

Dated 2018

- (1) City of Bradford Metropolitan District Council
- (2) [Insert name of Provider]

## Contract for Services

Contract for the Provision of Pharmacy based Services

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Date:

Parties:

- (1) CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL of City Hall, Bradford, BD14HU (the “Council”)
- (2) [PHARMACY NAME] of [address1, addresss2,] (the “Provider”)

### Introduction

- D This Agreement sets out the procedure for and the main terms and conditions for the provision of the Service and the obligations of the Pharmacy Provider under this Agreement.
- E It is the Parties' intention that the Council and the Pharmacy Provider for this Agreement to govern the arrangement between the parties.

### Agreed terms

#### 1 Definitions and Interpretation

##### 1.1 Definitions

<b>Admission Body</b>	means a transferee admission body for the purposes of regulation 5A of the Local Government Pension Scheme Regulations 2013;
<b>Administering Council</b>	means the body designated to maintain and administer the relevant Local Government Pension Scheme as currently described in Regulations 2 and 53 of the Local Government Pension Scheme Regulations 2013.
<b>Affected Party</b>	means the party seeking to claim relief in respect of a Force Majeure Event;
<b>Annual Contract Value</b>	means the annual value as set out in Schedule 2 (Payment Arrangements);
<b>Authorised Officer</b>	has the meaning given in clause 58;
<b>Best Value Duty</b>	means the duty imposed on the Council by Section 3 of the Local Government Act 1999 in relation to, inter alia, any one (1) or more of the Services;
<b>Business Continuity Plan</b>	means the Provider’s plan that complies with the requirements of the Civil Contingencies Act 2004 and relates to continuity of the Services, as agreed with the Council by the Commencement Date and as may be amended by the Provider thereafter from time to time;

<b>Business Day</b>	means a day other than a Saturday, Sunday or public holiday in England;
<b>Business Hours</b>	means between the hours of 09:00 and 17:00 on any Business Day;
<b>Caldicott Guardian</b>	means the senior health professional responsible for safeguarding the confidentiality of patient information;
<b>Caldicott Principles</b>	means the 1997 Committee report chaired by Dame Fiona Caldicott setting out the principles to govern the use of information about Service Users to ensure that the minimum amount of person identifiable information is exchanged, and only when absolutely necessary, as further updated by the 2014 Caldicott 2 (information to share or not to share) report;
<b>Carer</b>	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;
<b>Care Quality Commission or CQC</b>	means the care quality commission established under the Health and Social Care Act 2008;
<b>CCGs (Clinical Commissioning Groups)</b>	are the NHS organisations set up by the Health and Social Care Act to organise the delivery of NHS services in England led groups that include all of the GP groups in their geographical area;
<b>Cessation Date</b>	means any date on which the Provider or relevant Sub-Contractor ceases to be an Admission Body other than as a result of termination of this Contract or because it ceases to employ Eligible Employees;
<b>Change in Control</b>	means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the ability to control the exercise of 50% or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters), provided that a Change in Control will be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation;

<b>Change in Control Notification</b>	means a notification in the form to be provided to the Provider by the Council and to be completed as appropriate by the Provider;
<b>Change in Law</b>	means any change in Law, which impacts on the performance of the Services which comes into force after the Effective Date;
<b>Charges</b>	means the charges payable by the Council to the Provider under the terms of this Contract in accordance with the provisions set out at Schedule 2 (Payment Arrangements);
<b>Charges Review</b>	has the meaning set out at clause 6.1;
<b>Clinician</b>	means doctors, consultants and nurses;
<b>Commencement Date</b>	means 1 <sup>st</sup> April 2018;
<b>Compensation Regulations</b>	means the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006
<b>Competent Body</b>	means any body that has statutory authority to issue standards or recommendations with which either Party must comply;
<b>Concerned Others</b>	Any individual affected by someone else's alcohol or drug misuse, as set out in the Specification;
<b>Confidential Information</b>	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 which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and Providers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;
<b>Conflict of Interest</b>	means any actual or potential conflict of interests between the personal or pecuniary interests of two or more Parties to this Contract;
<b>Consents</b>	means: (a) 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
- (b) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract;

<b>Contract Manager</b>	has the meaning given in clause 59;
<b>CQC Regulations</b>	means the Care Quality Commission (Registration) Regulations 2009;
<b>Deductions</b>	means those amounts to be deducted from the Charges as set out in Schedule 2 (Payment Arrangements);
<b>Deputy Authorised Officer</b>	has the meaning given in clause 59;
<b>Deputy Contract Manager</b>	has the meaning given in clause 59;
<b>DBS</b>	means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012;
<b>Eligible Employees</b>	means the Transferring Employees who are active members of the LGPS on a Relevant Transfer Date;
<b>Emergency</b>	means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;
<b>Employee Liability Information</b>	means the employee liability information to be provided pursuant to Regulation 11 of TUPE;
<b>Enhanced DBS &amp; Barred List Check</b>	means an Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (child & adult) (as appropriate);
<b>Enhanced DBS &amp; Barred List Check (adult)</b>	means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult's barred list;



<b>Enhanced DBS &amp; Barred List Check (child)</b>	means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list;
<b>Enhanced DBS &amp; Barred List Check (child &amp; adult)</b>	means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's and adult's barred list;
<b>Enhanced DBS Check</b>	means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for;
<b>Enhanced DBS Position</b>	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted;
<b>Expiry Date</b>	means 31 <sup>st</sup> March 2020;
<b>Extension Period</b>	has the meaning set out at clause 2;
<b>Force Majeure Event</b>	means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, being acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider or any other failure in the Provider's or any Sub-Contractor's supply chain;
<b>Future Provider</b>	means a provider of services equivalent to the Services immediately following expiry or termination of this Provider;
<b>Good Clinical Practice and/or Good Healthcare Practice</b>	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;

<b>Guidance</b>	means any applicable local Council, health or social care guidance, direction or determination which the Council and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006;
<b>Good Industry Practice</b>	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Provider) under the same or similar circumstances;
<b>Holding Companies</b>	has the definition given to it in section 1159 of the Companies Act 2006;
<b>Indirect Losses</b>	loss of profits (other than profits directly and solely attributable to the provision of the Services);
<b>Institutional Investor</b>	means an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pension fund, private equity firm, venture capitalist, insurance company or investment trust;
<b>Intellectual Property Rights</b>	means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information, the right to sue for passing off, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Provider for the purposes of providing the Services and/or otherwise for the purposes of this Contract;
<b>Interest (“Prescribed Rate”)</b>	two (2)% above the bank base rate of National Westminster Bank;
<b>Joint Investigation (“JI”)</b>	has the meaning given to it in clause 8.9;
<b>Key Performance Indicators/KPIs</b>	means the key performance indicators in relation to the provision of the Services set out in the Specification;
<b>Law</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of

Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, rule of Court or directives or requirements of any competent Council, delegated or subordinate legislation;

**Legal Guardian**

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

**LGPS Regulations**

means the Local Government Pension Scheme Regulations 2013 and Guidance as amended from time to time;

**Local HealthWatch**

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

**Losses**

means all liabilities, costs, expenses, damages, claims, actions and losses(including and limited to any direct, consequential losses, and all direct interest, penalties and legal costs (calculated on a full indemnity basis) and all other direct reasonable professional costs and expenses, but excluding Indirect Losses;

**Material Breach**

means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding;

**Medically Appropriate**

means health care services that a physician, exercising prudent clinical judgement, would provide to a patient for the purpose of evaluating, diagnosing or treating an illness, injury, disease or its symptoms;

**Mobilisation Services**

means those services carried out during the Mobilisation Period as set out in Schedule 4 (Mobilisation);

**Mobilisation Period**

means the period beginning on the Commencement Date and ending on the Services Commencement Date;

<b>NICE</b>	means the National Institute for Health and Care Excellence;
<b>Non-Collusion Certificate</b>	has the meaning given to it in clause 52;
<b>Party</b>	means either the Council or the Provider as applicable;
<b>Performance Improvement Plan</b>	means a plan to be produced by the Provider in the event of a material breach or KPI failure as more fully described in clauses 8.11-8.16;
<b>Personal Data</b>	has the meaning given to it in the Data Protection Act 1998;
<b>Personnel</b>	means all employees, workers, staff, agents and consultants of the Council engaged in the provision of the Services at any time;
<b>Premises</b>	means any premises made available by the Council for use by the Provider for the provision of the Services;
<b>Prohibited Act</b>	<ul style="list-style-type: none"> <li>(a) offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation the obtaining of execution of the agreement or any other contract with the Council;</li> <li>(b) showing, or forbearing to show, favour or disfavour to any person in relation to any person in relation to this Council or any other agreement with the Council or if any like acts shall have been done by any person employed by the Provider, or acting on the Provider's behalf (whether with or without the knowledge of the Provider);</li> <li>(c) in relation to any contract with the Council the Provider, or any person employed by the Provider, or acting on the Provider's behalf commits any offence under the Bribery Act 2010 or any amendment to it;</li> <li>(d) gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972;</li> <li>(e) paying commission or agreeing to pay any commission to any employee or representative of the Council, or any</li> </ul>

employee or representative of the Provider doing the same;

- (f) offering, giving or agreeing to give to any employee, office or member of the Council any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;
- (g) entering into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;
- (h) committing any offence:
  - (i) under the Prevention of Corruption Acts 1889-1916;
  - (ii) under Law creating offences in respect of fraudulent acts;
  - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or
  - (iv) defrauding or attempting to defraud or conspiring to defraud the Council;

<b>Provider</b>	means Provider, Pharmacy or Pharmacy Provider
<b>Provider Admission Contract</b>	means an admission contract entered into in accordance with regulation 5A of the LGPS Regulations by the Administering Council, the Council and the Provider or a Sub-Contractor (as appropriate);
<b>Provider Authorised Representative</b>	means the person designated as such by the Provider, the first of which to be notified to the Council within five (5) days of Service commencement;
<b>Provider Change in Control</b>	means any Change in Control of the Provider or any of its Holding Companies;
<b>Provider Personnel</b>	means all employees, workers, staff, agents and consultants of the Provider engaged in the provision of the Services at any time;
<b>Provider Tender</b>	means the tender submitted in response to the Service Specification and attached as Schedule 3;
<b>Provider Warranted Data</b>	means the data supplied by the Provider and acknowledged as such by the parties;
<b>Public Company</b>	means a company which has shares that can be purchased by the public; and has an authorised share capital of at least £50,000 with each of the company's shares being paid up at least as to one quarter of the nominal value of the share and the whole of any premium on it; and has securities listed on a stock exchange in any jurisdiction;
<b>Regulatory Bodies</b>	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council or the Provider and "Regulatory Body" shall be construed accordingly;
<b>Relevant Employees</b>	means an employee who is subject to a Relevant Transfer;
<b>Relevant Requirements</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

<b>Relevant Transfer</b>	means a relevant transfer for the purposes of TUPE;
<b>Relevant Transfer Date</b>	means the date on which an Eligible Employee transfers to the Provider and/or one or more Sub-Contractor whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise;
<b>Relief / Relief Event</b>	means such events that the Provider raises to the Council and which the Council then has given its prior written consent to the application of a Relief);
<b>Representative</b>	means either the Authorised Officer or Contract Manager (or where applicable, either the Deputy Authorised Officer or the Deputy Contract Manager) as appointed in accordance with clause 58;
<b>Returning Employees</b>	means those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Contract whose employment transfers to the Council or a Future Provider pursuant to TUPE;
<b>Request for Information</b>	means a request for information or an apparent request for information under the FOIA or the EIR;
<b>Restricted Person</b>	means any person, other than an Institutional Investor, who has a material interest in the production of tobacco products or alcoholic beverages; or any person who the Council otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider or in a Sub-Contractor;
<b>Safeguarding Policies</b>	means the Provider's written policies for safeguarding children and adults, as amended from time to time, and as may be appended at Schedule 5 (Safeguarding Policies);
<b>Security</b>	means shares, debt securities, unit trust schemes (as defined in the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing debt securities, warrants or options to subscribe or purchase securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company;
<b>Serious Incident</b>	means an incident or accident or near-miss where a patient (whether or not a Service User),

	member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Provider's Premises or where the actions of the Provider, the Provider Personnel or the Personnel are likely to be of significant public concern;
<b>Service(s)</b>	means the provision of the requirements of the Specification;
<b>Service Commencement Date</b>	means the date on which the Provider commences provision of the Services;
<b>Service Delivery Proposals</b>	means those proposals set out in the Provider's Tender to deliver the Specification;
<b>Service Transfer Date</b>	means the transfer on a date agreed by the Parties to the Provider of responsibility for provision of (or procuring the provision by Sub-Contractors of) the Services in accordance with this Contract;
<b>Service Users</b>	means individuals receiving all or part of the Services directly from the Provider, as set out in the Specification. Also referred to as Client;
<b>Specification</b>	means the specification as set out at Schedule 1 (Service Specification);
<b>Specific Change in law</b>	means a Change in Law that relates specifically to the business of the Council and which would not affect a comparable supply of similar services to a third party;
<b>Standard DBS Check</b>	means a disclosure of information which contains certain details of an individual's convictions, cautions, reprimand or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions;
<b>Standard DBS Position</b>	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 197 (as amended) and in relation to which a Standard DBS Check is permitted;
<b>Step In Trigger Event</b>	means in the event of a Suspension Event;
<b>Suspension Event</b>	has the meaning set out in clause 16.6;
<b>Sub-Contract</b>	means any contract entered into by the Provider with a third party for the provision of any of the Services or goods or equipment in relation to the Services;



<b>Sub-Contractor</b>	means any provider or providers that enter into a Sub-Contract with the Provider;
<b>Sub-Contractor Change in Control</b>	means any Change in Control of a sub-contractor or any of its Holding Companies;
<b>Sub-Contractor Personnel</b>	means all employees, workers, staff, agents and consultants of the Sub-Contractor engaged in the provision of the Services at any time;
<b>Term</b>	has the meaning given in clause 2 below;
<b>Termination Date</b>	means the date on which this Contract expires at the end of the Term, including any Extension Period or the date on which this Contract terminates following termination in accordance with clause 16 and the other relevant provisions of this Contract;
<b>Transferring Employee</b>	means an employee of the Council (excluding, to avoid doubt (without limitation), any person engaged by the Council as an independent provider or persons employed by any Sub-Contractor engaged by the Council) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Contract between the Council and the Provider, a contract of employment with someone other than the Council;

In this Contract, unless the context otherwise requires:

- 1.2 headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Contract;
- 1.3 all references to clauses, schedules, annexure or appendices are references to the clauses of and schedules, annexure or appendices to this Contract unless otherwise stated;
- 1.4 If there is a conflict between the clauses and Schedules and/or any Schedules and annexure or appendices, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.4.1 This Contract;
  - 1.4.2 The schedules to this Contract, with priority in any event being to the Specification;
  - 1.4.3 With the exception of the Provider's Tender, any other schedules and annexes or appendices to this Contract;
  - 1.4.4 The Provider's Tender and any annexes thereto (if any);

and the Schedules annexes or appendices form part of this Contract;

- 1.5 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, documents or other instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.6 all references to any statutory provision shall include references to any statute or statutory provisions which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;
- 1.7 words importing the singular include the plural and vice versa;
- 1.8 words importing a gender include all genders;
- 1.9 "person" includes an individual, partnership, firm, trust, body corporate, government, governmental body, council, agency or unincorporated body of persons or association;
- 1.10 the words "include" and "including" are to be construed without limitation and the rule of construction known as ejusdem generis shall not apply to this Contract;
- 1.11 references to sub-contractors shall be to Sub-Contractors of any tier;
- 1.12 any obligation on a party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.13 subject to any express provisions of this Contract to the contrary, the obligations of any party are to be performed at that party's own expense.

## **2 Term**

- 2.1 This Contract shall commence on the Commencement Date and shall continue in effect until the Expiry Date or until it is otherwise terminated or extended in accordance with the provisions of this Contract (the "Term").
- 2.2 Prior to the expiry of this Contract, the Council may, at its absolute discretion, and after reasonable consultation with the Provider, serve notice on the Provider in writing extending the term of this Contract for a further period of twelve (12) months on up to two (2) occasions (the "Extension Period"). In the event that the Council serves notice under this clause 2.2 the term of this Contract will be extended in accordance with the notice.

## **3 Provision of the Services**

- 3.1 The Provider shall provide the Services throughout the Term in accordance with the provisions of this Contract, including, without limitation, the provisions of the Service Specification, the Provider's Tender and Schedule 2 (Payment Arrangement) having regard at all times to the welfare and rights of Service Users. The Provider is not given any sole or exclusive rights in relation to the provision of the Services.

- 3.2 Without prejudice to the provisions of the Service Specification and the rest of this Contract, the Provider shall:
- 3.2.1 secure and provide the Mobilisation Services during the Mobilisation Period; and
  - 3.2.2 deliver the Services with effect from the Service Commencement Date.
- 3.3 The Provider, without compromising any directly relevant NHS national standard (or otherwise subject to prior written notice and agreement with the Council (such agreement not to be unreasonably withheld or delayed)), must comply with the Council's local brand policy and guidelines, as revised, updated or re-issued from time to time.

### **Equipment**

- 3.4 The Provider must:
- 3.4.1 provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services;
  - 3.4.2 ensure that all Provider Personnel using Equipment and all Service Users, Carers or Legal Guardian (as appropriate) using Equipment independently as part of the Service User's care or treatment, have received appropriate and adequate training and have been assessed as competent in the use of that Equipment.

### **Withholding and/or discontinuation of Services**

- 3.5 Except where required by the Law and taking into account the NHS Constitution, the Provider shall not be required to provide or to continue to provide Services to any Service User:
- 3.5.1 who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
  - 3.5.2 who displays abusive, violent or threatening behaviour unacceptable to the Provider acting reasonably and taking into account the mental health of that Service User);
  - 3.5.3 in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Provider Personnel engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable;
  - 3.5.4 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; or

- 3.5.5 in respect of whom no valid consent (where required) has been given in accordance with the Service User consent policy which the Provider must publish, maintain and operate in compliance with the Law
- 3.6 If the Provider proposes not to provide or to stop providing a Service to any Service User under clause 3.5:
  - 3.6.1 where reasonably possible, the Provider must explain to the Service User, Carer or Legal Guardian (as appropriate), taking into account clause 3.6.2 below the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Business Days);
  - 3.6.2 the Provider must tell the Service User, Carer or Legal Guardian (as appropriate), of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
  - 3.6.3 the Provider must inform the Council in writing without delay and wherever possible in advance of taking such action;
  - 3.6.4 the Council must pay the Provider in accordance with the terms of this Contract for the Services provided to the Service User before the discontinuance

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

### **Service and Key Performance Indicators**

- 3.7 The Provider must carry out the Services in accordance with the Law, Good Clinical Practice and all relevant Council Policies and must, unless otherwise agreed (subject to the Law) with the Council in writing:
  - 3.7.1 comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
  - 3.7.2 respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
  - 3.7.3 comply with the Key Performance Indicators set out in the Specification;
  - 3.7.4 consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
  - 3.7.5 comply with the recommendations issued from time to time by a Competent Body;
  - 3.7.6 comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
  - 3.7.7 respond to any reports and recommendations made by Local HealthWatch; and

- 3.7.8 adopt, apply and implement the NHS Constitution and its Public Health supplement to the delivery of the Services.

### **Service User involvement**

- 3.8 The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians, including obtaining any consent, in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.
- 3.9 As soon as reasonably practicable following any reasonable request from the Council, the Provider must provide evidence to the Council of the involvement of Service Users, Concerned Others, Carers and Provider Personnel in the development and delivery of the Services.
- 3.10 The Provider must carry out Service User, Concerned Others surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Council in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in Schedule 7 (*Service User, Concerned Others, Carer and Provider Personnel Surveys*) or as otherwise agreed between the Parties in writing from time to time.
- 3.11 The Provider must review and provide a written report to the Council on the results of each survey carried out under this provision and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Council, the Provider must publish the outcomes and actions taken in relation to such surveys.

## **4 Standard of Performance**

- 4.1 Without prejudice to the generality of clause 4.3 the Provider will at all times ensure that the Services comply with and meet all the requirements of this Contract, the Service Specification, the Service Delivery Proposals, Good Industry Practice, Guidance, and all applicable Council Policies and the Law.
- 4.2 The Provider will at all times ensure that the Services are performed by appropriately qualified and trained personnel.
- 4.3 The Provider and Council shall co-operate fully and share information with each other and with any other commissioner or provider of health or social care in respect of a Service User in order to:
  - 4.3.1 ensure that a consistently high standard of care for the Service User is maintained at all times;
  - 4.3.2 ensure that a co-ordinated and integrated approach is taken to promoting the quality of care for the Service User across all relevant pathways;
  - 4.3.3 achieve continuity of service that avoids inconvenience to, or risk to the health and safety of the Service User or members of the public;

- 4.3.4 seek to ensure that the Services and other health and social care services delivered to the Service User are delivered in such a way as to maximise value for public money; and
- 4.3.5 seek to ensure that the provision of the Services does not hinder or adversely affect its delivery of the Services or its performance of this Contract.

## Complaints

- 4.4 The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services and shall include:
  - 4.4.1 publicising the complaints procedure;
  - 4.4.2 dealing with any complaints promptly; and
  - 4.4.3 informing any complainant who is not happy with the response that they have the right to refer the complaint to the Council, or the CQC or other Regulatory Body or relevant ombudsman.
- 4.5 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Council may have under this Contract, the Council may, in its sole discretion, uphold the complaint and take any action specified in clause 7 (*Failure in Service Standards*).
- 4.6 The Provider undertakes to co-operate with the Council with any investigation into a complaint including providing such information that is reasonably necessary.

## Service User Health Records

- 4.7 The Provider must create, maintain, store and retain Service User health records for all Service Users. The Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance. For the avoidance of doubt this obligation to retain is not dependent on the expiry or termination of this Contract.
- 4.8 The Provider must subject to capacity and consent:
  - 4.8.1 use Service User health records solely for the execution of the Provider's obligations under this Contract; and
  - 4.8.2 give each Service User (or as applicable Carer and/or Legal Guardian) full and accurate information regarding his/her treatment and Services received.

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

#### **Information and Data Quality Plan**

- 4.10 The Provider must provide the Council with the information specified in Schedule 8 (*Information Provision and Data Quality Improvement Plan*) to measure the quality, quantity or otherwise of the Services.
- 4.11 The Provider must deliver the information required under clause 4.10 in the format, manner, frequency and timescales specified in Schedule 8 (*Information Provision and Data Quality Improvement*) and must ensure that the information is accurate and complete.
- 4.12 If the Provider fails to comply with any of the obligations in this clause 4 and/or Schedule 8 (*Information Provision and Data Quality Improvement Plan*), the Council may (without prejudice to any other rights it may have under this Contract) issue a Contract Query Notice or exercise its rights under clause 7 (Failure in Service Standards) for failing to satisfy the relevant obligation specified in Schedule 8 (*Information Provision and Data Quality Improvement Plan*).
- 4.13 In addition to the information required under clause 4.10, the Council may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

#### **Information Governance**

- 4.14 Information governance is the management of all information by an organisation in order to meet its immediate and future regulatory, legal, risk and environmental obligations under this Contract.
- 4.15 The Provider shall ensure that in order to discharge its obligations under this Contract especially those in relation to information that its information governance meets all reasonable standards under Law, Good Clinical Practice, National Standards, Guidance or as directed by the Council or any Regulatory Body or CQC as applicable to the Provider and/or the Services.

#### **Data Quality Improvement Plan**

- 4.16 Without prejudice to any other rights contained in this Contract, where directed by the Council in its absolute discretion, the Provider shall prepare and agree a Data Quality Improvement Plan with the Council.
- 4.17 Any Data Quality Improvement Plan must set out the milestones to be met. Where applicable if the Provider fails to meet a milestone by the agreed date, the Council may exercise the relevant agreed consequence.

## 5 Charges

- 5.1 In consideration for the Provider's compliance with its obligations under this Contract the Council shall pay to the Provider the Charges calculated in accordance with Schedule 2 (*Payment Arrangements*).
- 5.2 All costs associated with the delivery of this Contract will remain fixed for the Contract duration and not subject to any escalation formulae or indexation.
- 5.3 The Charges exclude any amount in respect of VAT and the Council shall, upon receipt of a valid VAT invoice, pay such additional amounts in respect of VAT as are chargeable on the value of the Services.
- 5.4 The Charges shall be paid by the Council as follows:
  - 5.4.1 The Council shall pay all sums properly due and payable to the Provider in cleared funds within thirty (30) days of receipt of an undisputed invoice;
  - 5.4.2 Where the Provider enters into an agreed Sub-Contract for the purpose of performing its obligations under this Contract, the Provider shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of an undisputed invoice; and
  - 5.4.3 Notwithstanding any other provision of this Contract, if the Provider notifies the Council that the Provider has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Council otherwise discovers the same, the Council shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

## 6 Charges adjustment extension

- 6.1 The Council may, require the Provider to meet three months prior to the start of any Extension Period to review and as soon as reasonably possible within this three month period consider changes to Service provision and the related Charges paid by the Council for the Services ("**Charges Review**"). Agreed changes shall take effect on the first day of the Extension Period immediately following the Charges Review if the Charges are agreed prior to the start of the Extension Period immediately following the Council's request for a Charges Review. If the Charges are not agreed prior to the start of the Extension Period immediately following the Council's request for a Charges Review, the provisions of clause 6.4 below shall apply.
- 6.2 In agreeing Charges for an Extension Period, the Parties shall have regard to the following factors:
  - 6.2.1 changes to the Provider's costs of providing the Services;
  - 6.2.2 whether there are additional Services which the Council requires the Provider to supply;



- 6.2.3 any cost reductions achieved by the Provider since the last Charges Review (to the extent that they have not already been taken into account in the Charges).
- 6.3 If within one month of beginning a Charges Review the Parties cannot agree the Charges for the following year, the dispute resolution procedure set out in clause 57 shall apply.
- 6.4 If the Charges for a year are not agreed or determined by the first day of the Extension Period immediately following the Council's request for a Charges Review, the Charges in force during the previous year shall apply until the new Charges are agreed or otherwise determined in accordance with clause 12 or the dispute resolution procedure in clause 57. Once the new Charges are agreed or determined, they shall apply with effect from the date upon which the new Charges are agreed or determined.

## **7 Failure in Service standards**

- 7.1 In the event that the Council is of the reasonable opinion that there has been a material breach of this Contract by the Provider, then the Council may, without prejudice to any other rights or remedies it may have under this Contract including under clause 8 (Contract Management), consult with the Provider and then do any of the following:
  - 7.1.1 require the Provider to submit a report detailing why the material breach has occurred and a Performance Improvement Plan in accordance with clause 8.11 (Performance Improvement Plan) and how it will be improved within ten (10) Business Days or such other period of time as the Council may direct;
  - 7.1.2 without terminating this Contract, suspend the affected Service in accordance with the process set out in clause 16.6 - 16.8 (Suspension and Consequences of Suspension); and/or
  - 7.1.3 without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause 16 (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.
- 7.2 If the Council exercises any of its rights under clause 7.1 above, the Provider must indemnify the Council for any Losses 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 subject to the limitation of liability provisions in clause 24 and to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services and the period of time for such replacement Services is limited to six months.

## **8 Contract Management**

- 8.1 If the Council decides to implement one or more of the consequences in relation to the Provider failing to meet a KPI, the Council may exercise the

agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Council may have under this clause.

- 8.2 The provisions of this clause 8 do not affect any other rights and obligations the Parties may have under this Contract.

### **Contract Query**

- 8.3 If the Council seeks information in relation to the Provider failing to meet a KPI or any element of the Services, it may issue a “**Contract Query Notice**” to the Provider.
- 8.4 If the Provider has a Contract Query it may issue a “**Contract Query Notice**” to the Council.

### **Excusing Note**

- 8.5 A receiving Party (“**Receiving Party**”) may issue an Excusing Notice to the issuing Party (“**Issuing Party**”) within five (5) Business Days of the date of the Contract Query Notice.
- 8.6 If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within five (5) Business Days following the date of the Contract Query Notice.

### **Contract Management Meeting**

- 8.7 Unless the Contract Query Notice has been withdrawn, then within the discretion of the Council, the Council shall decide to:
- 8.7.1 withdraw the Contract Query Notice; or
- 8.7.2 prepare and implement an appropriate Performance Improvement Plan; or
- 8.7.3 conduct a Joint Investigation.

### **Joint Investigation**

- 8.8 If a Joint Investigation is to be undertaken:
- 8.8.1 the Council, in discussion with and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation.
- 8.8.2 the Council, in discussion with and the Provider may agree an Immediate Action Plan concurrently with the Joint Investigation.
- 8.9 On completion of a Joint Investigation, the Council and the Provider must produce and agree a (“**JI Report**”). The JI Report must include (without limitation) a recommendation to be considered at the next Review Meeting that either:

- 8.9.1 the Contract Query be closed; or
  - 8.9.2 a Performance Improvement Plan be agreed and implemented.
- 8.10 Either the Council or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Contract to consider a JI Report.

#### **Performance Improvement Plan**

- 8.11 If a Performance Improvement Plan is to be implemented then the Council shall prepare and issue a Performance Improvement Plan within ten (10) Business Days and where relevant discuss the contents of the same with the Provider.
- 8.12 The Performance Improvement Plan must set out:
- 8.12.1 milestones for performance to be remedied;
  - 8.12.2 the date by which each milestone must be completed; and
  - 8.12.3 the consequences for failing to meet each milestone by the specified date.
- 8.13 The Council and the Provider must implement or meet the milestones applicable to it within the timescales set out in the Performance Improvement Plan.
- 8.14 The Council and the Provider must record on an on-going basis progress made or developments under the Performance Improvement Plan in accordance with its terms. The Council and the Provider must review and consider that progress and in any event at the next Review Meeting.
- 8.15 If following implementation of a Performance Improvement Plan:
- 8.16 the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Performance Improvement Plan has been completed;
- 8.16.1 any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Council incomplete under the Performance Improvement Plan, then this shall be treated as a material breach and for the avoidance of doubt a further Performance Improvement Plan is an option within the absolute discretion of the Council; or
  - 8.16.2 any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Council unresolved and not due to the fault of the Provider then a further Performance Improvement Plan may be agreed in accordance with clauses 8.11 and 8.12.

#### **Withholding Payment for Failure to Agree Performance Improvement Plan**

- 8.17 If the Council and the Provider cannot agree a Performance Improvement Plan within the relevant period specified under this Contract they must jointly notify the Boards of Directors of both the Provider and the Council.
- 8.18 If, ten (10) Business Days after notifying the Boards of Directors, the Council and the Provider still cannot agree a Performance Improvement Plan, the Council may withhold up to 2% of the monthly sums payable by it for each further month the Performance Improvement Plan is not agreed.
- 8.19 The Council must pay the Provider any sums withheld within ten (10) Business Days of receiving the Provider's agreement to the Performance Improvement Plan and those sums are to be paid without interest.

### **Exception Reports**

- 8.20 If a Party breaches a Performance Improvement Plan and does not remedy the breach within ten (10) Business Days of its occurrence, the Provider or the Council (as the case may be) may issue a First Exception Report to that Party's chief executive and/or Board of Directors. If the Party in breach is the Provider, the Council may withhold payment from the Provider in accordance with clause 8.18 above.
- 8.21 If following issue of the First Exception Report, the breach of the Performance Improvement Plan is not rectified within the timescales indicated in the First Exception Report, the Council or the Provider (as the case may be) may issue a Second Exception Report to:
- 8.21.1 the relevant Party's chief executive and/or Board of Directors; and/or;
- 8.21.2 CQC or any other Regulatory Body,
- in order that each of them may take whatever steps they think appropriate.

### **Withholding of Payment at First Exception Report for Breach of Performance Improvement Plan**

- 8.22 If the Provider breaches a Performance Improvement Plan:
- 8.22.1 the Council may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Council under Schedule 2 Payment Arrangement, from the date of issuing the First Exception Report and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Council in relation to each Performance Improvement Plan;
- 8.22.2 the Council must pay the Provider any sums withheld within ten (10) Business Days following the Council's confirmation that the breach of the Performance Improvement Plan has been rectified. No interest will be payable on those sums.

### **Retention of Sums Withheld at Second Exception Report for Breach of Performance Improvement Plan**

- 8.23 If the Provider is in breach of a Performance Improvement Plan the Council may, when issuing any Second Exception Report retain permanently any sums withheld to date.

#### **Unjustified Withholding or Retention of Payment**

- 8.24 If the Council withholds sums or retains sums under the provisions of this clause, and within twenty (20) Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Council that the relevant sums were withheld or retained unjustifiably, the Council must pay those sums to the Provider within ten (10) Business Days following the date of the Council's acceptance of that evidence, together with interest at the Prescribed Rate for the period for which the sums were withheld or retained. If the Council does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

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

- 8.25 If the Provider does not agree a Performance Improvement Plan:
- 8.25.1 within six (6) months following the expiry of the relevant time period set down; or
  - 8.25.2 before the Expiry Date or earlier termination of this Contract,
- whichever is the earlier, the Council may retain permanently any sums withheld under this clause.
- 8.26 If the Provider does not rectify a breach of a Performance Improvement Plan before the Expiry Date or earlier termination of this Contract, the Council may retain permanently any sums withheld.

#### **Key Performance Indicators and Service Quality Performance Reporting**

- 8.27 The Provider must, as required under the Specification, deliver to the Council a management information pack which shall include detailed analysis of the Provider's performance against the Key Performance Indicators as specified in the Specification and the quarterly Service Quality Performance Report.
- 8.28 The Provider must submit each KPI and Service Quality Performance Report in the form and manner specified in the Specification.

#### **Unacceptable failure to meet KPIs**

- 8.29 The KPIs detail the Services and the features of such Services that will drive the Council's entitlement to remedies by the Provider if KPI targets are not achieved consistently.
- 8.30 Subject always to these KPI clauses, if the Services (or any part thereof) fail to meet the service levels required to meet the agreed KPI's, then the Council shall be entitled by notice in writing to the Supplier to exercise any one or more of the rights set out in the Specification.

## Review Meetings

- 8.31 From the Service Commencement Date for the first six (6) months of the Contract Term, the Parties will meet monthly to review and discuss the KPIs, Service Quality Performance Reports, to monitor financial operational costs and the Provider's performance of the Contract and consider any other matters reasonably required by either Party to ensure continuous improvement of the delivery of the Services.
- 8.32 From month 7 after the Service Commencement Date of this Contract, the Parties will meet three (3) monthly (i.e. quarterly) to review and discuss the KPIs, Service Quality Performance Reports, to monitor financial operational costs and the Provider's performance of the Contract and consider any other matters reasonably required by either Party at such Review Meetings to ensure continuous improvement of the delivery of the Services.
- 8.33 Any changes to the form of the Review Meeting are to be agreed by both Parties.
- 8.34 Notwithstanding clause 8.33, if either the Council or the Provider:
- 8.34.1 reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
- 8.34.2 considers that a Joint Investigation Report requires consideration sooner than the next scheduled Review Meeting,
- that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within five (5) Business Days following that notice.

## Annual Contract Review

- 8.35 The Parties shall meet annually at the Council's offices for an 'Annual Contract Review'. The Parties shall have agreed the date of the Annual Contract Review meeting no later than three (3) months after the Service Commencement Date and if not agreed then the first Annual Review Meeting shall be within one (1) month of the first anniversary of the Service Commencement Date and subsequent Annual Review Meetings during the Term shall be twelve (12) monthly thereafter, the Provider shall not less than one month prior to the date for the Annual Contract Review Meeting, submit to the Provider the outcome of its strategic review of the Provider's contract performance since the Service Commencement Date for the first Annual Review Meeting and thereafter for the twelve (12) months since the last such report together with a budget review. The Council will issue and the Provider may add to the agenda for this meeting by one month prior to the meeting date.

## Co-operation

- 8.36 The Parties must at all times act in good faith towards each other.
- 8.37 The Provider must co-operate fully and liaise appropriately with:
- 8.37.1 the Council;

- 8.37.2 any third party provider who the Service User may be transferred to or from;
- 8.37.3 any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and
- 8.37.4 primary, secondary and social care services, in order to:
- a) ensure that a consistently high standard of care for the Service User is at all times maintained;
  - b) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one Provider; and
  - c) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, Employees Of the Council or members of the public.

#### **Scrutiny Board/Executive Board Assistance**

- 8.38 The Local Council (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 places a duty on Providers of Health Services to attend before a Local Council when required.
- 8.39 If required or reasonably requested by the Council to do so, the Provider must throughout the period of this Contract and for a period of six (6) years after the expiry of this Contract give all reasonable assistance to the Council's Security Board and/or Executive Board and to any other board with a similar status, including attending the Council's Scrutiny and/or Executive Board in order to answer questions pertaining to this Contract.

#### **9 Access To Premises**

- 9.1 The Council shall, where applicable, provide the Provider (and any Sub-Contractors if necessary) with access to such parts of the Premises as the Provider reasonably requires for the purposes of properly providing the Services.
- 9.2 The Provider shall ensure that only those of the Provider Personnel and the Sub-Contractor's Personnel that are duly authorised to enter upon the Premises for the purposes of providing the Services do so.
- 9.3 Whilst on the Premises, or, if applicable any other land or premises which the Provider is required to access for the provision of the Services, the Provider shall and shall procure that any Sub-Contractor shall:
- 9.3.1 adhere to all reasonable requests and instructions of the Council as may be provided from time to time;
  - 9.3.2 take steps to minimise and keep to a minimum interference with any other activities taking place;

- 9.3.3 ensure that all Provider Personnel and Sub-Contractor Personnel are aware of and comply with the Council's Health and Safety Policy and are aware of any potential risks to health and safety in relation to the Premises or any other land or premises to which access is required for the purposes of providing the Services;
  - 9.3.4 comply with all security measures implemented by the Council in relation to the Council's Premises, including the provision of all Provider Personnel and Sub-Contractor Personnel entering the Premises with a form of identification acceptable to the Council, which shall be displayed visibly on that person's clothing at all times whilst they are on the Premises or other premises used for the provision of the Services; and
  - 9.3.5 immediately remove any Provider or Sub-Contractor Personnel from the Premises or other premises used for the provision of the Services where the Council requests this;
- 9.4 Whilst on the Premises, the Council reserves the right to search any Provider or Sub-Contractor Personnel, their vehicles or any other vehicles brought on to the Premises or other premises used for the provision of the Services.
- 9.5 On expiry or termination of this Contract the Council shall notify the Provider that it is to remove its equipment from the Council's Premises. All such equipment shall be promptly removed by the Provider and in any event within thirty (30) Business Days of the termination or expiry of this Contract, howsoever caused. The Council shall provide the Provider with such access as the Provider reasonably requires to the Council's Premises to remove any of the Provider's equipment, at a time which shall be convenient to the Council. If at any time the Provider requires access to the Premises or any interest in any land which does not form part of the Premises or any additional rights beyond those which the Provider has in relation to any part of the Premises, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Provider.

## **10 Occupation of Premises**

- 10.1 The Council shall, where applicable, provide the Provider with such accommodation and facilities in the Premises as may be specified in Schedule 11 or which is otherwise agreed by the Parties from time to time.
- 10.2 The Provider shall ensure that:
- 10.2.1 the Premises and any Council Assets are used solely for the purposes of performing the Contract and shall remain the property of the Council;
  - 10.2.2 the Provider and the Provider Personnel comply with any policies, rules or relations or the provisions of any insurance policies from time to time in force in relation to the use of the Premises, and shall procure that any Sub-Contractor or Sub-Contractor Personnel shall comply with the same;
  - 10.2.3 where the Council's Premises or any Council Assets are used by the Provider they are kept properly secure and it will comply and co-



operate with the Council's reasonable directions regarding the security of the same;

- 10.2.4 any Council Assets used by the Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Council Premises unless expressly permitted under this Contract or by the Council's Authorised Representative.
- 10.3 The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Provider or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Provider as a debt.
- 10.4 The Provider shall notify the Council immediately on becoming aware of any damage caused by the Provider, Provider Personnel or any Sub-Contractor or Sub-Contractor Personnel to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.
- 10.5 The Provider shall procure that in occupying the Premises, there shall be no act or omission by the Provider, or Sub-Contractor, or any Provider or Sub-Contractor Personnel which shall give rise to a right for any person to obtain title to or any right or interest over the Premises or any part of it and/or cause any material disruption to the provision of the services.
- 10.6 Except as otherwise expressly provided in this Contract the Provider shall take the Premises in its state and condition in all respects as at the date of this Contract and nothing in this Contract or otherwise shall constitute or imply a warranty by or on the part of the Contract as to the fitness and suitability of the Premises or any part thereof for the provision of the Services or for any other purpose.
- 10.7 The Provider shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Premises, and the Provider shall ensure that the Services are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.
- 10.8 To the extent permissible by Law, the Council will not accept liability for equipment or material left or stored on the Premises or any other premises used for the purposes of providing the services.

#### **Conduct of Provider, Sub-Contractor Personnel and admission to Premises**

- 10.9 Whilst engaged at the Council's Premises the Provider shall and shall procure that any Sub-Contractor shall comply with the Council's Policies relating to the conduct of Provider Personnel and security arrangements. The Council (acting reasonably) may:
- 10.9.1 instruct the Provider that disciplinary action is taken against any employee of the Provider or any Sub-Contractor involved in the provision of the Services (in accordance with the terms and

conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Council shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

- 10.9.2 where the Council has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).
- 10.10 Subject to clauses 10.11 and 10.12 the Provider shall, at least twenty (20) Business Days before the date on which the Provider first provides any of the Services, provide the Council with a written list of the names and addresses of all employees or other persons who it expects may require admission to each Premises in connection with the provision of the Services, specifying the capacities in which those employees or other persons are concerned with the provision of the Services and giving such other particulars as the Council may require. The Provider shall update this information as and when any such individuals are replaced or complemented by others, not less than twenty (20) Business Days before their inclusion. The decision of the Council on whether any person is to be refused admission to Premises shall be final and conclusive and the Council shall not be obliged to give reasons for its decision.
- 10.11 Where the Provider is unable (acting reasonably) to comply with clause 10.9.2 by the time period specified in it then the Provider shall comply with its obligations under that clause as soon as reasonably practicable and by no later than the end of the day on which the relevant individual first goes on to the Premises. Until such time as the Provider has complied with its obligations in respect of that individual, he or she shall at all times be accompanied on the Premises by a member of the Provider's or Sub-Contractor's Personnel who has been properly notified to the Council in accordance with clause 10.9.2.
- 10.12 Clauses 10.9.1 and 10.11 shall not apply to those individuals who shall be required by the Provider or any Sub-Contractor to attend on the Premises to provide emergency reactive services. In the case of such individuals, the Provider shall or shall procure that any Sub-Contractor shall ensure that such individuals are accompanied at all times while on each Premises by a member of the Provider or Sub-Contractor's Personnel who has been properly notified to the Council in accordance with clause 10.9.1.

### **Refusal of Admission**

- 10.13 The Council reserves the right for it to refuse to admit to the Council's Premises any person, employed or engaged by the Provider or a Sub-Contractor, whose admission would, in the opinion of the Council present a risk to the Council, any third party or the Council's property and shall not be obliged to give any reasons for such refusal.
- 10.13.1 The decision of the Council as to whether any person is to be refused admission to the Council's Premises pursuant to clause 10.13 shall be final and conclusive.
- 10.13.2 The Provider shall comply with and/or procure compliance with any notice issued by the Council from time to time requiring the removal

from Council's Premises of any person employed thereon who in the opinion of the Council is not acceptable on the grounds of a risk to the Council, any third party or the Council's property and that such persons shall not be employed again in relation to the provision of Services without the written consent of the Council.

## 11 Contract delay

- 11.1 If, at any time, the Provider becomes aware of any circumstance or occurrence which may lead to a delay in the provision of the Services or otherwise adversely affect the Provider's performance of its obligations under this Contract it shall immediately notify the Council in writing, providing details of the potential or actual delay.
- 11.2 The Provider shall use its best endeavours to avoid and mitigate the impact of any circumstance or occurrence referred to in clause 11.1 upon the Council.

## 12 Change

- 12.1 Should the Council wish to change any aspect of the provision of the Services (a "Change") it shall provide the Provider with written notice of the proposed Change including whether (so far as this may apply) any provision under clauses 5, 9 and/or 10 will need to be considered, in sufficient detail to enable the Provider to comply with its obligations under clause 12.2.
- 12.2 Within twenty (20) Business Days of receipt of the notice referred to in clause 12.1, or such time as the parties agree in writing, the Provider shall provide the Council with sufficient detail of the implementation of the proposed Change outlined under clause 12.1, such that the parties can discuss the implementation of such proposal. The parties shall then co-operate and work together with all reasonable endeavours such that within thirty (30) days thereafter, or such longer time as the parties agree in writing, the Provider can submit to the Council the proposed timetable for implementation and details of any changes to the Charges arising as a result of the proposed Change on a transparent and open-book basis.
- 12.3 In calculating any changes to the Charges, the Provider shall ensure that any alteration reflects a fair and proportionate change based upon the reasonable costs of a well-run provider of Services and the current profit margin achieved by the Provider.
- 12.4 After receipt of the information referred in clause 12.2, the Council shall be entitled to abandon or continue with the proposed Change. Should the Council decide to continue with the proposed Change, the Parties shall take such steps as are reasonably necessary to agree a variation to this Contract to reflect the proposed Change.
- 12.5 If after the parties have concluded the Change process set out in this clause 12 and the Council is clear that it is unable to fund or otherwise operate this Contract, or the Provider is not able to agree the amendment to the Charges with the Council to fund the proposed Change only then shall the Council be entitled to implement clause 17 (Voluntary Termination by the Council).

## 13 Best Value

- 13.1 The Provider acknowledges that:
- 13.1.1 the Council is subject to the Best Value Duty;
  - 13.1.2 the provisions of this clause 13 are intended to assist the Council in discharging its Best Value Duty in relation to the Services; and
  - 13.1.3 the provisions of this clause 13.1 shall apply in respect of the obligations of the Provider and the Council concerning the Best Value Duty.
- 13.2 The Provider shall, throughout the Term, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 13.3 The Provider shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with its Best Value Duty, including:
- 13.3.1 complying with all requests by the Council to procure the attendance of specific officers or employees of the Provider or any Sub-Contractor (or to procure attendance of any of its or their sub-contractors) at any meetings of the Council at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than twice in any one (1) Contract Year).
  - 13.3.2 permitting any officer or employee of the Council at all reasonable times and upon reasonable notice, access to:
    - (a) any document or data relating to the Services;
    - (b) any Provider Personnel or Sub-Contractor Personnel.
- 13.4 Annual Service Report and Annual Service Plan
- 13.4.1 Without prejudice to any other provision in this Contract the Provider shall at its own cost provide to the Council a written report (the “**Annual Service Report**”) in accordance with clause 8.35 (*Annual Contract Review*) above and the requirements of the Service Specification.
  - 13.4.2 The Provider shall upon a written request from the Council promptly provide such written evidence or other supporting information as the Council may reasonably require to verify and audit the information and other material contained in the Annual Service Report.
  - 13.4.3 If, in the Council's reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Council may serve a written notice upon the Provider (a “**Best Value Service Change Notice**”) stating the nature and timing of the changes to the provision, performance or

delivery of the Services (or the relevant part) which the Council desires.

- 13.4.4 The Provider shall, within twenty (20) Business Days of the date of receipt of the Best Value Service Change Notice, provide the Council at its own cost with a written statement (the “**Annual Service Plan**”) containing the Service Delivery Proposals to achieve the change to the Services (or the relevant part) in accordance with the Best Value Service Change Notice.
  - 13.4.5 As soon as practicable after the Council receives the Annual Service Plan, the Parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Council may modify the Best Value Service Change Notice, in which case the Provider shall, as soon as practicable, and in any event not more than twenty (20) Business Days after the receipt of such modification, notify the Council of any consequential changes to the Annual Service Plan.
  - 13.4.6 If the Parties cannot agree on the contents of the Annual Service Plan then the dispute will be determined in accordance with the Disputes Resolution Procedure.
  - 13.4.7 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the dispute resolution procedure the Council shall:
    - (a) confirm in writing the Annual Service Plan; or
    - (b) withdraw the Best Value Service Change Notice.
  - 13.4.8 If the Council either withdraws the Best Value Service Change Notice or does not confirm the Annual Service Plan within twenty (20) Business Days of the Annual Service Plan having been agreed or determined pursuant to the Disputes Resolution Procedure, then the Annual Service Plan and the Best Value Service Change Notice shall be deemed to have been withdrawn.
  - 13.4.9 If the Council confirms the Annual Service Plan then the Council shall issue a change notice (which shall include the information set out in the Best Value Service Change Notice) in accordance with clause 12.
  - 13.4.10 To the extent that the implementation of the proposals in the Annual Service Plan will result in a decrease in the costs of the Provider, the Charges shall be adjusted downwards.
  - 13.4.11 To the extent that the implementation of the proposals in the Annual Service Plan will result in an increase in the costs of the Provider, the Charges shall be adjusted upwards
- 13.5 The Provider shall take all reasonable steps to mitigate any costs and maximise any savings arising as a consequence of a Best Value Service Change Notice and a change notice served pursuant to clause 13.413.4.8 (Annual Service Report and Annual Service Plan).

## **14 Emergencies**

- 14.1 If an Emergency arises during the Term which cannot be dealt with by performance of the Services, the Council may instruct the Provider to use its best endeavours to procure that such additional or alternative services are undertaken by the Provider as and when required by the Council to ensure that the Emergency is dealt with and normal provision of the Services resumes as soon as is reasonably practicable provided that the Provider shall not be obliged to provide any service which it is neither qualified nor competent to provide.
- 14.2 The reasonable and properly incurred additional costs of the Provider of any additional or alternative services provided to the Council under clause 14.1 arising as a direct result of the Provider providing any additional or alternative services shall be borne by the Council. If such costs are not agreed, the matter shall be referred to the Dispute Resolution Procedure.

## **15 Provider Warranties and Undertakings**

- 15.1 The Provider warrants, represents and undertakes to the Council that on the date hereof:
- 15.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
  - 15.1.2 the information contained in the Provider's Tender remains true and accurate unless and to the extent that any changes have been notified to the Council and the Council has agreed to the provision of the Services on the basis of those changes and no others;
  - 15.1.3 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
  - 15.1.4 all action necessary on the part of the Provider to authorise the execution of and the performance of its obligations under this Contract has been taken or;
  - 15.1.5 the obligations expressed to be assumed by the Provider under this Contract are legal, valid, binding and enforceable to the extent permitted by Law and is in the proper form for enforcement in England;
  - 15.1.6 the execution, delivery and performance by the Provider of this Contract does not contravene any provision of:
    - (a) any existing Law either in force, or enacted but not yet in force binding on the Provider;
    - (b) the Memorandum and Articles of Association of the Provider;
    - (c) any order or decree of any court or arbitrator which is binding on the Provider; or
    - (d) any obligation which is binding upon the Provider or upon any of its assets or revenues;

- 15.1.7 Provider Warranted Data is true and accurate in all respects;
- 15.1.8 the Provider has not, other than in connection with the Services, traded at any time since its incorporation as a company pursuant to the Companies Act 2006;
- 15.1.9 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Provider, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Provider to perform its obligations under this Contract;
- 15.1.10 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Provider to perform its obligations under this Contract;
- 15.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Provider, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
- 15.1.12 it has not paid commission or agreed to pay any commission to any employee, agent, Sub-Provider, officer or member of the Council either directly or through another on its behalf;

and the Council relies upon such warranties and representations.

- 15.2 The Provider warrants and undertakes to the Council that for so long as this Contract remains in full force:
  - 15.2.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or relevant council may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware the same may be threatened or pending or with twenty (20) Business Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor) give the Council notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the delivery of the Services, the Provider's ability to perform its obligations under this Contract;
  - 15.2.2 it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Provider to perform its obligations under this Contract;

- 15.2.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
  - 15.2.4 it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor;
  - 15.2.5 it shall not without the prior written consent of the Council, incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services;
  - 15.2.6 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business; and
  - 15.2.7 it shall not without the prior written consent of the Council, change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.
- 15.3 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Provider in this Contract are cumulative and none shall be given a limited construction by reference to any other.

## **16 Steps up to and Including Termination**

- 16.1 Without affecting any other right or remedy available to it, the Council may terminate this Contract with immediate effect by giving written notice to the Provider if:
- 16.1.1 the Provider fails to pay any undisputed amount due under this Contract on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment;
  - 16.1.2 the Provider commits a material breach of any term of this Contract which breach is irremediable or if such breach is remediable fails to remedy that breach within a period of fifteen (15) Business Days after being notified in writing to do so;
  - 16.1.3 the Provider repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
  - 16.1.4 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either



unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 16.1.5 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - 16.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other Party (being a company);
  - 16.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company);
  - 16.1.8 the holder of a qualifying floating charge over the assets of the other Party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 16.1.9 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
  - 16.1.10 the Provider (being an individual) is the subject of a bankruptcy petition or order;
  - 16.1.11 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) Business Days;
  - 16.1.12 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 16.1.3 to 16.1.11;
  - 16.1.13 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - 16.1.14 the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
  - 16.1.15 there is a change of control of the Provider (within the meaning of section 1124 of the Corporation Tax Act 2010);
- 16.1A The Council may upon giving three months' written notice to the Provider, terminate this Contract where a matter giving rise to a Performance Improvement Plan under clause 8 above remains in the reasonable opinion of

the Council unresolved due to the unreasonable breach of any of the terms of this Contract by the Provider.

16.2 For the purposes of this clause, a material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

16.2.1 a substantial portion of this Contract; or

16.2.2 any of the obligations set out in clauses 34 and 46

over the Term. In deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

16.3 Without affecting any other right or remedy available to it, the Provider may terminate this Contract:

16.3.1 on a 'without cause' basis, after the first anniversary of the Commencement Date, by giving twelve months' prior written notice to the Council and the Contract will terminate on the date specified in the notice given to the Council; or

16.3.2 where, following the conclusion of a matter brought by the Provider under Clause 57 (Dispute Resolution), the Council has been held to have deliberately acted fraudulently or illegally under this Contract and in doing so has materially and adversely affected the ability of the Provider to perform its obligations under this Contract.

#### **Provider Failure**

16.4 In the event that the Council is of the reasonable opinion that there has been a material breach of this Contract by the Provider, then the Council may, without prejudice to any other rights or remedies it may have under this Contract including under clause 8 (*Contract Management*), consult with the Provider and then do any of the following:

16.4.1 require the Provider to submit a report detailing why the material breach has occurred and a Performance Improvement Plan in accordance with clause 8.11 (Performance Improvement Plan) and how it will be improved within ten (10) Business Days or such other period of time as the Council may direct;

16.4.2 without terminating this Contract, suspend the affected Service in accordance with the process set out in clause 16.6 below (Suspension and Consequences of Suspension); and/or

16.4.3 without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause 16.1 (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.

- 16.5 If the Council exercises any of its rights under clause 16.3, the Provider must, subject to clause 24, indemnify the Council for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

### **Suspension and Consequences of Suspension**

- 16.6 A suspension event (each '*Suspension Event*') shall have occurred if the Council reasonably considers that a breach by the Provider of any obligation under this Contract:
- 16.6.1 may create an immediate and serious threat to the health or safety of any Service User; or
  - 16.6.2 may result in a material interruption in the provision of any one or more of the Services; or
  - 16.6.3 clause 16.6.1 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 the Services; or
  - 16.6.4 the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent.
- 16.7 Where a Suspension Event occurs:
- 16.7.1 The Council may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Council that it is able to and will perform the suspended Service, to the required standard; and
  - 16.7.2 the Provider must, where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.
- 16.8 During the suspension of any Service under the provisions of this clause 16, the Provider must comply with any steps the Council reasonably specifies in order to remedy the Suspension Event, including where the Council's decision to suspend pursuant to clause 16.6.1 has been referred to dispute resolution under the provisions of this Contract.
- 16.9 During the suspension of any Service, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:
- 16.9.1 all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect; and/or

- 16.9.2 all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with and under the agreement of the Council.
- 16.10 The Parties must use their reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- 16.11 Except where suspension occurs by reason of an event of Force Majeure, the Provider must, subject to clause 24, 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).
- 16.12 Following suspension of a Service the Provider must at the reasonable request of the Council and for a reasonable period:
- 16.12.1 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
- 16.12.2 at the cost of the Provider:
- (a) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative successor Provider; and
- (b) deliver to the Council all materials, papers, documents and operating manuals owned by the Council and/or used by the Provider in the provision of the suspended Service.
- 16.13 As part of its compliance with clause 16.12 the Provider may be required by the Council to agree a transition plan with the Council and/or any alternative successor Provider.
- 16.14 If it is determined, pursuant to clause 57 (*Dispute Resolution*) that the Council acted unreasonably in suspending a Service, the Council must indemnify the Provider in respect of any Losses directly and reasonably incurred by the Provider in respect of that suspension.
- 16.15 During any suspension of a Service the Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.

## 17 Voluntary Termination

- 17.1 If clause 12.5 applies, the Council may terminate the Contract by complying with its obligations under clause 17.2.1 and stating the date the Contract will terminate, such date being not less than four (4) months after the date of receipt of the notice.
- 17.2 If either Party (the “**Terminating Party**”) wishes to terminate the Contract on a no fault basis, it must give notice to the other Party stating:

- 17.2.1 that the Terminating Party is terminating the Contract under this clause 17.2; and
- 17.2.2 the date that the Contract will terminate, such date to be a date falling not less than twelve (12) months after the date of receipt of the notice.
- 17.3 The date specified in the notice issued pursuant to clause 17.1 or 17.2 will be that date on which the Contract will terminate on.

## **18 Consequences of termination/expiry**

- 18.1 In the event that this Contract is terminated in accordance with clause 16.1, the Terminating Party shall be entitled to recover any Losses from the other Party it suffers as a result of the circumstances giving rise to the Terminating Party's ability to terminate this Contract.
- 18.2 The Losses referred to in clause 18.1 shall include:
  - 18.2.1 any additional costs incurred by the Council in procuring replacement services (including any difference in purchase price); and
  - 18.2.2 any costs incurred by the Council in procuring an alternative supplier to provide a service similar to the Services.
- 18.3 Immediately upon termination or expiry of this Contract, the Provider shall provide to the Council all documents, materials, correspondence, papers, specifications, information contained within databases, manuals, guidance and other information in its control or possession which the Council may require or requests in writing in order to assist in the timely and efficient transfer of services to any third party providing the same or similar services to the Services or the adoption of such Services by the Council itself.
- 18.4 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## **19 Force Majeure**

- 19.1 Subject to the remaining provisions of this clause 19, either Party may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- 19.2 Neither Party can claim relief if the Force Majeure Event is attributable to its:
  - 19.2.1 wilful act,
  - 19.2.2 neglect; or
  - 19.2.3 failure to take reasonable precautions against the relevant Force Majeure Event.

- 19.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 19.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 19.5 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 19.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 19.7 Where reasonable in the circumstances and following consultation between the parties, the Charges payable by the Council shall be reduced to the extent that the Council does not receive the Services as a result of the Force Majeure Event.
- 19.8 If the performance of the Affected Party's obligations under the Contract is prevented by circumstances of a Force Majeure Event for a period of twenty Business Days or more and the parties have met and have been unable to agree reasonable and appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract, then either Party may terminate the Contract upon giving five (5) Business Days' written notice to the other Party.

## 20 Survival of termination

- 20.1 On termination or expiry of this Contract, the following clauses shall continue in force:  
1,4,5,13,15,23,24,25,27,29,30,31,34,39,41,42,43,49,50,55,56,57,65,66,67 and 68.

## 21 Step-In

- 21.1 On the occurrence of a Step-In Trigger Event, the Council may serve notice on the Provider (a "**Step-In Notice**") that it will be taking action under this clause 21, either itself or with the assistance of a third party (provided that the Provider may require any third parties to comply with a confidentiality undertaking equivalent to clause 30.1). The Step-In Notice shall set out the following:

- 21.1.1 details the action the Council wishes to take and in particular the Services that it wishes to control (the “**Required Action**”); and
- 21.1.2 the Step-In Trigger Event that has occurred and whether the Council believes that the Required Action is due to the Provider’s default.
- 21.2 Following service of a Step-In Notice, the Council shall be entitled to take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- 21.3 For so long as and to the extent that the Required Action is continuing, then:
  - 21.3.1 the Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
  - 21.3.2 the Council shall be entitled to deduct the costs incurred in taking the Required Action from the Charges payable to the Provider.
- 21.4 Before ceasing to exercise its step in rights under this clause 21 the Council shall deliver a written notice to the Provider specifying:
  - 21.4.1 the Required Action it has actually taken; and
  - 21.4.2 the date on which the Council plans to end the Required Action
- 21.5 The Provider shall bear its own costs in connection with any step-in by the Council under this clause 21.

## **22 Relief Events**

- 22.1 If the Provider would have provided the Services in accordance with its obligations under this Contract but has failed to do so as a direct result of a Relief Event the Provider will have the rights and relief set out in clause 22.2.
- 22.2 The Provider shall:
  - 22.2.1 (in measuring the performance of any affected Service be treated as though the relevant Service had met the relevant service levels or KPIs detailed in the Specification to the extent that the failure is due to any Relief Event;
  - 22.2.2 not be treated as being in breach of this Contract to the extent that non-performance or breach is due to any Relief Event; and
  - 22.2.3 be entitled to the Charges for the relevant Services affected by the Relief Event as if it had not occurred.
  - 22.2.4 If the Provider claims that clause 22.1 applies, and in order to claim the rights and reliefs in clause 22.2, it shall provide the Council with details of the Relief Event within five (5) Business Days of the Relief Event manifesting.
  - 22.2.5 In the event of any dispute as to whether a Relief Event applies to the Provider’s failure to provide the Services in accordance with this

Contract, the Parties shall continue to resolve the causes, and mitigate the effects, of such failure.

## 23 Indemnities

23.1 Neither Party excludes or limits liability to the other Party for:

- 23.1.1 death or personal injury;
- 23.1.2 fraud; or
- 23.1.3 fraudulent misrepresentation.

23.2 The Provider either:

shall indemnify the Council against all Losses suffered or incurred by the Council arising out of or in connection with:

- 23.2.1 any breach of statutory duty arising in relation to this Contract;
- 23.2.2 the successful enforcement of this Contract;
- 23.2.3 any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any act or omission by the Provider, Provider Personnel, Sub-Contractors or Sub-Contractor Personnel, professional advisors and consultants in the delivery of its obligations under this Contract; or
- 23.2.4 any claim made against the Council by a third party arising out of or in connection with this Contract to the extent that such claim arises out of the performance, breach, negligent performance or failure or delay in performance of this Contract by the Provider, Provider Personnel, Sub-Contractors or Sub-Contractor Personnel, professional advisors and consultants.

### Conduct of indemnity

23.3 If any third party makes a claim, or notifies an intention to make a claim, against either party (the “**Indemnified Party**”) which may reasonably be considered likely to give rise to a liability under this indemnity (a “**Claim**”), the Indemnified Party shall:

- 23.3.1 as soon as reasonably practicable, give written notice of the Claim to the other party, specifying the nature of the Claim in reasonable detail;
- 23.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the other party; and
- 23.3.3 give the other party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power



or control of the Indemnified Party, so as to enable the other party and its professional advisers to examine them and to take copies for the purpose of assessing the Claim; in order to enable that party to consider whether or not to then give to the other party sole authority to avoid, dispute, compromise or defend the Claim.

## **24 Limitation on Liability**

- 24.1 Subject to clause 23.1, the Council's, total aggregate liability, in addition to its obligation to pay the Charges as and when they fall due for payment, shall be limited to 100% of the aggregate annual Charges paid, due or which would have been payable under this Contract in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months).
- 24.2 Subject to clause 23.1, the Provider's total aggregate liability to the Council for a breach or otherwise of the terms of this Contract shall (excluding amounts receivable under any if its relevant insurance policies) be limited to 150% of the aggregate annual Charges received, due or which would have been receivable under this Contract in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount reasonably estimated to be paid by the Council in the first twelve (12) months).

## **25 Duty to mitigate**

Both Parties shall at all times throughout the duration of this Contract use reasonable endeavours to mitigate any loss, damage, costs or expenses suffered as a result of any acts or omissions of the other Party in relation to the performance of obligations under this Contract.

## **26 Interest**

- 26.1 Save where otherwise specifically provided, if a Party fails to make any payment due to the other Party under this Contract within Thirty (30) Business Days of the due date for payment, the defaulting Party shall pay interest on the overdue amount at the Prescribed Rate from the due date until the date of actual payment.
- 26.2 In relation to any payments that are disputed in good faith, interest under this clause shall be payable only after such dispute is resolved, and only on any sums found to be outstanding, from thirty (30) Business Days after such dispute is resolved until the date of actual payment.

## **27 Right of Set-off**

The Council may retain or set off any amount owed to it by the Provider against any amount due to the Provider under this Contract or under any other agreement between the Provider and the Council.

## **28 Insurance**

- 28.1 The Provider shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adequate

to cover its liability under this Contract, and any other insurances required in order to comply with the Law for the duration of the Term. These insurances must be effective in each case not later than the date on which the relevant risk commences.

28.2 The insurances referred to at clause 28.1 shall include but not be limited to the following, in each case for any one occurrence or series of occurrences arising out of one event:

28.2.1 Professional Indemnity Insurance to the value of £10 million

28.2.2 Employers' Liability Insurance to the value of £5 million

28.2.3 Public Liability Insurance to the value of £5 million

The Provider shall provide to the Council on request, copies of all insurance policies referred to in this clause 28 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

28.3 The Provider shall not take any action or fail to take any reasonable action, or permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy referred to in clause 28.1.

28.4 Should the Provider fail to take out any insurance in accordance with clause 28.1 the Council may purchase such insurances and recover the costs of such insurances from the Provider.

## 29 IPR

29.1 All Intellectual Property Rights:

29.1.1 furnished to or made available to the Provider by the Council shall remain the property of the Council;

29.1.2 prepared by or for the Provider for use, or intended use, in relation to the performance of its obligations under the Contract shall (subject to prior consultation between the parties and any alternative arrangement being agreed to in writing in accordance with clause 29.4 below) belong jointly to the Provider and the Council;

and the Provider shall not, and shall procure that the Provider Personnel and Sub-Contractors shall not, (except when necessary for the implementation of the Contract) without obtaining the Council's prior written approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Contract) which the Provider may obtain in performing the Contract except information which is in the public domain.

29.2 The Provider shall obtain the Council's written approval before using any material, in relation to the performance of the Contract, which is or may be subject to any third party Intellectual Property Rights. The Provider shall procure that the owner of such rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material. Such

licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

- 29.3 Where a claim or proceeding is made or brought against the Council which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with this Contract infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Council otherwise than in accordance with the terms of this Contract, the Provider shall, subject to clause 24, indemnify the Council at all times from and against all such claims and proceedings in accordance with clause 23.2.
- 29.4 The Provider and the Council shall as part of the development of any specific Intellectual Property for use in the delivery of the Services, consider and agree how such Intellectual Property shall be held.

### **30 Freedom of information and confidentiality**

- 30.1 In respect of any Confidential Information it may receive from the other party (the “**Discloser**”) and subject always to the remainder of this clause 30, each party (the “**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:
- 30.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Contract;
  - 30.1.2 the provisions of this clause 30.1 shall not apply to any Confidential Information which:
    - (a) is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
    - (b) is obtained by a third party who is lawfully authorised to disclose such information;
    - (c) is authorised for release by the prior written consent of the Discloser;
    - (d) is required to be disclosed to ensure the compliance of either party with the Freedom of Information Act 2000 (the “**FOIA**”) the Environmental Information Regulations 2004 (the “**EIR**”) or the Local Government Transparency Code 2014/2015;
    - (e) the Council at its sole discretion, elects to publish this Contract (including any variations to this Contract) in its entirety.
- 30.2 Nothing in this clause 30 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial,

administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, provided that the information is subject to confidentiality undertakings equivalent to those set out in clause 30.1, to its professional advisors or insurers.

- 30.3 The Provider acknowledges that the Council is subject to the FOIA and the EIR. Each Party notes and acknowledges the FOIA, the EIR and the Codes of Practice under section 45 and 46 of the FOIA. Each Party will act in accordance with the FOIA, the EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Provider in force from time to time) to the extent that they apply to the Provider's performance under this Contract.
- 30.4 The Provider agrees that:
- 30.4.1 without prejudice to the generality of clause 30.3, the provisions of this clause 30.4 are subject to the obligations and commitments of the Council under the FOIA and the Codes of Practice issued under section 45 and 46 of the FOIA.
  - 30.4.2 where it considers that any information should not be available for disclosure, it will:
    - (a) identify it specifically; and
    - (b) explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.
- 30.5 The Provider acknowledges that all decisions regarding disclosure of information following a Request For Information will be made at the sole discretion of the Council. The Provider acknowledges that, even where the Provider (or Council (as applicable)) has indicated that information is commercially sensitive, the Council or Provider may be required to disclose it under the FOIA or EIA, with or without consulting the other party and although the Council or Provider will use reasonable endeavours to consult with the other party prior to any disclosure, the Council or Provider shall not be under any further obligation to consult the other party prior to disclosure.
- 30.6 The Provider shall transfer to the Council any Request for Information it should receive, as soon as practicable after receipt and in any event within five (5) Business Days of receiving a Request for Information.
- 30.7 Where the Council is managing a request as referred to in clause 30.5, the Provider shall co-operate with the Council and shall respond together with copies of any documentation so requested within five (5) Business Days of any request by it for assistance.
- 30.8 The Receiving Party may disclose the Disclosing Party's Confidential Information:
- 30.8.1 in connection with any dispute resolution under clause 57 (Dispute Resolution);
  - 30.8.2 to comply with the Law;

30.8.3 to its staff, consultants and Sub-Contractors engaged in the delivery and performance management of this Contract, who shall in respect of such Confidential Information be under a duty no less onerous than the original Party's duty;

30.8.4 to comply with a Regulatory Bodies request.

### **31 Data Protection Act 1998**

31.1 In relation to all Personal Data, the Provider shall at all times comply with the Data Protection Act 1998 (the "DPA") as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the provision of Services.

31.2 The Provider and any Sub-Contractor shall:

31.2.1 only undertake processing of Personal Data as is required in connection with the provision of its obligations under this Contract and shall not transfer any Personal Data to any country or territory outside the European Economic Area, including processing on equipment situated outside the European Economic Area;

31.2.2 process any Personal Data only to the extent, and in such a manner, as is necessary to undertake the Services and in compliance with the Council's instructions and the provisions of this Contract and immediately notify the Council if it is unable to do so;

31.2.3 shall not determine or seek to determine the purposes for which and the manner in which any Personal Data is, to is to be processed;

31.2.4 bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of Provider Personnel having access to the Personal Data;

31.2.5 deal promptly and properly with all inquiries from the Council relating to its processing of the Personal Data and abide by the advice of the Information Commissioner's Office with regard to the processing of the Personal Data;

31.2.6 take any and all measures as required to enable it to process the Personal Data in compliance with obligations equivalent to those imposed on the Council by the DPA and in particular the seventh principle to ensure the security and integrity of all Personal Data which is under the care and control of the Provider and to protect against the unauthorised or unlawful processing or the accidental loss or damage of the Personal Data;

31.2.7 promptly (and in any event with five (5) Business Days) provide the Council with details of any the following which the Provider receives or becomes aware of:

- (a) any legally binding request for disclosure of Personal Data by a law enforcement Council unless otherwise prohibited;
  - (b) any accidental or unauthorised access;
  - (c) any complaint, investigation or request relating to the Council's compliance with the DPA and
  - (d) any request received directly from a data subject without responding to that request, unless it has been authorised to do so;
  - (e) any complaint relating to the Provider's or the Council's compliance with DPA;
  - (f) and at its own cost, provide the Council with such reasonable assistance as is reasonably requested by the Council as a result.
- 31.3 The Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Provider or the Sub-Contractors referred to in clause 31.2.4. Within fifteen (15) Business Days of such a request, the Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Council can determine whether or not, in connection with the Personal Data, the Council are the Provider are complying with the DPA.
- 31.4 The Provider shall observe the Caldicott Principles when dealing with Personal Data.
- 31.5 The Provider shall not disclose Personal Data to any third parties other than:
- 31.5.1 with the written consent of the Council;
  - 31.5.2 subject to requirements of any Regulatory Body;
  - 31.5.3 to its employees and Sub-Contractors to whom such disclosure is necessary in order for the Provider to carry out its obligations under this Contract; or
  - 31.5.4 to the extent required under a court order,
- provided that disclosure under clause 31.5 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 31 and that the Provider shall give notice in writing to the Council of any disclosure of Personal Data which either the Provider or a Sub-Contractor is required to make under clause 31.5.3 immediately upon becoming aware of such a requirement.
- 31.6 The Provider shall, subject to clause 24, indemnify and keep indemnified the Council against all Losses incurred by it in respect of any breach of this clause 31 by the Provider and/or any act or omission of any Sub-Contractor which causes the Provider to be in breach of this clause 31.

- 31.7 During the term of the Contract and after termination (in the event that the Provider is continuing to hold Personal Data):
- 31.7.1 The Provider shall promptly comply with any request from the Council requiring the Provider to amend or transfer the Personal Data and shall promptly certify in writing to the Council that it has complied with any such request; and
  - 31.7.2 subject to the requirements of any Regulatory Bodies, the Provider shall, where requested by Council, promptly destroy and confirm in writing to the Council the destruction of all Personal Data that the Provider and any Sub-Contractor have in their possession (whether in electronic format or otherwise).

## **32 Bribery and Fraud**

- 32.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider Personnel, have at any time prior to the Commencement Date:
- 32.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 32.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 32.2 The Provider shall not during the term of this Contract:
- 32.2.1 commit a Prohibited Act; and/or
  - 32.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, providers, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 32.3 The Provider shall during the term of this Contract:
- 32.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - 32.3.2 keep appropriate records of its compliance with its obligations under clause 32.3.1 and make such records available to the Council on request.
- 32.4 The Provider shall immediately notify the Council in writing if it becomes aware of any breach of clause 32.1 and/or 32.2, or has reason to believe that it has or any of the Provider Personnel have:

- 32.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 32.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 32.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 32.5 If the Provider makes a notification to the Council pursuant to clause 32.4, the Provider shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to Audit any books, Records and/or any other relevant documentation in accordance with clause 39.
- 32.6 If the Provider is in default under clauses 32.3.1 and/or 32.2, the Council may by notice:
- 32.6.1 require the Provider to remove from performance of this Contract any Provider Personnel whose acts or omissions have caused the default; or
  - 32.6.2 immediately terminate this Contract.
- 32.7 Any notice served by the Council under clause 32.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).

### **33 Health and Safety Requirements**

- 33.1 The Provider shall (and shall ensure that all Sub-Contractors and other related parties shall) at all times comply with all relevant health and safety procedures which shall include the requirements of the Health and Safety at Work etc. Act 1974, all other applicable Legislation, its own health and safety policies and safe working systems (to be produced to the Council on request), any relevant health and safety plans for the Premises and, in respect of the Council's Personnel and others who may be affected by the provision of the Services, the Council's health and safety policies and procedures.
- 33.2 The Provider shall promptly notify the Council of any incidents on the Premises or otherwise related to the provision of the Services which are or may give rise to a health and safety or an environmental hazard.

### **34 Safeguarding**

- 34.1 The Parties acknowledge that the Provider may be providing regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006 and will have responsibility for the management and control of any regulated activity provided under this Contract.



- 34.2 Where required by the Safeguarding Vulnerable Groups Act 2006 the Provider shall:
- 34.2.1 ensure that all individuals engaged or employed in the provision of the Services or in any activity related to, or connected with, the provision of the Services including locum staff and volunteers are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the barred lists; and
  - 34.2.2 monitor the level, i.e. enhanced or standard, and validity of the checks under this clause 34 for each individual and/or member of Provider Personnel.
- 34.3 The Provider warrants that at all times for the purposes of this Contract no person who is or will be employed or engaged by the Provider or a sub-provider of the Provider including locum staff and volunteers in the provision of the Services or in any activity related to, or connected with, the provision of the Services is barred from the regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006.
- 34.4 The Provider shall refer information about any person carrying out the Services to the DBS where the Provider 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 Service Users.
- 34.5 The Provider shall 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 or there may be a risk of unsuitability to carry out regulated activity or who may otherwise present a risk to Service Users.
- 34.6 The Provider shall ensure that Provider Personnel, temporary staff, agents, or volunteers and must procure that staff, temporary staff, agents, or volunteers of any Sub-Contractor do not abuse, neglect, harm or exploit Service Users, Carers or colleagues, any such concerns shall be immediately reported to the police and the Council.

### **Safeguarding - Policies and Procedures**

- 34.7 The Provider shall have in force and shall maintain and shall procure that any Sub-Contractor has in force and will maintain a safeguarding of vulnerable adults and children policy which shall set out and require compliance by the Provider's Personnel with the obligations detailed in this clause 34 and the principles and procedures laid down in the policies cited in the following sub-clause 34.8 in order that there can be effective joint action to protect vulnerable adults and children from abuse.

- 34.8 The Provider shall comply with the “Bradford District Safeguarding Adults Board” and with “The Bradford District Safeguarding Children Board” policies and procedures recognising the duty that all Providers have to safeguard adults and children as laid out in the Government guidance ‘No Secrets 2000’ and ‘Working Together to Safeguard Children 2010’ as referred to in Schedule 5 (Safeguarding policies) as the same maybe updated or replaced throughout the Contract Term.
- 34.9 The Provider shall, prior to the Commencement Date, nominate both an Authorised Officer and a Deputy Authorised Officer (to act in those instances where the Contract Manager is unavailable). The contact details for the Authorised Officer, the Deputy Authorised Officer, the Contract Manager and the Deputy Contract Manager shall be provided in writing to the other party within ten (10) days of Service Commencement. Any changes to the contact details under clause 58.3 shall be notified to the other Party as soon as is reasonably practicable in accordance with the provisions of clause 62.
- 34.10 The Provider shall have in place and shall procure that any Sub-Contractor comply with all relevant Codes of Professional Conduct and has in place a robust safeguarding training programme for all Provider Personnel (including volunteers) appropriate to their level of responsibility
- 34.11 The Provider shall establish and shall procure that any Sub-Contractor establishes clear policies to deal with dangerous, exploitative or unsafe behaviour and practice and provide training and shall procure that Provider Personnel and any Sub-Contractor staff are provided training to develop appropriate skills and knowledge.
- 34.12 The Provider shall have in place and shall have implemented and shall procure that any Sub-Contractor has in place and implemented robust up-to-date procedures, (including, disciplinary procedures, whistle-blowing policy and recruitment checks), for avoiding and responding to actual or suspected physical, sexual, psychological, financial or material and discriminatory abuse and acts of neglect or omission. Such procedures shall be reviewed and the outcomes of such reviews reported against to the Council at least once every year.
- 34.13 The Provider shall ensure and shall procure that any Sub-Contractor shall ensure that its disciplinary procedures are compatible with the responsibility to protect vulnerable adults and children and which shall include the ability to suspend an employee pending the outcome of a safeguarding investigation. The decision to suspend by the Provider shall take into account the best interests of the employee and/or the alleged victim of abuse, the outcome of a risk assessment, and consideration of the potential harms/dangers to the individual/individuals concerned, and any other relevant factors including those outlined in the Multi-Agency Safeguarding Policy. Any decision to suspend shall be properly recorded in writing and a copy of this record shall be provided to the Council within 24 hours of any decision being made.

#### **Safeguarding - Monitoring, Investigation and Enforcement**

- 34.14 The Provider shall and shall procure that any Sub-Contractor shall immediately provide the Council with any information that the Council reasonably requests to enable it to be satisfied that the obligations of this clause 34 (Safeguarding) have been met.

- 34.15 The Provider shall and shall procure that any Sub-Contractor shall at all times co-operate with the Council's processes for inspection, monitoring, evaluations, quality audit and safeguarding in whatever way is reasonably requested by the Council. Accordingly, the Council may request access to records held by the Provider and/or Sub-Contractor regarding Service Users and the Provider's and/or Sub-Contractor's Staff where necessary under the Multi-Agency Policies.
- 34.16 The records held by the Provider and/or Sub-Contractor of the Provider referred to in clause 34.14 above may include the Care Plan of any Service User concerned who is resident at the Provider's premises and in receipt of a service. Access to these records will assist in the early identification of safeguarding issues and in monitoring safeguarding concerns.
- 34.17 The Council reserves the right to undertake its own safeguarding investigation without prejudice to any investigation undertaken by the CQC or any other Regulatory Body. In the event that a safeguarding investigation is initiated by the Council it will be conducted in accordance with the Multi-Agency Safeguarding Policy. The Provider agrees and acknowledges that any action taken by the CQC or Regulatory Body and which does not result in the deregistration of the Provider by the CQC will not be binding upon the Council nor require the Council to conclude its own investigation. For the avoidance of doubt the Council shall be under no obligation to provide prior written or other notification of a safeguarding investigation by the Council to the Provider.
- 34.18 The Council may require the Provider's Personnel and any staff of any Sub-Contractor, including locum staff and volunteers to be withdrawn and an acceptable person substituted in the event of:
- 34.18.1 the Provider failing to comply with the provisions set out in this Contract in relation to the protection of vulnerable adults and children; or
  - 34.18.2 the Provider's Personnel or staff of any Sub-Contractor including locum staff and volunteers refuses to complete a disclosure statement/application; or
  - 34.18.3 the disclosure at any stage of information that in the reasonable opinion of the Council renders the Provider's Personnel or staff of any Sub-Contractor including locum staff and volunteers unsuitable for the work involved;
- 34.19 In the event that the Council through the course of a safeguarding investigation identifies that remedial action is required in respect of the Contract, the Council will follow the procedures set out in clauses 16.4 (Provider Failure) and 8.1 (Contract Management).
- 34.20 In the event that the Council receives any written notification from the CQC, or other Regulatory Body or other interested stakeholder concerning the Provider or a Sub-Contractor in relation to suspected or actual safeguarding issues the Council reserves the right to issue any relevant notice under clauses 16.4 (Provider Failure) and 8.1 (Contract Management) or to request further information under this clause 34 to carry out further investigations, and a risk assessment of the Provider and the Services.

- 34.21 The Council reserves the right to share any information received as part of any investigation with the CQC, relevant Regulatory Body, NHS partners, other commissioners of health and social care services, the police and emergency services where it is reasonably appropriate to do so.
- 34.22 The Provider shall accept and bear the costs of any learning interventions recommended by the Council to support improvements in safeguarding. The Provider will also accept any subsidised training and free learning resources offered by the Council.

### **Disclosure and Barring Service**

- 34.23 The Provider must have policies and procedures which acknowledge and provide for on-going monitoring of Provider Personnel, including undertaking further DBS disclosures every three (3) years.
- 34.24 The Provider must keep and must procure that the Council is kept advised at all times of any Provider Personnel who, subsequent to their commencement of employment, receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider (or any employee of a Sub-Contractor involved in the provision of the Services).

## **35 Staff**

- 35.1 At all times, the Provider must ensure and shall procure that any Sub-Contractor will ensure that:
- 35.1.1 each of the Provider Personnel including locum staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - 35.1.2 there is an adequate number of Provider Personnel to provide the Services properly in accordance with the provisions of the applicable Service Specification, set out in the Specification);
  - 35.1.3 where applicable, Provider Personnel including locum staff are registered with the appropriate professional Regulatory Body and that they work within their respective Codes of Professional Conduct at all times;
  - 35.1.4 all clinical staff must abide by the Codes of Professional Conduct and standards of their appropriate Regulatory Body or professional association; and
  - 35.1.5 Provider Personnel are aware of and respect equality and human rights of colleagues and Service Users.
- 35.2 If requested by the Council, the Provider shall as soon as practicable and by no later than ten (10) Business Days following receipt of that request, provide the Council with evidence of the Provider's compliance with the terms of this Contract.

- 35.3 The Provider must have in place and shall procure that any Sub-Contractor has in place systems for seeking and recording specialist professional advice including in accordance with clause 35.2 above and must ensure and shall procure that any Sub-Contractor will ensure that every member of Provider Personnel including locum staff involved in the provision of the Services receives:
- 35.3.1 mandatory training to maintain patient safety and so that Provider Personnel including locum staff understand all relevant policies including all aspects of infection prevention;
  - 35.3.2 proper and sufficient continuous professional and personal development, training and instruction; and
  - 35.3.3 full and detailed appraisal with peer review where appropriate (in terms of performance and on-going education and training);
- each in accordance with Good Clinical Practice, Guidance and the standards of any applicable relevant Regulatory Body or professional body or where necessary the requirements of the Council.
- 35.4 The Provider must and shall procure that any Sub-Contractor must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.
- 35.5 Where required by the Council and in accordance with best practice, the Provider must and shall procure that any Sub-Contractor must carry out Provider Personnel and/or Sub Contractor staff surveys in relation to the Services at intervals and in the form set out in the Service User, Carer and Staff Surveys Schedule or as otherwise agreed with the Council in writing from time to time.
- 35.6 Before the Provider or any Sub-Contractor engages or employs any person in the provision of the Services, including locum staff or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation and shall procure that any Sub-Contractor must without limitation, complete:
- 35.6.1 the Employment Checks; and
  - 35.6.2 where the Services are or include activity that is defined as regulated activity under the Safeguarding Vulnerable Groups Act 2006, then such Standard DBS Check or Enhanced DBS Check (as appropriate) as required by this Act.
- 35.7 The Provider must and shall procure that any Sub-Contractor must have policies and procedures which acknowledge and provide for on-going monitoring of any person engaged or employed in the provision of the Services or in any activity related to, or connected with, the provision of the Services including locum staff, including undertaking further DBS checks and disclosures and policies to support the employment of ex-offenders and such policy shall conform to the Council's policy on employing ex-offenders.

- 35.8 The Provider must keep and must procure that any Sub-Contractor must keep the Council:
- 35.8.1 advised at all times of any Provider Personnel including locum staff and including staff and locum staff of any Sub-Contractor who, subsequently to their commencement of employment, receives a relevant conviction, caution, reprimand; and/or
  - 35.8.2 advised of previous relevant convictions, cautions, reprimands or warnings, which become known to the Provider (or any employee/worker of a Sub-Contractor involved in the provision of the Services, including locum staff where the Services constitute regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006.

## **36 Discrimination**

- 36.1 The Provider acknowledges the Council's obligations under equality Law and agrees to perform its obligations under this Contract, and agrees to procure that any Provider Personnel and if applicable any Sub-Contractor shall perform its obligations in relation to the Services with regard to:
- 36.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - 36.1.2 the Council's equality and diversity policy as set out on the Council website and as updated from time to time;
  - 36.1.3 the Equality and Human Rights Commission's Code of Practice on Employment as updated from time to time;
  - 36.1.4 any other relevant statutory code of practice in relation to equalities legislation or prevention of discrimination in the workplace; and
  - 36.1.5 any other requirements and instructions which the Council imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law or under the Council's own policies or rules.
- 36.2 The Provider shall take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 36.3 To the extent that the Provider's obligations under this Contract involve the exercise of public functions of the Council, the Provider shall, and shall procure that any Provider Personnel and if applicable any Sub-Contractor shall comply to the extent permitted by Law with the provisions of:
- 36.3.1 Sections 28 and 29 of the Equality Act 2010, as if they were a body within the meaning of those Sections 28 and 29; and
  - 36.3.2 Part 11 of Chapter 1 of the Equality Act 2010, as if they were a body within the meaning of Schedule 19 of that Act;

- 36.4 The Provider shall assist the Council in its performance of its obligations under the Equality Act 2010, including but not limited to the provision of information that the Council shall require in order to monitor:
- 36.4.1 equality of access to the Services
  - 36.4.2 compliance with the Council's obligation under the equality Law
- 36.5 The Provider shall provide to the Council such information as the Council may require in respect of this clause 36 within ten (10) Business Days of receipt of a request from the Council's Representative.
- 36.6 The Provider shall ensure and shall procure that any Sub-Contractor shall ensure that any Provider Personnel or any Sub-Contractor Personnel engaged in the provision of the Services shall comply with the requirements of this clause 36.
- 36.7 Breach of this clause 36 by the Provider shall entitle the Council to terminate the Contract with immediate effect.

### **37 Sub-contracting**

- 37.1 The Provider shall not, without the prior written consent of the Council, sub-contract, whether in whole or in part, any one or more of its obligations under this Contract.
- 37.2 In relation to any sub-contracting pursuant to clause 37.1:
- 37.2.1 the Provider shall be responsible to the Council in Law or otherwise for all such sub-contracted Work and/or Services and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Provider under this Contract and/or at Law or otherwise;
  - 37.2.2 the Provider's remuneration shall not be increased by any amounts payable by the Provider to its Sub-Contractors; and
  - 37.2.3 the Provider shall be liable to the Council for the tortious acts and omissions of the person performing any sub-contracted work and/or services.

### **38 Replacement of Sub-Contractors**

- 38.1 The rights set out in this clause 38 may be exercised by the Provider on no more than two (2) occasions during the Term.
- 38.2 On the substitution or replacement of a defaulting Sub-Contractor to the Provider, the Provider may elect that, for the purposes of clause 16.1 only that any warning notices in respect of clause 16.1.3 **Error! Reference source not found.** in each case relating to the relevant works in respect of which the Sub-Contractor is being replaced, shall be cancelled. The Provider shall notify the Council on or before the appointment of any such substitute or replacement Sub-Contractor whether it elects for this clause 38.2 to apply on that occasion.

- 38.3 Where an election is made pursuant to clause 38.2 above on the substitution or replacement of a defaulting Sub-Contractor to the Provider then, for the purposes of clause 16.1.1 only no warning notices in respect of clause 16.1.3 shall accrue for the purposes of the definition of Provider default in respect of the works for which the Sub-Contractor has been replaced during a period of one (1) month from the date on which such works are first provided by the replacement or substitute Sub-Contractor.

### **39 Human rights**

- 39.1 The Provider shall, and shall procure that the Provider Personnel and any Sub-Contractor shall at all times comply with the provisions of the Human Rights Act 1998 (the “HRA 1998”) in the performance of this Contract.
- 39.2 The Provider shall undertake or refrain from undertaking, and shall procure that the Provider Personnel and any Sub-Contractor shall undertake or refrain from undertaking, such acts as the Council requests in order to enable the Council to comply with its obligations under the HRA
- 39.3 In the event that the Provider, any Provider Personnel or any Sub-Contractor does or omits to do, or permits or allows anything to be done which is incompatible with the provisions of the HRA 1998 which causes or may cause the Council to be in breach of its obligations under the HRA 1998 the Provider shall immediately notify the Council in writing and the Council may terminate this Contract immediately upon notice in writing in its absolute discretion.
- 39.4 The Provider shall, subject to clause 24, indemnify the Council against any Losses or liability (including any interest, penalties or costs incurred) which arises as a result of a breach by the Provider of its obligations under this clause 39.

### **40 Conflict of interest**

- 40.1 The Provider acknowledges and agrees that no Conflict of Interest exists between the Provider and or any Sub-Contractor and the Council at the date stated on the face of this Contract. In the event that the Provider becomes aware of a Conflict of Interest between its own interests or those of a Sub-Contractor and the Council, it shall notify the Council of the full details of any such Conflict of Interest immediately.
- 40.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or take such steps as it shall deem necessary should it become aware of a Conflict of Interest between itself and the Provider or a Sub-Contractor.

### **41 Assignment/Novation**

- 41.1 The rights and obligations of the Council under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Contract and having the legal capacity, power and Council to become a party to and to perform the obligations of the Council under this Contract being:



- 41.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
  - 41.1.2 any Local Council which has sufficient financial standing or financial resources to perform the obligations of the Council under this Contract; or
  - 41.1.3 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Provider) by the Council or a Minister of the Crown having the legal capacity, power and Council to perform the obligations under the guarantee and the obligations of the Council under this Contract.
- 41.2 The Provider shall not assign, novate, or otherwise transfer its rights and obligations under this Contract in whole or in part except with the prior written consent of the Council.

## **42 Records and Accounting**

- 42.1 The Provider shall, on reasonable request from the Council, provide full details and record of financial information relating to the Services:
- 42.2 The Provider shall:
- 42.2.1 keep fully auditable records of the financial information relating to the Services; and
  - 42.2.2 make those records available to the Council whenever reasonably requested.
- 42.3 Without prejudice to any other duty the Provider may have under this Contract the Provider shall maintain or shall procure that the following are maintained:
- 42.3.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
  - 42.3.2 full records of all maintenance procedures carried out during the term of this Contract;
- and the Provider shall have the items referred to in clause 42.3 available for inspection by the Council (and its advisers) upon reasonable notice, and shall present a report of them to the Council as and when requested from time to time.
- 42.4 The records referred to in this clause 42 shall be retained for a period of at least six (6) years after the Provider's obligations under this Contract have come to an end.
- 42.5 All information referred to in this clause 42 is subject to the obligations set out in clause 30.

## **43 Audit**

43.1 The Council, or any third party nominated by the Council (and notified to the Provider in accordance with the provisions of clause 62), shall at any time within Business Hours and on request:

43.1.1 have access to any place of business at which the Provider is carrying out work in relation to this Contract;

43.1.2 be able to inspect, audit and obtain copies of all records, invoices, accounts, reports, designs, drawings, manuals, estimates, bills of quantities, sub-contract quotations and other documents, used, intended to be used, or stored in connection with work being carried out by the Provider under this Contract; and

43.1.3 be able to inspect, audit and obtain copies of the Provider's quality management system and have access to any records and documentation relating to any management processes and procedures which are relevant to work being carried out by the Provider under this Contract.

43.1.4 The Provider shall provide the Council with all reasonable assistance in obtaining the right to such access and inspection, and shall provide any copies of records so required without charge.

43.1.5 The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's premises and/or the premises of any Sub-Contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's premises and/or the premises of any Sub-Contractor where it would adversely affect the provision of the Services and/or, the privacy or dignity of a Service User. The Provider at its own cost unless otherwise agreed in writing by the Council shall be responsible for all and any required remedial action arising from an audit carried out by the CQC, or the National Audit Office unless the Council has in writing agreed to any other arrangement.

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

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

## **44 Resources, Training and Policies**

44.1 The Provider shall procure that:

- 44.1.1 there shall be at all times a sufficient number of Provider Personnel (including all relevant grades of supervisory personnel) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient Provider Personnel to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and
- 44.1.2 all employees receive such training and supervision as is necessary to ensure the proper performance of the Services under this Contract.
- 44.2 The Provider shall procure that there are set up and maintained by it and by all Sub-Contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Provider shall procure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Council.
- 44.3 The Provider shall ensure that each of the Provider Personnel shall comply at all times with each of the Council's policies (which shall include rules, codes of practice, procedures and standards) listed at the Council's website and as amended or updated from time to time and any additional policies which the Council may adopt from time to time.
- 44.4 For the avoidance of doubt, the Provider Personnel shall include any Sub-Contractors engaged by the Provider at any time for the provision of the Services.
- 44.5 The Provider shall procure that any Sub-Contractor engaged in the provision of the Services shall ensure that the Sub-Contractor's Personnel shall comply with this clause 44.

## **45 Change in Law**

- 45.1 The Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the Charges as the result of:
  - 45.1.1 a General Change in Law; or
  - 45.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.
- 45.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 45.1.2, the Provider shall notify the Council of the likely effects of that change, including:
  - 45.2.1 whether any Change is required to the Services, the Charges or this Contract; and
  - 45.2.2 whether any relief from compliance with the Provider's obligations is required including any obligation to achieve milestones/meet service levels.

- 45.3 A soon as practicable after any notification in accordance with clause 45.2, the Parties shall discuss and seek to agree the matters referred to in that clause and any ways in which the Provider can mitigate the effect of the Specific Change of Law, including:
- 45.3.1 providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - 45.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Provider before it occurred;
  - 45.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
  - 45.3.4 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 13 (Best Value), has been taken into account in amending the Charges.
- 45.4 Any increase in the Charges or relief from the Provider's obligations agreed by the Parties pursuant to clause 45.3 shall be implemented in accordance with clause 12.

#### **46 Compliance with policies**

- 46.1 The Provider shall ensure that each of the Provider Personnel shall comply at all times with each of the Council's policies (which shall include rules, codes of practice, procedures and standards as set out on the Council's website) as amended or updated from time to time and any additional policies which the Council may adopt from time to time.
- 46.2 For the avoidance of doubt, the Provider Personnel shall include any Sub-Contractors engaged by the Provider at any time for the provision of the Services.
- 46.3 The Provider shall procure that any Sub-Contractor engaged in the provision of the Services shall ensure that the Sub-Contractor's Personnel shall comply with this clause 46.
- 46.4 If the Provider is CQC registered it shall comply and shall ensure any Sub-Contractor shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
- 46.5 If the Provider gives a notification to the CQC or any other Regulatory Body which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council within five (5) Business Days or within the timescale set out in Schedule 6 (*Incidents Requiring Reporting Procedure*).
- 46.6 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User Safety Incidents that are agreed between

the Provider and the Council and set out in Schedule 6 (*Incidents Requiring Reporting Procedure*).

- 46.7 Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this clause 46 (*Incidents Requiring Reporting*) and Schedule 6 (*Incidents Requiring Reporting Procedure*).

#### **47 Mistakes in information/inspection of premises**

- 47.1 The Provider acknowledges and confirms that prior to entering into this Contract:

47.1.1 it has been offered the opportunity to thoroughly inspect and carry out due diligence in relation to all Council Premises which may be used by the Provider in relation to the provision of the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services from the Premises in accordance with the terms of this Contract;

47.1.2 it has received all information requested by it from the Council pursuant to clause 47.1.1 to enable it to determine whether it is able to provide the Services from the Premises in accordance with the terms of this Contract;

47.1.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 47.1.2

47.1.4 it has raised all relevant due diligence questions with the Council before the Commencement Date; and

47.1.5 it has entered into this Contract in reliance on its own due diligence.

- 47.2 Where applicable, the Provider is deemed to have inspected the Premises before tendering for this Contract and is deemed to have understood and be satisfied with all matters in relation to the Premises and the provision of the Services from the Premises before entering into this Contract.

#### **48 Security**

- 48.1 The Provider shall, and shall procure that any Sub-Contractor and Provider and Sub-Contractor Personnel shall:

48.1.1 Comply with the Council's Security Policy and any other rules or policies in relation to the Premises as set out on the Council's website and as amended or updated from time to time;

48.1.2 Comply with the provisions of any Law or statutory guidance in relation to security which may be applicable to the provision of the Services;

48.1.3 Comply and co-operate with any investigation carried out by the Council or any other person responsible to the Council relation to security which shall include:

- (a) making Provider or Sub-Contractor Personnel available for interview for the purposes of the investigation (such persons shall have the right to be accompanied by the Provider's Authorised Representative and to be advised or represented by such other person whose presence at the interview is acceptable to the Council's Authorised Representative;
- (b) providing all documents or information, in whatever format and howsoever stored as may be required by the Council for the purposes of the investigation. The Council may retain such material for use in connection with the investigation and shall so far as possible provide the Provider with a copy of any material retained. Any material retained shall be subject to clause 30.

## 49 TUPE and Employees

49.1 The Council and the Provider agree that the following events:

49.1.1 The Service Transfer Date constituted a Relevant Transfer; and

49.1.2 Where the identity of a provider (including the Council) of any service which constitutes or which will constitute one of the Services is changed whether in anticipation of changes pursuant to this contract or not,

may constitute a Relevant Transfer and that the contracts of employment of the Relevant Employees have the effect (subject to regulation 4(7) of Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended ("TUPE 2006") as if originally made between those employees and the new provider except insofar as such contracts related to those parts of an occupational pension scheme relating to the old age, invalidity or survivors' benefits.

49.2 The Council shall comply with its obligations under TUPE (if any) arising out of the award of this contract and in respect of each Relevant Transfer pursuant to this Contract and the Provider shall comply and shall procure that each Sub-Contractor shall comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Contract and each of the Council and the Provider shall indemnify the other against any Losses sustained as a result of any breach of this clause 49.22 by the party in default save that there shall be no obligation on the Council to indemnify the Provider for any breach by the Council of its obligations under Regulation 13 of TUPE, or any award of compensation under Regulation 15 where such failure arises from the failure of the Provider or any Sub-Contractor to comply with its or their duties under Regulation 13 of TUPE.

49.3 The Council shall be responsible for or shall procure that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees/Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date.

- 49.4 The Provider shall be responsible for or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Service Transfer Date.

### **Employment Costs**

- 49.5 The Council shall and the Provider shall and shall procure that each and every Sub-Contractor shall take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the services of the Council including the Services and to the employees who transfer.

### **Union Recognition**

- 49.6 The Council shall and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that any previous provider of these services and every relevant Sub-Contractor of the Council shall supply to the Provider no later than 10 working days prior to the Service Transfer Date true copies of its union recognition Contract(s) and the Provider shall and shall procure that each and every Sub-Contractor shall in accordance with TUPE 2006 recognise the trade unions representing Relevant Employees (as relevant to each Sub-Contractor) after the transfer to the same extent as they were recognised by the Council, the previous provider(s) and any relevant Sub-Contractor before the Service Transfer Date.
- 49.7 The Provider shall procure that, on each occasion on which the identity of a Sub-Contractor changes pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Contractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the change of identity of the Sub-Contractor in respect of the provision of the Services at the Council's premises.

### **Indemnities**

- 49.8 The Council shall indemnify and keep indemnified in full the Provider (for itself and for the benefit of each relevant Sub-Contractor) against all Losses incurred by the Provider or any relevant Sub-Contractor in connection with or as a result of:
- 49.8.1 a breach by the Council of its obligations under clause 49.3 above;
  - 49.8.2 subject to clause 49.10 any claim or demand by any Transferring employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the Council in relation to any Transferring Employee prior to the date of the Relevant Transfer (save where such act, fault or

omission arises as a result of the Provider's or any of its Sub-Contractor's failure to comply with Regulation 13 of TUPE) and any such claim is not in connection with the Service Transfer Date.

- 49.9 Where any liability in relation to any Transferring Employee, in respect of his or her employment by the Council or its termination which transfers in whole or part in accordance with TUPE and/or the Directive arises partly as a result of any act or omission occurring on or before the Service Transfer Date and partly as a result of any act or omission occurring after the Service Transfer Date, the Council shall indemnify and keep indemnified in full the Provider or the relevant Sub-Contractor against only such part of the Losses sustained by the Provider or any Sub-Contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Service Transfer Date.
- 49.10 The indemnities contained in clause 49.8 shall apply as if references in those clauses to any Transferring Employee also included a reference to any Relevant Employee and references to any act, fault or omission of the Council also included a reference to the relevant third party provider employer of the Relevant Employee prior to the Service Transfer Date to the extent that the Council recovers any sum in respect of the subject matter of those indemnities from such Third Party Provider under any indemnity or other legal entitlement it has against such Third Party Provider. The Council will use all reasonable endeavours to recover any such sums under any such entitlement as in mentioned in this clause.
- 49.11 The Provider shall indemnify and keep indemnified in full the Council, and at the Council's request each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Contract ("**Future Provider**") against:
- 49.11.1 all Losses incurred by the Council or any Future Provider in connection with or as a result of any claim or demand against the Council or any Future Provider by any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor after the Service Transfer Date;
  - 49.11.2 all Losses incurred by the Council or any Future Provider in connection with or as a result of a breach by the Provider of its obligations under clause 49.4 above; and
  - 49.11.3 all Losses incurred by the Council or any Future Provider in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Provider and/or the relevant Sub-Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date.



- 49.12 The Provider shall indemnify and keep indemnified in full the Council and/or the previous provider(s) of these Services, against all Losses incurred by them in connection with or as a result of:
- 49.12.1 the change of identity of employer occurring by virtue of TUPE 2006 to the Provider or the relevant Sub-Contractor being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE 2006) on or before the Service Transfer Date as a result of the change in employer and whether such claim arises before or after the Service Transfer Date;
  - 49.12.2 any proposed or actual change by the Provider or any Sub-Contractor to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Provider or the relevant Sub-Contractor which are to any of the Relevant Employee's material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE 2006) on or before the Service Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Service Transfer Date; and
  - 49.12.3 any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Provider or Sub-Contractor to the Relevant Employees or their representatives whether before on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.
- 49.13 For the avoidance of doubt, the indemnities in clauses 49.10 and 49.12 shall not apply in respect of any sum for which the Council is to indemnify the Provider or a relevant Sub-Contractor pursuant to clause 49.8 or to the extent that the claim arises from a wrongful act or omission of the Council or any Future Provider.
- 49.14 The Provider shall (and shall procure that any Sub-Contractor shall) within fourteen (14) Business Days of a request by the Council or following the service of a termination notice under clause 16 or as a consequence of the Council notifying the Provider of its intention to retender this Contract:
- 49.14.1 on receiving a request from the Council provide in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services (the Assigned Employees) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of (including details of the occupational pension provision made in respect of each such employee) and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Provider or of any Sub-Contractor as the case may be until immediately before the Termination Date, would be Returning Employees (the Retendering Information);

- 49.14.2 provide the Retendering Information promptly and at no cost to the Council;
  - 49.14.3 notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise; and
  - 49.14.4 Without prejudice to clauses 49.14 and 49.16 the Provider shall provide and shall procure that any Sub-Contractor shall provide the Employee Liability Information to the Council at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE.
- 49.15 The Provider shall (and shall procure that any Sub-Contractor shall) following the service of a termination notice or as a consequence of the Council notifying the Provider of its intention to retender this contract:
- 49.15.1 be precluded from making any material increase or decrease in the numbers of Assigned Employees;
  - 49.15.2 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent not to be unreasonably withheld or delayed; and
  - 49.15.3 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent, not to be unreasonably withheld or delayed.
- 49.16 The Provider shall indemnify and shall keep indemnified in full the Council and at the Council's request any Future Provider against all Losses arising from any claim by any party as a result of the Provider or Sub-Contractor failing to provide or promptly to provide the Council and/or any Future Provider where requested by the Council with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Provider by the Council and was materially inaccurate or incomplete when originally provided.

### **Termination of Contract**

- 49.17 On the expiry or earlier termination of this Contract, the Council and the Provider agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.

- 49.18 Upon expiry or termination of this Contract for whatever reason (the “Return Date”), the provisions of this clause 49.18 will apply:
- 49.18.1 The Provider shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Provider or the Sub-Contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Provider or Sub-Contractors up to the Return Date are satisfied;
- 49.18.2 Without prejudice to this clause 49.18 the Provider shall:
- (a) remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Provider's or Sub-Contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Council and any Future Provider against all Losses incurred by the Council or any Future Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Provider's or Sub-Contractor's employees who do not constitute the Returning Employees;
  - (b) in respect of those employees who constitute Returning Employees indemnify the Council and any Future Provider against all Losses incurred by the Council or any Future Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Provider or any Sub-Contractor to comply with its or their obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Provider.
- 49.18.3 The Council shall be entitled to assign the benefit of this indemnity to any Future Provider.
- 49.18.4 For the avoidance of doubt, the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 49.1 to 49.18.2, to the extent necessary to ensure that any Future Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Future Provider by the Provider or the Authority in its own right under section 1(1) of the 1999 Act.
- 49.19 Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.
- 49.20 The Authority regards compliance with this clause 49 (TUPE and Pensions) as fundamental to this Contract. In particular, failure to comply with paragraphs 49.14 in respect of the provision of accurate information about the Relevant

Employees shall entitle the Authority to suspend payment to the Provider until such information is provided or indefinitely. The maximum sum that may be retained under this Clause shall not exceed an amount equivalent to that payable in a three month period following the Provider's failure to comply with this Clause.

## **50 Pensions**

### **Provider to Become an Admission Body**

- 50.1 Where the Provider or a Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the Local Government Pension Scheme (the “LGPS”), the Provider shall:
- 50.1.1 procure that it and/or each relevant Sub-Contractor shall become an Admission Body. The Provider shall before the Relevant Transfer Date execute and procure that each relevant Sub-Contractor executes a Provider Admission Contract which will have effect from and including the Relevant Transfer Date;
  - 50.1.2 Undertake to pay to the LGPS all such amounts as are due under the Provider Admission Contract and shall deduct and pay to the LGPS such employee contributions as are required by the LGPS; and
  - 50.1.3 indemnify and keep indemnified the Council on demand against any claim by, payment to, or loss incurred by, the LGPS in respect of the failure to account to the LGPS for payments received and the non-payment or the late payment of any sum payable by the Provider to or in respect of the LGPS.

### **Indemnity for a Breach of the Provider Admission Contract**

- 50.2 Without prejudice to the generality of this clause 50, the Provider hereby indemnifies the Council and on the request of the Council any Future Provider and, in each case, their Sub-Contractors on demand from and against all Losses suffered or incurred by it or them which arise from any breach by the Provider or any Sub-Contractor of the terms of the Provider Admission Contract to the extent that such liability arises before or as a result of the Termination or expiry of this Contract (howsoever caused).

### **Indemnity or Bond**

- 50.3 Without prejudice to the generality of the requirements of this clause 50, the Provider shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Provider Admission Contracts.

### **Right of Set Off**

- 50.4 The Council shall have a right to set off against any payments due to the Provider under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Provider or from any relevant Sub-Contractor (as applicable) under the Provider Admission Contract.

### **Provider Ceases to be an Admission Body**

- 50.5 If the Provider or any Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and:
- 50.5.1 the Provider or any relevant Sub-Contractor does not wish to offer those Eligible Employees membership of the LGPS; or
  - 50.5.2 the Council, the Provider or any relevant Sub-Contractor are of the opinion that it is not possible to operate the provisions of clauses 50.1 to 50.4 inclusive; or
  - 50.5.3 if for any reason after the Relevant Transfer Date the Provider or any relevant Sub-Contractor ceases to be an Admission Body other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible Employees,

then the provisions of clauses 50.1 to 50.4 inclusive shall not apply (without prejudice to any rights of the Council under those clauses) and the provisions of clause 50.6 shall apply.

### **Provider Scheme**

- 50.6 Where this clause 50.6 applies pursuant to clause 50.5, the following shall apply:
- 50.6.1 The Provider shall or shall procure that any relevant Sub-Contractor shall not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes shall be the Provider Scheme for the purposes of this clause 50.6. Such pension scheme or schemes must be:
    - (a) established within three (3) months prior to the Relevant Transfer Date or Cessation Date (as the case may be) and maintained until any payment to be made under the Bulk Transfer Terms (as applicable) is made;
    - (b) reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
    - (c) registered within the meaning of the Finance Act 2004; and
    - (d) certified by the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS;
  - 50.6.2 The Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall and shall procure that any relevant Sub-Contractor shall procure that:

- (a) the Eligible Employees shall by three (3) months before the Relevant Transfer Date or the Cessation Date (as the case may be) be offered membership of the Provider Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
- (b) the Provider Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the LGPS had they continued in membership of the LGPS;
- (c) on and from the Relevant Transfer Date or Cessation Date (as the case may be) until the earlier of:
  - (i) three (3) months after the date on which the Eligible Employees are first able to join the Provider Scheme; and
  - (ii) the date on which the Eligible Employee joins the Provider Scheme, the Provider shall provide death benefits for and in respect of the Eligible Employees which are certified by the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as being broadly comparable to those that would otherwise have been provided in respect of those Eligible Employees by the LGPS;
- (d) if the Provider Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Provider or relevant Sub-Contractor. The replacement scheme must comply with this clause 0 as if it were the Provider Scheme;
- (e) before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Provider Scheme shall undertake by deed to the Council and to the Administering Council that they shall comply with the provisions of clauses 50.6.1 to 50.6.2(d), 50.7.1, 50.7.2 and 50.7.3; and
- (f) it shall ensure that as a term of their contracts of employment, the Eligible Employees shall be able to enforce the right to such broadly comparable benefits as described in clause 50.6.2(b) above against the Provider.

#### **Undertaking from the Provider**

- 50.7 The Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:
- 50.7.1 all information which the Council or the Administering Council or their respective professional advisers may reasonably request from the Provider or any relevant Sub-Contractor for the administration of the LGPS or concerning any other matters raised in clause 50.6 or clause 50.7 shall be supplied to them as expeditiously as possible;
  - 50.7.2 it shall not and shall procure that any relevant Sub-Contractor shall not, without the consent in writing of the Council (which shall only be given subject to the payment by the Provider or the relevant Sub-Contractor of such reasonable costs as the Council or the Administering Council may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
  - 50.7.3 until the Relevant Transfer Date, it shall not and shall procure that any relevant Sub-Contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in clauses 50.10 to 50.5 inclusive without the consent in writing of the Council and the Administering Council (not to be unreasonably withheld or delayed);
  - 50.7.4 it shall not and shall procure that any relevant Sub-Contractor shall not take or omit to take any action which would materially affect the benefits under the LGPS or under the Provider Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written consent of the Council (not to be unreasonably withheld or delayed) provided that the Provider and/or such Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and
  - 50.7.5 it shall and shall procure that any relevant Sub-Contractor shall offer any of its Eligible Employees who cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of the LGPS membership of the Provider Scheme immediately after ceasing to be so engaged.

#### **NHS Pensions**

- 50.8 Where the Provider employs, in the provision of the Services, any Provider Personnel who are members of or eligible to be members of the National Health Service Pension Scheme (NHSPS) immediately before the Service Commencement Date (the Eligible Staff) the Provider must offer continued access to the NHSPS. In particular, the Provider will follow the principles and the procedures prescribed within HM Treasury Guidance “Fair Deal for staff pensions: staff transfer from central government”(October 2013) and the Department of Health Guidance “Fair Deal for Staff Pensions: staff transfers from Central Government” (March 2014) to ensure this is done on accepting

staff consequent upon entering into this Contract and/or in the event of any subsequent transfer of staff consequent upon the Services or part thereof being provided by a new Provider following the expiry or termination of this Contract or termination of a Service and the provisions of TUPE applying to that transfer.

- 50.9 Prior to the commencement of the Services, the Provider (and any Sub-Contractor to whom staff are transferring) must obtain a Pension Direction in respect of the Eligible Staff.
- 50.10 The Provider must comply (and ensure that its Sub-Contractor complies) with the terms of the Pension Direction. The Pension Direction should in all cases be addressed to the employer of the relevant staff, which may be a subcontractor, or member organisation.
- 50.11 The Provider must provide (and ensure that its Sub-Contractor provides) Transferred Staff with continued access to the National Health Service Pension Scheme (NHSPS) for as long as they continue to be engaged in relation to the relevant contract. That access must be in accordance with the Pension Direction.
- 50.12 The Provider's contracts of employment and those of its Sub-Contractors, with Transferred Staff must give such staff the right to continued access to the NHSPS for as long as they continue to be engaged in relation to the Services.
- 50.13 The Provider must ensure that Transferred Staff have the right to continued access to the NHSPS on any subsequent transfer, as a result of sub-contracting or termination of a sub-contract, for as long as they continue to be engaged in relation to the Services or any of them.
- 50.14 Failure by the Provider or its Sub-Contractor to comply with its obligations in relation to the NHSPS (including those under any Pension Direction), as notified to the Authority by NHS Pensions, will constitute an event of default entitling the Authority to terminate this Contract.
- 50.15 If the Provider or its Sub-Contractor is in arrears in respect of contributions due to the NHSPS, as notified to the Authority by NHS Pensions, the Authority may deduct the amount overdue from sums due to the Provider under this Contract and pay that amount to NHS Pensions.
- 50.16 Subject to clause 50.15, the Provider is required to comply with the provisions of Schedule 7 of the Standard NHS Contract.
- 50.17 Clause 50.14 will not apply if the Provider and Replacement Provider are either an NHS body or independent sector Provider already offering the NHS Pension Scheme.

#### **Discretionary Benefits**

- 50.18 Where the Provider or a Sub-Contractor is an Admission Body, the Provider shall and/or shall procure that any relevant Sub-Contractor shall:
- 50.18.1 award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council; and



- 50.18.2 Where the award of benefits in clause 50.18 is not permitted under the Compensation Regulations and/or the LGPS or the Provider and/or a Sub-Contractor is not an Admission Body, the Provider shall and/or shall procure that any Sub-Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- 50.18.3 Under clause 50.18.1 and 50.18.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Provider shall and/or shall procure that any relevant Sub-Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

#### **Claims from Eligible Employees or Trade Unions**

- 50.19 The Provider hereby indemnifies the Council and/or any Future Provider and, in each case, their Sub-Contractors from and against all Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Provider and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:
- 50.19.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
- 50.19.2 arise out of the failure of the Provider and/or any relevant Sub-Contractor to comply with the provisions of this clause 50 before the date of termination or expiry of this Contract;
- 50.19.3 and the Council and the Provider agree that clause 66 shall not apply to this clause.

#### **Liability for Costs**

- 50.20 The costs of the Council necessarily and reasonably incurred in connection with the Provider Admission Contract and/or of obtaining the necessary certification of comparability in accordance with clause 50.6.1(d) shall be borne by the Provider.

#### **Transfer to another Employer**

- 50.21 Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Provider shall procure that any relevant Sub-Contractor shall:
- 50.21.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and

50.21.2 procure that the employer to which the Eligible Employees are transferred (the “**New Employer**”) complies with the provisions of this clause 50 provided that references to the “Sub-Contractor” will become references to the New Employer, references to Relevant Transfer Date will become references to the date of the transfer to the New Employer and references to Eligible Employees will become references to the Eligible Employees so transferred to the New Employer.

### **Pension Issues on Expiry or Termination**

50.22 The Provider shall procure that any relevant Sub-Contractor shall:

50.22.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);

50.22.2 promptly provide to the Council such documents and information mentioned in clause 18.3 which the Council or the Administering Council may reasonably request in advance of the expiry or termination of this Contract; and

50.23 fully co-operate (and procure that the trustees of the Provider’s Scheme shall fully co-operate) with the reasonable requests of the Council or the Administering Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.

## **51 Sustainable Development**

51.1 The Provider acknowledges and agrees to support the Council’s commitment to reduce CO2 emissions;

51.2 Where requested by the Council, the Provider shall provide to the Council any such information as may be required by the Council in order to demonstrate the Provider’s compliance with clause 51.1;

51.3 The Provider shall participate in the development of local or regional multi-agency climate change quality indicators and or carbon reduction plans where required by the Council;

51.4 The Provider shall in performing its obligations under this Contract, give due regard to the impact of its expenditure on the community, over and above the direct purchase of goods and services, as envisaged by the Public Services (Social Value) Act 2012.

## **52 Collusion**

The Provider warrants that, up until the date of this Contract, it has not engaged in collusion of any kind with any other provider of Goods similar in nature to those which form the subject of this Contract in relation to its obligations under this Contract.

### **53 Canvassing**

The Provider warrants that, up until the date of this Contract, it has not directly or indirectly canvassed any member, official or employee of the Council or their advisers in relation to this Contract or its subject matter.

### **54 Capacity**

Each of the Council and the Provider confirm that they have the due capacity to enter and undertake the respective duties and obligations of this Contract.

### **55 Co-Operation**

Each Party agrees to co-operate, at its own expense (but without being compelled to incur material additional expenditure), with the other Party in the fulfilment of the purposes and intent of this Contract. To avoid doubt, neither Party shall be under any obligation to perform any of the other's obligations under this Contract.

### **56 Public Relations and Publicity**

56.1 The Provider shall not make any announcement (including advertisements) in relation to or publicise in any way either the Contract (or any part thereof) or its activities under the Contract without obtaining the prior approval of the Council. Such approval shall not be unreasonably withheld and, if applicable, will be notified to the Provider in accordance with the provisions of clause 62.

56.2 The Provider shall ensure that Provider Personnel, Sub-Contractor Personnel and professional advisors and consultants comply with the provisions of this clause 56.

56.3 In circumstances where an announcement is required by Law, any governmental or regulatory Council, or by any court or other competent Council, the Party required to make the announcement shall notify the other Party as soon as is reasonably practicable in accordance with the provisions of clause 62. The Party subject to the requirement shall use reasonable endeavours to agree the content of the announcement with the other Party before making it.

56.4 The provisions of this clause 56 shall apply throughout the duration of this Contract and indefinitely beyond either its expiry or termination.

### **57 Dispute resolution**

57.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute (a "**Dispute**") between them arising out of or in connection with the Contract within ten (10) Business Days of either Party notifying the other of the dispute.

57.2 In the event that the Dispute cannot be resolved within ten (10) Business Days of notification being provided in accordance with clause 57.1 the Parties shall escalate the dispute to the Finance Director of the Council and the Managing Director/Chief Executive (or equivalent) of the Provider.

57.3 If the Dispute cannot be resolved by the Parties pursuant to clauses 57.1 and 57.2 within twenty (20) Business Days of notification being provided in

accordance with clause 57.1 the Dispute shall be referred to mediation pursuant to the procedure set out in clause 57.4 unless:

57.3.1 the Council considers that the Dispute is not suitable for resolution by mediation; or

57.3.2 the Provider does not agree to mediation;

in which case the provisions of clause 57.4.6 will apply.

57.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

57.4.1 a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Business Days from the date of the proposal to appoint a Mediator or within ten (10) Business Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator.

57.4.2 the Parties shall within ten (10) Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

57.4.3 unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

57.4.4 if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is executed by their duly authorised representatives.

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

57.4.6 If:

(a) the Parties fail to reach agreement in the structured negotiations within sixty (60) Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties; or

(b) the provisions of clauses 57.3.1 or 57.3.2 apply

- 57.4.7 then the provisions of clause 57.5 shall apply OR the difference between them may be referred to the Courts.
- 57.4.8 The performance of the Contract shall not be suspended, cease or be delayed by the application of the procedures set out in this clause 57 and Provider shall comply fully with the requirements of the Contract at all times.
- 57.5 If the Dispute cannot be resolved by the Parties pursuant to clauses 57.1, 57.2 and 57.4 then before the Provider may commence any court proceedings it shall serve written notice on the Council of its intention and the Council shall have fifteen (15) Business Days from receipt of the Provider's notice in which to reply requiring the Dispute to be referred to arbitration in accordance with the provisions in clause 57.7.
- 57.6 In its notice to the Council pursuant to clause 57.5, the Provider may request that the Dispute is referred to arbitration, to which the Council may, in its sole discretion, consent.
- 57.7 If:
- 57.7.1 the Council requires the Dispute to be referred to arbitration in accordance with clause 57.5; or
  - 57.7.2 the Council consents to the Provider's request to refer the Dispute to arbitration in accordance with clause 57.6;
- the Dispute shall be referred to arbitration and the Parties shall comply with the following provisions:
- 57.7.3 the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the London Court of International Arbitration ("LCIA") procedural rules shall be applied and are deemed to be incorporated into this Contract (save that in the event of any conflict between those rules and this Contract, this Contract shall prevail);
  - 57.7.4 the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);
  - 57.7.5 the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Business Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA; and
  - 57.7.6 the arbitration proceedings shall take place in London.
- 57.8 Nothing in this clause 57 shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

## 58 Representatives

- 58.1 The Council shall, prior to the Commencement Date, appoint both an Authorised Officer and a Deputy Authorised Officer (to act in those instances where the Authorised Officer is unavailable).
- 58.2 The Provider shall, prior to the Commencement Date, appoint both a Contract Manager and a Deputy Contract Manager (to act in those instances where the Contract Manager is unavailable).
- 58.3 The contact details for the Authorised Officer, the Deputy Authorised Officer, the Contract Manager and the Deputy Contract Manager shall be provided in writing to the other party within ten (10) days of Service Commencement.
- 58.4 Any changes to the contact details under clause 58.3 shall be notified to the other Party as soon as is reasonably practicable in accordance with the provisions of clause 62.
- 58.5 The Authorised Officer and the Contract Manager (and where applicable the Deputy Authorised Officer and the Deputy Contract Manager) shall have Council to act on behalf of the Council and the Provider respectively for all purposes in connection with this Contract unless otherwise notified to the other Party in accordance with clause 62.
- 58.6 The Authorised Officer shall be entitled to give directions to the Contract Manager from time to time for any purpose under or in connection with this Contract.
- 58.7 The Council reserves the right to reject the appointment of any individual as Contract Manager who, at the absolute discretion of the Council, either does not possess the necessary experience in the provision of the Services or is any other way unsuitable for the role.

### Change in Control

- 58.8 This clause applies to any Provider Change in Control and/or any Material Sub-Contractor Change in Control, but not to a Change in Control of a company which is a Public Company.
- 58.9 The Provider must:
  - 58.9.1 as soon as possible on, and in any event within five (5) Business Days following, a Provider Change in Control; and/or
  - 58.9.2 immediately on becoming aware of a Sub-Contractor Change in Control,notify the Council of that Change in Control and submit to the Council a completed Change in Control Notification.
- 58.10 If the Provider indicates in the Change in Control Notification an intention or proposal to make any consequential changes to its operations then, to the extent that those changes require a change to the terms of this Contract in order to be effective, they will only be effective when a Variation is made in accordance with the applicable Variation provision of this Contract. The

Council will not and will not be deemed by a failure to respond or comment on the Change in Control Notification to have agreed to or otherwise to have waived its rights in respect of that intended or proposed change.

- 58.11 The Provider must specify in the Change in Control Notification any intention or proposal to make a consequential change to its operations which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract. If the Provider does not do so it will not be entitled to propose a Variation in respect of that for a period of six (6) months following the date of that Change in Control Notification, unless the Council agrees otherwise.
- 58.12 If the Provider does not specify in the Change in Control Notification an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Provider's Premises as a result of or in connection with the Change in Control then, unless the Council provides its written consent to the relevant action, the Provider must:
- 58.12.1 ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract; and
  - 58.12.2 continue providing the Services from the Provider's premises, in each case for at least twelve (12) months following the date of that Change in Control Notification. The provisions of this clause will not apply to an assignment by way of security or the grant of any other similar rights by the Provider consequent upon a financing or re-financing of the transaction resulting in Change of Control.
- 58.13 The Provider must supply (and must use its reasonable endeavours to procure that the relevant Sub-Contractor supplies) to the Council, whatever further information relating to the Change in Control the Council may, within twenty (20) Business Days after receiving the Change in Control Notification, reasonably request.
- 58.14 The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Sub-Contractor include a provision obliging the Sub-Contractor to inform the Provider in writing on, and in any event within five (5) Business Days following, a Sub-Contractor Change in Control in respect of that Sub-Contractor.
- 58.15 If:
- 58.15.1 there is a Sub-Contractor Change in Control; and
  - 58.15.2 following consideration of the information provided to the Council in the Change in Control Notification or, the Council reasonably concludes that, as a result of that Sub-Contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Sub-Contractor to provide Services in accordance with this Contract (and, in reaching that conclusion, the Council may consider any factor, in its absolute discretion, that it considers relevant to the provision of Services),

then:

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

58.15.4 the Provider must duly replace the relevant Sub-Contractor within the period specified above.

58.16 Notwithstanding any other provision of this Contract:

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

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

58.17 In accordance with the provision so this clause 58 the Council may by serving written notice upon the Provider to require the Provider replace a relevant Sub-Contractor within five (5) Business Days; or) whatever period may be reasonably specified by the Council (taking into account any factors which the Council considers relevant in its absolute discretion, including the interests of Service Users and the need for the continuity of Services), and the Provider must replace the relevant Sub-Contractor within the period specified in that notice.

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

58.19 Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.

## **59 Business Continuity**

59.1 The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.

59.2 The Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan (the first of which shall be provided to the Council at the Commencement Date) which shall be reviewed and such revisions as required by the Parties shall be concluded by no later than 30 days after each anniversary of the Commencement Date. The Provider must notify the Council



as soon as reasonably practicable of its activation and in any event no later than (3) days from the date of such activation.

## **60 Parent Company Guarantee/Bond**

60.1 Where applicable, the Provider shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Council which shall be attached to this Contract as Schedule 10.

## **61 No Agency**

61.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Council and the Provider.

61.2 Save as expressly provided otherwise in this Contract, the Provider shall not be, or be deemed to be, an agent of the Council and the Provider shall not hold itself out as having authority or power to bind the Council in any way.

61.3 Without limitation to its actual knowledge, the Provider shall for all purposes of this Contract, be deemed to have such knowledge in respect of the provision of the Services as is held (or ought reasonably to be held) by any Provider Personnel or Sub-Contractor or Sub-Contractor Personnel.

## **62 Notices**

62.1 A notice (or any other communication) from one Party to the other under or in connection with this Contract shall be:

62.1.1 in writing;

62.1.2 signed on behalf of the Party giving it;

62.1.3 marked for the attention of the Representative of the receiving Party as provided for in clause 58.3; and

62.1.4 sent by a delivery method listed in clause 62.2.

62.2 The table below sets out the delivery methods by which a notice (or any other communication) in connection with this Contract may be sent as well as the corresponding dates and times of deemed delivery that shall apply:

<b>Delivery Method</b>	<b>Deemed Delivery</b>
By hand	On signature of a delivery receipt.
By pre-paid first class post, recorded delivery or other next Business Day delivery service	At 09:00 on the second Business Day after posting.
By fax	At the point of transmission or, if transmitted outside of Business Hours, at 09:00 on the next Business Day.
By document exchange (DX)	At 09:00 on the second Business Day after being put into the DX.

By electronic mail	Save for when returned as undelivered, either at the time of sending or, if transmitted outside of Business Hours, at 09:00 on the next Business Day.
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62.3 All references to the time of deemed delivery in clause 62.2 are to local time in the place of deemed receipt.

62.4 This clause shall not apply to the service of proceedings or any other document in connection with any legal action or, if applicable, in connection with any other method of dispute resolution as provided for in clause 57.

### 63 Change in Currency

63.1 All payments under this Contract shall be in British pounds (the “**Pound**”). If the Pound ceases to be used as a currency in England or the government of England recognises a currency other than the Pound (the “**New Currency**”) as the lawful currency of England then:

63.1.1 all payments under this Contract shall be in the New Currency from the date of its adoption by England;

63.1.2 (unless prohibited by Law) any conversion from the Pound to the New Currency shall be at the official rate of exchange recognised by the government of England; and

63.1.3 this Contract shall be subject to such reasonable changes in interpretation as may be appropriate to minimise the economic effect on the Parties to this Contract of the adoption by the government of England of the New Currency.

63.1.4 any changes required under this clause shall be implemented by the Provider at no cost to the Council.

### 64 Severability

64.1 If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

### 65 Waiver

65.1 A waiver of any right or remedy either by Law or under this Contract shall only be effective if it is notified to the other Party in accordance with the provisions of clause 62 and is expressly stated to be a waiver.

65.2 No waiver of any right or remedy arising from a breach of this Contract shall be deemed to be a waiver of any right or remedy relating to any subsequent breach of this Contract.

65.3 Any failure or delay by a Party to exercise any right or remedy either by law or under this Contract shall not constitute a waiver of that or any other right or

remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy either by law or under this Contract shall prevent or restrict the further exercise of that or any other right or remedy.

## **66 Assistance in legal proceedings**

66.1 The Provider shall, when reasonably requested to do so by the Council, provide all information that is relevant to the performance of its obligations under this Contract to the Council free of charge in connection with any actual or expected legal proceedings in which the Council is or may be involved or any relevant internal disciplinary hearing at the Council.

66.2 The Provider shall ensure that its servants, employees, agents, Sub-Contractors, Providers, professional advisors and consultants are available to be interviewed in connection with or to give evidence in relation to such proceedings or hearings.

66.3 In circumstances where:

66.3.1 it is reported that Losses (incurred by any person or body) have either been caused by or have been contributed to by an act or omission on the part of the Provider; and

66.3.2 the Council decides to, in light of such finding, make a payment to or provide some other benefit to such person or body;

then the Provider shall either reimburse the Council the amount of any such payment or pay to the Council the reasonable cost of any such benefit as is applicable and proportionate to the act or omission of the Provider. The Council may also deduct any such amounts from any payment otherwise due to the Provider under this Contract.

## **67 Third Party Rights**

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.

## **68 Entire Agreement**

68.1 This Contract, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters.

68.2 The Provider acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.

68.3 Nothing in this clause 68 shall operate to exclude any liability for fraud.

**69 Double recovery**

Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to the provisions of this Contract or otherwise.

**70 Counterparts**

70.1 This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

70.2 No single counterpart shall be effective until each Party has executed and delivered at least one counterpart.

**71 Governing Law**

This Contract will be governed by English law and the Parties hereby submit to the exclusive jurisdiction of the English courts.

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

SIGNED: .....

for and on behalf of **City of Bradford Metropolitan District Council** by

(Full name of signatory in capitals) .....

Title .....

SIGNED: .....

on behalf of **Provider**  
(Full name of Provider) .....

(Full name of signatory in capitals) .....

Position (Director/Secretary) .....

**SCHEDULE 1**  
**Service Specification**

## **SCHEDULE 2**

### **Payment Arrangements**

Payments for the Service(s) will be administered by CPWY.

Refer to the service specification for details of payments for the Service(s) and process for reporting and payment.

**SCHEDULE 3**

**Not Used**



**SCHEDULE 4**

**Not Used**

**SCHEDULE 5**  
**SAFEGUARDING POLICIES**

The full list of Bradford Safeguarding Policies and Procedures can be accessed via the following web link: <http://westyorkscb.proceduresonline.com/index.htm>

**“Bradford Safeguarding Adults Board”:**

[http://www.bradford.gov.uk/bmdc/health\\_well-being\\_and\\_care/adult\\_care/adult\\_abuse/for\\_apracs/safeguarding\\_adults\\_board](http://www.bradford.gov.uk/bmdc/health_well-being_and_care/adult_care/adult_abuse/for_apracs/safeguarding_adults_board)

**“The Bradford Safeguarding Children Board”:**

<http://www.bradford-scb.org.uk/scr.htm>

## SCHEDULE 6

### INCIDENTS REQUIRING REPORTING PROCEDURES

*Provider to insert proposed procedure for reporting, investigating, and implementing and sharing Lessons Learned from: (1) Serious Incidents and (2) Non-Service User incidents to be compliant with CQC requirements and to be agreed with the Council following the award of the contract.*

## SCHEDULE 7

### SERVICE USER, CARER AND PROVIDER PERSONNEL SURVEYS

#### **National surveys**

The Provider will participate in all mandatory national patient, carer and staff surveys.

#### **Local surveys**

The Provider will use local patient and carer surveys to actively seek out and respond positively to views, and to improve services.

The information collected through local surveys will include information on whether service users and carers feel that services are integrated and co-ordinated.

Results of local surveys will be published.

The methodology of each local survey will be published with survey results. Methodologies will include explanation of how bias has been avoided.

#### **Survey results**

Upon the publication of results of any of the above surveys, a report and action plan will be developed and shared with the commissioner to an agreed timescale.

The completion of planned actions and the impact of these actions on the experience of patients, carers and staff will be monitored in partnership between Provider and commissioner through a process agreed via the contract management process.

## **SCHEDULE 8**

### **INFORMATION PROVISION AND DATA QUALITY IMPROVEMENT PLAN**

Community Pharmacy West Yorkshire (CPWY) are responsible for collating activity information from Pharmacy Providers.

PharmOutcomes is used to record key data to process payments. CPWY will administrate (i.e. processes invoice claims) for the Service(s).

Refer to Schedule 1 Service Specification for requirements and process for reporting.