all policies and procedures comply with current National Institute for Health and Care Excellence ("NICE") guidelines, local and national, regarding infection prevention and control. Provider Staff should be familiar with, and as a minimum they must cover; hand hygiene; use of personal protective equipment; management of spillages of blood and/or body fluids; the action to be taken in the event of a splashing/sharps injury involving blood and/or blood stained body fluids; management of waste; decontamination of equipment and the environment;

(c) ensure all Provider Staff are trained in and aware of their role in infection control on induction and receive annual mandatory infection control updates. They will also be aware of the local resources/arrangements for accessing advice on the prevention and control of infection and for reporting infections and outbreaks of infection; and

(d) collaborate with the Authoritys' Representative or any other officers of the Authority to undertake root cause analysis of all healthcare associated infections and take action to prevent further incidences.

B16.5 The Provider shall have a nominated infection prevention and control lead that has undertaken additional relevant training. The infection and prevention control lead, will be:

(a) responsible for infection prevention and control within the organisation(s);
(b) aware of how to obtain specialist advice if problems occur; and
(c) disseminate information/training to Provider Staff.

B16.6 The Provider will ensure that Provider Staff are equipped to work safely, for example provided with hand washing facilities and personal protective equipment.

B17. PREVENT DUTY

B17.1 The Provider shall take regard of the Prevent Duty and must not be engaged in any extremist activity or espouse extremist views. The Provider must:

(a) protect children and vulnerable people from being drawn into terrorism by having robust safeguarding policies in place to identify individuals at risk, and intervening as appropriate;

(b) assess the risk of children and vulnerable people being drawn into terrorism, including support for extremist ideas that are part of terrorist ideology. This should be based on an understanding, shared with partners, of the potential risk in the local area;

(c) ensure Staff (including any volunteers, where applicable) have a good understanding of the Prevent Duty and are trained to recognise vulnerability to being drawn into terrorism and are aware of available programmes to deal with this issue (e.g. Channel, Council offers e-learning);

(d) ensure Staff (including any volunteers, where applicable) are aware of and know how to contribute to prevent-related activity in their area, where appropriate;

(e) ensure the Prevent Duty is considered in other relevant policies like IT policies, use of premises and such like.

B17.2 The Authority reserves the right to terminate this Agreement should the Provider fail to comply with any of the provisions set out in this clause B17.

B18. COMPLAINTS

18.1 The Provider must have and maintain adequate complaint procedure or policy to handle and deal with complaints relating to the Services. The Provider must at all times comply with Part 5 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 and any subsequent enactment or guidance for complaints relating to the provision of the Services and shall:

(a) maintain a system for receiving and investigating complaints and keeping details of how many complaints are received and how they are dealt with;

(b) appoint a responsible person to deal with complaints;

(c) make available the complaints procedure to Service Users and their representatives;

(d) deal with any complaints speedily and ensure the complainant receives a written response from the Provider within a reasonable time;

(e) informing any complainant who have exhausted the Provider's complaint procedure and remains unhappy with the Provider's response, that they have the right to refer the complaint to the Authority, or relevant Regulatory Body or ombudsman (where applicable); and

(f) provide to the Authority at its reasonable request such information (not containing any Personal Data) as it may require and within any reasonable timescale set, including but not limited to the number and subject matter of the complaints it receives.

B18.2 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Agreement, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Agreement, the Authority may, in its sole discretion, uphold the complaint and take any action specified within this Agreement.

B18.3 The Provider undertakes to co-operate with the Authority with any investigation into a complaint including providing such information or assistance that is reasonably necessary.

B19. SERVICE REVIEW

B19.1 The Provider must for every quarter during the term of this Agreement, deliver to the Authority the reports set out in the Service Specification, and any other reports that may be reasonably required by the Authority from time to time.

B19.2 The Provider must submit each relevant report (and any additional reports) in the form, manner and timescale specified in Service Specification during the term of the Agreement.

B20. REVIEW MEETINGS

B20.1 The Parties must review and discuss the relevant reports and monitor performance of the Agreement and the Quality Outcomes Indicators, and consider any other matters reasonably required by either Party at Review Meetings, which should be held every quarter or as specified in the Service Specification. The form of the Review Meetings shall be as set out in the Service Specification.

B20.2 Notwithstanding clause B20.1, if either the Authority or the Provider:

(a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or

(b) considers that a Joint Investigation Report requires consideration sooner than the next scheduled Review Meeting,

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

B21. CO-OPERATION

B21.1 The Provider must work closely, co-operate fully and liaise appropriately with:

(a) the Authority;

(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;

(d) any third party provider (including wider partners and key stakeholders) as set out in the Service Specification or those identified by the Authority from time to time; and

(e) primary, secondary and social care services,

in order to:

(i) ensure that a consistently high standard of care for the Service User is at all times maintained;

(ii) ensure a co-ordinated and integrated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider; and

(iii) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Authority's or members of the public.

B22. WARRANTIES AND REPRESENTATIONS

B22.1 The Provider warrants and represents that:

(a) it has full capacity and authority to enter into this Agreement and all necessary Consents have been obtained and are in full force and effect;

(b) its execution of this Agreement by duly authorised representative 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 Agreement it has not committed any Prohibited Act;

(d) all reasonably material information supplied by it to the Authority (and which may be attached at Schedule D (*Policies and Procedures*) during the award procedure leading to the execution of this Agreement is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Authority which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Agreement;

(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 Agreement;

(f) it has the right to permit disclosure and use of Confidential Information for the purpose of this Agreement;

(g) 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;

(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 Agreement; and

(iv) 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.

B22.2 The Provider shall (at no additional cost to the Authority) maintain such records as are necessary pursuant to Law and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Authority or its authorised representative.

B22.3 The Authority warrants and represents that:

(a) it has full power and authority to enter into this Agreement and all necessary approvals and consents have been obtained and are in full force and effect;
(b) its execution of this Agreement 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 Agreement; 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 Agreement.

B22.4 The Provider warrants and represents neither the Provider nor any of its officers, employees, agents or Sub-Contractors has:

(a) committed an MSA Offence;

(b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

(d) in the three (3) years prior to the date of this Agreement:

(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 Laws and regulations in the jurisdiction in which it is established; and

(iii) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.

(e) at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services:

(i) has a Relevant Conviction; or

(ii) is barred from carrying out Regulated Activity.

B22.5 Except as may be expressly set out in the Agreement, the Authority does not warrant the accuracy of any representation or statement of fact or law including, without limitation, the frequencies or volumes set out in the Specification or other tender document given to the Provider by the Authority, its servants or agents at any time before the execution of this Agreement.

B22.6 Subject to clause B22.7, the Authority shall not be liable to the Provider for any loss or damage which the Provider may sustain as a result of relying on any such other representation, statements, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to this Agreement or not); and

B22.7 Clause B22.6 shall not apply to any statement, representation or warranty made fraudulently or to any provision of this Agreement which was induced by Fraud, for which the remedies available shall be all those available under Law.

B22.8 Each of the Parties hereby confirms that it has not relied on any written or oral representation, warranty or undertaking of the other in entering into the Agreement save for any such representation, warranty or undertaking expressly set out in this Agreement. This clause shall not apply so as to restrict the liability of any Party hereunder in respect of any Fraud or fraudulent misrepresentation.

B22.9 The warranties set out in this clause B22 are given on the Commencement Date and repeated every day during the period of this Agreement.

B23. VARIATIONS

B23.1 Unless otherwise stated in this Agreement, this Agreement may not be amended or varied ("**Variation**") other than in accordance with this clause B23 and Regulation 13 of the Provider Selection Regime Regulations 2023.

B23.2 The Parties acknowledge that a variation may result in reduced or additional services and supplies to the Authority. The Authority reserves the right to modify by provision of reduced or additional services including in the following circumstances (and any such modification will not change the economic balance of the Agreement in favour of the Provider):

(a) best value and service improvements implemented under clause B9;

(b) where changes to public health delivery plans, public health needs assessment, or changing and updating of any local strategic aims and priorities occur or are necessary, the Authority reserves the right to modify this Agreement including revision to any elements of the Service Specifications, Quality Outcomes Indicators, and any agreed activity plan during the term of this Agreement to reflect the changes in order to ensure continuity of the service delivery;

(c) if geographical boundaries change, or demand in geographical areas increase or decrease, throughout the duration of the Agreement, the Authority reserves the right to modify the Agreement to amend the geographical boundaries to ensure continuity of service delivery;

(d) in response to policy and/or Guidance issued by but not limited to Central Government, Regulatory Body and or Competent Body, which impacts upon Public Health delivery plans;

(e) if the current funding levels increase throughout the duration of the Agreement, the Authority reserves the right to modify this Agreement including the Charges and/or increase the Services to reflect the changes to ensure continuity of service delivery;

(f) if the current funding levels decreases, the Authority reserves the right to review the Agreement value and the Parties will review the Service Specification and agree any necessary modifications to the service as a result (including any decrease to the Services in order to ensure continuity of service delivery);

(g) where any developments, efficiencies and improvements identified within the Services during the term of the Agreement, the Parties may modify this Agreement to reflect the changes to ensure service delivery;

(h) where during the period of this Agreement a change to the manner in which the Services are commissioned is required by operation of NHS or Local Government Law or policy through statutes, orders, regulations, instruments, guidance and directions made by the Secretaries of State for Health and Local Government respectively or others duly authorised pursuant to statute or other changes in the law which relate to the powers, duties and responsibilities of the Authority and which have to be complied with, implemented or otherwise observed by the Authority or Provider;

(i) in the event of:

(i) the Provider being universally or partially succeeded following corporate restructuring, including takeover, merger, acquisition or insolvency resulting in a new provider replacing the Provider; and

(ii) the new Provider fulfilling the criteria for qualitative selection initially established during the procurement of this Agreement; and

(iii) the result of this succession not entailing other substantial modifications to this Agreement; and

(iv) this succession complying with Regulation 13 of the Provider Selection Regime Regulations 2023;

the Authority may agree to this Agreement being novated to the new provider with such agreement to be in writing.

(k) Anticipated changes to the service delivery which may include but are not limited to:

(i) Linking with other agents of behavioural change for example but not limited to, smoking cessation services, drug and alcohol services , Tier 2 Weight Management, Long Acting Reversible Contraception (LARC), NHS Health Checks outreach and other Public Health commissioned services, as each of these services is commissioned or established;

(ii) Ensuring the service is linked with any community hubs, family hubs or other similar community focused initiatives that may be developed;

B23.3 The savings or costs of all reduced or additional services and / or supplies shall be agreed by the Parties and shall be based upon similar prices as applicable to the Services and on the basis that such Variation do not result in an increased profit margin to the Provider

B23.4 Either Party may from time to time during the term of this Agreement, by written notice to the other Party, request a Variation. In response to a request for a Variation, the Party shall produce a Variation Notice which must set out in as much detail as is reasonably practicable the proposed Variation(s) and shall include the following:

(a) the title of the Variation;

(b) the originator and date of the request for the Variation;

(c) the reason for the Variation;

(d) full details of the Variation including the consequences on delivery of the Services and the Charges, supported by relevant documentation where possible;

(e) a timetable for implementation together with any proposals for acceptance of the Variation;

(f) the date of expiry of validity of the Variation Notice;

(g) any other relevant information to support the Variation; and

(h) provision for signature by the Authority and by the Provider.

B23.5 If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than 40 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. Such discussions will be without prejudice to the rights of either Party under this Agreement.

B23.6 Neither the Authority or the Provider shall unreasonably withhold its consent to any Variation.

B23.7 Until such time as a Variation is agreed in accordance with this clause B23 and unless the Parties agree otherwise in writing, the Authority and Provider shall continue to supply the Services specified in this Agreement as if the request for a Variation had not been made.

B23.8 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 Agreement.

B23.9 Any services undertaken by the Provider, its Sub-contractors or agents which has not been authorised in advance as Variation to this Agreement pursuant to this clause B23 shall be undertaken at the expense and liability of the Provider.

B23.10 No Variation to this Agreement will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or its nominee) in accordance with clause A7 (*Notices*) but a signed Variation Notice by both parties shall discharge this requirement.

B24. ASSIGNMENT AND SUB-CONTRACTING

B24.1 Unless expressed otherwise in this Agreement, the Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Agreement without the Authority in writing consenting to the appointment of the Sub-contractor (such consent not to be unreasonably withheld or delayed).

B24.2 The Authority's consent to sub-contracting under clause B24.1 will not relieve the Provider of its liability and responsibility to the Authority for the proper performance of any of its obligations under this Agreement 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. The Provider shall continue to remain the sole point of contact for this Service.

B24.3 Subject to clause B24.1, with respect to any of the obligations that the Provider proposes to sub-contract, the Provider shall provide the Authority with full details of:

(a) the specific elements of the Services which it proposes to sub-contract;
(b) the identity of the proposed Sub-Contractor;
(c) the value expressed as a percentage of the Agreement price; and
(d) such further information as the Authority may reasonably request.

Such details are to be set out in Schedule F (*Approved Sub-Contractors*)

B24.4 The Provider shall procure that the Authority and/or its auditors are permitted to review the financial records and data security policies of each Sub-Contractor to the extent relevant to the provision of the Services.

B24.5 Where, in the Authority's reasonable opinion:

(a) the performance of a Sub-Contractor is deficient; or
(b) misrepresentations were made concerning the identity, qualifications, experience or financial standing of a Sub-Contractor at the time of the Authority's approval, the Authority may notify the Provider of any concerns relating to such Sub-Contractor

the Provider shall promptly investigate the matters raised by the Authority and shall seek in good faith to address the Authority's concerns. The Provider shall inform the Authority of the steps to be taken to address its concerns and if the Authority, acting reasonably is unsatisfied with these steps it may require the Provider to remove the relevant Sub-Contractor from performance of the Provider's obligations under this Agreement.

B24.6 The Provider shall not terminate any Sub-Contract with any of the Sub-Contractors without the Authority's prior consent provided that where the Provider is being placed in breach of its obligations under this Agreement by the actions of any Sub-Contractor, the Provider may (without prejudice to any rights of the Authority in respect of any breach of this Agreement and without prejudice to the Provider's obligation to provide the Services in accordance with the terms of this Agreement) terminate the sub-contract of that Sub-Contractor without the prior consent of the Authority but the Provider shall notify the Authority of any such termination forthwith.

B24.7 The Provider shall include in every Sub-contract:

(a) a right for the Provider to terminate that Sub-contract if the relevant Sub-contractor fails to comply in the performance of its Agreement with legal obligations in the fields of environmental, social or labour law; and
(b) a requirement that the Sub-contractor includes a provision having the same effect as (a) above in any Sub-contract which it awards.

In this clause, 'Sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

B24.8 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 20 the Provider Selection Regime Regulations 2023 as it would apply under section 28 of the Procurement Act 2023, then:

(a) if the Authority finds there are compulsory grounds for exclusion, the Provider shall replace or shall not appoint the Sub-contractor;
(b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Provider to replace or not to appoint the Sub-contractor and the Provider shall comply with such a requirement.

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

B25. AUDIT AND INSPECTION

B25.1 The Provider must comply with all reasonable written requests made by, CQC, Regulatory Body, the National Audit Office, any Authorised Person 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 and/or, the privacy or dignity of a Service User.

B25.2 Subject to Law and notwithstanding clause B25.1, an Authorised Person may enter the 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.

B25.3 Within 10 Business Days of the Authority's reasonable request and/or in accordance with the Service Specification, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.

B25.4 The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.

B25.5 During any audit undertaken under clause B25.1 or B25.2, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:

(a) all reasonable information requested within the scope of the audit;

(b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and

(c) access to the Staff, agents or consultants or where applicable agents, employees or consultants of Sub-contractors.

B26. INDEMNITIES

B26.1 The Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Agreement, breach of its statutory duties or obligations which include those under Data Protection Legislation, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or breach of its statutory duties or obligations by the Authority.

B27. LIMITATION OF LIABILITY

B27.1 Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Agreement.

B27.2 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 Agreement.

B27.3 Nothing in this Agreement 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.

B27.4 The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Agreement.

B27.5 Unless otherwise expressly agreed between the Parties, the payment tariffs set out in Schedule B and such other amounts expressed to be payable by the Authority under this Agreement shall constitute the Authority's entire payment liability to the Provider under this Agreement, and the Provider hereby indemnifies the Authority against any liability to any third party for costs or charges relating to the Services.

B27.6 The Authority shall not be responsible for and shall provide no warranty in respect of the accuracy or completeness of the Third Party Employer's Staffing Information whether provided to the Provider directly by any Third Party Employer or by the Authority during the tender process for this Agreement or otherwise.

B28. INSURANCE

B28.1 Unless agreed otherwise, 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 (together the "**Required Insurances"**) in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Agreement:

(a) public liability insurance with a limit of indemnity of not less than £5 million for each and every claim;
(b) employer's liability insurance with a limit of indemnity of not less than £5 million for each and every claim;
(c) professional indemnity insurance with a limit of indemnity of not less than £5 million in relation to each and every claim, which shall continue to be maintained in place for a minimum period of 6 years following expiry of the Agreement and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;
(d) if required, product liability insurance with a limit of indemnity of not less than £5million in relation to each and every claim;
(e) medical/clinical malpractice insurance policy of not less than £5million for each and every claim, which shall continue to be maintained for such period after the expiry of the Agreement as is sufficient to satisfy proper claims made during the period of the limitation applicable to a claim.
(f) if required, motor Insurance cover with a limit of indemnity unlimited for personal injury and death and not less than £5 million per claim for damage to property.

B28.2 Without prejudice to any other remedies or provisions in this Agreement including the right to suspend or terminate, if, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

B28.3 The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies. Such request can be made annually throughout the duration of this Agreement.

B28.4. Subject to the minimum amounts set out in clause B28.1 it shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liabilities arising under the Agreement.

B29. DEFAULTS AND FAILURE TO SUPPLY

B29.1 In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of this Agreement by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Agreement including under clause B30 (*Contract Management*), discuss with the Provider and then do any of the following:

(a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and a remedial plan in accordance with clause B30.12, setting out how it will be remedied within 10 Business Days or such other period of time as the Authority may direct; and within the discretion of the Authority, the Authority may reasonably decide to also withhold any further sums payable under this Agreement until the remedial plan has been successfully implemented; and/or

(b) without terminating this Agreement, suspend the affected Services in accordance with the process set out in clause B32 (*Suspension and Consequences of Suspension*); and/or

(c) without terminating the whole of this Agreement, terminate this Agreement in respect of the affected part of the Services only in accordance with clause B33 (*Termination*) (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.

B29.2 If the Authority exercises any of its rights under clause B29.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

B29.3 If the Authority withholds sums under clause B29.1(a), and within 20 Business Days of the date of that withholding the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld unjustifiably, the Authority must pay those sums to the Provider within 10 Business Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld. If the Authority does not accept the Provider's evidence the Provider may refer the matter to dispute resolution.

B30. CONTRACT MANAGEMENT

B30.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in the Service Specification and/or Schedule C (*Activity Plan*) and the Provider fails to meet the Quality Outcomes Indicator, the Authority may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Authority may have under this clause B30.

B30.2 The provisions of this clause B30 do not affect any other rights and obligations the Parties may have under this Agreement

Contract Query and Excusing Notice

B30.3 If the Authority has a Contract Query it may issue a Contract Query Notice to the Provider. If the Provider has a Contract Query it may issue a Contract Query Notice to the Authority.

B30.4 The Receiving Party may issue an Excusing Notice to the Issuing Party within 5 Business Days of the date of the Contract Query Notice.

B30.5 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.

B30.6 Unless the Contract Query Notice has been withdrawn, the Parties must meet to discuss ("**Management Meeting**") the Contract Query and any related Contract Excusing Notice within 10 Business Days following the date of the Contract Query Notice

B30.7 At the Management Meeting, the Parties must agree either

(a) that the Contract Query Notice is withdrawn; or

(b) prepare and implement an appropriate Remedial Action Plan; or

(c) conduct a Joint Investigation.

Joint Investigation

B30.8 If a Joint Investigation is to be undertaken:

(a) the Authority and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation;

(b) the Authority and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

B30.9 On completion of a Joint Investigation, the Authority and the Provider must produce and agree a Joint Investigation Report. The Joint Investigation 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) a Remedial Action Plan be implemented.

B30.10 Either the Authority or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Agreement to consider a Joint Investigation Report.

Remedial Action Plan

B30.11 If a Remedial Action Plan is to be implemented, the Parties must agree the contents of the Remedial Action Plan within 10 Business Days following the Management Meeting.

B30.12 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) the consequences for failing to meet each milestone by the specified date.

B30.13 The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.

B30.14 The Authority and the Provider must record on an on-going basis progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress and in any event at the next Review Meeting.

B30.15 If following implementation of a Remedial Action Plan:

(a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;

(b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority unresolved due to the fault of the Provider (including a breach of the Remedial Action Plan) then this shall be treated as a material breach and the provisions of clause B29.1 shall apply and for the avoidance of doubt a further remedial plan is an option within the absolute discretion of the Authority;

(c) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority unresolved and not due to the fault of the Provider then a further Remedial Action Plan may be agreed in accordance with clauses B30.11 and B30.12.

B31. DISPUTE RESOLUTION

B31.1 If the Parties are in Dispute, then except as expressly provided in this Agreement, they must seek in good faith to resolve the Dispute following the process set out in this clause B31, and the Provider shall continue to (and without any disruption or delay) supply the Services during the Dispute.

Escalated procedure

B31.2 Except to the extent that any injunction is sought relating to a matter arising out of clause B37 (*Confidentiality*), if any Dispute arises out of or in connection with this Agreement, 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**") and provided no Party in Dispute is represented by the same individual each of the Parties shall negotiate in good faith be represented:

(a) for the first 10 Business Days, by a senior person who where practicable has not had any direct day to day involvement in the matter that led to the Dispute and has authority to settle the Dispute; and

(c) for the last 5 Business Days, by its chief executive, director, or board member who has authority to settle the Dispute.

Mediation

B31.3 If the Parties are unable to settle the Dispute by negotiation, they may 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.

B31.4 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.

B31.5 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.

Expert Determination

B31.6 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 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.

B31.7 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.

B31.8 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.

B31.9 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within five (5) Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Agreement, 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.

B31.10 The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within five (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.

B31.11 The Expert must produce a written decision with reasons within 30 Business Days of receipt of the statement of case referred to in clause B31.9, or any longer period as is agreed by the Parties after the Dispute has been referred.

B31.12 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.

B31.13 The Parties must comply with any request or direction of the Expert in relation to the expert determination.

B31.14 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 five (5) Business Days and send any revised decision simultaneously to the Parties.

B31.15 The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.

B31.16 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:

(a) the Expert reconsider his decision (either all of it or part of it); or

(b) the Expert's decision be set aside (either all of it or part of it).

B31.17 If a Party does not abide by the Expert's decision the other Party may apply to Court to enforce it.

B31.18 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.

B31.19 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.

B31.20 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.

B32. SUSPENSION AND CONSEQUENCES OF SUSPENSION

B32.1 A suspension event (each a "***Suspension Event"***) shall have occurred if:

(a) the Authority reasonably considers that a breach by the Provider of any obligation under this Agreement:

(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 B32.1(a) does not apply, but the Authority, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of 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.

B32.2 Where a Suspension Event occurs the Authority:

(a) may by written notice to the Provider and with immediate effect suspend any affected Services, or the provision of any affected Services, until the Provider demonstrates to the reasonable satisfaction of the Authority that it is able to and will perform the suspended Service, to the required standard; and

(b) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

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

B32.4 During the suspension of any Services under clause B32.2, the Provider will not be entitled to claim or receive any payment for the suspended Services except in respect of:

(a) all or part of the suspended Services the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B32.2; and/or

(b) all or part of the suspended Services which the Provider continues to deliver during the period of suspension in accordance with clause B32.5.

B32.5 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Services.

B32.6 Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Services).

B32.7 Following suspension of Services the Provider must at the reasonable request of the Authority and for a reasonable period:

(a) co-operate fully with the Authority and any Successor Provider of the suspended Services in order to ensure continuity and a smooth transfer of the suspended Services and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and

(b) at the cost of the Provider:

(i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Services by a Successor Provider; and

(ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Services.

B32.8 As part of its compliance with clause B32.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.

B32.9 If it is determined pursuant to clause B31 (*Dispute Resolution*) that the Authority acted unreasonably in suspending Services, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.

B32.10 During any suspension of Services 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.

B33. TERMINATION

B33.1 Either Party may voluntarily terminate this Agreement without cause (and without liability to the other Party) in whole or in part by giving written notice to the other Party not less than one (1) month at any time after the Service Commencement Date.

B33.2 The Authority may terminate this Agreement 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 obligations under clause B14;

(b) the Provider is in persistent breach of its obligations under this Agreement;

(c) the Provider:

(i) fails to obtain any Consent;

(ii) loses any Consent; or

(iii) has any Consent varied or restricted,

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

(d) the Provider has breached the terms of clause B40 (*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 B38 (Data Protection);

(g) the Provider breaches the terms of clause B8 (*Charges and Payment)* and B24 (*Assignment and Sub-contracting*);

(h) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or

(i) the Provider has breached any of its obligations under this Agreement and that breach materially and adversely affects the provision of the Services in accordance with this Agreement, and the Provider has not remedied that breach within 30 Business Days following receipt of notice from the Authority identifying the breach;

(j) the Agreement has been subject to a substantial modification which would have required a new procurement procedure; or

(k) The provider, at the time of the contract award, should have been excluded from the procurement process in accordance with regulation 20 of the Health Care Services (Provider Selection Regime) Regulations 2023

If the Agreement is terminated by the Authority on the grounds listed above such termination shall be at no loss or cost to the Authority and the Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

B33.3 Subject to clause B42 (*Force Majeure*), either Party may terminate this Agreement or the Services by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than 20 Business Days without the Parties agreeing alternative arrangements.

B33.4 The Provider may terminate this Agreement or the Services with immediate effect by written notice to the Authority if the Authority is in material breach of any obligation under this Agreement provided that if the breach is capable of remedy, the Provider may only terminate this Agreement under this clause B33.4 if the Authority has failed to remedy such breach within 30 Business Days of receipt of notice from the Provider to do so.

B33.5 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, the Authority may terminate this Agreement immediately (or following such notice period as it sees fit), without liability to the Provider if:

a. there is a Change in Control or where there is a change in the identity of the person or entity who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the Provider or its parent company whether through the ownership of voting shares, by contract or otherwise; or

b. the Provider, being an individual, or where the Provider is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by section 1124 of the Corporation Tax Act 2010, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or

c. Provider, being a company, passes a resolution, or the Court makes an order that the Provider or its parent company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Provider or the parent company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding up order, or the Provider or its parent company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

B33.6 Following the service of a termination notice for any reason, the Provider shall continue to provide and/or procure the provision of the Services in accordance with this Agreement and shall ensure that there is no degradation in the standards of the Services until up to the date of termination.

B34. CONSEQUENCE OF EXPIRY OR TERMINATION

B34.1 Expiry or termination of this Agreement, or termination of the Services, 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.

B34.2 From notification of re-procurement, on the expiry or termination of this Agreement or termination of the Services for any reason the Authority, the Provider, and if appropriate any Successor Provider, will agree a Succession Plan which shall include but is not limited to the list of information set out in Schedule G (*Succession Plan*) and the Parties will comply with the provisions of the agreed Succession Plan.

B34.3 From notification of re-procurement, on the expiry or termination of this Agreement or termination of the Services, the Provider must co-operate fully with the Authority to migrate the Services in an orderly manner to the Successor Provider.

B34.4 In the event of termination or expiry of this Agreement, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.

B34.5 If, as a result of termination of this Agreement or any element of the Services in accordance with this Agreement (except any termination under clauses B33.1 or B33.3 (*Termination*), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the element of the amount that would have been payable to the Provider for providing the same Services, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.

B34.6 Upon termination or expiry of this Agreement, the Provider shall repay to the Authority any amount which it may have been paid in advance in respect of Services not provided within 30 Business Days, or as otherwise agreed with the Authority in writing, from the date of the Authority's invoice.

B34.7 The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (Information), B24 (*Assignment and Sub-contracting*), B25 (*Audit and Inspection*), B26 (*Indemnity*), B34 (*Consequence of Expiry or Termination*), B36 (*Intellectual Property),* B37 (*Confidentiality*), B38 (*Data Protection)* and B39 (*Freedom of Information and Transparency*) will survive termination or expiry of this Agreement.

B35. BUSINESS CONTINUITY AND EMERGENCIES

B35.1 The Civil Contingencies Act 2004 requires the Authority to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. The Provider shall have in place prior to the Service Commencement Date a robust Business Continuity Plan that allows for the continued delivery of the Services following an emergency or disruptive occurrence. The Business Continuity Plan shall set out the procedures and actions to be taken if a disruptive event occur affecting the Services.

B35.2 The Provider must maintain a Business Continuity Plan and must notify the Authority as soon as reasonably practicable of its activation and in any event no later than 5 Business Days from the date of such activation and details of how it managed any such incident and any subsequent amendments made to processes or systems.

B35.3 If requested by the Authority, the Provider shall provide a copy of the Business Continuity Plan within 10 Business Days of the request.

B35.4 If reasonably requested by the Authority the Provider shall cooperate and contribute to any coordinated development and review of any local area business continuity plans or incident response plans.

B36. INTELLECTUAL PROPERTY

B36.1 All Intellectual Property Rights created by the Authority prior to this Agreement shall remain the property of the Authority and may be licenced to the Provider on a non-assignable, non-transferrable, royalty-free, non-exclusive, revocable basis for the duration of this Agreement at no cost for the purpose of performing the Services. Provider's Intellectual Property Rights created prior to this Agreement shall remain the property of the Provider and may be licenced to the Authority on a non-assignable, non-transferrable, royalty-free, non-exclusive, revocable basis for the duration of this Agreement at no cost.

B36.2 All Intellectual Property Rights created by the Authority, the Provider or any employee, agent or Sub-contractor of the Provider in the course of performing the Services or exclusively for the purpose of performing the Services, shall vest in the Authority upon creation and will be licenced to the Provider on a non-assignable, non-transferrable, royalty-free, non-exclusive, revocable basis for the duration of the Agreement at no cost.

B36.3 To the extent that the ownership of the Intellectual Property Rights has not vested in the Authority from its creation the Provider hereby assigns, or shall procure the assignment to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the materials prepared. This assignment shall take effect on the date of the Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider.

B36.4 The Provider shall procure that its employees, agents and sub-contractors shall waive absolutely and irrevocably their moral rights granted under the Copyright, Designs and Patents Act 1998 or equivalent or analogous rights under laws of other jurisdictions in relation to such property.

B36.5 The Provider shall indemnify and keep indemnified the Authority against all claims, demands, actions, costs, expenses (including legal costs (calculated on a full indemnity basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

B37. CONFIDENTIALITY

B37.1 Other than as allowed in this Agreement, 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 other than in accordance with this clause B37.

B37.2 Subject to Clauses B37.3 and B37.4, the Receiving Party agrees:

(a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;

(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.

B37.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

(a) in connection with any dispute resolution under clause B31 (*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 engaged in the delivery and performance management of this Agreement, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B37.2;

(e) to comply with a regulatory bodies' request.

B37.4 The obligations in clause B37.1 and clause B37.2 will not apply to any Confidential Information which:

(a) is in or comes into the public domain other than by breach of this Agreement;

(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.

B37.5 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B37.

B37.6 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B37 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B37.

B37.7 This clause B37 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

B37.8 The obligations in clause B37.1 and clause B37.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (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.

B38. DATA PROTECTION

B38.1 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that the Provider is an independent Controller of the Personal Data and Special Category Data collected in the performance of the Service. Whilst it is not expected that the Authority will process Personal Data under this contract the Authority shall be an independent Controller to the extent it is a commissioner of the service and, should it process Personal Data, of any Personal Data that it processes.

B38.2 The Provider shall comply at all times with the Data Protection Legislation for the Personal Data collected and processed in the performance of the Service and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation. Where required, the Provider will ensure there are relevant data sharing agreements with other organisations where sharing is required regardless of the quantity.

B38.3 The Provider shall process the Personal Data for the purposes of providing Services under this Agreement and/or for complying with its statutory duties.

B38.4 The Provider will supply the Authority with adequate statistical data (including but not limited to these listed in the Service Specification), to analyse and monitor the Service and for the purposes of payment. The Authority may also publish the anonymous data.

B38.5 The Provider shall procure that the Provider's Staff, Representatives and any Sub-Contractors shall, duly observe all their obligations under the Data Protection Legislation and common law of Confidentiality, which arise in connection with the performance of this Agreement.

B38.6 The Provider shall ensure that it has the necessary lawful basis, privacy notices and consents (where required) in place to enable lawful processing and transfer of the Personal Data for the purposes of this Agreement.

B38.7 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Provider shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

B38.8 The Provider shall at the request of the Authority provide such information about its data security including cyber security in order to demonstrate that the Provider's processing is being performed in accordance with this Agreement, any data sharing agreement and the Data Protection Legislation. Such requests to be made no more than on an annual basis unless the Provider has experienced a Data Loss Event affecting Personal Data relevant to this Agreement.

B38.9 The Provider shall designate a Data Protection Officer if required by the Data Protection Legislation.

B38.10 The Provider shall notify the Authority within 48 hours on becoming aware of a potential Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner's Office or the Data Subject.

B38.11 The Provider shall not transfer personal data outside UK or a country with full adequacy as declared by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018 without the prior written consent of the Authority and the following conditions are fulfilled:

(a) The Provider has provided appropriate safeguards in relation to the transfer in accordance with Article 46 UK GDPR or section 75 DPA 2018.

(b) The Data Subject has enforceable rights and effective legal remedies.

(c) The Provider complies with its obligations under the Data Protection Legislation by providing an appropriate level of protection to any Personal Data that is transferred.

B38.12 In respect of any Processing of Personal Data performed by a third party on behalf of the Provider, the Provider shall:

(a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Agreement, and provide evidence of such due diligence to the Authority where reasonably requested; and

(b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

B38.13 When providing records of Health Checks to the patient's own GP the Provider shall:

(a) ensure that that records are accurate and provided securely in accordance with the Data Protection Legislation; and

(b) ensure that a suitable agreement is in place with the patient's own GP as required under applicable Data Protection Legislation.

B38.14 The Provider will be required to complete the NHS Data Security and Protection Toolkit (DSPT) on an annual basis at the appropriate category level dictated by the DSPT and meet the standard of at least "standards met"

B38.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office and/or any relevant central government body. The Authority may on not less than thirty (30) Business Days' notice to the Provider amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office and/or any relevant central government body.

B38.16 If the Provider materially breaches its obligations under this clause B38, the Authority shall be entitled to terminate the Contract by issuing a termination notice to the Provider in accordance with clause B33.2(f).

B38.17 The Provider shall be liable for and shall indemnify (and keep indemnified) the Authority against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Authority which arises directly from a breach by the Provider of its obligations under this clause B38 and the Data Protection Legislation, including without limitation those which arise out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Provider or its employees, servants, agents or Sub-contractors.

B39. FREEDOM OF INFORMATION AND TRANSPARENCY

B39.1 If both Parties are Public Authorities then they 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 and within any timescales set by the relevant Party.

B39.2 If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:

(a) that this Agreement and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Authority under the FOIA;

(b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;

(d) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within 2 Business Days) transfer the request to the Authority;

(d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Agreement either without consulting with the Provider, or following consultation with the Provider and having taken its views into account;

(e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within 5 Business Days of such request and without charge; and

(f) with regard to all information that may be subject to a request under FOIA to retain such information to permit any disclosure and the Provider shall permit the Authority to inspect such information upon reasonable request.

B39.3 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 Agreement is not Confidential Information.

B39.4 Notwithstanding any other provision of this Agreement, the Provider hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

B39.5 In preparing a copy of this Agreement for publication pursuant to clause B39.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.

B39.6 The Provider must assist and co-operate with the Authority to enable the Authority to publish this Agreement.

B39.7 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Agreement. 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.

B40. PROHIBITED ACTS

B40.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider's Staff, have at any time prior to the Commencement Date:

(a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

B40.2 The Provider (or its staff or agents or anyone acting on its behalf) shall not during the term of this Agreement:

(a) commit a Prohibited Act; and/or

(b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

B40.3 The Provider shall immediately notify the Authority in writing if it becomes aware of any breach of clause B40.1 and/or clause B40.2, or has reason to believe that it has or any of the Provider's Staff have:

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

B40.4 If requested the Provider shall, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.

B40.5 The Provider shall during the Term:

(a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

(b) keep appropriate records of its compliance with its obligations under clause B40.5(a) and make such records available to the Authority within 5 Business Days of the Authority requesting it.

B40.6 If the Provider is in Default under clause B40.1 and/or clause B40.2, the Authority, may by notice, shall be entitled:

(a) to exercise its right to terminate under clause B33.2 (*Termination*) and to recover from the Provider the amount of any Losses resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the terms of this Agreement has it not been terminated; and

(b) to recover from the Provider the amount or value of any gift, consideration or commission concerned; and

(c) to recover from the Provider any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence; or

(d) require the Provider to remove from performance of this Agreement any Provider's Staff whose acts or omissions have caused the Default.

Any notice served by the Authority under clause B40.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take.

B40.7 Should the Provider become aware of or suspect any breach of this clause B40, it will notify the Authority immediately. Following such notification, the Provider shall respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.

B40.8 The decision of the Authority shall be final and conclusive in any dispute, difference or question arising in respect of:

(a) the interpretation of this clause B40; or
(b) the right of the Authority under this clause B40 to terminate the Agreement.

B41. CONFLICTS OF INTEREST

B41.1 If a Party becomes aware of any conflict of interest which had or is likely to have an adverse effect on the other Party's decision whether or not to have contracted, or contract, or continue to contract substantially on the terms of this Agreement, the Party aware of the conflict must immediately declare it to the other. The other Party may then take whatever action under this Agreement as it deems necessary.

B42. FORCE MAJEURE

B42.1 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 Agreement as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Agreement.

B42.2 Subject to clause B42.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Agreement to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Agreement.

B42.3 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 Agreement 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.

B42.4 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.

B42.5 Subject to clause B42.3, the Authority shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Agreement, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

B43. THIRD PARTY RIGHTS

B43.1 Except for the express rights reserved under this Agreement and as set out in Schedule E (*Retendering and TUPE*), no terms of this Agreement are intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

B44. CAPACITY

B44.1 Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Agreement, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon the Authority or in any way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability on the part of the Authority under this Agreement (howsoever arising) in any capacity other than as contracting counterparty.

B45. SEVERABILITY

B45.1 If any provision or part of any provision of this Agreement is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Agreement and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Agreement.

B46. WAIVER

B46.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

B46.2. The rights and remedies provided by this Agreement may be waived only in writing by the authorised representative of the relevant party in a manner that expressly states that such waiver is intended for and shall only be operative with regard to, the specific circumstances referred to in the notice of waiver.

B47. PUBLICITY AND BRANDING POLICY

B47.1 The Provider shall promote and publicise the availability of the Services in accordance with the Service Specification and the Authority is entitled to promote and publicise the Services as it deems appropriate.

B47.2 The Provider shall observe the Authority's approval processes by obtaining, with suitable written notice, the Authority's written consent prior to engaging in any promotional activity, making public statements or issuing press releases in relation to this Agreement. This permission will be sought by emailing corporate.communications@hants.gov.uk

B47.3 Where required by the Authority, the Provider shall always use the Authority's logo on publicity materials connected to the Agreement, and shall do so in accordance with any approval granted under clause B47.2 and the Authority's Branding Guidelines.

B47.4 The Authority shall grant the Provider a non-assignable, non-transferrable, non-exclusive revocable licence to use the Authority's logo in connection with this Agreement and for the permitted purposes set out in the Branding Guidelines and/or any approval granted under clause B47.2. All Intellectual Property Rights in the branding licensed under this clause B47.4 is and shall remain the property of the Authority. On expiry or termination of this Agreement, the Provider shall not continue use the Authority's logo in any subsequent promotional material, marketing material, similar material or announcement, unless expressly permitted by the Authority in writing in accordance with clause B47.2.

B47.5 Except with the written consent of the Authority, in no circumstances shall the Provider:

(a) grant sub-licences of this licence;

(b) acquire rights in respect of the Authority's logo;

(c) incorporate the Authority's logo in to any other logo or advertising;

(d) create any new logo or visual identity to represent the Services.

B47.6 The Provider must take all reasonable steps to ensure the observance of the provisions of clause B47 by all its staff, servants, agents, consultants and sub-contractors.

B48. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

B48.1 Nothing in this Agreement creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Authority and the Provider.

B48.2 The Provider must not in any circumstances hold itself out as being a servant or agent of the Authority. The Provider must not hold itself out as being authorised to enter into any agreement on behalf of the Authority or in any bind the Authority to the performance, variation release or discharge of any obligation to a third party. The Provider's staff shall not hold themselves out to be and shall not be held out by the Provider as being servants and agents of the Authority

B49. CHANGE IN CONTROL

B49.1 This clause applies to any Provider Change in Control and/or any Material Sub-contractor Change in Control, but not to a Change in Control of a company which is a Public Company.

B49.2 The Provider must:

(a) as soon as possible, and in any event within 5 Business Days following knowledge of the Provider's Change in Control; and/or

(b) immediately on becoming aware of a Sub-contractor Change in Control;

notify the Authority of that Change in Control and submit to the Authority a completed Change in Control Notification.

B49.3 The Authority may terminate the Agreement by giving notice in writing to the Provider with immediate effect within six months of:

(a) being notified that a Provider's Change in Control has occurred; or
(b) where no notification has been made, the date that the Authority becomes aware of the Provider's Change in Control;

but shall not be permitted to terminate where an approval was granted by the Authority before the Provider's Change in Control.

B49.4 The Provider must supply (and must use its reasonable endeavours to procure that the relevant Sub-contractor supplies) to the Authority whatever further information relating to the Change in Control the Authority may, within 20 Business Days after receiving the Change in Control Notification, reasonably request.

B49.5 The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Sub-contractor include a provision obliging the sub-contractor to inform the Provider in writing on, and in any event within 5 Business Days following, a Sub-contractor Change in Control in respect of that Sub-contractor.

B49.6 If:

(a) there is a Sub-contractor Change in Control; and

(b) following consideration of the information provided to the Authority in the Change in Control Notification or under clause B49.4, the Authority reasonably concludes that, as a result of that Sub-contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Sub-contractor to provide Services in accordance with this Agreement (and, in reaching that conclusion, the Authority may consider any factor, in its absolute discretion), that it considers relevant to the provision of Services, then

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

(d) the Provider must duly replace the relevant Sub-contractor within the period specified under clause B49.6(c).

B49.7 Notwithstanding any other provision in this Agreement:

(a) a Restricted Person must not hold, and the Provider must not permit a Restricted Person to hold, at any time 5% or more of the total value of any Security in the Provider or in the Provider's holding company or any of the Provider's subsidiaries (as defined in the Companies Act 2006); and

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

B49.8 If the Provider breaches clause B49.7(a), the Authority may by serving written notice upon the Provider enter into dispute resolution (in accordance with clause B31) with the Provider, and in the event that the dispute cannot be resolved by the Parties, the Authority reserves the right to terminate this Agreement.

B49.9 If the Provider breaches clause B49.7(b), the Authority may by serving written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within three (3) months or whatever period may be reasonably specified by the Authority in that notice (taking into account any factors which the Authority considers relevant in its absolute discretion, including the interests of Service Users and the need for the continuity of Services).

B49.10 Nothing in this clause will prevent or restrict the Provider from discussing with the Authority a proposed Change in Control before it occurs. In those circumstances, all and any information provided to or received by the Authority in relation to that proposed Change in Control will be Confidential Information.

B49.11 Subject to the Law and to the extent reasonable the Parties must cooperate in any public announcements arising out of a Change in Control.

B50. ENTIRE CONTRACT

B50.1 This Agreement and any documents referred to in it constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

B50.2 Each party acknowledges that, in entering into this Agreement it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

B50.3 Nothing in this clause shall limit or exclude any liability for fraud.

B51. GOVERNING LAW AND JURISDICTION

B51.1 This Agreement 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.

B51.2 Subject to the provisions of clause B31 (*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 Agreement.

B52. DEFINITIONS AND INTERPRETATION

B52.1 The Agreement shall be interpreted in accordance with this clause B54:

(a) The clause, schedule and paragraph headings in this Agreement shall not affect its interpretation.

(b) 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.
(c) References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
(d) References to Sections, clauses and Schedules are to the Sections, clauses and Schedules of this Agreement, unless expressly stated otherwise.
(e) References to any body, organisation or office shall include reference to its applicable successor from time to time.
(f) Any references to this Agreement or any other documents includes reference to this Agreement or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.
(g) The use of any of the following terms in any phrase, sentence or sub-clause shall be construed as illustrative and shall not limit the scope of the clause: include, including, in particular, or any other similar expressions.
(h) Use of the singular includes the plural and vice versa and a reference to one gender shall include a reference to the other genders.

B52.2 The following terms shall have the meanings as set out:

Activity means any levels of services and/or Service User flows and as set out in a Service Specification or Schedule C, and amended from time to time by the Authority

Adverse Events means the definition of serious incidents by NHS England where the consequences to patients, families and carers, staff or organisations are so significant or the potential for learning is so great, that a heightened level of response is justified. Providers are responsible for the safety of their Service Users, visitors and others using their services, and must ensure robust systems are in place for recognising, reporting, investigating and responding to Serious Incidents Requiring Investigation and for arranging and resourcing investigations

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

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

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

Branding Guidelines means the policies, procedure and guidelines on the use of the Authority's corporate logo amended from time to time and which is available either on request or at www.hants.gov.uk/logos

Business Continuity Plan means the Provider's plan referred to in clause B35.2 (*Business Continuity*) relating to continuity of the Services against business disruption in case of unforeseen events, and as may be amended from time to time

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

Caldicott Guardian means the senior officer or employee responsible for safeguarding the confidentiality of Service User's information and making sure it is used properly

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

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

CEDR means the Centre for Effective Dispute Resolution

Change in Control means a change in control within the meaning of section 1124 or section 450 (as applicable) of the Corporation Tax Act 2010 or any changes to consortia arrangements from the date of the tender return and provided this does not contravene any law

Change in Control Notification means a notification in the form to be provided to the Provider by the Authority and to be completed as appropriate by the Provider

Charges means the charges which shall become due and payable by the Authority to the Provider in respect of the provision of the Services in accordance with the provisions of this Agreement, as set out in Schedule B.

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

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

Consents means:

(a) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration or Gillick competence of the Service User required by Law for or in connection with the performance of Services; and/or

(b) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Agreement or for the provision by the Provider of the Services in accordance with this Agreement

Contract Query means:

(a) a query on the part of the Authority in relation to the performance or non-performance including any Activity or quality issues by the Provider of any obligation on its part under this Agreement; or

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

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

Controller, Processor, Data Subject, Personal Data, Special Category Data, Personal Data Breach, Data Protection Officer shall take the meaning in the UK GDPR.

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

Data Protection Impact Assessment An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.

Data Protection Legislation (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR; and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it is applicable) the EU GDPR. The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018.

Data Subject Rights Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation in respect of their Personal Data

Debarment List means the list of Providers referred to in section 62 of the Procurement Act 2023.

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 Agreement and in respect of which the Provider is liable to the Authority

Default Interest Rate means the base rate set from time to time by Barclays Bank plc plus 2% per annum

Dispute means a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Agreement or the performance, validity or enforceability of it

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

Enhanced DBS Check and Barred List Check means an Enhanced DBS or Enhanced DBS & Barred List Check (Adult) or Enhanced DBS & Barred List Check (Child & Adult) (as appropriate) and the Provider shall ensure that these meet the Authority's Disclosure and Barring Service Policy

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

Environmental Information Regulations/EIR means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations

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 Agreement

Estates means the Provider's Premises and other such land and property whether fixed or mobile from which the Provider provides or intends to provide services including the Services

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:

(a) due wholly or partly to an act or omission by the Issuing Party; or

(b) a direct result of the Receiving Party following the instructions of the Issuing Party; or

(c) 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 clause 31 (Dispute Resolution)

Expert Determination Notice means a notice in writing served pursuant to clause B31.6 (*Dispute Resolution*) showing an intention to refer Dispute for expert determination

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 Commissioner or relevant government department in relation to such legislation

Force Majeure means any circumstance affecting its performance of its obligations under this Agreement not within a Party's reasonable control including, without limitation:

(a) acts of God, flood, drought, earthquake or other natural disaster;
(b) epidemic or pandemic (excluding Covid19);
(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
(d) nuclear, chemical or biological contamination or sonic boom;

(e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
(f) collapse of buildings, fire, explosion or accident; and
(g) any labour or trade dispute, strikes, industrial action or lockouts; and
(h) interruption or failure of utility service

but excluding any industrial dispute relating to the Provider or the Staff or any other failure in the Provider's or a Provider's supply chain.

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

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

Health Care Services (Provider Selection Regime) Regulations 2023 Or PSR Or Provider Selection Regime means Health Care Services (Provider Selection Regime) Regulations 2023(SI 2023/1348) Which makes provisions for those commissioning health care services by allowing for direct awards without the need for a procurement exercise.

Holding Companies means has the definition given it in the section 1159 of the Companies 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

Intellectual Property Rights means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, branding, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites

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

Institutional Investor means any organisation whose primary purpose is to invest its own assets or those held in tryst by it or others, including a bank, mutual fund, pension fund, private equity firm, venture capitalist, insurance company or investment trust

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

Joint Controllers Where two or more Controllers jointly determine the purposes and means of Processing

Joint Investigation 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

LADO has the meaning given in Clause B10.5

LARGE SCALE ENQUIRY ("LSE") means an overarching safeguarding enquiry undertaken by the Authority which looks beyond single incidents or individuals to identify patterns of harm when concerns about organisational abuse or neglect are raised.

Law means (and in each case in force in England and Wales):

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

(b) any applicable enforceable European Union law;

(c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;

(d) National Standards;

(e) Guidance; and

(f) any applicable industry code

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

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

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

Negotiation Period means the period of 15 Business Days following receipt of the first offer under clause B31 (*Dispute Resolution*)

Parties means the Authority and the Provider and "**Party**" means either one of them

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

Service User 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

Prevent Duty means the duties pursuant to the Counter-Terrorism and Security Act 2015 more information on which can be found here: https://www.gov.uk/government/publications/prevent-duty-guidance

Prohibited Acts means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

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

(c) committing any offence: (i) under the Bribery Act 2010 (Bribery Act); (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Authority or (iv) committing an offence under sub-section (2) of section 117 of the Local Government Act 1972 ;

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

Provider Change in Control means any Change in Control of the Provider or any of its Holding Companies

Provider's Premises means premises controlled or used or to be procured by the Provider for any purposes connected with the provision of the Services

Public Authority means as defined in section 3 of the FOIA

Public Company means a company which:

(a) has shares that can be purchased by the public; and

(b) has an authorised share capital of at least £50,000 which each of the company's shares being paid up at least as to one quarter of the nominal value of the share and the whole of any premium on it; and

(c) has securities listed on a stock exchange in any jurisdiction

Quality Outcomes Indicators means the agreed key performance indicators and outcomes to be achieved as set out in the Service Specification and as amended by the Authority from time to time

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

Regulated Activity means in relation to children as defined in Part 1 of Schedule 4, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4, of the Safeguarding Vulnerable Groups Act 2006.

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

Relevant Conviction means a Conviction that is relevant to the nature of the Services to be provided by the Provider.

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

Restricted Person means:

(a) any person, other than an Institutional Investor, who has a material interest in the production of tobacco products or alcoholic beverages; or

(b) any person who the Authority otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider or in a Sub-contractor

Review Meeting means a meeting to be held or requested in accordance with clause B20 (*Review Meetings*) and B30 (*Contract Management*).

Safeguarding Policies means the Provider's written policies and procedures for safeguarding children and adults, as amended from time to time, and as may be appended at Schedule D (*Policies and Procedures*)

Safeguarding Inquiry means an inquiry under section 42 of the Care Act 2014.

Safeguarding And Governance Team means Hampshire County Council Adults' Health and Care Department quality assurance, improvement, and monitoring team.

Security means shares, debt securities, unit trusts schemes (as defined by the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing debt securities, warrants or options to subscribe or purchase securities, other securities or any description and any other type of proprietary or beneficial interest in a limited company

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 Estate or where the actions of the Provider, the Staff or the Authority are likely to be of significant public concern

Serious Incidents Requiring Investigation means those listed within the Service Specification and any other incidents to be included as agreed between the Parties

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

Service Specification means the service specification defined by the Authority and set out at Schedule A (*Service Specification*) and as amended by the Authority from time to time

Service User means the person (including children, young persons and vulnerable adults) directly receiving the Services provided by the Provider as specified in the Service Specification and includes their Carer and Legal Guardian where appropriate

Staff means all persons engaged (whether paid or unpaid and whether or not employed) by the Provider to perform its obligations including management, supervision and provision of the Services, under this Agreement together with the Provider's servants, agents, suppliers and Sub-contractors used in the performance of its obligations under this Agreement

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

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

Sub-contractor means any third party appointed by the Provider and approved by the Authority under clause B24.1 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

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

Succession Plan means a plan agreed by the Parties to deal with transfer of the Services to an alternative provider following expiry or termination of this Agreement as set out in Schedule G

Successor Provider means any replacement or successor provider (whether temporarily or permanently) to whom the Services are transferred on termination or expiry of this Agreement

Third Party Employer means a provider engaged by the Authority to provide some or all of the Services to the Authority before the effective date and whose employees will transfer to the Provider on the effective date

Third Party Employer's Staffing Information means in relation to all persons detailed on the Third Party Employer's Provisional Staff List, in an anonymised format, and in the Third Party Employer's Final Staff List all information including the employee liability information and details regarding such persons provided by the Third Party Employer to the Authority or the Provider

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

UK GDPR means Regulation (EU) 2016/679 of the European Parliament and of the Authority of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018

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

Variation Notice means a notice to vary a provision or part of a provision of this Agreement issued under clause B23 (*Variations*).

SCHEDULE A

SERVICE SPECIFICATION

Lot 1

Lot 2

SCHEDULE B

PAYMENT AND INVOICING

This is an activity-based contract as described in the Specifications and payment will be made based on the activity data supplied by the Provider as outlined in the service specifications.

Quarterly undisputed claims will be processed within 30 days following approval by the local authority of the providers quarterly activity data . For Health Checks only, undisputed annual quality payments will be made within 30 days following approval by the local authority of the providers submitted quality claim .

Activity claims for payment must be submitted in accordance with the service specification, as detailed in section 7: Managing Delivery and Tracking Performance and Quality, and section 8: Tariffs and Payments which are published here www.hants.gov.uk/business/procurement/PHPCS

Quarterly activity claims for payment and annual quality claims (where applicable) must only be submitted as detailed in the service specifications (or any other future data submission protocols as notified by the commissioner to the provider via intend).

Activity data and quality claims must not include any personally identifiable data.

SCHEDULE C:

ACTIVITY PLAN

[ACTIVITY PLAN TO BE DEVELOPED BETWEEN THE PROVIDER AND THE AUTHORITY AND INSERTED HERE]

SCHEDULE D

POLICIES AND PROCEDURES

The following policies, procedures and information are to be included:

Agreement Reference	Title
Conditions Precedent	Certificate setting out the Required Insurances Business Continuity Plan Details of Caldicott Guardian and Chief Information Officer or equivalent
Schedule C	Activity Plan
B10 Safeguarding Children and Adults	The Authority's Multi-Agency Safeguarding Policy
B11 Incidents Requiring Reporting	The Authority's Serious Incidents Requiring Investigation Policy
B40 Prohibited Acts	Bribery Policy

Provider's Policies

The Provider must have the Policies/Procedures as set out in the Service Specification in place before the Service Commencement Date*:*

SCHEDULE E

RETENDERING AND TUPE

1 Interpretation

1.1 The definitions and rules of interpretation in this paragraph 1 apply in this Schedule E.

Acquired Rights Directive	means Directive 77/187/EEC as amended and updated.
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) ("**DPA 2018**"); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any successor legislation.
Effective Date	means the date on which the Services (or any part of the Services), transfer from the Third Party Employer to the Provider or Sub-Contractor and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-Contractor. The first Effective Date shall occur on Commencement Date;
Employed In Connection With	means employed by the Provider (or its Sub-Contractor(s) if relevant) solely or mainly (i.e. more than 50% of their working time) in the delivery of the provision of the Services under this Agreement;
Employee Liability Information	means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE: (a) the identity and age of the employee; (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);

	(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applies, within the previous two (2) years; (d) information about any court or tribunal case, claim or action either brought by the employee against the Transferor within the previous two (2) years or where the Transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor; and (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.
Employment Liabilities	means all claims, including without limitation claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;
Redundancy Costs	means statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Provider in respect of any Third Party Employees or its own Staff;

Relevant Employees	means those employees who are Employed in Connection With the Services and whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Provider by virtue of the application of TUPE;
Relevant Transfer	means a relevant transfer of the Services for the purposes of TUPE, including upon or as a result of expiry or termination of this Agreement;
Relevant Transfer Date	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
Replacement Services	means any services that are fundamentally the same as any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Authority internally or by any Replacement Provider;
Replacement Provider	means any third party Provider of Replacement Services appointed by the Authority from time to time;
Provider's Final Staff List	means the list of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;
Provider's Provisional Staff List	means the list prepared and updated by the Provider of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list, and in the format requested by the Council;
Service Transfer Date	means the date on which the Services (or any part of the Services), transfer from the Provider or Sub-contractor to the Authority or any Replacement Provider;
Staffing Information	means in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and

	details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;
Sub-Contract	means any sub-contract entered into by the Provider or by any Sub-Contractor for the purpose of the performance of any obligation on the part of the Provider this Agreement;
Sub-Contractor	means the contractors or service providers engaged by the Provider (or a sub-contractor of the Provider) to provide goods, services or works to, for or on behalf of the Provider for the purposes of providing the Services to the Council;
Subsequent Transfer	means, following the commencement of this Agreement, circumstances whereby the identity of the provider of the Services (or any part of the Services) changes (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part from the Provider to the Authority or Replacement Provider;
Third Party Employee	means employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Provider or Sub-contractor by virtue of the application of TUPE. An indicative list of the Third Party Employees, as at the date of execution of the Agreement, is attached at Appendix 1 of this Schedule 6.
Third Party Employer	means a former Provider engaged by the Authority to provide some or all of the Services to the Authority before the Effective Date and whose employees will transfer to the Provider on the Effective Date;
Transferor and Transferee	has the meaning given in TUPE;
TUPE	means the Transfer or Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.
TUPE	has the meaning given in paragraph 3.6;

Information	
UK GDPR	means Regulation (EU) 2016/679 of the European Parliament and of the Authority of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018.

1.1 All other words, terms and expressions used in this Schedule 6 (Staff Transfer and TUPE) shall have the meanings given to them in clause 1 (Definitions) of this Agreement.

1.2 Where a provision in this Schedule imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, the Provider shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Third Party Provider Replacement Provider or Replacement Sub-contractor, as the case may be.

1.2 Notwithstanding any other provisions of this Schedule 6, where in this Schedule 6 the Authority accepts an obligation to procure that a Third Party Employer does or does not do something, such obligation shall be limited so that it extends only to the extent that the Council's contract with the Third Party Employer contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Third Party Employer does or does not act accordingly.

2 Transfer of Employees to the Provider on the Service Transfer Date

2.3 The Authority and the Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment, other than in relation to any benefits in respect of old age, invalidity or survivors under any occupational pension scheme, of any Third Party Employee(s) shall transfer to the Provider or Sub-contractor. The Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The first Relevant Transfer shall occur on the Commencement Date.

2.4 The Authority shall procure that the Third Party Employer(s) shall provide the Employee Liability Information for the Third Party Employee(s) to the Provider, and, where necessary, update such information, as required by TUPE. The Authority shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by any Third Party Employer(s).

2.5 The Provider shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:

i) any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider making on or after the Effective Date;

ii) any of the employees informing the Authority and/or any Third Party Employer they object to being employed by the Provider or Sub-Contractor pursuant to Regulation 4(7) of TUPE; and

iii) any change in identity of the Third Party Employees' employer as a result of the operation of TUPE; or

iv) as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Effective Date.

2.6 The Provider shall, and shall procure that any relevant Sub-Contractor shall, be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs, and otherwise from and including the Effective Date.

2.7 The Provider shall immediately on request by the Authority and/or the Third Party Employer provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no such measures, the Provider will give confirmation of that fact and shall indemnify and keep indemnified the Authority and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

2.8 The Provider shall and shall procure that each and every Sub-Contractor shall in accordance with Regulation 6 of TUPE recognise the trade unions representing the Third Party Employees.

2.9 The Provider shall ensure that any Sub-Contract entered into pursuant to this Agreement contains equivalent provisions to those set out in this Schedule 6 (Staff Transfer and TUPE).

2.10 NOT USED

3 Employment exit provisions

3.1 This Agreement envisages that subsequent to its commencement, the identity of the Provider of the Services (or any part of the Services) may change (whether as a result of expiry or termination of this Agreement or otherwise) resulting in a transfer of the Services in whole or in part (a “Subsequent Transfer”).

3.2 Where a Subsequent Transfer constitutes a Relevant Transfer then the Authority or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.3 The Provider shall and shall procure that any Sub-Contractor shall:

i) on request from the Authority on a date not more than twelve (12) months immediately preceding the expiry of this Agreement and/or any review date; and/or

ii) on receiving notice of termination of this Agreement (on whatever grounds and in whatever circumstances) or otherwise; and/or

iii) at such times as required by TUPE

provide promptly (and in any event within ten (10) days of request) and at no cost to the Council, in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authority(notwithstanding this may be beyond the information required to be provided under TUPE), including information as to the application of TUPE to the employees. The Provider shall notify the Council, within ten (10) days of the event (and in any event before the Service Transfer Date), of any material changes to the information supplied, discovery of further relevant information or on receipt of a request for or clarification or amplification by the Council.

3.4 At least twenty eight (28) days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Council, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's staff/personnel named are Relevant Employees.

3.5 The Authority shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as (or any part of) the Services.

3.6 The Provider warrants to the Authority and the Replacement Provider that the Provider's Provisional Staff List, the Provider's Final Staff List, the Employee Liability Information and the Staffing Information (the "TUPE Information") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.

3.7 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information to the Authority(including, but not limited to, for the purposes of the Authority managing this Agreement with the Provider, monitoring the

delivery of the Services and in relation to exit/succession planning and/or re-procurement of the Services on the expiry or termination of this Agreement (in whole or in part)) and any Replacement Provider under the Data Protection Legislation.

3.8 The Authority regards compliance with this paragraph 3 as fundamental to this Agreement. In particular, failure to comply with paragraphs 3.3 and 3.4 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Agreement Price until such information is provided.

3.9 Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) Months prior to expiry or termination of this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Sub-Contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

3.10 In the six (6) Months prior to expiry or termination of this Agreement or from the date of service of a termination notice of this Agreement, (whichever is the longer) the Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff/personnel listed on the Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees or transfer or remove from the performance of the Services any supervisory or managerial staff/personnel without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).

3.11 The Provider shall indemnify and keep indemnified in full the Authority and each and every Replacement Provider against all Employment Liabilities arising from or connected with:

i) any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services;

ii) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor;

iii) any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

iv) any failure by the Provider or any Sub-Contractor to supply or delay in supplying the Staffing Information, the Provider's Provisional Staff List, the Provider's Final Staff List and the Employee Liability Information and any other information herein required (or inaccuracy or incompleteness of the same) or to inform and consult in accordance with TUPE;

v) any failure on the part of the Provider or any Sub-Contractor to provide the Relevant Employees with any benefit of any nature including any pension provision or failure to make all due payments to the Relevant Employees or applicable pension fund;

vi) any failure or omission of any legal or statutory obligation on the Provider;

vii) any claim by any Relevant Employee arising out of any personal injury or injury at work of whatever nature prior to the termination of this Agreement; and

viii) any other obligations of or arising under this Agreement,

whether any such claim arises on or after the Service Transfer Date if it has its origins before such date.

3.12 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.13 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 3.3 to 3.12, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.14 Notwithstanding paragraph 3.13, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

3.15 The Authority shall not be liable to the Provider (or any Sub-Contractor) in respect of any Redundancy Costs either upon the Commencement Date or the expiry or termination of this Agreement (in whole or in part).

Appendix 1 - Employee lists

List of Third Party Employees

The anonymised list of Third Party Employees anticipated to be in scope to TUPE transfer to the Provider on the Commencement Date (as at the date of entering into this Agreement).

SCHEDULE F

Approved Sub-contractor

SCHEDULE G

Succession Plan

A Succession Plan will be agreed between the Authority and the Provider a minimum of three months before the end of this Agreement, whether due to expiry or termination of this Agreement.

This will include:

- Process for transfer of Service Users who are still receiving the Service to the Successor Provider(s).
- Agreement of protocols for and transfer of all records created in such format and period as is reasonable to the Successor Provider(s).
- Agreeing information governance standards that will apply to the transfer and handover of contractual and Service User data.
- Agreeing the depth of information to be transferred and level of secure protection to be afforded to each batch, including paper and electronic Service User records both past and present, staff records, asset register, premises register, contracts and subcontracts.
- TUPE arrangements for staff.
- Communications strategy to inform all stakeholders including GPs and other referrers, related NHS organisations and other agencies, other commissioners.
- Provide access to any Provider's Premises or Premises or Equipment that may be needed for the continued provision of the Services by the Successor Provider during any interim period
- Transfer of equipment and/or subcontracts for maintenance, etc.
- Costs which are committed beyond the life of the contract (if any).
- Costs of venue hire requirements (if any).
- Identifying sub-contractors and the details of their contracts including notice periods and if termination costs would apply.
- Secure data archiving.
- Secure data destruction.
- Sharing of relevant policies, procedures, general agreement (including relevant costs).
- Arrangement for any Intellectual Property Rights (if relevant)

Information and Reports

The Provider shall deliver a comprehensive suite of information to inform the Authority and the Successor Provider(s) of the state of the Agreement including:

- End of contract report
    - Data reporting
    - Service evaluation(s)

    - Case studies
- Contract Variations/Evaluations (where applicable)
- Final reconciliation
- Service User consent to transfer data to new provider(s), where applicable
- Incident Reports, closure agreements and follow up actions
- Waiting Lists
- Number of Service Users who will have started but not finished the service when the Agreement expires or terminates
- Provide any other details that are necessary by the Successor Provider(s) to ensure the provision of Services continues notwithstanding the expiry or termination of this Agreement.

SCHEDULE H

Provider's Service Proposal (Not Applicable)

SCHEDULE I
Tender Clarifications and Responses (Not Applicable)