

**2018  
PUBLIC HEALTH SERVICES CONTRACT**

**Rotherham Borough Council (1)**

**AS AUTHORITY**

**AND**

**Parkwood Healthcare Ltd (2)**

**AS PROVIDER**

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**CONTRACT FOR THE  
PROVISION OF PUBLIC HEALTH SERVICES-  
Integrated Public Health & Lifestyle  
Behaviour Change Service**

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**Integrated Public Health & Lifestyle Behaviour Change Service**

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**SECTION A**  
**THE PARTICULARS**

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**This Contract is made on 1<sup>st</sup> April 2018**

**PARTIES**

- (1) Public Health, Rotherham Borough Council of Riverside House, Main Street, Rotherham S60 1AE (the **Authority**); and
- (2) Parkwood Healthcare Ltd, Parkwood House, Cuerden Park, Berkeley Drive, Bamber Bridge, Preston, PR5 6BY (the **Provider**).

**BACKGROUND**

- (A) The Authority must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations. In order to satisfy these obligations the Authority wishes to secure the provision of the Services and the Provider wishes to provide the Services.
- (B) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.
- (C) The Provider is the Provider who submitted the most economically advantageous tender
- (D) The Provider has agreed to provide the Services in accordance with the terms and conditions of this Contract.

**IT IS AGREED**

**A1. CONTRACT**

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

**A2. INTERPRETATION**

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

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**A3. COMMENCEMENT AND DURATION**

- A3.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the **Commencement Date**).
- A3.2. The Provider shall, subject to having satisfied the Conditions Precedent where applicable, provide the Services from **1<sup>st</sup> April, 2018 (Service commencement date)**
- A3.3. This Contract shall expire automatically on **31<sup>st</sup> March, 2021** unless it is extended or terminated earlier in accordance with the provisions of this Contract. The final possible end date of the contract including extension periods is 31<sup>st</sup> March 2023

**A4. REPRESENTATIVES**

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

Name: Teresa Roche  
Title: Public Health Director  
Contact Details: 01709 255845  
Email: [Teresa.roche@rotherham.gov.uk](mailto:Teresa.roche@rotherham.gov.uk)

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

Name:  
Title:  
Contact Details:  
Email:

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

**A5. NOTICES**

- A5.1. Any notices given under this Contract shall be in writing and shall be served by hand or post by sending the same to the address for the relevant Party set out in clause A4.2

- A5.2. Notices:

- a) by post and correctly addressed shall be effective upon the earlier of actual receipt, or **5** Business Days after mailing; or
- b) by hand shall be effective upon delivery.

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

- a) For the Authority:  
Address: Public Health  
Riverside House  
Main Street  
Rotherham  
S60 1AE
- For the attention of: Teresa Roche  
Tel: 01709 255845  
Email: [teresa.roche@rotherham.gov.uk](mailto:teresa.roche@rotherham.gov.uk)

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b) For the Provider:

For the attention of:  
Tel:  
Email:

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

**A6. ENTIRE CONTRACT**

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

**A7. COUNTERPARTS**

This Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

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

**Executed as a deed by affixing the common seal of the Authority in the presence of:**

**[COMMON SEAL]**

.....  
**SIGNATURE of Authorised signatory (The Authority)**  
**Teresa Roche (Public Health Director)**

.....  
**Date**

.....  
**SIGNATURE of Authorised signatory (The Authority)**  
**Ian Gleadhill (Legal and Administration Solicitor)**



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.....  
**Date**

**SIGNED by Authorised Signatory (Provider)**

.....  
**Signature**

.....  
**Print**

.....  
**Title**

.....  
**Date**

<b>SECTION B</b> <b>GENERAL TERMS AND CONDITIONS</b>
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**B1. SERVICES**

- B1.1. The Provider shall provide the Services in accordance with the Service Specification(s) in Appendix A (*Service Specifications*), including any service limitations set out in them, and in accordance with the provisions of this Contract.
- B1.2. Arrangements for revision for the Service Specification(s) in Appendix A are as follows:
- B1.3. Where, for any reason, it becomes necessary to implement changes to the Service Specification(s) in Appendix A during the period of operation, these changes shall only be changed within the spirit of the Service Specification(s) and shall be by mutual agreement. Written notification will be issued to the Service Provider with the proposed change allowing a sufficient period for consultation.
- B1.4. Any changes to the Service Specification(s) in Appendix A following consultation under clause B1.3 or required by the implementation of any Act or Direction of Central Government shall be binding on both parties for the duration of the Contract. Such changes will result in a contract variation under clause B22.VARIATIONS
- B1.5. Failure to reach agreement under clause B1.3 may result in the termination of the Contract. In such cases 6 months written notice of termination will be given.

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- B1.6. The Provider shall satisfy any Conditions Precedent set out in Appendix B (*Conditions Precedent*) prior to commencing provision of the Services

**B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE**

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

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

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

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

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

**B3. SERVICE AND QUALITY OUTCOMES INDICATORS**

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

- a) comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
- b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
- c) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
- d) comply with the recommendations issued from time to time by a Competent Body;

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- e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
- f) respond to any reports and recommendations made by Local HealthWatch; and
- g) comply with the Quality Outcomes Indicators set out in Appendix C (*Quality Outcomes Indicators*).

**B4. SERVICE USER INVOLVEMENT**

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

**B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**

- B5.1. The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- B5.2. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- B5.3. In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
  - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and

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

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

B5.4. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide the Authority with a plan detailing how it will comply with its obligations under clause B5.3.

B5.5. The Provider must provide to the Authority as soon as reasonably practicable, any information that the Authority reasonably requires to:

- a) monitor the equity of access to the Services; and
- b) Fulfil their obligations under the Law.

**B6. MANAGING ACTIVITY**

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

**B7. STAFF**

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

- a) each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- b) there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;
- c) where applicable, Staff are registered with the appropriate professional regulatory body; and
- d) Staff, are aware of and respect equality and human rights of colleagues and Service Users.
- e) it can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Provider's discretion) for each of the Staff engaged in the Services if requested by the commissioner as part of an audit process.

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

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

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- a) proper and sufficient continuous professional and personal development, training and instruction; and
  - b) full and detailed appraisal (in terms of performance and on-going education and training),
  - c) each in accordance with Good Clinical Practice and the standards of any applicable relevant professional body.
- B7.4 Where applicable under section 1(F)(1) of the NHS Act 2006, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.
- B7.5 The Provider must carry out Staff surveys in relation to the Services at intervals and in the form set out in Appendix D (*Service User, Carer and Staff Surveys*) or as otherwise agreed in writing from time to time.
- B7.6 Subject to clause B7.7, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
- d) the Employment Checks; and
  - e) such other checks as required by the DBS.
- B7.7 Subject to clause B7.8, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.
- B7.8 Where clause B7.7 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
- f) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
  - g) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
  - h) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
  - i) any other reasonable requirement of the Authority.
- B7.9 Where the Authority has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Authority and in any event within 28 Business Days of that request (unless otherwise agreed in writing), provide the Authority with all

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reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.

- B7.10 The Provider shall indemnify and keep indemnified the Authority and any Successor Provider against any Losses incurred by the Authority and/or the Successor Provider in connection with any claim or demand by any transferring employee under TUPE.

**B8. CHARGES AND PAYMENT**

- B8.1 Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Authority shall pay the Provider the Charges.
- B8.2 The Parties shall to the extent reasonably practicable agree the Charges in a transparent and equitable manner and the Charges shall be set out at Appendix E (*Charges*).
- B8.3 The Provider shall invoice the Authority for payment of the Charges at the end of each calendar month (or such other frequency agreed between the Parties in writing) which the Authority shall pay within 30 Business Days of receipt. Where the Provider is a voluntary organisation, the Authority shall pay the Charges to the Provider quarterly in arrears in accordance with the amounts and dates in Appendix E (*Charges*). Cumulated claims submitted at the end of the financial year will not be accepted.
- B8.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- B8.5 In its performance of this Contract the Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).
- B8.6 If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:
- a) the contesting Party shall within 5 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
  - b) any uncontested amount shall be paid in accordance with this Contract.
- B8.7 If a Party contests a payment under clause B8.6 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.6, the contesting Party may refer the matter to dispute resolution under clause B30 (*Dispute Resolution*) and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.3.
- B8.8 Subject to any express provision of this Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B8.9 Each Party may retain or set off any sums owed to the other Party which have fallen due and payable against any sum due to the other Party under this Contract or any other agreement between the Parties.

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**B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY**

- B9.1 The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.
- B9.2 In addition to the Provider's obligations under clause B9.1, where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.
- B9.3 During the term of this Contract at the reasonable request of the Authority, the Provider must:
- a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;
  - b) implement such improvements; and
  - c) where practicable following implementation of such improvements decrease the price to be paid by the Authority for the Services.
  - d) If requested by the Authority, the Provider must identify the improvements that have taken place in accordance with clause B9.3, by reference to any reasonable measurable criteria notified to the Provider by the Authority.

**B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- B10.1 The Provider shall adopt Safeguarding Policies and such policies shall comply with the Authority's safeguarding policy as amended from time to time and may be appended at Appendix F (*Safeguarding Policies*).
- B10.2 At the reasonable written request of the Authority and by no later than **10** Business Days following receipt of such request, the Provider must provide evidence to the Authority that it is addressing any safeguarding concerns.
- B10.3 If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.



**B11. INCIDENTS REQUIRING REPORTING**

- B11.1 If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
- B11.2 If the Provider gives a notification to the CQC or any other Regulatory Body under clause B11.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within **5** Business Days or within the timescale set out in Appendix G (*Incidents Requiring Reporting Procedure*).
- B11.3 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix G (*Incidents Requiring Reporting Procedure*).
- B11.4 Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause B.11 and Appendix G (*Incidents Requiring Reporting Procedure*).

**B12. CONSENT**

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

**B13. SERVICE USER HEALTH RECORDS**

- B13.1 The Provider must create, maintain, store and retain Service User health records for all Service Users. The Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
- B13.2 The Provider must:
- a) use Service User health records solely for the execution of the Provider's obligations under this Contract; and
  - b) give each Service User full and accurate information regarding his/her treatment and Services received.
- B13.3 The Provider must at all times during the term of this Contract have a Caldicott Guardian and shall notify the Authority 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 Authority of the identity and contact details of such replacements.
- B13.4 Subject to Guidance and where appropriate, the Service User Health Records should include the Service User's verified NHS number.
- B13.5 Patient data is owned by the patient but with the provider agency (or successor provider agency) handling patient data to comply with information governance.

**B14. INFORMATION**

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

**B15. EQUIPMENT**

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

**B16. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS**

- B16.1 The Provider must comply with any Transfer of and Discharge from Care Protocols agreed by the Parties set out in Appendix I (*Transfer of and Discharge from Care Protocols*).

**B17. COMPLAINTS**

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

**B18. SERVICE REVIEW**

- B18.1 The Provider must each *quarter* of this Contract deliver to the Authority a Service Quality Performance Report against the factors set out in Appendix J (*Service Quality Performance Report*).
- B18.2 The Provider must submit each Service Quality Performance Report in the form and manner specified in Appendix J (*Service Quality Performance Report*).

**B19. REVIEW MEETINGS**

B19.1 The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix K (*Details of Review Meetings*).

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

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

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

**B20. CO-OPERATION**

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

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

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

**B21. WARRANTIES AND REPRESENTATIONS**

B21.1 The Provider warrants and represents that:

- a) It has full capacity and authority to enter into this Contract and all necessary Consents have been obtained and are in full force and effect;

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

B21.2 The Authority warrants and represents that:

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

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

**B22. VARIATIONS**

B22.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives)

**B23. ASSIGNMENT AND SUB-CONTRACTING**

B23.1 The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the Authority in writing:

- a) consenting to the appointment of the Sub-contractor (such consent not to be unreasonably withheld or delayed); and
- b) approving the Sub-contract arrangements (such approval not to be unreasonably withheld or delayed) which shall include the addition of any of the clauses in this Contract to the Sub-contract as the Authority may reasonably require

B23.2 The Authority's consent to sub-contracting under clause B23.1 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.

B23.3 Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.

B23.4 The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Provider.

**B24. AUDIT AND INSPECTION**

B24.1 The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.

B24.2 Subject to Law and notwithstanding clause B24.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.

B24.3 Within 10 Business Days of the Authority's reasonable request, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.

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B24.4 The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.

B24.5 During any audit undertaken under clause B24.1 or B24.2, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:

- a) all reasonable information requested within the scope of the audit;
- b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
- c) access to the Staff.

**B25. INDEMNITIES**

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

**B26. LIMITATION OF LIABILITY**

B26.1 Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.

B26.2 Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract.

B26.3 Nothing in this Contract will exclude or limit the liability of either Party for:

- a) death or personal injury caused by its negligence; or
- b) fraud or fraudulent misrepresentation.

**B27. INSURANCE**

B27.1 7.1 The Provider must:

- i. comply with all relevant and any future legislation that might apply to the services defined in this Contract;
- ii. maintain Public Liability Insurance of not less than ten (10) million pounds sterling for any one claim or series of claims arising out of one event;
- iii. maintain Employers Liability Insurance of ten (10) million pounds sterling for any one claim or series of claims arising out of one event;
- iv. maintain cover for malpractice of up to five (5) million pounds sterling in any one year;
- v. maintain insurance cover for any motor vehicle used in connection with any part of the Service that complies with the Road Traffic Act 1972 and is adequate for the type of use being made in connection with the Service;
- vi. procure and maintain the above mentioned insurance(s) with a reputable company or companies approved by the Council;
- vii. make available to the Council upon request copies of the above mentioned insurance policies together with receipts for current premiums relating to their requirements

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- B27.2 The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- B27.3 The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.
- B27.4 The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

**B28. DEFAULTS AND FAILURE TO SUPPLY**

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

**B29. CONTRACT MANAGEMENT**

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

**Contract Query**

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B29.4 If the Authority has a Contract Query it may issue a Contract Query Notice to the Provider.

B29.5 If the Provider has a Contract Query it may issue a Contract Query Notice to the Authority.

**Excusing Notice**

B29.6 The Receiving Party may issue an Excusing Notice to the Issuing Party within **5** Business Days of the date of the Contract Query Notice.

B29.7 If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within **10** Business Days following the date of the Contract Query Notice.

**Contract Management Meeting**

B29.8 Unless the Contract Query Notice has been withdrawn, the Authority and the Provider must meet to discuss the Contract Query and any related Excusing Notice within **10** Business Days following the date of the Contract Query Notice.

B29.9 At the Contract Management Meeting the Authority and the Provider must agree either:

- a) that the Contract Query Notice is withdrawn; or
- b) to implement an appropriate Remedial Action Plan; or
- c) to conduct a Joint Investigation.

B29.10 If a Joint Investigation is to be undertaken:

- a) the Authority and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation.
- b) the Authority and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

**Joint Investigation**

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

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

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

**Remedial Action Plan**

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

- a) **5** Business Days following the Contract Management Meeting; or



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- b) **5** Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause B29.11.
- B29.14 The Remedial Action Plan must set out:
- a) milestones for performance to be remedied;
  - b) the date by which each milestone must be completed; and
  - c) subject to the maximum sums identified in clause B29.23, the consequences for failing to meet each milestone by the specified date.
- B29.15 The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.
- B29.16 The Authority and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.
- B29.17 If following implementation of a Remedial Action Plan:
- a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;
  - b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

**Withholding Payment for Failure to Agree Remedial Action Plan**

- B29.18 If the Authority and the Provider cannot agree a Remedial Action Plan within the relevant period specified in clause B29.13, they must jointly notify the Boards of Directors of both the Provider and the Authority.
- B29.19 If, **10** Business Days after notifying the Boards of Directors, the Authority and the Provider still cannot agree a Remedial Action Plan, the Authority may withhold up to **2%** of the monthly sums payable by it under clause B8 (*Charges and Payment*) for each further month the Remedial Action Plan is not agreed.
- B29.20 The Authority must pay the Provider any sums withheld under clause B29.19 within **10** Business Days of receiving the Provider's agreement to the Remedial Action Plan. Unless clause B29.25 applies, those sums are to be paid without interest.

**Exception Reports**

- B29.21 If a Party breaches a Remedial Action Plan and does not remedy the breach within **5** Business Days of its occurrence, the Provider or the Authority (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 Authority may withhold payment from the Provider in accordance with clause B29.23.

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B29.22 If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Authority or the Provider (as the case may be) may issue a Second Exception Report to:

- a) the relevant Party's chief executive and/or Board of Directors; and/or;
- b) CQC or any other Regulatory Body,

in order that each of them may take whatever steps they think appropriate.

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

B29.23 If the Provider breaches a Remedial Action Plan:

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

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

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

**Unjustified Withholding or Retention of Payment**

B29.25 If the Authority withholds sums under clause B29.19 or clause B29.23 or retain sums under clause B29.24, and within 20 Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld or retained unjustifiably, the Authority must pay those sums to the Provider within 10 Business Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld or retained. If the Authority does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

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

B29.26 If the Provider does not agree a Remedial Action Plan:

- a) within 6 months following the expiry of the relevant time period set out in clause B29.13; or
- b) before the Expiry Date or earlier termination of this Contract,

whichever is the earlier, the Authority may retain permanently any sums withheld under clause B29.19.

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B29.27 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Authority may retain permanently any sums withheld under clause B29.23.

**B30. DISPUTE RESOLUTION**

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

**B31. SUSPENSION AND CONSEQUENCES OF SUSPENSION**

B31.1 A suspension event shall have occurred if:

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

(each a ***Suspension Event***).

B31.2 Where a Suspension Event occurs the Authority:

- a) may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Authority that it is able to and will perform the suspended Service, to the required standard; and
- b) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

B31.3 During the suspension of any Service under clause B31.2, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to clause B31.2 has been referred to dispute resolution under clause B30 (*Dispute Resolution*).

B31.4 During the suspension of any Service under clause B31.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

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- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B31.2; and/or
  - b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B31.5.
- B31.5 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- B31.6 Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).
- B31.7 Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:
- a) co-operate fully with the Authority and any Successor Provider of the suspended 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 Authority or members of the public; and
  - b) at the cost of the Provider:
    - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
    - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B31.8 As part of its compliance with clause B31.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.
- B31.9 If it is determined, pursuant to clause B30 (*Dispute Resolution*), that the Authority acted unreasonably in suspending a Service, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B31.10 During any suspension of a Service the Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.

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**B32. TERMINATION**

B32.1 Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 6 months' written notice at any time after the Service Commencement Date.

B32.2 The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:

- a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
- b) the Provider is in persistent breach of its obligations under this Contract;
- c) the Provider:
  - (i) fails to obtain any Consent;
  - (ii) loses any Consent; or
  - (iii) has any Consent varied or restricted,

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

- d) the Provider has breached the terms of clause B39 (*Prohibited Acts*);
- e) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
- f) the Provider materially breaches its obligations in clause B37 (*Data Protection*);
- g) two or more Second Exception Reports are issued to the Provider under clause B29.22 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
- h) the Provider breaches the terms of clause B23 (*Assignment and Sub-contracting*);
- i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 30 Business Days following receipt of notice from the Authority identifying the breach.

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- B32.3 Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than 30 Business Days without the Parties agreeing alternative arrangements.
- B32.4 The Provider may terminate this Contract or any Service with immediate effect by written notice to the Authority if the Authority is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B32.4 if the Authority has failed to remedy such breach within 30 Business Days of receipt of notice from the Provider to do so.

**B33. CONSEQUENCE OF EXPIRY OR TERMINATION**

- B33.1 Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- B33.2 On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.
- B33.3 On the expiry or termination of this Contract or termination of any Service the Provider must co-operate fully with the Authority to migrate the Services in an orderly manner to the successor provider.
- B33.4 In the event of termination or expiry of this Contract, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.
- B33.5 If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B32.1 or B32.3 (*Termination*)), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.
- B33.6 The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B23 (*Assignment and Sub-contracting*), B24 (*Audit and Inspection*), B33 (*Consequence of Expiry or Termination*), B36 (*Confidentiality*) and B38 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.

**B34. BUSINESS CONTINUITY**

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

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**B35. COUNTER-FRAUD AND SECURITY MANAGEMENT**

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

**B36. CONFIDENTIALITY**

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

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- b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
  - c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B36.5 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B36.
- B36.6 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B36.
- B36.7 This clause B36 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- B36.8 The obligations in clause B36.1 and clause B36.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

**B37. DATA PROTECTION**

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



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- e) promptly notify the Authority of any requests for disclosure of or access to the Personal Data;
  - f) Promptly notify the Authority of any breach of the security measures required to be put in place pursuant to this clause B37;
  - g) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.
- B37.3 To the extent that any Authority data is held and/or processed by the Provider, the Provider shall supply that Authority data to the Authority as requested by the Authority.
- B37.4 The Provider and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law.

**B38. FREEDOM OF INFORMATION AND TRANSPARENCY**

- B38.1 The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B38.2 If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:
- a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
  - b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
  - c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within **2** Business Days) transfer the request to the Authority;
  - d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
  - e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within **5** Business Days of such request and without charge.
- B38.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.

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- B38.4 Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- B38.5 In preparing a copy of this Contract for publication pursuant to clause B38.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.
- B38.6 The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.
- B38.7 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

**B39. PROHIBITED ACTS**

- B39.1 Neither Party shall do any of the following:

- a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and
- b) in connection with this Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,

(together "**Prohibited Acts**").

- B39.2 If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:
- a) to exercise its right to terminate under clause B32.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
  - b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
  - c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.
- B39.3 Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

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- B39.4 The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within 5 Business Days of the Authority requesting it and enforced by the Provider where applicable.
- B39.5 Should the Provider become aware of or suspect any breach of this clause B39, it will notify the Authority immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.

**B40. FORCE MAJEURE**

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

**B41. THIRD PARTY RIGHTS**

- B41.1 No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

**B42. CAPACITY**

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

**B43. SEVERABILITY**

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

**B44. WAIVER**

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

**B45. PUBLICITY**

- B45.1 Without prejudice to clause B38 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.
- B45.2 The Provider must take all reasonable steps to ensure the observance of the provisions of clause B45.1 by all its staff, servants, agents, consultants and sub-contractors.

**B46. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY**

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

**B47. GOVERNING LAW AND JURISDICTION**

- B47.1 This Contract will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.
- B47.2 Subject to the provisions of clause B30 (*Dispute Resolution*), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.

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

**APPENDIX B**

**CONDITIONS PRECEDENT**

Any additional conditions to those included in the ITT that must be satisfied prior to the contract commencing.

**APPENDIX C:**

**QUALITY OUTCOMES INDICATOR**

Refer to the ITT document attached (Appendix O) or will be agreed prior to full agreement of full T&C's

## **APPENDIX D**

### **SERVICE USER, CARER AND STAFF SURVEYS**

Refer to the ITT document attached (Appendix O) or will be agreed prior to full agreement of full T&C's



## **APPENDIX E**

### **CHARGES**

Refer to the ITT document attached (Appendix O).

**APPENDIX F**

**SAFEGUARDING POLICIES**

Refer to the ITT document attached (Appendix O).

## APPENDIX G

### INCIDENTS REQUIRING REPORTING PROCEDURE

#### Part A – Reportable Incidents Policy

Providers are asked to report the following information relating to their delivery of contracted services to the Authorised Officer (Public Health Commissioner) at RMBC and keep the Authorised Officer updated on the progress and outcomes around the incident.

**A reportable incidents form should be submitted to the Authorised Officer within One Working Day of the incident or concern being brought to the attention of the service.** Where an incident occurs in the course of a weekend or bank holiday, the provider should submit the form on the next Working Day.

We have tried to limit the number of points to report information to the minimum possible number and to link these to existing contract management arrangements.

Issues reported directly to contract managers may be discussed with the provider at a later stage, for instance at a contract review meeting.

INCIDENT	REPORT TO:
Police actions or investigations relating to, staff and/or the delivery of the contracted services.(Note; Instances where a staff member has returned to police or prison custody under a probation order are not reportable for the purposes of this policy)	Authorised Officer (but only in relation to issues relating directly to the delivery of the contracted services)
Injuries to staff or the public relating to the delivery of the contracted services	Authorised Officer
Incidents reportable to the Health and Safety Executive or the Environmental Health Department of the local authority relating to the delivery of the contracted services (a copy of the notification will be sufficient initially)	Authorised Officer
Any issues that might create adverse publicity relating to the contracted service, such as major disputes with neighbours or suicides	Authorised Officer
A known or anticipated inability to continue providing part or all of the service (for instance because of loss of staff or premises)	Authorised Officer (use Business Continuity Plan)
Enforcement and/or Improvement Notices served by any regulatory agency on you and relating to the contracted services	Authorised Officer
Any complaints or disciplinary issues raised around Staff conduct in delivery of the service	Authorised Officer
Adult or child protection issues	Follow RMBC safeguarding policies within the ITT or attached as a separate appendices
Breach of Data Protection	Authorised Officer

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**Contact Details**

Name	Telephone Number	Email Address
To follow		

## **APPENDIX H**

### **INFORMATION PROVISION**

Refer to the ITT document attached (Appendix O) or will be agreed prior to full agreement of full T&C's

## **APPENDIX I**

### **TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS**

Refer to the ITT document attached (Appendix O) or will be agreed prior to full agreement of full T&C's

**APPENDIX J**

**SERVICE QUALITY PERFORMANCE REPORT**

Refer to the ITT document attached (Appendix O) or to be agreed prior to full agreement of full T&C's

## **APPENDIX K**

### **DETAILS OF REVIEW MEETINGS**

The review meetings will follow the format set by the Public Health Commissioner.



**APPENDIX L**  
**AGREED VARIATIONS**

Any variations to be agreed during the contract period.

## APPENDIX M

### DISPUTE RESOLUTION

#### Part 1 of Appendix M – Dispute Resolution Process

##### 1. ESCALATED NEGOTIATION

- 1.1 Except to the extent that any injunction is sought relating to a matter arising out of clause B36 (*Confidentiality*), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the 15 Business Days following receipt of the first such offer (the “**Negotiation Period**”) each of the Parties shall negotiate in good faith and be represented:

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

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

provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

##### 2. MEDIATION

- 2.1 If the Parties are unable to settle the Dispute by negotiation, they must within 5 Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in Part 2 of this Appendix M.

- 2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.

- 2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

##### 3. EXPERT DETERMINATION

- 3.1 If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within 10 Business Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.

- 3.2 If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.

- 3.3 Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the

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appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.

- 3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within **5** Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.
- 3.5 The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within **5** Business Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.
- 3.6 The Expert must produce a written decision with reasons within **30** Business Days of receipt of the statement of case referred to in paragraph 1.9, or any longer period as is agreed by the Parties after the Dispute has been referred.
- 3.7 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 3.8 The Parties must comply with any request or direction of the Expert in relation to the expert determination.
- 3.9 The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties and the Expert agree are within the scope of the expert determination. The Expert must send his decision in writing simultaneously to the Parties. Within **5** Business Days following the date of the decision the Parties must provide the Expert and each other with any requests to correct minor clerical errors or ambiguities in the decision. The Expert must correct any minor clerical errors or ambiguities at his discretion within a further **5** Business Days and send any revised decision simultaneously to the Parties.
- 3.10 The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- 3.11 The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, or material breach of instructions on the part of the Expert at which point a Party will be permitted to apply to Court for an Order that:
  - 3.11.1 the Expert reconsider his decision (either all of it or part of it); or
  - 3.11.2 the Expert's decision be set aside (either all of it or part of it).
- 3.12 If a Party does not abide by the Expert's decision the other Party may apply to Court to enforce it.
- 3.13 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 3.14 The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.

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- 3.15 The Expert is appointed to determine the Dispute or Disputes between the Parties and his decision may not be relied upon by third parties, to whom he shall have no duty of care.

## Appendix N

### Definitions and Interpretation

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

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

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

**Authority Representative** means the person identified in clause A4.1 (*Representatives*) or their replacement

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

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

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

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

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

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

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

**CEDR** means the Centre for Effective Dispute Resolution

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

**Commencement Date** means the date identified in clause A3.1 (*Commencement and Duration*)

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

**Conditions Precedent** means the conditions precedent, if any, to commencement of service delivery referred to in clause A3.2 (*Commencement and Duration*) and set out in Appendix B (*Conditions Precedent*)

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

**Consents means:**

- (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or
- (ii) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract

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

**Contract Query** means:

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

as appropriate

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

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

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

**Data Processor** has the meaning set out in the DPA

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**Data Subject** has the meaning set out in the DPA

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

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

**Default Interest Rate** means LIBOR plus 2% per annum

**Disclosing Party** means the Party disclosing Confidential Information

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

**DPA** means the Data Protection Act 1998

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

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

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

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

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

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

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

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

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

- (i) due wholly or partly to an act or omission by the Issuing Party; or
- (ii) a direct result of the Receiving Party following the instructions of the Issuing Party; or

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- (iii) due to circumstances beyond the Receiving Party's reasonable control but which do not constitute an event of Force Majeure

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

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

**Expiry Date** means the date set out in clause A3.3 (*Commencement and Duration*)

**First Exception Report** means a report issued in accordance with clause B29.21 (*Contract Management*) notifying the relevant Party's chief executive and/or Board of Directors of that Party's breach of a Remedial Action Plan and failure to remedy that breach

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004

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

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

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

**General Conditions** has the meaning given to it in clause A1.1(b) (*Contract*)

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

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

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

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



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

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

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

**Law** means:

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

in each case in force in England and Wales

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

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

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

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

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

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

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

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

**NHS Act 2006** means the National Health Service Act 2006

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

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

**Personal Data** has the meaning set out in the DPA

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

**Provider Representative** means the person identified in clause A4.2 (*Representatives*) or their replacement

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

**Public Authority** means as defined in section 3 of the FOIA

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

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

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

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

**Required Insurances** means the types of policy or policies providing levels of cover as specified in the Service Specification(s)

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

**Safeguarding Policies** means the Provider's written policies for safeguarding children and adults, as amended from time to time, and as may be appended at Appendix F (*Safeguarding Children and Vulnerable Adults*)

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

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

**Service Commencement Date** means the date set out in clause A3.2 (*Commencement and Duration*)

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

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

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

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

**Special Conditions** has the meaning given to it in clause A1.1(c) (*Contract*)

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

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

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

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

**Sub-contractor** means any third party appointed by the Provider and approved by the Authority under clause B23.1 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

**Succession Plan** means a plan agreed by the Parties to deal with transfer of the Services to an alternative provider following expiry or termination of this Contract as set out at Appendix N (*Succession Plan*)

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

**Transfer of and Discharge from Care Protocols** means the protocols set out in Appendix I (*Transfer and Discharge from Care Protocols*)

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

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

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

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

## **Appendix O**

Copy of submitted ITT and completed method statement questions attached at the end of this document

**SECTION C**

**SPECIAL TERMS AND CONDITIONS**

***[INSERT ANY LOCALLY AGREED CLAUSES EITHER FROM THE CONTRACT GUIDANCE OR OTHERWISE INTO THIS SECTION. ANY PROVISIONS INSERTED INTO THIS SECTION WILL PREVAIL OVER THE PROVISIONS IN SECTIONS A AND B – TO BE BY EXCEPTION ONLY]***