

DATED

2024



**THE CORNWALL COUNCIL**

and

**[INSERT NAME OF PROVIDER]**

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**Agreement for the provision of [XXXXXXXXXX]**

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Legal Services  
Cornwall Council  
New County Hall  
Treyew Road  
Truro  
Cornwall  
TR1 3AY

Ref: SG/074333

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**THIS AGREEMENT** is made on \_\_\_\_\_ day of \_\_\_\_\_ 2024

**BETWEEN:**

- (1) **THE CORNWALL COUNCIL** of New County Hall, Treyew Road, Truro, Cornwall TR1 3AY ('the Council'); and
- (2) **[NAME OF PROVIDER] [CO REG NO.] of [REGISTERED ADDRESS]** ('the Service Provider')

each a 'Party' and together the 'Parties'.

**WHEREAS**

- (A) The Council has a statutory duty with regard to improving public health by virtue of the NHS Act 2006 as amended by the Health and Social Care Act 2012. In pursuance of its duties it wishes to secure the provision of the Services and the Service Provider wishes to provide the Services.
- (B) The Parties have agreed for the Service Provider to provide the Services in accordance with the terms and conditions of this Agreement.
- (C) Provided the Service Provider fully complies with the provisions of this Agreement to the satisfaction of the Council, the Council shall make to the Service Provider the payments provided for in this Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

'Activity'	means any levels of clinical services and/or Service User flows set out in the Specification;
'Agreement'	means this Agreement entered into between the Council and the Service Provider embodying these terms and conditions and the schedules and appendices attached hereto;
'Appendix'	means any of the appendices attached hereto;
'Best Value Duty'	means the duty imposed by section 3 of the Local Government Act 1999 (the <b>LGA 1999</b> ) as amended, and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to any applicable guidance issued from time to time;
'Board of Directors'	means the executive board or committee of the relevant organisation;
'Business Continuity Plan'	means the Service Provider's plan referred to in Clause 35 ( <i>Business Continuity</i> ) relating to continuity of the Services, as agreed with the Council prior to the Commencement Date;

`Business Day`	means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London;
`Caldicott Guardian`	means the senior health professional responsible for safeguarding the confidentiality of patient information;
`Carer`	means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage;
`CEDR`	means the Centre for Effective Dispute Resolution;
`Charges`	means the charges which shall become due and payable by the Council to the Service Provider in respect of the provision of the Services in accordance with the provisions of this Agreement, as set out in the Payment Schedule;
`Commencement Date`	means 1 April 2025;
`Competent Body`	means anybody that has authority to issue standards or recommendations with which either Party shall comply;
`Complaint Procedure`	means the Service Provider's complaint procedure, which has been approved by the Council prior to the Commencement Date;
`Confidential Information`	<p>means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Special Categories Data within the meaning of the DPA. Confidential Information shall not include information which:</p> <ul style="list-style-type: none"> <li>(i) was public knowledge at the time of disclosure (otherwise than by breach of clause 37 (Confidential Information; Disclosure of Information and Freedom of Information));</li> <li>(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</li> <li>(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</li> <li>(iv) is independently developed without access to the Confidential Information</li> </ul>
`Consent Notice`	means the consent of an individual to the sharing of their Personal Data for the provision of the Services;
`Contract Management Meeting`	means a meeting of the Council and the Service Provider held in accordance with clause 29 ( <i>Contract Management</i> );

'Contract Standard'	means such standard as complies in each and every respect with all relevant provisions of this Agreement and where to the extent that no criteria are stated in this Agreement such standard as is to the entire satisfaction of the Council's Representative;
'Consents'	means: <ul style="list-style-type: none"> <li>(i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by law for or in connection with the performance of Services; and/or</li> <li>(ii) any necessary consent or agreement from any third party needed either for the performance of the Service Provider's obligations under this Agreement or for the provision by the Service Provider of the Services in accordance with this Agreement;</li> </ul>
'CQC'	means the Care Quality Commission;
'CQC Regulations'	means the Care Quality Commission (Registration) Regulation 2009;
'Council Representative'	means the person nominated by the Council as set out in Schedule 1 and appointed pursuant to Clause 10;
'Data Controller'	has the meaning given to it in the Data Protection Legislation;
'Data Guidance'	means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Service Provider by the Council and/or any relevant Regulatory Body;
'Data Processor'	has the meaning given to it in the Data Protection Legislation;
'Data Protection Legislation'	means the General Data Protection Regulations and the Data Protection Act 2018 (together referred to as the Data Protection Legislation) and subordinate and subsequent legislation;
'Data Protection Officer'	has the meaning set out in the Data Protection Legislation;
'Data Subject'	has the meaning set out in the Data Protection Legislation;
'DBS'	means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012;
'Default'	means any breach of the obligations of the Service Provider (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the Service Provider or the Staff in connection with or in relation to the subject-matter of this Agreement and in respect of which the Service Provider is liable to the Council;

'Default Interest Rate'	means LIBOR plus 2% per annum;
'Disclosing Party'	means the Party disclosing Confidential Information;
'Dispute'	means a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Agreement;
'DPA'	means the Data Protection Act 1998 and any subordinate legislation made under such 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;
'Equipment'	means the Service Provider's equipment, plant, materials and such other items supplied and used by the Service Provider in the performance of its obligations under this Agreement;
'Expiry Date'	means 31 March 2030;
'FOIA'	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Council or relevant government department in relation to such legislation and the Environmental Information Regulations 2004 ("EIR");
'Fraud'	means any offence under the laws of the United Kingdom creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts or defrauding or attempting to defraud or conspiring to defraud the Council;
'Fundamental Standards of Care'	means the requirements set out in regulations 9 to 19 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
'Good Clinical Practice'	means using standards, practices, methods and procedures conforming to the law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider, or a person providing services the same as or similar to the Services, at the time the Services are provided, as applicable;
'Guidance'	means any applicable local Council, health or social care guidance, direction or determination which the Council and/or the Service Provider have a duty to have regard to;
'Harm Test'	means the harm test as defined in the Safeguarding Vulnerable Groups Act 2006;
'Incident Report Form'	means the form attached at Schedule 2 to be completed and returned to the Council in accordance with clause 14.2;
'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;

- 'Information Governance Lead' means the individual responsible for information governance and for providing the Service Provider with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;
- 'Intellectual Property Rights' means all vested and contingent and future intellectual property rights including but not limited to copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created to which the Council may be entitled;
- 'Invoice' means a list of the Services provided by the Service Provider to the Council and the sums due for these;
- 'Joint Data Controller' has the meaning given it in the Data Protection Legislation;
- 'Legal Guardian' means an individual who has been legally appointed to take care of an individual personally and/or the individual's affairs;
- 'Lessons Learned' means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Service Provider's provision of the Services;
- 'LIBOR' means the London Interbank Offered Rate for 6 months sterling deposits in the London market;
- 'Living Wage' means the living wage as determined and amended from time to time by the Living Wage Foundation;
- 'Local Healthwatch' means the local independent consumer champion for health and social care in England;
- 'Location(s)' means the location(s) detailed in the document attached at Appendix C to this Agreement;
- 'Losses' means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses;
- 'LPC' means the Local Pharmaceutical Council;
- 'Material Breach' means a material breach (including but not limited to fundamental breach or breach of a fundamental term) by the Service Provider of its obligations under this Agreement, which may be a single material breach or a number of breaches or repeated breaches by the Service Provider of its obligations under this Contract that taken together constitute a material breach;



'National Institute for Health and Clinical Excellence' or 'NICE'	means the special health Council (or any other successor body appointed from time to time) responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health;
'Necessary Consents'	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services;
'NHS Act 2006'	means the National Health Service Act 2006;
'Patient Safety Incident'	means any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to, harm to that Service User;
'Payment Schedule'	means the document attached at Appendix B which sets out the Charges;
'Performance Improvement Plan'	means a plan developed by the Service Provider and approved by the Council which specifies the agreed measures to be undertaken by the Service Provider within agreed timescales in order to remedy the relevant breach;
'Performance Report'	means a report provided to the Council by the Service Provider setting out accurate performance information (in a format to be agreed between the parties) in accordance with clause 21.3;
'Personal Data'	has the meaning given it in the Data Protection Legislation;
'Personal Data Breach'	has the meaning given it in the Data Protection Legislation;
'Privacy Notice'	means the information that must be provided to a Data Subject under the Data Protection Legislation;
'Public Authority'	means as defined in section 3 of the FOIA;
'Quality Outcomes Indicators'	means the agreed key performance indicators and outcomes to be achieved as set out in the Specification;
'Regulatory or Supervisory Body'	means any body other than the CQC carrying out regulatory or supervisory functions in relation to the Service Provider and/or the Services;
'Regulated Activity'	means a regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006;
'Relevant Conduct'	means relevant conduct as defined in the Safeguarding Vulnerable Groups Act 2006;
'Relevant Offence'	means a relevant offence as defined in the Safeguarding Vulnerable Groups Act 2006;
'Right of Access, Rectification or Erasure Request'	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access, rectify or erase their Personal Data;

'Schedules'	means any of the schedules attached hereto;
'Special Categories Data'	means Personal Data consisting of information as to the racial or ethnic origin, the political beliefs, religious or similar beliefs, trade union membership, details of physical or mental health, sexual life and alleged commissions of crimes or criminal record of the data subject;
'Serious Incident'	means an incident or accident or near-miss where a patient (whether or not a Service User), member of Staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Service Provider's Premises or where the actions of the Service Provider, the Staff or the Council are likely to be of significant public concern;
'Services'	means the services (and any part or parts of those services) described in each of, or, as the context admits, all of the Specifications, and/or as otherwise provided or to be provided by the Service Provider under and in accordance with this Agreement;
'Service User'	means the person directly receiving the Services provided by the Service Provider as specified in the Service Specifications and includes their Carer and Legal Guardian where appropriate;
'Services Environment'	means the physical location, space, area, accommodation or other place as may be used or controlled by the Service Provider from time to time in which the Services are provided, excluding Service Users' private residences, Local Authority premises, schools and premises controlled by the Council;
'Specification'	means the document(s) attached to this Agreement at Appendix A;
'Staff'	means all persons employed by the Service Provider to perform its obligations under this Agreement together with the Service Provider's servants, agents, suppliers and Sub-contractors used in the performance of its obligations under this Agreement;
'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;
'Successor Provider'	means any provider to whom a member of Staff is transferred pursuant to TUPE in relation to the Services immediately on termination or expiry of this Agreement;
'Service Provider's Representative'	means the person who is nominated to represent the Service Provider as set out in Schedule 1 and appointed pursuant to clause 8;
'TUPE'	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
'VAT'	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

'Variation' means a variation to a provision or part of a provision of this Agreement made in accordance with clause 22.

- 1.2 The headings in this Agreement shall not affect its interpretation.
- 1.3 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.4 References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
- 1.5 References to sections, clauses and Appendices are to the sections, clauses and Appendices of this Agreement, unless expressly stated otherwise.
- 1.6 A reference to a person shall include a reference to any individual, Council or other legal entity
- 1.7 References to anybody, organisation or office shall include reference to its applicable successor from time to time.
- 1.8 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.
- 1.9 Use of the singular includes the plural and vice versa.
- 1.10 In the event of any conflict between the provisions of this Agreement and the provision of the Schedules or Appendices the provisions of this Agreement shall prevail.

## **2. COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall take effect on the Commencement Date and shall expire automatically on the Expiry Date.

## **3. SERVICES**

- 3.1 The Service Provider shall provide the Services **[at the Location(s)]** fully in accordance with the Specification and the provisions of this Agreement.
- 3.2 The Service Provider shall carry out the Services in accordance with the law and Good Clinical Practice and shall, unless otherwise agreed (subject to the law) with the Council in writing:
  - 3.2.1 comply, where applicable, with the registration and regulatory compliance guidance of, the CQC and any other Regulatory or Supervisory Body and any standards or recommendations issued from time to time by the General Pharmaceutical Council or any other Regulatory or Supervisory Body;
  - 3.2.2 respond where applicable, to all requirements and enforcement actions issued from time to time by, the CQC and any other Regulatory or Supervisory Body;
  - 3.2.3 consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;

- 3.2.4 comply with the recommendations issued from time to time by any Competent Body;
- 3.2.5 comply with the recommendations from time to time contained in guidance and appraisals issued by NICE where appropriate;
- 3.2.6 respond to any reports and recommendations made by Local HealthWatch where appropriate; and
- 3.2.7 comply with the Quality Outcomes Indicators set out in the Specification.
- 3.3 The Service Provider shall comply with all reasonable instructions given by the Council in relation to the Services.
- 3.4 The Service Provider shall keep the Council fully informed and provide it with regular reports on all matters of interest to a prudent client, together with such information as the Council may reasonably require from time to time.
- 3.5 The Service Provider shall provide the Services to the Contract Standard.
- 3.6 The Service Provider shall maintain current and accurate records of all work undertaken in the provision of the Services.
- 3.7 The Service Provider shall inform the Council's Representative promptly and confirm in writing if the Service Provider is unable to or fails to provide any part of the Service in accordance with this Agreement. The provision of information under this Clause 3.7 shall not in any way release or excuse the Service Provider from any of its obligations under this Agreement.

#### **4. WITHOLDING AND/OR DISCONTINUANCE OF SERVICE**

- 4.1 Except where required by the Law, the Service Provider shall not be required to provide or to continue to provide Services to any Service User:
  - 4.1.1 who in the reasonable professional opinion of the Service Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
  - 4.1.2 who displays abusive, violent or threatening behaviour unacceptable to the Service Provider (acting reasonably and taking into account the mental health of that Service User);
  - 4.1.3 in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Service Provider reasonably considers to be unacceptable; or
  - 4.1.4 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.
- 4.2 If the Service Provider proposes not to provide or to stop providing a Service to any Service User under clause 4.1:
  - 4.2.1 where reasonably possible, the Service Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 2 Business Days);

4.2.2 the Service Provider must tell the Service User of the right to challenge the Service Provider's decision through the Service Provider's complaints procedure and how to do so;

4.2.3 the Service Provider must inform the Council in writing without delay and wherever possible in advance of taking such action;

provided that nothing in this clause 4.2 entitles the Service Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

## **5. SERVICE USER INVOLVEMENT**

5.1 The Service Provider shall engage, liaise and communicate with Service Users and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.

5.2 As soon as reasonably practicable following any reasonable request from the Council, the Service Provider shall provide evidence to the Council of the involvement of Service Users and Staff in the development of Services.

## **6. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**

6.1 The Parties shall 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.

6.2 The Service Provider shall provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).

6.3 In performing this Agreement the Service Provider shall comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:

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

6.3.2 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

6.3.3 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 Service Provider is a public authority for the purposes of section 149 of the Equality Act 2010.

- 6.4 As soon as reasonably practicable following any reasonable request from the Council, the Service Provider shall provide the Council with a plan detailing how it will comply with its obligations under clause 6.3.
- 6.5 The Service Provider shall provide to the Council as soon as reasonably practicable, any information that the Council reasonably requires to:
  - 6.5.1 monitor the equity of access to the Services; and
  - 6.5.2 fulfil their obligations under the law.

## **7. MANAGING ACTIVITY**

- 7.1 The Service Provider shall manage Activity in accordance with any activity planning assumptions and activity cap set out in the Specification and shall comply with all reasonable requests of the Council to assist it with understanding and managing the levels of Activity for the Services.
- 7.2 Where an activity cap is specified, the Service Provider shall ensure activity does not exceed this. Any proposed activity beyond the cap stated should be discussed with the Council's Representative prior to the Services being provided.

## **8. STAFF**

- 8.1 At all times, the Service Provider shall ensure that:
  - 8.1.1 each of the Staff is sufficiently and appropriately qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - 8.1.2 there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the Specification;
  - 8.1.3 all staff employed by the Services Provider or its Sub-Contractors in connection with the performance of its obligations under this Agreement will be paid no less than the Living Wage;
  - 8.1.4 where applicable, Staff are registered with and where required have completed their revalidations with the appropriate professional regulatory body;
  - 8.1.5 it can provide a clear check undertaken through the DBS for each of the Staff engaged in the Services
  - 8.1.6 Staff carry, and where appropriate display, valid identification; and
  - 8.1.7 Staff are aware of and respect equality and the human rights of colleagues and Service Users.
- 8.2 If requested by the Council, the Service Provider shall as soon as practicable and by no later than 20 Business Days following receipt of that request, provide the Council with evidence of the Service Provider's compliance with clause 8.1.

- 8.3 The Service Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:
- 8.3.1 proper and sufficient continuous professional and personal development, training and instruction; and
  - 8.3.2 full and detailed appraisal (in terms of performance and on-going education and training),
- each in accordance with Good Clinical Practice and the standards of any applicable relevant professional body.
- 8.4 The Service Provider shall replace any of the Service Provider's Staff who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Staff for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 8.5 The Council shall in no circumstances be liable either to the Service Provider or to such Staff in respect of any cost, expense, liability loss, or damage occasioned by such removal and the Service Provider shall fully indemnify the Council in respect of any claim made by such Staff.
- 8.6 The Service Provider shall maintain up-to-date personal records on the Service Provider's Staff engaged in the provision of the Services, and on request, provide reasonable information to the Council on the Service Provider's Staff. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 8.7 The Service Provider shall use its best endeavours to ensure continuity of Staff and to ensure that the turnover rate of its Staff engaged in the provisions or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 8.8 The Service Provider shall provide and shall ensure that its personnel at all times when engaged in the provision of the Services wear such identification (including photographic identification) as agreed by the Parties, and shall ensure that when requested to do so any personnel of the Service Provider shall disclose his identity and status as personnel of the Service Provider and shall not attempt to avoid so doing.
- 8.9 Where Council rules and regulations or the nature or the location of any duties upon which the Service Provider's personnel shall be engaged in the provision of the Services make the wearing of any special or protective clothing necessary or appropriate, the Service Provider shall provide and shall require its personnel to wear such clothing. Such special or protective clothing shall be maintained and replaced as necessary by the Service Provider.
- 8.10 The Service Provider shall notify the Council's Representative immediately upon becoming aware of any possible conflict of interest which may arise between the interests of the Council and any other client of the Service Provider and the Service Provider shall take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Council's Representative.

## **9. SERVICE PROVIDER'S REPRESENTATIVE**

- 9.1 The Service Provider shall appoint a suitably qualified and experienced Service Provider Representative as named in Schedule 1 who shall be empowered to act on behalf of the Service Provider for all purposes connected with this Agreement. Such appointment or any further appointment shall be subject to the approval of the Council. The Service Provider's Representative shall not be replaced without prior written approval of the Council, such approval not to be unreasonably withheld. Any notice, information, instruction or other communication given to the Service Provider's Representative or any duly appointed deputy shall be deemed to have been given to the Service Provider.
- 9.2 The Service Provider shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of any person appointed as the Service Provider's Representative and of any subsequent appointment.
- 9.3 The Service Provider shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of any person authorised to act for any short temporary period as deputy for the Service Provider's Representative and when such deputy ceases to be so authorised.
- 9.4 The Service Provider shall ensure that the Service Provider's Representative or his deputy is available to meet the Council's Representative at all reasonable times. The Service Provider shall submit to the Council a list of any personnel appointed to supervise each area of work and shall inform the Council within five working days if there are any changes to that list.

## **10. COUNCIL'S REPRESENTATIVE**

- 10.1 The Council's Representative shall be the person named in Schedule 1 or such other person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of this Agreement.
- 10.2 The Council's Representative shall have power to issue instructions to the Service Provider on any matter relating to the provision of the Services and the Service Provider shall comply therewith.
- 10.3 From time to time the Council's Representative may appoint one or more representatives to act for the Council's Representative generally or for specified purposes or periods. Any act or instruction of any such representative shall be treated as an act or instruction of the Council's Representative.

## **11. SAFEGUARDING**

- 11.1 The Service Provider shall develop and maintain awareness and understanding of safeguarding issues with vulnerable adults, children and young people.
- 11.2 The Service Provider shall ensure that all allegations, suspicions and incidents of abuse, harm or risk of harm to children and/or vulnerable adults or where there is concern about the behaviour of an individual are reported immediately to the Council's Representative and the Multi Agency Referral Unit (MARU) 0300 123 1116.
- 11.3 The Service Provider shall ensure that children and/or vulnerable adults are safeguarded from any form of exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhumane or degrading treatment through deliberate intent, negligent acts or omissions.



- 11.4 The Service provider shall comply with all statutory obligations and Council and Government policies (including but not limited to the Council's Safeguarding Policy, Safeguarding Guidance for Providers and the South West Safeguarding Procedures) in respect of safeguarding as applicable and amended from time to time.
- 11.5 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 11 have been met.
- 11.6 The Service Provider must comply with any instruction given by the Council in respect of this clause 11.
- 11.7 The Parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 11.8 The Service Provider shall:
- 11.8.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the DBS;
  - 11.8.2 monitor the level and validity of the checks under this clause 11.8 for each member of Staff;
  - 11.8.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 11.9 The Service Provider warrants that 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 Service Provider in the provision of the Services is barred from activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 11.10 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, children or vulnerable adults.
- 11.11 The Service Provider shall ensure that all personnel engaged in the delivery of the Services regularly receive appropriate safeguarding training in relation to children and/or vulnerable adults in accordance with the Specification or as agreed by the Parties
- 11.12 The Service Provider shall appoint an individual of sufficient seniority for the safeguarding of children and/or vulnerable adults. This individual shall be responsible for the implementation and monitoring of the Service Provider's safeguarding policies and procedures in accordance with the terms of this Agreement.
- 11.13 The Service Provider shall ensure that it operates a recruitment and selection procedure which aligns with the Council's safer recruitment and disciplinary standards and which meets the requirements of legislation, equal opportunities and anti-discriminatory practice and ensures the protection of children and/or vulnerable adults

#### Whistleblowing

- 11.14 The Service Provider shall have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Service Provider as regards any part of the provision of the Services.
- 11.15 The Service Provider shall not take any action against any employee pursuant to its contractual rights in respect of that employee where such employee has in accordance with the process provided pursuant to clause 11.14 and in good faith reported alleged malpractice on the part of the Service Provider.

## **12. CHARGES AND PAYMENT**

- 12.1 Subject to any provision of this Agreement to the contrary (including without limitation those relating to withholding and/or retention), in consideration of the provision of the Services in accordance with the terms of this Agreement, the Council shall pay the Service Provider the Charges.
- 12.2 The Service Provider shall invoice the Council for payment of the Charges quarterly in arrears which the Council shall pay within thirty (30) Business Days of receipt. Each Invoice shall contain appropriate references and a detailed breakdown of the Services provided and shall be supported by any other documentation reasonably required by the Council's Representative to substantiate the Invoice.
- 12.3 The Council shall be under no obligation to pay any invoices which are submitted more than three (3) calendar months following provision of the Services.
- 12.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice.
- 12.5 Any VAT payable by the Council shall be payable at the rate and in the manner for the time being prescribed by law. All VAT charges must be shown separately in any Invoice clearly identifying what it relates to.
- 12.6 Where the Service Provider enters into a sub-contract with a contractor for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contact which requires payment to be made of all sums by the Service Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 12.7 If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause 12:

- 12.7.1 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;
- 12.7.2 any uncontested amount shall be paid in accordance with this Agreement.
- 12.8 If a Party contests a payment under clause 12.7 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause 12.7, the contesting Party may refer the matter to dispute resolution under clause 30 (*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 12.2.
- 12.9 Subject to any 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.
- 12.10 The Council may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement, including any other agreement pursuant to which the Service Provider provides goods or services to the Council.
- 12.11 The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.

### **13. SERVICE IMPROVEMENTS AND BEST VALUE DUTY**

- 13.1 The Service Provider shall to the utmost extent reasonably practicable co-operate with and assist the Council in fulfilling its Best Value Duty.
- 13.2 In addition to the Service Provider's obligations under clause 13.1, where reasonably requested by the Council, the Service Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Council and shall assist the Council with the preparation of any Best Value performance plans.
- 13.3 During the term of this Agreement at the reasonable request of the Council, the Service Provider shall:
- 13.3.1 demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;
- 13.3.2 implement such improvements; and
- 13.3.3 where practicable following implementation of such improvements decrease the price to be paid by the Council for the Services.
- 13.4 If requested by the Council, the Service Provider shall identify the improvements that have taken place in accordance with clause 13.3, by reference to any reasonable measurable criteria notified to the Service Provider by the Council.

## **14. INCIDENTS REQUIRING REPORTING**

- 14.1 If the Service Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Service Provider is not CQC registered it shall notify Serious Incidents to any relevant Regulatory or Supervisory Body as applicable, in accordance with the law.
- 14.2 If the Service Provider gives a notification to the CQC or any other Regulatory Body under clause 14.1 which directly or indirectly concerns any Service User, the Service Provider shall provide a completed Incident Report Form along with a copy of the notification to the Council as soon as possible and in any event within 5 Business Days. If no incidents occur which require notification, a monthly nil report shall be submitted to the Council's Representative by the 7<sup>th</sup> day of each calendar month.
- 14.3 The Parties shall comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Service Provider and the Council.
- 14.4 Subject to the law, the Council shall have complete discretion to use the information provided by the Service Provider under this clause 14.

## **15. CONSENT**

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

## **16. SERVICE USER HEALTH RECORDS**

- 16.1 The Service Provider shall create, maintain, store and retain Service User health records for all Service Users. The Service Provider shall retain Service User health records for the periods of time required by law and securely destroy them thereafter in accordance with any applicable Guidance.
- 16.2 The Service Provider must:
- 16.2.1 use Service User health records solely for the execution of the Service Provider's obligations under this Agreement; and
- 16.2.2 give each Service User full and accurate information regarding his/her treatment and Services received.
- 16.3 The Service Provider must at all times during the term of this Agreement have a Caldicott Guardian and shall notify the Council of their identity and contact details prior to the Commencement Date. If the Service Provider replaces its Caldicott Guardian at any time during the term of this Agreement, it shall promptly notify the Council of the identity and contact details of such replacements.
- 16.4 Subject to Guidance and where appropriate, the Service User Health Records should include the Service User's verified NHS number.

## **17. INTELLECTUAL PROPERTY**

- 17.1 Neither Party shall acquire any right, title or interest in or to any Intellectual Property Rights owned by the other Party or licensed to the other Party by a third party licensor unless specifically agreed pursuant to a variation agreed in accordance with clause 24. Neither Party shall have any right to use any of the other Party's Intellectual Property Rights (including names, logos or trade marks) in

connection with the performance of this Contract without the other Party's prior written consent.

- 17.2 The Service Provider warrants to the Council that the Intellectual Property Rights referred to in clause 17.1 are, save to the extent that duly authorised sub-contractors have been used, the Service Provider's own original work and that in performance of the Services it has not infringed and will not infringe any intellectual property right of any third party. The Service Provider further warrants that where duly authorised sub-contractors are used their work will be original.
- 17.3 The Service Provider shall indemnify and keep indemnified the Council against all reasonably foreseeable and legally enforceable actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Service Provider of this clause 17.

## **18. INFORMATION**

- 18.1 The Service Provider shall provide the Council with the information specified in the Specification to measure the quality, quantity or otherwise of the Services.
- 18.2 The Service Provider shall deliver the information required under clause 18.1 in the format, manner, frequency and timescales specified in the Specification and shall ensure that the information is accurate and complete.
- 18.3 In addition to the information required under clause 18.1, the Council may request from the Service Provider any other information it reasonably requires in relation to this Agreement and the Service Provider shall at its own cost deliver such requested information in a timely manner but in any case within 10 Business Days.

## **19. SERVICES ENVIRONMENT AND EQUIPMENT**

- 19.1 The Service Provider shall provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and shall ensure that all Equipment is fit for the purpose of providing the applicable Services.
- 19.2 The Service Provider must ensure that the Services Environment and Equipment comply with the Fundamental Standards of Care.
- 19.3 The Service Provider must ensure that all Staff using Equipment have received appropriate and adequate training and have been assessed as competent in the use of that Equipment.

## **20. COMPLAINTS**

- 20.1 The Service Provider shall at all times comply with its Complaint Procedure.
- 20.2 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under this Agreement, then the Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Service Provider, CQC or/and any Regulatory or Supervisory Body. Without prejudice to any other rights the Council may have under this Agreement, the Council may, in its sole discretion, uphold the complaint and take any action provided for under this Agreement.

**21. NOT USED****22. CO-OPERATION**

- 22.1 The Parties shall at all times act in good faith towards each other and in the performance of their respective obligations under this Agreement.
- 22.2 The Service Provider shall co-operate fully and liaise appropriately with:
- 22.2.1 the Council;
- 22.2.2 any third party supplier who the Service User may be transferred to or from the Service Provider;
- 22.2.3 any third party supplier which may be providing care to the Service User at the same time as the Service Provider's provision of the relevant Services to the Service User; and
- 22.2.4 primary, secondary and social care services,  
in order to:
- 22.2.5 ensure that a consistently high standard of care for the Service User is at all times maintained;
- 22.2.6 ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one supplier;
- 22.2.7 achieve a continuation of the Services that avoids inconvenience, or risk to the health and safety of, Service Users, employees of the Council or members of the public.
- 22.3 The Service Provider must ensure that its provision of any service to any third party does not hinder or adversely affect its delivery of the Services or its performance of this Agreement.

**23. WARRANTIES AND REPRESENTATIONS**

- 23.1 The Service Provider warrants and represents that:
- 23.1.1 It has full capacity and authority to enter into and perform its obligations under this Agreement and that this Agreement is executed by a duly authorised representative of the Service Provider;
- 23.1.2 it has all of the Consents in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 23.1.3 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 party or which is binding on it or any of its assets;
- 23.1.4 in entering this Agreement it has not committed any Fraud;

23.1.5 all material information supplied by it to the Council is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Council which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Service Provider substantially on the terms of this Agreement;

23.1.6 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;

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

23.1.8 in the 3 years prior to the Commencement Date:

(i) It has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

(ii) It has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(iii) It has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on going business concern or its ability to fulfil its obligations under this Agreement; and

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

23.1.10 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge or belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement.

23.2 The warranties set out in this clause 23 are given on the Commencement Date and repeated on every day during the term of this Agreement.

## **24. VARIATIONS**

24.1 This Agreement may not be amended or varied other than in accordance with this clause 24.

24.2 Either Party may from time to time during the term of this Agreement, by written notice to the other Party, request a variation to this Agreement (Variation). A notice of Variation shall set out in as much detail as is reasonably practicable the proposed amendment(s).

24.3 Where a notice of Variation is issued, the Council and the Service Provider shall enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree

a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Agreement.

- 24.4 No Variation to this Agreement will be valid or of any effect unless agreed in writing by the Council Representative (or his nominee) and the Service Provider Representative (or his nominee) in accordance with clause 42 (Notices). All agreed Variations shall form an addendum to this Agreement.

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

- 25.1 The Service Provider shall not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Agreement without the Council in writing:

25.1.1 consenting to the appointment of the sub-contractor (such consent not to be unreasonably withheld or delayed); and

25.1.2 approving the sub-contract arrangements (such approval not to be unreasonably withheld or delayed).

- 25.2 The Council's consent to sub-contracting under clause 25.1 will not relieve the Service Provider of its liability to the Council for the proper performance of any of its obligations under this Agreement and the Service Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Service Provider.

- 25.3 Any sub-contract submitted by the Service Provider to the Council for approval of its terms, shall impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Agreement to the extent practicable.

- 25.4 The Council may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the consent of the Service Provider.

## **26. AUDIT AND INSPECTION**

- 26.1 The Service Provider shall comply with all reasonable written requests made by, the Council, the CQC the National Audit Office, and the authorised representative of the Local HealthWatch for entry to the Service Provider's Premises for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Service Provider may refuse such request to enter the Service Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.

- 26.2 Subject to law and notwithstanding clause 26.1, the Council may enter the Service Provider's Premises and/or the premises of any Sub-contractor upon reasonable notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Service Provider shall not restrict access and shall give all reasonable assistance and provide all reasonable facilities to the Council.



- 26.3 Within 10 Business Days of the Council's reasonable request, the Service Provider shall send the Council a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Service Provider, to which the Service Provider has access and which it can disclose in accordance with the law.
- 26.4 The Council shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 26.5 During any audit undertaken under clause 26.1 or 26.2, the Service Provider shall provide the Council with all reasonable co-operation and assistance in relation to that audit, including:
- 26.5.1 all reasonable information requested within the scope of the audit;
  - 26.5.2 reasonable access to the Service Provider's Premises; and
  - 26.5.3 access to the Staff.
- 26.5 If an audit identifies that:
- 26.5.1 the Service Provider has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a Performance Improvement Plan. If the Service Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Service Provider's costs, then the Performance Improvement Plan shall include a requirement for the provision of all such information;
  - 26.5.2 the Council has overpaid any Charges, the Service Provider shall pay to the Council the amount overpaid within 19 days. The Council may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
  - 26.5.3 the Council has underpaid any Charges, the Council shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Service Provider in relation to invoicing within 30 days.

## **27. INDEMNITIES AND INSURANCE**

- 27.1 The Service Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of, or in any way arising out of, the provision of the Services, in relation to the injury to, or death of, any person, and the loss of, or damage to, any property including property belonging to the Council except and to the extent that it may arise out of the act, default or negligence of the Council, its employees or agents not being the Service Provider or its personnel.
- 27.2 Without prejudice to its obligations under this Clause 27, the Service Provider shall effect and maintain with reputable insurers such policy or policies of insurance as may be necessary to cover the Service Providers obligations and liabilities under this Clause 27, including but not limited to:
- 27.2.1 professional indemnity insurance with a limit of liability of not less that £2 million; and

27.2.2 public liability insurance with a limit of liability of not less than £5 million;  
and

27.2.3 employers liability insurance with a limit of liability of not less than £5 million

27.2.4 medical negligence insurance with a limit of liability of not less than £5 million

for any one occurrence.

27.3 The Service Provider shall supply to the Council forthwith any relevant policy or a certificate from its insurers or brokers confirming that the Service Provider's insurance policies comply with Clause 27.2 and the Service Provider shall supply to the Council on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with Clause 27.2.

27.4 If the Service Provider fails to take out and maintain the insurance required under Clauses 27.1 and 27.2 then the Council itself may insure against any risk in respect of which the failure shall have occurred and a sum or sums equivalent to the amount paid or payable by the Council in respect of premiums therefore may be deducted by the Council from any monies due or to become due to the Service Provider under this Agreement or such amount may be recoverable by the Council from the Service Provider as a debt.

27.5 The Service Provider shall procure that any sub-contractors of the Service Provider maintain like insurance cover to that required to be maintained by the Service Provider under this Agreement and any such other insurance cover as may from time to time be reasonably required by the Council.

27.6 The Service Provider shall hold and maintain the insurances set out in clause 27 above for a minimum of six (6) years following the expiration or earlier termination of this Agreement.

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

27.8 Nothing in this Agreement will exclude or limit the liability of either Party for:

27.8.1 death or personal injury caused by its negligence; or

27.8.2 fraud or fraudulent misrepresentation.

## **28. DEFAULTS AND FAILURE TO SUPPLY**

28.1 In the event that the Council is of the reasonable opinion that there has been a Default which is a Material Breach of this Agreement by the Service Provider, then the Council may, without prejudice to any other rights or remedies it may have under this Agreement, consult with the Service Provider and then do any of the following:

28.1.1 require the Service Provider to submit a performance improvement plan detailing why the Material Breach has occurred and how it will be remedied within 10 Business Days or such other period of time as the Council may direct;

28.1.2 without terminating this Agreement, suspend the affected Service in accordance with the process set out in clause 32 (Termination);

28.1.3 without terminating the whole of this Agreement, terminate this Agreement in respect of the affected part of the Services only in accordance with clause 32 (Termination) (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Council may supply or procure a third party to supply such part of the Services.

28.1.4 terminate in accordance with clause 32 (Termination) the whole of this Agreement.

28.2 If the Council exercises any of its rights under clause 28.1, the Service Provider shall indemnify the Council for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

## **29. CONTRACT MANAGEMENT**

29.1. The provisions of this clause 29 do not affect any other rights and obligations the Parties may have under this Agreement.

### **29.2 Contract Management Meetings**

29.2.1 The Council may require the Service Provider to attend Contract Management Meetings to review and monitor performance of the Services and consider any other matters reasonably required by either Party, at a frequency determined by the Council.

29.2.2 The Service Provider shall submit to the Council any agenda items to be discussed at a Contract Management Meeting no less than five (5) Business Days prior to the date of the Contract Management Meeting.

29.2.3 Where requested by the Council, the Service Provider shall provide to the Council a Performance Report no less than five (5) Business Days prior to the date of the Contract Management Meeting.

29.2.4 The Service Provider acknowledges and accepts that the Council may, at its absolute discretion, publish the Performance Reports (subject to the removal or redaction of any Confidential Information) from time to time.

29.3 Notwithstanding clauses 29.2 above if either the Council or the Service Provider reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution that Party may by notice require that an emergency Contract Management Meeting be held as soon as practicable and in any event within five (5) Business Days following receipt of that notice by the other Party.

### **29.4 Quality Outcome Indicators**

29.4.1 The Service Provider shall achieve the Quality Outcomes Indicators set out in the Specification.

29.4.2 Quality Outcomes Indicators shall be reported on by the Service Provider in the Performance Reports submitted to the Council in accordance with clause 29.2.

29.4.3 Without prejudice to any other rights or remedies arising under this Contract, if the Service Provider fails to achieve the same Quality Outcomes Indicators on two or more occasions within any twelve (12) month rolling period, the Council reserves the right to require a Performance Improvement Plan from the Provider in accordance with clause 29.5.

## 29.5 Performance Improvement Plan

29.5.1 Without prejudice to clause 31 (*Suspension and Consequences of Suspension*) of this Agreement, in the event that the Service Provider commits a breach of this Contract which has an adverse effect on the Services or any Service User, the Council may (without prejudice to any other rights or remedies that it may have under this Contract) serve a written notice on the Service Provider requiring the Service Provider to submit a draft Performance Improvement Plan to the Council detailing why the breach has occurred and how it will be remedied within ten (10) Business Days of receipt of Council's notice.

29.5.2 The Council shall confirm whether the draft Performance Improvement Plan is approved or rejected within ten (10) Business Days of receipt and, if rejected, shall provide reasons for the rejection. If the Council rejects the proposed draft Performance Improvement Plan, the Service Provider shall promptly amend the draft Performance Improvement Plan to take account of the Council's reasons for rejection and resubmit to the Council for approval. Thereafter, the procedure set out in this clause 29.5.2 shall be reapplied until the draft Performance Improvement Plan is approved by the Council. Once the draft Performance Improvement Plan has been approved by the Council, it shall be implemented by the Service Provider in accordance with its terms.

29.5.3 If the Service Provider fails to implement an approved Performance Improvement Plan in accordance with its terms, this will constitute a Material Breach for the purposes of this Contract.

29.6 If the Council exercises its rights under this clause 29, the Service Provider shall indemnify the Council in respect of any Losses directly and reasonably incurred by the Council in respect of the breach which is subject to the Performance Improvement Plan.

## **30. DISPUTE RESOLUTION**

30.1 The Parties shall initially attempt to resolve any Disputes by the Parties Representatives negotiating in good faith within ten (10) Business Days.

30.2 In the event that the dispute or difference cannot be resolved pursuant to clause 30.1 within ten (10) Business Days of the date of notification of the Dispute the matter shall be referred to the Head of Service for the Council and a Partner for the Service Provider who shall work together in good faith to resolve the Dispute within ten (10) Business Days of the meeting at which the Dispute is discussed following referral by the Parties Representatives.

30.3 In the absence of resolution in accordance with clause 30.1 or 30.2 above the Dispute may be referred by agreement of both Parties to a single mediator to be

appointed in accordance with the mediation procedures of the Centre for Effective Dispute Resolution (CEDR) Model Mediation procedure 2001 or such later edition as may be in force from time to time or such other organisation which provides mediation services. The mediator shall be agreed upon by the Parties.

- 30.3 All costs of mediation shall be borne equally by the Parties unless otherwise directed by the mediator.
- 30.4 The submission of a Dispute to mediation by either Party shall not limit the right of either Party to commence any proceedings in any court of competent jurisdiction in England and Wales.

### **31. SUSPENSION AND CONSEQUENCES OF SUSPENSION**

31.1 A suspension event shall have occurred if:

31.1.1 the Council reasonably considers that a breach by the Service 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

31.1.2 clause 31.1.1 does not apply, but the Council, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of a Service or Services; or

31.1.3 the Service Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each a Suspension Event).

31.2. Where a Suspension Event occurs the Council:

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

31.2.2 must where applicable promptly notify CQC and/or any relevant Regulatory or Supervisory Body of the suspension.

31.3. During the suspension of any Service under clause 31.2, the Service Provider must comply with any steps the Council reasonably specifies in order to remedy the Suspension Event, including where the Council's decision to suspend pursuant to clause 31.2 has been referred to dispute resolution under clause B30 (Dispute Resolution).

31.4. During the suspension of any Service under clause 31.2, the Service Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

31.4.1 all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause 31.2; and/or

- 31.4.2 all or part of the suspended Service which the Service Provider continues to deliver during the period of suspension in accordance with clause 31.5.
- 31.5. The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- 31.6. Except where suspension occurs by reason of an event of Force Majeure, the Service Provider must indemnify the Council in respect of any Losses directly and reasonably incurred by the Council in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).
- 31.7. Following suspension of a Service the Service Provider must at the reasonable request of the Council and for a reasonable period:
- 31.7.1 co-operate fully with the Council and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Council or members of the public; and
- 31.7.2 at the cost of the Service Provider:
- 31.7.3 promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
- 31.7.4 deliver to the Council all materials, papers, documents and operating manuals owned by the Council and used by the Service Provider in the provision of the suspended Service.
- 31.8. As part of its compliance with clause 31.7 the Service Provider may be required by the Council to agree a transition plan with the Council and/or any alternative Successor Provider.
- 31.9. If it is determined, pursuant to clause 30 (Dispute Resolution), that the Council acted unreasonably in suspending a Service, the Council must indemnify the Service Provider in respect of any Loss directly and reasonably incurred by the Service Provider in respect of that suspension.
- 31.10. During any suspension of a Service the Service Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.

## **32. TERMINATION**

- 32.1 Either Party may terminate this Agreement at any time by giving the other Party not less than three (3) months' prior written notice to the Service Provider.
- 32.2 If the Service Provider is found to have offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of this Agreement, or any other Agreement with the Council, or for showing or forbearing to show favour, or disfavour, to any person in relation to this Agreement, or any other Agreement with the Council, or if the like acts shall have been done by any person employed by the Service Provider, or acting on the Service Provider's behalf (whether with or without the knowledge of the Service Provider), or if in relation to this Agreement, or any other Agreement with the

Council, the Service Provider or any other person employed by the Service Provider, or acting on the Service Provider's behalf, shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward to any member or officer of the Council, the receipt of which is an offence under section 117 (2) Local Government Act, 1972, then any such act shall constitute a breach of this Agreement which entitles the Council to treat itself as discharged from further liability under this Agreement and to recover from the Service Provider the full amount of any loss resulting thereto.

32.3 If the Service Provider or (as appropriate) the Service Provider's partners, directors or members of a limited liability partnership:

32.3.1 is in persistent breach of any one of its obligations under this Agreement;

32.3.2 is in persistent or repetitive breach of the Quality Outcomes Indicators;

32.3.3 fails to obtain any Consent, loses any Consent, or has any Consent varied or restricted, the effect of which might reasonably be considered by the Council to have a material adverse effect on the provision of the Services;

32.3.4 the Service Provider's necessary registrations are cancelled by the CQC or other Regulatory or Supervisory Body as applicable;

32.3.5 is in Material Breach of any one of its obligations under this Agreement;

32.3.6 experiences, in the opinion of the Council, an irreconcilable conflict of interest between the interests of the Council and any other client of the Service Provider;

32.3.7 has a resolution passed or an order is made for the winding-up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administrative order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment;

32.3.8 ceases or threatens to cease to carry on business;

32.3.9 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 Service Provider has not remedied that breach within 30 Business Days following receipt of notice from the Council identifying the breach

then any such event shall constitute a breach of this Agreement which entitles the Council to terminate this Agreement in whole or part with immediate effect by written notice to the Service Provider.

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

### **33. CONSEQUENCES OF EXPIRY OR TERMINATION**

33.1 Expiry or termination of this Agreement, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that

expiry or termination or which later accrue.

33.2 The Service Provider shall develop an outline succession plan which describes the procedure for ensuring an orderly transfer of the Services to a Successor Provider following expiry or termination of this Contract and shall submit the same to the Council for approval no later than twenty (20) Business Days prior to the Commencement Date. The succession plan shall provide the following:

33.2.1 if applicable, confirmation of any transferring assets (including but not limited to hardware, software and leases);

33.2.2 if applicable, confirmation of any Intellectual Property Rights created under this Contract;

33.2.3 details of any outstanding Services that have not yet been delivered by the Service Provider; and

33.2.4 confirmation of any final reconciliation of the Charges due to the Council in accordance with clauses 12.11 and 42.

33.3 On the service of a Termination Notice or forty (40) Business Days prior to expiry (as appropriate), the Service Provider will make any updates to the Succession Plan which may be required to take into account the identity of the Successor Provider and the Council's preferred transition arrangements (as notified to the Service Provider by the Council) and shall provide the updated succession plan to the Council for approval. Following approval of the updated succession plan by the Council, the Parties shall implement the succession plan in accordance with its terms.

33.4 Without prejudice to clause 33.3, on the expiry or termination of this Contract the Service Provider must co-operate fully with the Council to migrate the Services in an orderly manner to the Successor Provider.

33.5 In the event of termination or expiry of this Contract, the Service Provider shall cease to use the Council's Confidential Information and on the earlier of the receipt of the Council's written instructions or twelve (12) months after the date of expiry or termination, either return all copies of the Confidential Information to the Council or destroy all copies of the Confidential Information, as required by the Council.

33.6 The Parties acknowledge and agree that any clauses, paragraphs or other provisions of this Contract which are stated to, or by implication are intended to, survive the termination or expiry of this Contract shall continue to have effect and bind the parties until the date specified in the relevant clause, paragraph or other provision or (if not date is specified) the date which is twelve (12) years following the date of termination or expiry of this Contract.

#### **34. SURVIVAL OF TERMS**

34.1 The provisions of clauses 8 (Staff), 12 (Charges and Payment), 14 (Incidents Requiring Reporting), 16 (Service User Health Records), 18 (Information), 25 (Assignment and Sub-contracting), 26 (Audit and Inspection), 33 (Consequence of Expiry or Termination), 37 (Confidentiality, Data Protection and Freedom of Information) and 39 (TUPE) will survive termination or expiry of this Agreement.

#### **35. BUSINESS CONTINUITY**



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

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

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

### **37. CONFIDENTIALITY; DATA PROTECTION AND FREEDOM OF INFORMATION**

#### **37.1 CONFIDENTIALITY**

- 37.1.1 Except where otherwise provided for 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.
- 37.1.2 Subject to Clauses 37.1.3 and 37.1.4, 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.
- 37.1.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:
- (a) in connection with any dispute resolution under clause 30 (Dispute Resolution);
  - (b) in connection with any litigation between the Parties;

- (c) to comply with the law;
- (d) to its Staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause 37.1.2;
- (e) to comply with a regulatory bodies request.

37.1.4 The obligations in clause 37.1.1 and clause 37.1.2 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.

37.1.5 The obligations in clause 37.1 and clause 37.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Service Provider and where reasonably practicable shall consider any representations made by the Service Provider.

## 37.2 INFORMATION GOVERNANCE AND DATA PROTECTION

### Protection of Personal Data

- 37.2.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that:
- (a) the Service Provider and the Council will, in the circumstances set out at Schedule 3, be joint Data Controllers in relation to the Processing of Personal Data under this Agreement; and
  - (b) the Service Provider may act as a separate Data Controller in relation to the majority of the Processing of Personal Data carried out by the Service Provider under this Agreement.

### Obligations where the Service Provider acts as a separate Data Controller

- 37.2.2 Where and to the extent that the Service Provider acts as Data Controller in relation to Personal Data Processed in connection with this Agreement, the Service Provider shall:
- (a) Process the Personal Data only for the purposes of complying with its obligations under this Agreement;
  - (b) Process the Personal Data fairly and lawfully and in particular provide appropriate privacy notices to Data Subjects to ensure that they understand how their Personal Data will be Processed by the Service Provider;
  - (c) ensure that the Personal Data is accurate, kept up-to-date and limited to the Personal Data that is necessary to enable the Service Provider to comply with its obligations under this Agreement;
  - (d) not Process Personal Data for any longer than is necessary for the purposes of complying with its obligations under this Agreement, except where required under any applicable Law; and
  - (e) have in place appropriate technical and organisational security measures to prevent unauthorised or unlawful Processing of Personal Data or accidental loss or destruction of, or damage to, Personal Data and to ensure a level of security appropriate to the nature of the Personal Data and the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage.

#### Obligations where the Council and the Service Provider act as joint Data Controllers

- 37.2.3 The Parties acknowledge that in relation to the Personal Data Processing activities set out at Part 1 of Schedule 3, the Council and the Service Provider will be joint Data Controllers.
- 37.2.4 The Parties agree to comply with their respective roles and responsibilities set out at Part 2 of Schedule 3 in relation to Personal Data Processed by the Council and the Service Provider as joint Data Controllers.

#### Obligations where the Service Provider acts as Data Processor on behalf of the Council

- 37.2.5 The Parties do not anticipate that the Service Provider will routinely act as a Data Processor on behalf of the Council. However, if and to the extent that the Service Provider does act as Data Processor on behalf of the Council in connection with this DPS Agreement, the Service Provider shall:
- (a) prior to the Processing of any Personal Data under this Agreement and where requested by the Council from time to time provide a Privacy Impact Assessment ("PIA") to the Council which will include (but not be limited to);
    - (i) a systematic description of the envisaged processing operations and the purpose of the processing;
    - (ii) an assessment of the necessity and proportionality on the processing operations in relation to the Services;
    - (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
- (b) Process the Personal Data only in accordance with instructions from the Council, except where Processing is and as required by Law or any regulatory body; in which case the Service Provider shall inform the Council of the relevant requirement prior to Processing, unless prevented from doing so by law;
- (c) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data under this Agreement, including all measures required by the Data Protection Laws, and in particular Article 32 of the GDPR;
- (d) not disclose or transfer the Personal Data to or allow the processing of Personal Data by any Sub-Contractor, Affiliate and/or third party without the prior written consent of the Council, and in the case of any Sub-Contractor or other third party whom the Service Provider wishes to engage for the Processing of Personal Data under this Agreement ("Sub-processor") such consent to be conditional upon:
  - (i) the Service Provider entering into a contract with the Sub-processor which includes terms which are substantially the same as those set out in this clause;
  - (ii) the Service Provider remaining fully liable to the Council for any failure by the Sub-processor to fulfil its obligations in relation to the Processing of Personal Data; and
  - (iii) the use of the Sub-processor being otherwise in accordance with clause 37.2.6;
- (e) take all reasonable steps to ensure the reliability and integrity of any Service Provider Staff who have access to the Personal Data and ensure that the Service Provider Staff:
  - (i) are aware of and comply with the Service Provider's duties under clause 37.1 (Confidentiality);
  - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
  - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (f) notify the Council within 48 hours if it :
  - (i) receives from a Data Subject (or third party on their behalf):
    - (A) a Data Subject Access Request (or purported Data Subject Access Request);
    - (B) a request to rectify, block or erase any Personal Data; or

- (C) any other request, complaint or communication relating to the Council's obligations under the Data Protection Laws;
  - (ii) receives any communication from the Information Commissioner or any other regulatory body in connection with Personal Data; or
  - (iii) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (iv) considers that any instructions from the Council infringe the Data Protection Laws; or
  - (v) receives any regulator correspondence or any other communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement; or
  - (vi) is required by Law to commit an act or omission that would constitute a breach of this clause 37.2;
- (g) provide the Council with full cooperation and assistance (within the timescales reasonably required by the Council) in relation to either Party's obligations under the Data Protection Laws or any complaint, communication or request made as referred to in clause 37.2.5 (e), including by promptly providing:
- (i) the Council with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Council to enable the Council to comply with any request from a Data Subject to exercise any right under the Data Protection Laws (including but not limited to a Data Subject Access Request) within the relevant timescales set out in the Data Protection Laws;
  - (iii) the Council, on request by the Council, with any Personal Data it holds in relation to a Data Subject; and
  - (iv) assistance following a Personal Data Breach as required by the Council including with respect to the conduct of a data protection impact assessment and the Council's consultation with the Information Commissioner's Office;
- (h) if requested by the Council, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause 37.2.5 and provide to the Council copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
- (i) keep a record of all categories of processing activities carried out on behalf of the Council, containing;

- (i) the name and contact details of the Service Provider and each Sub-processor, and where applicable, the Processor and each Sub-processor's data protection officer;
- (ii) the categories of processing carried out on behalf of the Council;
- (iii) where applicable, any transfers of Personal Data to Restricted Countries or an international organisation; and
- (iv) the written description of security measures referred to in clause 37.2.5 (h).

#### General data protection obligations

- 37.2.6 The obligations in clauses 37.2.7 to 37.2.14 below apply regardless of whether the Service Provider is a separate Data Controller, a joint Data Controller with the Council or a Data Processor on behalf of the Council.
- 37.2.7 The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations. This clause 37.2.7 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 37.2.8 The Service Provider must comply with and must demonstrate satisfactory compliance with clause 37.2.7 above.
- 37.2.9 The Service Provider must:
  - (a) nominate an Information Governance Lead;
  - (b) nominate a Data Protection Officer if applicable; and
  - (c) ensure that the Council is kept informed at all times of the identities and contact details of the Information Governance Lead and the Data Protection Officer if applicable.
- 37.2.10 If the Service Provider is required under Data Protection Legislation to notify the Information Commissioner or a Data Subject of a Personal Data Breach then within 48 (forty-eight) hours of the Personal Data Breach occurring the Service Provider must inform the Council of the Personal Data Breach together with confirmation of what steps the Service Provider is taking to comply with the Data Protection Legislation (such steps to include but not be limited to reporting the Personal Data Breach to the Information Commissioner within 72 (seventy-two) hours of the Personal Data Breach Occurring).
- 37.2.11 The Service Provider shall ensure that the Service Provider Staff are appropriately trained to handle and Process Personal Data in accordance with this Agreement.

- 37.2.12 The Council is entitled, on giving reasonable notice to the Service Provider, and the Service Provider shall permit the Council to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the Processing of Personal Data by the Service Provider in connection with this Agreement. The requirement under this clause 37.2.12 to give notice shall not apply if the Council believes that the Service Provider is in breach of any of its obligations under this Agreement or the Data Protection Laws in relation to Personal Data Processed in connection with this Agreement.
- 37.2.13 Upon request, the Service Provider shall allow the Information Commissioner's Office and its representatives access to the Service Provider's premises, records and personnel for the purposes of assessing the Service Provider's compliance with this clause 37.2 and the Data Protection Laws.
- 37.2.14 Whether or not a Party or Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and any further Data Guidance. The Parties acknowledge that a Party or Sub-Contractor may act as both a Data Controller and a Data Processor, or a Joint Data Controller.
- 37.2.12 Without prejudice to the generality of clause 37.2, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this Agreement.
- 37.2.13 Any failure by the Service Provider to inform individuals as required by Data Protection Legislation or Data Guidance about the uses of Personal Data that may take place under this Agreement cannot be relied on by the Services Provider as evidence that such use is unlawful and therefore not contractually required.
- 37.2.14 Where the Council requires information for the purposes of quality management, the Service Provider must consider whether the Council's request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Council, the Service Provider must:
- (a) provide such information in pseudonymised form where possible; and in any event
  - (b) ensure that there is a legal basis for the sharing of Personal Data.
- 37.2.15 The Service Provider shall complete and return to the Council's Representative the Data Security and Information Governance Requirements form attached at Schedule 4 by no later than 13 January 2025 and annually thereafter.

- 37.2.16 Immediately upon the termination or expiry of this Agreement (or any part thereof) the Service Provider shall cease Processing the Personal Data (or any part thereof, as applicable) (except as necessary to comply with an obligation under any Law), and as soon as reasonably practicable thereafter, at the Council's option (to be exercised without undue delay), either (i) securely return to the Council or securely transfer to a new supplier; or (ii) securely wipe from its systems (so that the Personal Data cannot reasonably be recovered or reconstructed), the Personal Data and any copies of it or the information it contains.

#### Data protection indemnity

- 37.2.15 The Service Provider shall indemnify the Council on a continuing basis against any and all Losses incurred by the Council arising from, or in connection with, any breach of the Service Provider's obligations under this clause 37.2 and/or any failure by the Service Provider or any Sub-Contractor to comply with their respective obligations under Data Protection Laws.
- 37.2.16 Notwithstanding any other provision of this Agreement, where the Service Provider commits a Personal Data Breach which under Data Protection Legislation must be notified to the Information Commissioner and/or to an individual the Council may terminate this Agreement with immediate effect.
- 37.2.17 Nothing in this clause 37.2 shall be construed as requiring the Service Provider or any relevant Sub-Contractor to be in breach of any Data Protection Laws.

#### 37.3 FREEDOM OF INFORMATION AND TRANSPARENCY

- 37.3.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 37.3.2 If the Service Provider is not a public Council, the Service Provider acknowledges that the Council is subject to the requirements of the FOIA and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA. Accordingly the Service Provider agrees:
- (a) that this Agreement and any other recorded information held by the Service Provider on the Council's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Council under the FOIA;
  - (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Council;
  - (c) that if the Service Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Council) and will promptly (and in any event within 2 working days) transfer the request to the Council;



- (d) that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Service Provider and this Agreement either without consulting with the Service Provider, or following consultation with the Service Provider and having taken its views into account; and
  - (e) to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an Council within 5 working days of such request and without charge.
- 37.3.3 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.
- 37.3.4 Notwithstanding any other provision of this Agreement, the Service 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.
- 37.3.5 In preparing a copy of this Agreement for publication pursuant to clause 37.1.4 the Council may consult with the Service Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Council's absolute discretion.
- 37.3.6 The Service Provider shall assist and co-operate with the Council to enable the Council to publish this Agreement.
- 37.3.7 In order to comply with the Government's policy on transparency in the areas of Agreements and procurement the Council will be disclosing information on its website in relation to expenditure over £500 (five hundred pounds) in relation to this Agreement. The information will include the Service Provider's name and the Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.
- 37.3.8 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 37.
- 37.3.9 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause 37 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 37.
- This clause 37 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- 37.3.10 The Service Provider shall be responsible for any costs associated with compliance with the provisions of this clause 37.

37.3.11 The Service Provider shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) detailed in the Specification in relation to its security policies, procedures and control of Confidential Information, Personal Data and Special Categories Data.

37.3.12 The Service Provider's compliance with this clause shall be monitoring as part of the Agreement monitoring process in accordance with clause 29.

### **38. PROHIBITED ACTS**

38.1. Neither Party shall do any of the following:

38.1.1 offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Agreement or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the other Party; and

38.1.2 in connection with this Agreement, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,

(together "Prohibited Acts").

38.2. If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Agreement, the non-defaulting Party shall be entitled:

38.2.1 to exercise its right to terminate under clause 32.2 (Termination) and to recover from the defaulting Party the amount of any loss resulting from the termination; and

38.2.2 to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and

38.2.3 to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

38.3. Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

38.4. The Service Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Council within 5 Business Days of the Council requesting it and enforced by the Service Provider where applicable.

- 38.5. Should the Service Provider become aware of or suspect any breach of this clause B39, it will notify the Council immediately. Following such notification, the Service Provider must respond promptly and fully to any enquiries of the Council, co-operate with any investigation undertaken by the Council and allow the Council to audit any books, records and other relevant documentation.

### **39. TUPE**

- 39.1. The Service Provider acknowledges that the Council has made no assurance about the effect of TUPE and has formed its own view on whether TUPE applies before executing this Agreement. The Service Provider agrees that the Agreement Price shall not be varied on the grounds that TUPE does or does not apply, irrespective of the belief of the Council or the Service Provider prior to the execution of this Agreement.
- 39.2 The Service Provider shall provide pension rights to Transferring Employees that are the same as or are broadly comparable to or better than those the Transferring Employees had prior to any transfer affected by the award of this Agreement. The Service Provider, if applicable, shall consider seeking admitted body status with the Local Government Pension Scheme or applying to NHS Pensions for permission to employ people on a NHS Pension Scheme for those Transferring Employees that are members of such a scheme. Where applicable, the Service Provider shall comply with the Statement of Practice on Staff Transfers in the Public Sector (2000), the Code of Practice on Workforce Matters in Local Council Service Agreements, Best Value Authorities Staff Transfers (Pensions) Direction 2007 together with any other guidance and/or legislation that is issued from time to time.
- 39.3 No compensation or remuneration shall be payable by the Council, where the nature, extent, effect or character of any obligations acquired by the Service Provider under this Agreement as a result of the effects of TUPE may be different from that envisaged.
- 39.4 The Council does not accept any responsibility for and gives no warranty in respect of the TUPE information which has been supplied to the Service Provider by the Council.
- 39.5 Where the Council has notified the Service Provider that it intends to tender or retender any of the Services, the Service Provider shall on written request of the Council and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the Council with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.
- 39.6 The Service Provider shall not in anticipation of the termination of this Agreement change the identity of any of the employees engaged in providing the Services, increase or decrease the number of employees or vary any of the terms and conditions on which they are employed unless otherwise agreed in writing by the Council and shall indemnify and hold harmless the Council from and against any breach of this Clause 39.
- 39.7 The Service Provider agrees to ensure that at no time during the term of this Agreement will any employees be wholly or exclusively employed in the provision of the Services and furthermore it will not structure its work force in such a way that TUPE may become applicable on termination of this Agreement and for the avoidance of doubt this clause 39.7 will survive termination of this Agreement.

- 39.8 The Service Provider shall indemnify and keep indemnified the Council and any Successor Provider against any losses incurred by the Council and/or the Successor Provider arising from any act or omission by the Service Provider in connection with any claim or demand by any transferring employee under TUPE.

#### **40. GRATUITIES**

- 40.1 The Service Provider shall not, whether itself, or by any person employed by it to provide the Services, solicit or accept any gratuity or any other reward, tip or any other form of money taking, collection or charge for any part of the Services other than charges properly approved by the Council in accordance with the provisions of this Agreement.

#### **41. LEGAL PROCEEDINGS**

- 41.1 The Service Provider shall notify the Council's Representative immediately upon becoming aware of any accident, damage, or breach of any statutory provision relating in any way to the provision of or connected with the Services.
- 41.2 If requested to do so by the Council's Representative and at its own expense, the Service Provider shall provide the Council's Representative with any relevant information in connection with any litigation, arbitration or other dispute in which the Council may become involved or any relevant disciplinary hearing internal to the Council and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Services.
- 41.3 The Service Provider shall at its own expense fully assist the Local Government Ombudsman, the Audit Commission, the District Auditor, the Council's Internal Auditor, the Council's Monitoring Officer and any other body or person as may be specified by the Council's Representative with any investigations, enquiries or complaints relating to allegations of maladministration or other irregularities or improprieties in connection either directly or indirectly with the Agreement such assistance to include the prompt disclosure to such body or person as aforesaid of all relevant information and documentation.
- 41.4 Should any part of the Services involve the Service Provider in performing duties or exercising powers under some other Agreement it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation under that other Agreement forthwith notify the Council's Representative of any such matter together with such particulars as are available.

#### **42. RECOVERY OF SUMS DUE TO THE COUNCIL**

- 42.1 Whenever under this Agreement any sum of money shall be recoverable from or payable by the Service Provider to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Service Provider under this Agreement or any other Agreement between the Parties.

#### **43. NOTICES**

- 43.1 Any demand, notice, or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class recorded delivery post or facsimile transmission to the registered office or last known address of the Party to be served therewith and if so sent, subject to proof to the contrary, be deemed to have been received by the addressee on the second Business Day after the date of posting or on successful transmission, as the case may be.

**44. FORCE MAJEURE**

- 44.1. 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.
- 44.2. Subject to clause 44.1, 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.
- 44.3. 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.
- 44.4. 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.
- 44.5. The Council 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.

**45. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 45.1 Any rights of any person who is not a party to this Agreement to enforce the terms of this Agreement pursuant to the Agreements (Rights of Third Parties) Act 1999 are excluded.

**46 SEVERABILITY**

- 46.1 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.

**47. WAIVER**

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

**48. PUBLICITY**

- 48.1 Without prejudice to clause 48 except with the written consent of the Council, (such consent not to be unreasonably withheld or delayed), the Service Provider shall not make any press announcements in relation to this Agreement in any way.
- 48.2 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of clause 48.1 by all its Staff, servants, agents, consultants and sub-contractors.

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

- 49.1 Nothing in this Agreement creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Council and the Service Provider.

**50. CAPACITY**

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

**51. ENTIRE AGREEMENT**

- 51.1 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement, except for any Agreement entered into between the Council and the Service Provider which relates to the same or similar services to the Services and is designed to remain effective until the Service Commencement Date.

**52. GOVERNING LAW AND JURISDICTION**

- 52.1 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.
- 52.2 Subject to the provisions of clause 30 (*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.

**[EXECUTION CLAUSE – COUNCIL/PARTNERSHIP/COMPANY]**

**SCHEDULE 1**

## Council/Service Provider's Representatives

Council:

Name: Lee Evans – Public Health Principal,  
Sexual Health Commissioning & Strategy Lead

Address: Public Health  
Cornwall Council  
New County Hall  
Treyew Road  
Truro  
Cornwall  
TR1 3AY

Email: [lee.evans@cornwall.gov.uk](mailto:lee.evans@cornwall.gov.uk)  
Telephone: 07925360364

Service Provider: Any of the Directors, Sole Traders, Partners or Other Senior Employees of the Service Provider as notified in writing to the Council from time to time

**SCHEDULE 2**

Incident Report Form





## Cornwall Sexual Health Incident Reporting Procedures

### Incident Occurrence Summary Report

- The Sexual Health Commissioner will receive an Incident Occurrence Summary Report from each provider<sup>1</sup> as part of the quarterly monitoring activity. Reports will be tabled at each Sexual Health Board meeting (usually bi-monthly) for consideration. The template for the report is attached as **Appendix 1**.
- The report should only contain anonymised information relating to service users, carers, or staff (including volunteers).
- Each incident should be described only briefly in the report. It is not necessary to supply further detail unless specifically requested.
- Each provider must ensure that an appropriate member of staff with sufficient authority is available to attend the Sexual Health Board to discuss the report and carry any actions back to their provider.
- Reports will be shared with the Public Health Governance and Contracts Group
- The Sexual Health Board may, in agreement with the provider, identify SIRIs as case studies, learning opportunities and/or action that needs to be implemented across all providers to be shared at the Sexual Health Partnership Group.
- Reports may be shared with important partners such as NHSE, KCCG, CQC, or Local Authority Safeguarding Officers, as appropriate to support service improvement and effective governance, in agreement with providers.

### In-house Reporting Procedures

This procedure assumes every provider has bespoke incident reporting procedures in place within their organisation. Those procedures will include investigation, informing regulatory authorities where required, reporting of findings, learning to be gained (if any), and an action plan to implement that learning.

The Incident Occurrence Summary Report will capture only a brief summation of each event, and some incidents may need further depth of reporting verbally at the Sexual Health Board.

Occasionally, the Sexual Health Commissioner may request details of the investigation, but detailed internal reports will not usually be published to members of the Sexual Health Board. The Sexual Health Governance Incident Reporting Procedures should not require any significant change to providers' existing in-house incident procedures.

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<sup>1</sup> Including Null report.

GP's will be required to submit incident reporting data as part of quarterly activity reporting data unless a serious incident has occurred in which case the incident reporting procedure applies.

Pharmacies will be required to submit incident reports as part of the annual audit unless a serious incident has occurred in which case the incident report procedure applies.

### Sexual Health Governance Incident Reporting Schedule

Type of Incident	Reporting Schedule	Other sources of information & support	Comments
<p><b>Serious Incident Requiring Investigation*</b></p> <p>*as set out in National Framework for Reporting &amp; Learning from Serious Incidents Requiring Investigation; March 2010; National Patient Safety Agency, This definition was drawn up prior to Health and Social Care Act and as such refers to NHS- funded services. However, the definition is equally applicable to clinical services commissioned by bodies with new responsibilities, including local authorities.</p>	<p>Notify Sexual Health Commissioner within 5 business days of a SIRI trigger.</p> <p>Incident Occurrence Summary Report (including null reports) to be reported quarterly. Supply final report for review at Sexual Health Board within 30 days of initial notification.</p>	<p>CQC</p> <p>NHSE</p> <p>ICB</p>	
<p><b>Complaints/Service User feedback<sup>2</sup></b></p>	<p>Inform Sexual Health Commissioner via contract management meetings.</p> <p>Escalated complaints to be brought to next Public Health Clinical Governance Group via incident occurrence Summary Report.</p> <p>Annual summary of complaints to be provided at year end to the Sexual Health Commissioner.</p>		

<p><b>Health and Safety to include violence and aggression towards staff members</b></p>	<p>Inform Sexual Health Commissioner via contract management meetings.</p> <p>Escalated complaints to be brought to next Public Health Clinical Governance Group via incident occurrence Summary Report.</p> <p>Annual summary of complaints to be provided at year end to the Sexual Health Commissioner.</p>		
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**Appendix  
Incident Occurrence Summary Report**

<b>Name of Provider</b>			
<b>Period Reported</b>		<b>To:</b>	

<b>Brief Description of Incident <sup>2</sup></b>	<b>Organisations Involved <sup>3</sup></b>	<b>Actions Taken</b>	<b>Completed or Ongoing? What Learning to Date? <sup>4</sup></b>	<b>Comments</b>

1. The date & brief details of each incident
2. Details of all organisations involved in the incident
3. Is the incident process ongoing or completed? What learning has been identified or applied? Does learning need wider dissemination?

### Null report

(Please complete a null report if you have not provided information in the section above - for new incidents or updates on previous incidents)

There have not been any incidents in this organisation during this period	Date from:	Date to:
	<input type="text"/>	<input type="text"/>

### Declaration

I declare that by submitting this report I agree that, to the best of my knowledge and understanding, the contents of this report are true and accurate.

**Name**

**Date**

**Job Title**

### Note:

- **Once an incident is notified to the Local Authority a formal acknowledgement will be provided.**
- **All incident reports to be emailed to [PHcontracts@cornwall.gov.uk](mailto:PHcontracts@cornwall.gov.uk).**

### Schedule 3

#### Joint Data Controller Schedule

#### **Part 1: Personal Data Processing activities in relation to which the Commissioners and the Service Provider will be joint Data Controllers**

<b>Categories of Personal Data</b>	[Name, address, date of birth, contact details, medical conditions and medical history, care needs, gender, religion, marital status, sexual orientation...]
<b>Categories of Data Subjects</b>	[Service Users and Service Users' Representatives, family members and/or friends.  In this Schedule, all references to "Data Subjects" shall mean Data Subjects whose Personal Data is Processed by the Commissioners and the Service Provider as joint Data Controllers.]
<b>Processing Operations</b>	[Reviewing, using and analysing Personal Data.]
<b>Purposes</b>	[Developing Service Users' Support Plans and implementing changes to Support Plans.]

#### **Part 2: Roles and responsibilities of the Commissioners and the Service Provider in relation to Personal Data Processed as joint Data Controllers**

##### **1 Introduction**

- 1.1 The obligations in this Schedule apply where and to the extent that the Council and the Service Provider act as joint Data Controllers and in respect of the Personal Data set out above which is Processed by the Council and the Service Provider as joint Data Controllers (the **Joint Personal Data**).
- 1.2 Where and to the extent that the Council and the Service Provider Process Personal Data as separate Data Controllers in their own right, they shall each remain responsible for compliance with Data Protection Laws in accordance with clause 37.2 of this Agreement.

##### **2 Transparency**

- 2.1 The Council shall be responsible for ensuring that Data Subjects are provided with appropriate privacy notices detailing how the Joint Personal Data will be Processed by the Council and the Service Provider.

##### **3 Privacy Impact Assessments**

- 3.1 If the Council decides that a Privacy Impact Assessment (**PIA**) is required in respect of the Processing of Joint Personal Data, the Service Provider shall be responsible for conducting any such PIA. The Council shall provide reasonable cooperation and assistance to the Service Provider to carry out any such PIA.

- 3.2 Where a PIA is carried out in respect of the Processing of Joint Personal Data, the Service Provider shall provide the Council with a copy of the PIA and shall regularly review the PIA and update the PIA if necessary to reflect any changes in the Processing of Joint Personal Data.

#### **4 Security**

- 4.1 The Council and the Service Provider shall ensure that they have in place appropriate technical and organisational measures against unauthorised or unlawful processing of Joint Personal Data and against accidental loss or destruction of, or damage to, Joint Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Joint Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with Article 32 of the GDPR.

#### **5 Data Subject rights**

- 5.1 The Service Provider shall have primary responsibility for responding to requests from Data Subjects to exercise any of their rights under Data Protection Laws in relation to Joint Personal Data.
- 5.2 Subject to paragraph 5.3, if the Council receive a request from a Data Subject to exercise one or more of the Data Subject's rights under Data Protection Laws in relation to Joint Personal Data (a Request), the Council shall, as soon as reasonably practicable, forward the Request to the Service Provider.
- 5.3 Where the Council decides, acting reasonably, that it is more appropriate in the circumstances for the Council to respond to the Request, the Council shall inform the Service Provider of the receipt of the Request and of the Commissioners' decision to respond to the Request. The Service Provider shall provide all reasonable assistance and cooperation to enable the Council to respond to the Request in accordance with the Data Protection Laws.
- 5.4 If the Service Provider receives a Request, the Service Provider shall immediately inform the Council of the receipt of the Request.
- 5.5 If the Council forwards a Request to the Service Provider in accordance with paragraph 5.2, or if the Service Provider receives a Request in accordance with paragraph 5.4, the Service Provider shall ensure that the Request is responded to in accordance with the Data Protection Laws and in particular within any statutory timeframes set out for responding to that Request. The Council shall provide reasonable assistance and cooperation to enable the Service Provider to respond to the Requests. The Service Provider shall keep a record of all Requests and the status of such Requests and their responses and shall provide such record to the Council on request.

#### **6 Complaints handling and breach notification**

- 6.1 The Service Provider shall have responsibility for day-to-day contact with Data Subjects in respect of Joint Personal Data, including for making the essence of this Schedule available to Data Subjects if required by Data Protection Laws.
- 6.2 The Service Provider shall notify the Council immediately upon receipt of any correspondence from a Data Subject, the Information Commissioner's Office or any other data protection regulator in relation to the Processing of Joint Personal

Data. The Service Provider shall be primarily responsible for responding to any such correspondence but the Service Provider must consult with the Council before responding to the correspondence and must obtain the Council's approval to any proposed response before that response is sent.

- 6.3 The Council shall provide reasonable assistance to the Service Provider to enable the Service Provider to respond to such correspondence.
- 6.4 Without prejudice to the Service Provider's obligations under clause 37.2.10 of this Agreement, where a Personal Data Breach relates to Joint Personal Data and the Service Provider is required to notify such Personal Data Breach to the Information Commissioner's Office or any other regulator, the Service Provider shall obtain the Commissioners' approval to the content of any such notification before submitting the notification to the Information Commissioner's Office or relevant regulator.

## **7 Governance and review**

- 7.1 The Council and the Service Provider shall each nominate (by notice in writing to the other) a single point of contact (SPoC) who shall act as the primary point of contact for each of the Commissioners and the Service Provider respectively in relation to Joint Personal Data. The SPoCs shall work together to reach agreement with regard to any issues arising from this Schedule and to actively improve the effectiveness of this Schedule going forward.
- 7.2 The Council and the Service Provider shall review the effectiveness of this Schedule at least every year, including but not limited to:
  - 7.2.1 assessing whether the Joint Personal Data is still as listed in Part 1 of this Schedule or whether the scope of the Joint Personal Data needs to be amended;
  - 7.2.2 assessing whether the Data Protection Laws are being complied with; and
  - 7.2.3 assessing whether Requests and correspondence have been appropriately handled in accordance with this Schedule.

**Schedule 4**

Data Security and Information Governance Requirements



## Data Security & Information Governance Requirements



<i>Requirement</i>	<i>Name</i>	<i>Contact Details</i>
Caldicott Guardian		
Information Governance Lead		
Data Protection Officer		

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

**APPENDIX B**  
**PAYMENT SCHEDULE**

<b>PROCEDURE</b>	<b>TARIFF</b>
Coil Fit	£123.75
Coil Removal	£38.50
Coil R&F	£138.75
Failed Fit	£74.25
Implant Fit	£60.25
Implant Removal	£63.25
Implant R&F	£85.25

**APPENDIX C**

**LOCATIONS APPENDIX**

[To be inserted if required]