SCHEDULE 1
CONTRACT FOR PHARMACY PUBLIC HEALTH SERVICES
STANDARD TERMS AND CONDITIONS

CONTENTS

Clause Number	Clause Title
1	Definitions and Interpretation
2	Appointment and Duration
3	The Service
4	The Provider's Obligations
5	Status of Provider
6	Transfer From Care Protocol
7	Employees
8	DBS
9	Safeguarding Children and Vulnerable Adults
10	Incidents Requiring Reporting
11	Contract Price
12	Re-provision of the Service and TUPE
13	Confidentiality
14	Information
15	Information, Service User and Staff Surveys
16	Service Improvements and Best Value Duty
17	Service User Health Records
18	Data Protection
19	Freedom of Information
20	Transparency
21	Intellectual Property
22	Indemnity Limitation of Liability and Insurance
23	Complaints and Compliments
24	Default and Suspension
25	Termination
26	Consequences of Termination and Early Termination
27	VAT
28	Contract Management
29	Records and Information

30	Equality and Diversity
31	Health & Safety
32	Entry and Inspection by Members of Local Healthwatch
33	Information and Requests for Information from Local Healthwatch
34	Audit and Inspection
35	Statutory Requirements
36	Disputes
37	Corrupt Gifts
38	Assignment and Sub-Contracting
39	Force Majeure
40	Business Continuity Plan
41	Set Off
42	Whole Agreement
43	Waiver
44	Proper Law and Jurisdiction
45	Severance
46	Notices
47	Variation
48	Survival
49	Publicity
50	Contracts (Rights of Third Parties) Act 1999
Schedule 1	Serious Incident Reporting Procedure
Schedule 2	Information Provision

1 DEFINITIONS AND INTERPRETATION

The following terms shall have the following meanings:-

"Activity"	any levels of clinical services and/or Service User flows set out in the Specification(s);
"Authorised Persons"	the Council and any body or person concerned with the provision of the Service(s) or care of a Service User;
"Best Value Duty"	the duty imposed by Part 1 of the Local Government Act 1999 (the LGA 1999) and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued in connection with the LGA 1999 from time to time;
"Business" Continuity Plan"	the plan setting out the steps the Provider will take to ensure compliance with the Contract and delivery of the Service(s) in the event of an emergency or interruption;
"Business Day"	Any day except a Saturday, Sunday or a bank or public holiday;
"Carer"	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;
"Commencement Date"	The commencement date stated in the Contract Particulars;
"Commercially	information used in this Contract comprising

Sensitive Information”	information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Council would, if disclosed by the Council, cause the Provider significant commercial disadvantage or material financial loss;
“Complaints Process”	the Council’s Public Health Complaints Process published by the Council pursuant to section 32 of the Health and Social Care Act 2012
“Complaint Regulations”	the regulations known as The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 or such other successor legislation relating to public health complaints;
“Conditions “Precedent”	the conditions precedent set out in the Specification(s);
“Confidential Information”	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 market or development or workforce plans) but which is not information which is disclosed pursuant to a FOIA request or under the provisions of Clause 19 (Freedom of Information) or information which is published as a result of government policy in relation to transparency either in accordance with Clause 20 (Transparency) or otherwise;
“Consent”	any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or

	declaration required by Law for or in connection with the performance of the Services and/or 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"	Includes the Contract Particulars, these terms and conditions (including all schedules and documents annexed hereto) together with the Invitation to Tender and the Tender;
"Contract Particulars"	the document detailing the specific core terms agreed between the parties with regard to the Service(s);
"Council"	The Borough Council Of Gateshead
"Council's Nominated Representative"	The Director of Public Health or such other representative as may be nominated by the Council from time to time;
"Council's Safeguarding Policies"	the Council's multi-agency safeguarding policy or policies in respect of vulnerable adults or children detailed in the Specification(s);
"CQC"	the Care Quality Commission or such other successor Regulatory body;
"Data Controller"	has the same meaning as set out in the Data Protection Legislation;
"Data Loss Event"	any event that results, or may result, in unauthrised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract;
"Data Processing	the schedule, if applicable, at Schedule 4 of the

	Specification(s);
Schedule”	
“Data Processor”	has the same meaning set out in the Data Protection Legislation;
“Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged processing on the processing on the protection of Personal Data;
“Data Protection Legislation”	means (i) unless and until the GDPR is no longer directly applicable in the UK the GDPR, the LED and any applicable national implementing laws as amended from time to time and then (ii) the Data Protection Act 2018 [subject to Royal Assent] and / or any other successor legislation to the GDPR or the Data Protection Act 1998 and (iii) all applicable Law about the processing of personal data and privacy;
“Data Sharing Agreement”	the agreement, if applicable, at Schedule 4 of the Specification(s), being a formal agreement that documents what data is being shared and how the data can be used between the Parties, as may be included within the Specification(s);
“Data Sharing Code of Practice”	the code of practice issued by the Information Commissioner in respect the sharing of Personal Data;
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Data Subject”	has the meaning set out in the Data Protection Legislation;
“DBS”	Disclosure and Barring Service or such other similar or successor body established under any subsequent legislation;
“Default”	Any failure, by either Party, to carry out its obligations under this Contract;

“Default Notice”	A notice setting out the nature of the Default committed and, if the Default can be put right. The action required to put it right and the timescale within which it is to be put right. Any such timescale must be reasonable in all the circumstances;
“Employees”	The employees of the Provider engaged by the Provider to provide the Service(s) to the Council, this definition includes volunteers;
“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, disclosure and barring service checks and occupational health checks;
“Exempt Information”	in respect of Clause 33 (Information and requests for information from the Local Healthwatch) information that is prohibited from disclosure by any enactment or order of a court or is information prohibited or restricted from disclosure by any rule of law;
“Exempt Personal Information”	in respect of Clause 33 (Information and requests for information from the Local Healthwatch), information that is confidential and relates to a living individual;
“FOIA”	Freedom of Information Act 2000;
“Force Majeure”	includes any cause preventing either party from performing any or all of its obligations which arise fro or are attributable to acts, events, omissions or accidents beyond the reasonable control of the party including without limitation acts of God, war, riot civil commotion, malicious damage, compliance with any laws

	or governmental order, rule regulation or direction, fire, flood or storm;
"Good Clinical Practice"	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 Service(s), at the time the Service(s) is/are provided, as applicable;
"Guidance"	any applicable local authority, health or social care guidance, direction or determination which the Council and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006;
"Healthwatch Regulations"	The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 or such successor Legislation as may be enacted relating to the powers of the Local Healthwatch;
"Indirect Loss"	loss of profits, loss of use, loss of production, loss of business, loss of business opportunity; or any claim for consequential loss or for indirect loss of any nature but excluding any losses under any sub-contracts which are not of themselves Indirect Losses;
"Information Governance Lead"	the senior health professional responsible for safeguarding the confidentiality of Service User information;
"Initial Term"	the period of 24 months from the Commencement Date;
"Joint Data Controller"	has the meaning set out in the Data Protection Legislation;

"ITT"	The Council's Invitation to Tender;
"Law"	any applicable statute or proclamation or any delegated or subordinate legislation or regulation; (i) any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972; (ii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (iii) National Standards; (iv) Guidance; and (v) any applicable industry code in each case in force in England and Wales
"LED"	Law Enforcement Directive (Regulation (EU) 2016/679);
"Local Healthwatch"	means the locally appointed provider who carries out the functions outlined in the Local Government and Public Involvement in Health Act 2007 (as amended) and is known as Healthwatch Gateshead;
"Lot(s)"	the lots that were selected by the Provider during Tender stage that pertain to the Service(s) and incorporate the Specification(s);
"Legal Guardian"	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;
"NHS Independent Complaints Service"	the service commissioned by the Council to provide independent advocacy support to individuals in support of any NHS complaint or Council Advocacy public health service complaint;
"Parties"	The Council and the Provider;
"Performance	the key performance indicators and outcomes to be

Indicators”	achieved as set out in the Specification(s);
“Persistent Default”	The committing by the Provider of more than two Defaults during any consecutive period of 6 months, whether or not these are the same Defaults or different Defaults and even if the Provider puts the Default right each time;
“Personal Data”	has the meaning set out in the Data Protection Legislation;
“Price”	The price specified in the Specification(s);
“Pricing Schedule”	the pricing schedule within the Specification(s);
“Protective Measures”	appropriate technical and organizational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Provider’s Nominated Representative”	the person named in the Provider’s Tender as the nominated representative or other representative as may be nominated by the Provider from time to time;
“Provider’s Premises”	means premises controlled or used by the Provider for any purposes connected with the provision of the Services;
“Public Body”	a public authority as defined in Section 3 of the Freedom of Information Act 2000;
“Regulatory Body”	any body other than CQC carrying out regulatory functions in relation to the Provider and/or the Service(s)
“Required Insurances”	the levels of insurance required under this Contract set out in the ITT.

“Serious Default”	A Default by the Provider which materially prejudices the health, safety or welfare of a Service User or Service Users;
“Serious Incident”	means an incident or near miss occurring on the Provider’s premises or in relation to the Service(s) provided, resulting in death, serious injury or harm to patients, staff or the public, significant loss or damage to property or the environment, or otherwise likely to be significant public concern. This shall include ‘near misses’ or low impact incidents which have the potential to contribute to serious harm. The definition also applies to any incident involving the actual or potential loss of personal information that could lead to identify fraud or have significant impact on individuals.
“Service(s)”	the provision of primary care as fully described in the Specification(s);
“Service Commencement Date”	The service commencement date stated in the Contract Particulars;
“Service User”	any individual(s) to whom the Service(s) is/are to be provided;
“Specification(s)”	The specification(s) included applicable to the lots selected during Tender stage setting out the Council's detailed requirements in relation to the Service(s);
“Tender”	the Provider’s tender for the Service(s) in response to the ITT;
“Term”	the total period of this Contract set out at clause 2 including any extensions under Clauses 2.4 and 2.7
“TUPE”	Transfer of Undertakings (Protection of Employment)

Regulations 2006;

1.1 References to any statute or statutory provision include, unless otherwise stated, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time prior to completion and any subordinate legislation made under the relevant statute or statutory provision in force prior to completion;

1.2 References to persons will be construed so as to include bodies corporate, and unincorporated associations;

1.3 References to clauses and schedules are to clauses of and schedules to this Contract;

1.4 The schedules form part of this Contract and will have the same force and effect as if expressly set out in the body of this Contract;

1.5 The headings to the clauses of this Contract and to the paragraphs of the schedules will not affect its construction;

1.6 References to singular in this Contract include the plural and vice versa and references by way of male pronoun shall include references to female pronouns and vice versa;

1.7 Where there is any conflict or inconsistency between the Specification(s) and the main body of this Contract, then the main body of this Contract shall prevail; and

1.8 All references to this Contract shall include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.

1.9 This Contract supersedes any previous contracts and agreements between the parties in relation to the Services.

1.10 The Council, by entering into this Contract with the Provider, is exercising 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.

2. APPOINTMENT AND DURATION

2.1 The Council engages the Provider to provide the Service(s) in accordance with these terms and conditions in consideration for which the Council will pay the Provider the Price.

2.2 The Provider shall, subject to having satisfied the Conditions Precedent where applicable, provide the Service(s) from the Service Commencement Date.

2.3 This Contract shall commence on the Commencement Date and shall remain in force for the Initial Term or until terminated earlier in accordance with this Contract when, in either case, the Provider will cease provision of the Service(s).

2.4 The Council shall have the option to extend the Initial Term by periods of 12 months upon the expiry of the Initial Term or the expiry of any 12 month period thereafter ("the Extension Periods").

2.5 If the Council decides to extend this Contract under Clause 2.4 it shall give the Provider no less than one month notice in writing of the extension before the end of the Initial Term or the expiry of any Extension Period (as applicable).

2.6 Where the Council exercises the option to extend the Council will continue to pay the Price as set out in the Pricing Schedule.

2.7 Where the Contract should terminate either after the Initial Term or following the contract extension under Clause 2.4 but the Council has received a legal challenge under the Public Contracts (Amendment) Regulations 2009 or any other legal remedy in respect of any procurement exercise in respect of the re-tendering of the Service(s), the Council may extend this Contract at its discretion for such period as the Council shall determine with the agreement of the Provider in order to ensure the continuity of Service provision to the Service Users, until the resolution of the

legal challenge.

2.8 Any contract extension under Clause 2.4 or 2.7 shall be subject to the existing terms and conditions as set out in this Contract.

2.9 This Contract, from the Commencement Date, extinguishes and replaces all previous contracts for the Service(s) between the parties.

3 THE SERVICE(S)

3.1 The Provider shall provide the Service(s) in accordance with the applicable Specification(s) and the terms of this Contract.

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

3.2.1 who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;

3.2.2 who displays abusive, violent or threatening behaviour unacceptable to the Provider acting reasonably and taking into account the mental health of that Service User);

3.2.3 in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or

3.2.4 where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.

3.3 If the Provider proposes not to provide or to stop providing a Service to any Service User under clause 3.2:

3.3.1 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);

3.3.2 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;

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

provided that nothing in this clause 3.3 entitles the Provider not to provide or to stop providing the Service(s) where to do so would be contrary to the Law.

3.4 The Provider must manage the Activity for the Service(s) in accordance with any activity planning assumptions and any caseloads set out in the Specification(s) and must comply with all reasonable requests of the Council to assist it with understanding and managing the levels of Activity for the Service(s).

3.5 In providing the Service(s) the Provider shall also comply with:

3.5.1 Any and all codes of practice, performance ratings and quality standards that are laid down in this Contract or that are issued to the Provider at a later date;

3.5.2 Where applicable, the regulations and regulatory compliance guidance issued by CQC or any Regulatory Body;

3.5.3 Where applicable, all regulatory and enforcement action issued by CQC or any Regulatory Body and shall inform the Council within 2 working days of notification from CQC or any Regulatory Body of any such action;

3.5.4 All statutory provisions which apply to the Service(s);

3.5.5 All reasonable locally agreed good practice, performance ratings and quality standards which may from time to time be notified to the Provider by the Council or by another recognised appropriate body or trade association or government department;

3.5.6 Where such good practice or performance ratings or quality standards are notified to the Provider by a person or body other than the Council, the Provider shall ensure that the Council is

notified as soon as reasonably practicable of the good practice or performance ratings or quality standards which the Provider intends to apply and which it does apply to the provision of the Service(s);

3.5.7 The Performance Indicators set out in the Specification(s).

3.5.8 Consider and respond to the recommendations arising from any audit, death, Serious Incident Report.

3.5.9 Comply with the recommendations from time to time contained in guidance and appraisals issued by NICE.

3.5.10 Respond to any reports and recommendations made by Local Healthwatch.

4 THE PROVIDER'S OBLIGATIONS

4.1 To provide the Service(s) to the Council in accordance with the requirements contained in this Contract.

4.2 To provide the Service(s) with due skill, care and diligence, to the satisfaction of the Council's Nominated Representative, so as to deliver the Service(s) to the standards to be expected of a competent provider of services of a similar kind to the Service(s).

4.3 To comply with any reasonable directions of the Council's Nominated Representative.

4.4 To satisfy any Conditions Precedent set out in the Specification(s) prior to commencing provision of the Service(s).

4.5 To publish, maintain and operate a Service User Consent policy which complies with Good Clinical Practice and the Law.

4.6 The Provider must provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Service(s) in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of

providing the applicable Service(s).

4.7 The Parties must at all times act in good faith towards each other. The Provider must cooperate fully and liaise appropriately with:

4.7.1 the Council;

4.7.2 any third party provider who the Service User may be transferred to or from the Provider;

4.7.3 any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and

4.7.4 primary, secondary and social care services,

in order to:

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

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

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

5 STATUS OF PROVIDER

5.1 The Provider is an independent contractor and not the servant or agent of the Council for all purposes of this Contract.

5.2 Whilst the Provider shall not be directly subjected to directions from the Council as to the manner in which the work shall be performed, the Council reserves the right to make reasonable enquiries of the Provider as to its performance and to make reasonable recommendations through the Council's Nominated Representative, as it may consider expedient.

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

6 TRANSFER FROM CARE PROTOCOL

6.1 The Provider must comply with any Transfer of and Discharge from Care Protocols as agreed by the Parties.

7 EMPLOYEES

7.1 The Employees shall remain at all times the responsibility of and under the management of the Provider.

7.2 At all times the Provider must ensure that:

7.2.1 Each of the Employees is suitably qualified and experienced, adequately trained and capable of providing the applicable Service(s) in respect of which they are engaged.

7.2.2 There is an adequate number of Employees to provide the Service(s) properly in accordance with the provisions of the Specification(s).

7.2.3 Where applicable, Employees are registered with the appropriate professional regulatory body.

7.2.4 Employees are aware of and respect equality and human rights of colleagues and Service Users.

7.3 If requested by the Council, the Provider shall as soon as practicable and by no later than 20 Business Days following receipt of that request, provide the Council with evidence of the Provider's compliance with clause 7.2.

7.4 The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every Employee involved in the provision of the Service(s) receives:

7.4.1 proper and sufficient continuous professional and personal development, training and instruction; and

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

each in accordance with Good Clinical Practice and the standards

of any applicable relevant professional body.

7.5 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.

8 DBS

8.1 Subject to clause 8.2, before the Provider engages or employs any person in the provision of the Service(s), or in any activity related to, or connected with, the provision of the Service(s), the Provider must without limitation, complete:

8.1.1 the Employment Checks; and
8.1.2 such other checks as required by the DBS.

8.2 The Provider may engage a person in a Standard DBS Position pending receipt of the Standard DBS Check provided the following safeguards are put in place:

8.2.1 an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and

8.2.2 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

8.2.3 the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing the Service(s) under this Contract; and

8.2.4 any other reasonable requirement of the Council.

8.3 The Provider may only engage a person in an Enhanced DBS Position where they are working with vulnerable adults pending receipt of the Enhanced DBS Check, provided a DBS Adult First Check has been undertaken which shows that the person is not listed upon the Vulnerable Adults Barred List. The Provider must also ensure that following receipt of the DBS Adult First Check the following safeguards are put in place:

8.3.1 an appropriately qualified and experienced Employee is appointed to supervise the new Employee; and

8.3.2 wherever it is possible, this supervisor is on duty at the same time as the new Employee, or is available to be consulted; and

8.3.3 the new Employee is accompanied at all times by another employee, preferably the appointed supervisor, whilst providing the Service(s) under this Contract; and

8.3.4 any other reasonable requirement of the Council.

8.4 The Provider must in no circumstances engage a person in an Enhanced DBS Position which involves children until the Provider has received the results of the Enhanced DBS Check.

8.5 The Provider must have appropriate policies and procedures in place to ensure that regular enquiries are made of their Employees to ensure that their Employees have no relevant convictions that may affect delivery of the Service(s) since the Standard DBS Check or the Enhanced DBS Check.

8.6 The Provider shall procure that the Council is kept advised at all times if any Employee who, subsequent to his/her commencement of employment, receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider (or any employee of a sub-Contractor involved in the provision of the Service(s)).

8.7 Any fee incurred in meeting the requirements of this Clause 8 shall be at the Provider's own cost.

9 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

9.1 The Provider shall be aware of the Council's Safeguarding Policies (at http://www.gateshead.gov.uk/lscb/Child-protection-procedures/OurProcedures.aspx and http://www.gateshead.gov.uk/Care%20and%20Health/Older-People/Report-suspected-adult-abuse.aspx) amended from time to time.

9.2 The Provider shall have policies and procedures in place that conform to the principles contained in the Council's Safeguarding Policies.

9.3 At the reasonable written request of the Council and by no later than 10 Business Days following receipt of such request, the Provider must provide evidence to the Council that it is addressing any safeguarding concerns.

9.4 If requested by the Council, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

10 INCIDENTS REQUIRING REPORTING

10.1 If the Provider is CQC registered it shall comply with the 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.

10.2 If the Provider gives a notification to the CQC or any other Regulatory Body under clause 10.1 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 Schedule 1 (Serious Incident Reporting Procedure).

10.3 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Schedule 1 (Serious Incident Reporting Procedure).

10.4 Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this Clause 10 and Schedule 1 (Serious Incident Reporting Procedure).

11 CONTRACT PRICE AND PAYMENT

11.1 In consideration of the Service(s) to be provided by the Provider under this Contract the Council shall pay to the Provider the Price.

11.2 The Council shall pay the Price to the Provider in accordance with the Pricing Schedule.

11.3 If the Contract is extended under Clauses 2.4 and 2.7 the Council shall continue to pay the Price in accordance with the Pricing Schedule.

11.4 Where the Provider fails to deliver any elements of the Service(s) due to its own performance issues, the Council shall be entitled to withhold payment (without payment of interest) or to recover the Price in respect of the element of the Service(s) that has/have not been delivered.

~~11.5 The Provider must use the Price for the provision of the Service(s) and for no other services delivered by the Provider.~~ NOT USED

11.6 The Price is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice.

11.7 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).

11.8 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.

12 RE-PROVISION OF THE SERVICE(S) AND TUPE

12.1 Where the Council has notified the Provider that it intends to tender or retender any of the Service(s), the Provider must on written request of the Council and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the Council with all reasonably requested information on the

Employees engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.

12.2 The Provider shall permit the Council to use the information provided under Clause 12.1 for the purposes of re-tendering or any re-provision of the Service(s) including but not limited to the Council delivering the Service(s) in-house. The Council shall be able to disclose this information to any prospective Tenderer or Successor Provider without requiring the Council to enter into a confidentiality agreement or otherwise imposing any conditions upon the disclosure of the information.

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

13 CONFIDENTIALITY

13.1 Subject to Clauses 18 (Data Protection), 19 (Freedom of Information) and 20 (Transparency), each Party undertakes that it shall not at any time during the Contract and for a period of five years after termination of this Contract disclose to any person any Confidential Information of the other party except as permitted by Clause 13.2.

13.2 Each party may disclose the other party's Confidential Information:

13.2.1 To its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information shall comply with this Clause 13 and

13.2.2 As may be required by law, court order, or any governmental or regulatory authority.

13.3 No Party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Contract.

13.4 The provisions of this Clause 13 shall continue to apply after termination of this Contract.

14 INFORMATION

14.1 The Provider must provide the Council the information specified in Schedule 2 (*Information Provision*) to measure the quality, quantity or otherwise of the Service(s).

14.2 The Provider must deliver the information required under clause 14.1 in the format, manner, frequency and timescales specified in Schedule 2 (Information Provision) and must ensure that the information is accurate and complete.

14.3 If the Provider fails to comply with any of the obligations in this clause 14.1 and/or Schedule 2 (Information Provision), the Council may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Schedule 2 (Information Provision).

14.4 In addition to the information required under clause 14.1, the Council may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

15 INFORMATION, SERVICE USER AND STAFF SURVEYS

15.1 The Provider must provide the Council the information specified in the Specification(s) to measure the quality, quantity or otherwise of the Service(s).

15.2 The Provider must deliver the information required under Clause 15.1 in the format, manner, frequency and timescales specified in the Specification(s) and must ensure that the information is accurate and complete.

15.3 If the Provider fails to comply with any of the obligations in this

Clause 15 the Council may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation of the Specification(s).

15.4 In addition to the information required under clause 15.1, the Council may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

15.5 As soon as reasonably practicable following any reasonable request from the Council, the Provider must provide evidence to the Council of the involvement of Service Users and Employees in the provision of the Service(s).

15.6 The Provider must carry out Service User surveys with each Service User or Carer completing the Service(s) to inform the annual report to be submitted to the Council. The survey will assess the Service User's perception of effectiveness, support offered and the outcome(s) achieved. Any resultant action plan must be shared with the Council. The Provider shall carry out any other consultation reasonably required by the Council in relation to the Service(s). The Provider shall engage, liaise and communicate with Service User's, their Carers and Legal Guardians in an open and clear manner in accordance with the law, Good Clinical Practice and their human rights.

15.7 The Provider must review and provide a written report to the Council on the results of each survey carried out under clause 15.6 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Council, the Provider must publish the outcomes and actions taken in relation to such surveys.

16 SERVICE IMPROVEMENTS AND BEST VALUE DUTY

16.1 The Provider must to the extent reasonably practicable co-operate with and assist the Council in fulfilling its Best Value Duty.

16.2 In addition to the Provider's obligations under Clause 16.1, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Council and shall assist the Council with the preparation of any Best Value performance plans.

16.3 During the term of this Contract at the request of the Council, the Provider must:

16.3.1.1 demonstrate how it is going to secure continuous improvement in the way in which the Service(s) are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;

16.3.1.2 implement such improvements; and

16.3.1.3 where practicable following implementation of such improvements decrease the price to be paid by the Council for the Service(s).

16.4 If requested by the Council, the Provider must identify the improvements that have taken place in accordance with clause 16.3, by reference to any reasonable measurable criteria notified to the Provider by the Council.

17 SERVICE USER HEALTH RECORDS

17.1 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.

17.2 The Provider must:

17.2.1 use Service User health records solely for the execution of the Provider's obligations under this Contract; and

17.2.2 give each Service User full and accurate information regarding his/her treatment and Service(s) received.

17.3 The Provider must at all times during the term of this Contract have an Information Governance Lead and shall notify the Council of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Information Governance Lead at any time during the term of the Contract, it shall promptly notify the Council of the identity and contact details of such replacements.

18 DATA PROTECTION

18.1 The Provider shall (and shall procure that any of its Staff involved in the provision of the Service(s)) comply with any requirements under the Data Protection Legislation.

18.2 In particular and without prejudice to the generality of clause 18.1 above, if the Provider is acting as Data Controller for any data provided to the Provider by the Council or vice versa under this Contract then the following provisions shall apply:

18.2.1 The Provider and the Council shall comply with the Data Sharing Code of Practice and as amended from time to time.

18.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonably and without good reason refuse to enter into a Data Sharing Agreement.

18.3 In particular and without prejudice to the generality of clause 18.1 above, if the Provider and the Council are acting as Joint Data Controllers within the meaning of the Data Protection Legislation for any data collected by or provided to either Party under this Contract then the following provisions shall apply:

18.3.1 The Parties shall designate between them a contact point for Data Subjects in relation to any Personal Data under the joint control of the Parties.

18.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the Data Protection Legislation and the preparation of any Data Protection Impact Assessment.

18.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:

a) nature of the data to be protected;
b) harm that might result from a Data Loss Event;
c) state of technological development; and
d) cost of implementing any measures.

18.3.4 Each Party shall take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they are aware of and comply with the Party's data protection obligations have undergone adequate training in the use, care, protection and handling of Personal Data; and

18.3.5 Each Party shall notify the other immediately if it:

a) receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to any data under the joint control of the Parties;
b) receives a request to rectify, block or erase any Personal Data in relation to any data under the joint control of the Parties;
c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in relation to any data under the joint control of the Parties;
d) receives any communication from the Information Commissioner or any other regulatory authority in relation to any data under the joint control of the Parties;
e) receives a request from any third party for disclosure of Personal Data under the joint control of the Parties where compliance with such request is required or purported to be required by Law; or
f) Becomes aware of a Data Loss Event in relation to any data under the joint control of the Parties.

18.3.6 Each Party shall designate a data protection officer if required by the Data Protection Legislation.

18.3.7 The Parties agree to take account of any guidance issued by

the Information Commissioner's Office.

18.3.8 Each Party shall fully indemnify the other against any costs, claims, actions or otherwise brought against the other party arising as a result of the indemnifying party's breach of any of its data protection obligations.

18.4 In particular and without prejudice to the generality of clause 18.1 above, if the Provider is acting as Data Processor on behalf of the Council within the meaning of the Data Protection Legislation for any data provided to it by the Council under this Contract then the following provisions shall apply:

18.4.1 The Data Processing Schedule shall apply and the only processing that the Contractor is authorised to do is listed in the Data Processing Schedule (as may be amended by the Council) and may not be determined by the Provider.

18.4.2 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

18.4.3 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

a) a systematic description of the envisaged processing operations and the purpose of the processing;

b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

c) an assessment of the risks to the rights and freedoms of Data Subjects; and

d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

18.4.4 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

a) process that Personal Data only in accordance with the Data Processing Schedule, unless the Provider is required to do otherwise by Law. If it is so required the

Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect the Personal Data having taken account of the:
   i. nature of the data to be protected;
   ii. harm that might result from a Data Loss Event;
   iii. state of technological development; and
   iv. the cost of implementing any measures;

c) ensure that the Provider Staff do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);

d) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
   i. are aware of and comply with the Provider's duties under this clause;
   ii. are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
   iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
   iv. have undergone adequate training in the use, care, protection and handling of Personal Data;

e) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
   i. the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;

ii. the Data Subject has enforceable rights and effective legal remedies;

iii. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

iv. the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

18.4.5 At the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Provider is required by Law to retain the Personal Data.

18.4.6 The Contractor shall notify the Council immediately if it:

a) receives a Data Subject Access Request (or purported Data Subject Access Request);

b) receives a request to rectify, block or erase any Personal Data;

c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

f) becomes aware of a Data Loss Event.

18.4.7 The Provider's obligation to notify under clause 18.4.6 shall include the provision of further information to the Council in phases as details become available.

18.4.8 Taking into account the nature of the processing, the Provider

shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under such legislation (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

a) the Council with full details and copies of the complaint, communication or request;

b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;

d) assistance as requested by the Council following any Data Loss Event;

e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

18.4.9 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause 18.4

18.4.10 The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

18.4.11 The Provider shall designate a data protection officer if required by the Data Protection Legislation.

18.4.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

a) notify the Council in writing of the intended Sub-processor and processing;

b) obtain the written consent of the Council;

c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 182.4 such that they apply to the Sub-processor; and

d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

18.4.13 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

18.4.14 The Council may, at any time on not less than 30 Working Days' notice, revise any part of this clause182.4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

18.4.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

19 FREEDOM OF INFORMATION

19.1 The Provider acknowledges that the Council as a public authority is subject to the FOIA. The Council may in compliance with its duties under the FOIA, be required to disclose information from the Contract or other information prepared for or arising from this Contract to anyone who makes a legitimate request. The Provider unless it is a Public Body is not subject to the provisions of the FOIA and as such shall not provide information prepared for or associated with this Contract direct to third parties.

19.2 If subject to Clause 19.3 the Provider considers that any of the information provided or documents produced during the course of this Contract should not be disclosed because it is commercially sensitive or is a trade secret, then this should be stated clearly by marking the information "Confidential – Not for Disclosure to Third Parties", together with the Providers reasons why the information is considered to be commercially sensitive or a trade secret. The Council shall endeavour to obtain the Providers consent before releasing any information requested by a third party under the FOIA

but for the avoidance of doubt shall not be liable for any loss arising from disclosure of information where such information has not been clearly marked as stated herein above or has been marked but is not exempt from disclosure under the FOIA.

19.3 The Council shall be responsible for determining at its absolute discretion whether the information subject to a request under the FOIA is:

19.3.1 Commercially Sensitive Information or trade secret;

19.3.2 is exempt from disclosure in accordance with the FOIA; and

19.3.3 if it should be disclosed in response to a request for information and in no event shall the Provider respond directly to a request for information unless expressly authorised by the Council to do so.

19.4 The Provider acknowledges that the Council may in accordance with the FOIA disclose information:

19.4.1 without consulting the Provider;

19.4.2 following consultation with the Provider and having taken its views into account.

19.5 The Provider shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure for the duration of the Contract and three years thereafter and shall permit the Council to inspect such information from time to time.

19.6 The Provider acknowledges that any information provided to the Council and marked as confidential is indicative only and that the Council may nevertheless be obliged to disclose confidential information in accordance with the FOIA.

19.7 Where a request for disclosure of information under the FOIA is made directly to a Provider, unless the Provider is a Public Body, the Provider shall forward the request directly to the Council and will

not disclose any information relating to this Contract in response to such a request without instruction from the Council.

20 TRANSPARENCY

20.1 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council will be disclosing information on its website with effect from the 1st January 2011 in relation to monthly expenditure over £500 (five hundred pounds). The information will include the Provider's name and the monthly Price paid. The parties acknowledge that this information is not Confidential Information or Commercially Sensitive Information.

20.2 The parties acknowledge that, except for any information which is exempt from disclosures in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information or Commercially Sensitive Information. The Council shall be responsible for determining at its absolute discretion whether any of the content of the Contract is for disclosure in accordance with the FOIA. Notwithstanding any other term of this Contract, the Provider hereby gives its consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

21 INTELLECTUAL PROPERTY

21.1 The Provider hereby grants to the Council relevant licenses and permissions in respect of~~, with full title guarantee and free from all third party rights,~~ any intellectual property rights arising or in respect of any intellectual property created by the Provider or any sub-contractor during the performance of the Contract or the delivery of the Service(s) or exclusively for the purpose of delivering the Service(s).

22 INDEMNITY LIMITATION OF LIABILITY AND INSURANCE

22.1 The Provider shall indemnify and keep indemnified the Council from and against all loss, damage or liability suffered (including legal fees and costs) or incurred by the Council arising from any breach of this Contract by the Provider including:

22.1.1 Any negligent act, omission or default of the Provider

22.1.2 Breaches in respect of any matter arising from the provision of the Service(s) resulting in any successful claim by any third party (except to the extent that such loss, damage or claim is caused by any negligent act or omission on the part of the Council).

22.2 The Provider's total liability to the Council under Clause 22.1 shall be limited to the levels of Required Insurances to be maintained by the Provider in accordance with Clause 22.4 below.

22.3 Nothing in this Contract will exclude or limit liability of either Party for:

22.3.1 Death or personal injury caused by its negligence; or

22.3.2 Fraud or fraudulent misrepresentation.

22.4 The Provider shall take out and maintain at its own cost the Required Insurances in respect of all risks to cover its liability in respect of any act or default for which it may become liable to indemnify the Council under the terms of this Contract.

23 COMPLAINTS AND COMPLIMENTS

23.1 The Provider shall have a written procedure to enable complaints, compliments and representations to be made about the Service(s). The procedure must be compliant with the Complaint Regulations and consistent with the Complaints Process. The procedure shall be contained in an information pack and be readily available to any person on request.

23.2 The Provider must provide a copy of the procedure to the Council upon request.

23.3 Where a complaint is not resolved at an informal stage the Provider's complaints procedure shall include provision for the involvement in the investigation of complaints by an appropriately experienced individual, independent of the day to day management and functioning of the Service(s).

23.4 The procedure shall allow for the involvement of an advocate acting on behalf of the complainant. The procedure must contain reference to and details of the NHS Independent Complaints Advocacy Service and inform individuals of their rights to access the NHS Independent Complaints Advocacy Service.

23.5 The Provider shall ensure that all complaints received by the Provider in respect of the Service(s) which are serious in nature (the seriousness of the complaint to be determined by the Provider) should be reported to the Council immediately. The Provider should provide a full written response to the complaint and provide a copy of the response to the Council.

23.6 The Provider shall keep records of all complaints, compliments and representations received and make them available for inspection by the Council at all reasonable times and on the receipt of written notice.

23.7 The existence of the Provider's complaints procedure does not remove an individual's right of access to the Public Health Statutory Complaints Procedure where they are eligible to do so.

23.8 If a complaint is received about the standard of the provision of the Service(s) or about the manner in which any of the Service(s) have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Council may have under this Contract, the Council may, in its sole discretion, uphold the complaint and take any action specified in clause 25.

24 DEFAULT AND SUSPENSION

Defaults

24.1 If the Provider commits a Default then the Council will be entitled to serve on the Provider a Default Notice. This will be without prejudice to any other right or remedy that may be available to the Council, either under this Contract or at law.

24.2 If the Council serves on the Provider a Default Notice, which relates to a Default which can be remedied then on receiving such a Default Notice, the Provider will take the action specified in the Default Notice, within the timescale set out, at the Provider's own cost. In the event the Provider does not remedy the Defect in the timescales provided, the provisions of Clause 25.2.1 shall apply.

Suspension

24.3 Without prejudice to the Council's other remedies under this Contract, the Council shall be entitled to suspend in whole or in part the Provider's performance under this Contract with immediate effect by written notice where it is considered by the Council that either a Serious Default or a Persistent Default has occurred. For the avoidance of doubt the Council may suspend the Provider's performance of a Service pertaining to a Lot without impact upon the Provider's provision of the remaining Service(s) under this Contract that pertain to the remaining Lot(s).

24.4 Any suspension under Clause 24.3 shall continue until such a time as the Council provides written notice to the Provider that the Service(s) can resume.

24.5 Where the Council suspends the whole of the Service(s) under this Contract and thereafter serves a notice of termination, the Provider must repay to the Council all sums the Council has paid the Provider

during the period of suspension which relate to the suspended Service(s) concerned (with the exception of any sums used to meet costs that the Provider was under a legal obligation to pay). If the Provider does not repay the Council these sums within 20 Working Days of any notice of termination, then the Council will be entitled to recover these sums as a civil debt.

25 TERMINATION

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

25.2 The Council may terminate this Contract immediately by giving written notice of termination on the occurrence of any of the following events:

25.2.1 the Provider is in breach of its obligations under this Contract, and, if the breach is capable of remedy, fails to remedy such breach within the timescales notified in a Default Notice;

25.2.2 the Provider commits Persistent Defaults;

25.2.3 the Provider is in material breach of its obligations under this Contract and the breach is incapable of remedy;

25.2.4 any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;

25.2.5 the Provider becomes bankrupt or makes an arrangement with its creditors or has a proposal in respect of its company for the voluntary arrangements for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;

25.2.6 the Provider has an application made under the Insolvency Act 1986 in respect of its company to the court for the appointment of an administrative receiver;

25.2.7 the Provider has a winding-up order made (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;

25.2.8 the Provider has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;

25.2.9 the Provider has an administrative receiver as defined in the Insolvency Act 1986 appointed;

25.2.10 the Provider is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding-up order; or

25.2.11 the Provider commits an act of grave misconduct in the course of its business or profession

23.2.11 where there are any serious safeguarding concerns or a number of individual safeguarding concerns in respect of the Service(s)

23.2.12 the Provider has submitted false information in respect of its Tender; or

23.2.13 the Provider has committed fraud;

25.3 The Provider may terminate this Contract immediately by giving written notice of termination on the occurrence of any one of the following events:

25.3.1 the Council is in breach of its obligations under this Contract, and, if the breach is capable of remedy, fails to remedy such breach within a reasonable time of being notified in writing of the breach by the Provider. This clause does not apply to the procedure in respect of a breach

relating to non-payment of the undisputed Price. This should be dealt with in accordance with Clause 25.4 below;

25.3.2 the Council is in material breach of its obligations under this Contract and the breach is incapable of remedy.

25.4 If the Council fails to pay the Provider the undisputed Price when due the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed amounts within 60 working days of such written notice the Provider may terminate this Contract with immediate effect.

25.5 The Council's termination rights under this Clause 25 are exercisable in relation to the termination of the Provider's provision of a Service pertaining to a Lot (each Service as described in the Specification(s) being a separate Service under this Contract) or the termination of all Services under this Contract, at the discretion of the Council. The termination of a Service pertaining to a Lot does not automatically terminate the entire Contract.

26 CONSEQUENCES OF TERMINATION AND EARLY TERMINATION

26.1 If this Contract is terminated in accordance with Clause 25 or for any other reason the Provider shall continue to provide the Service(s) during the period of notice. The Council shall only be liable to pay the Provider the Price up to the date of termination. The provision is without prejudice to any rights that may have accrued to the Council under this Contract before termination.

26.2 During the term of the Contract or alternatively on the expiry or termination of this Contract or termination of any Service(s) for any reason the Provider must co-operate fully with the Council, and if appropriate any future provider, to migrate the Service(s) in an orderly manner to the future provider. This shall include (but not be limited to) the transfer of any information collected and recorded by the Provider in accordance with the Specification(s).

26.3 Expiry, termination of this Contract, or termination of any Service(s),

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.

26.4 During the term of the Contract or alternatively on the expiry or termination of this Contract or termination of any Service(s) for any reason the Council, the Provider, and if appropriate any successor provider, will agree an exit plan and the Parties will comply with the provisions of the exit plan. The exit plan (where appropriate) as a minimum should include measures to maintain performance, a communication plan, measures to address workforce issues and caseload management.

27 VAT

27.1 All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes.

28 CONTRACT MANAGEMENT

28.1 The Provider will comply with the requirements regarding monitoring of the Service(s) as set out in the Specification(s) to the Contract.

28.2 The Provider shall at all times co-operate with the Council for the purposes of monitoring this Contract. The Council may wish to vary the process for monitoring this Contract during the Term and any variation will be discussed and agreed with the Provider.

28.3 The Council will seek to develop and enhance monitoring arrangements in conjunction with the Provider to ensure that high standards and quality services are achieved.

28.4 The Council reserves the right to undertake announced and unannounced visits to the Provider's premises in order to monitor the Service(s). Unannounced visits are likely to occur when the Council has serious concerns about the performance of the Service(s).

28.5 The Council may need to involve officers from other agencies, such as the NHS to assist in the monitoring of this Contract where the Service(s) require particular expertise. The Council shall notify the Provider of the involvement of representatives from other agencies when this is required. The Provider will allow access by officers from other agencies instructed by the Council to the Provider's premises in order to monitor these Service(s).

28.6 The Provider is expected to take responsibility for the quality of its own service provision according to the terms of this Contract and this includes the proactive use of the Provider's own quality assurance systems and a commitment to continuous quality improvement.

28.7 The Provider shall maintain a true and correct set of records in such form as the Council will specify pertaining to all activities relating to its performance of this Contract and all transactions related thereto. The Provider will supply statistical information regarding the Service(s) to the Council as required in such a format and at intervals as determined by the Council and/or Government departments. Wherever possible, the Council will seek to give to the Provider advance notice of such requirements in order to ensure that information is being collected by the Provider in a suitable format.

29 RECORDS AND INFORMATION

29.1 The Provider must compile and maintain such information as the Council may reasonably require.

29.2 In addition to Claus29.1, at the Council's reasonable request (but subject to Clauses 13 (Confidentiality) and 18 (Data Protection Act) the Provider must provide the Council with any information in relation to performance of the Contract which the Council may require from time to time.

29.3 Any documentation held by the Provider in relation to this Service(s) must be retained safely by the Provider for a period of three years

from the date of the last payment to the Provider under or by virtue of this Contract.

29.4 The Provider must notify the Council if:

29.4.1 there is a planned change in who controls the majority of its shares in, or the voting rights amongst its shareholders or members or there is a material change in its objects;

29.4.2 the Provider plans to merge with another organisation;

29.4.3 the Provider plans to transfer its engagements to another organisation;

29.4.4 the Provider plans to transfer its business to another organisation in any way;

29.4.5 any registration that the Provider must maintain in order to provide any of the Service(s) is withdrawn or cancelled or is threatened to be withdrawn or cancelled.

29.5 If the Council (acting reasonably) consider that any of the effects of clause 29.4 shall have a detrimental impact upon the provision of the Service(s) then the Council may terminate the Contract pursuant to clause 25 (Termination).

30 EQUALITY AND DIVERSITY

30.1 The Provider must carry out the Service(s) treating all people in a considerate and respectful way and showing sensitivity towards a person's beliefs, background, and way of life, personal needs or circumstances. This Condition applies to anyone that the Provider comes into contact with, or has access to whilst performing the Contract.

30.2 The Provider shall comply with the principle that no-one is to be treated less favourably on the grounds of age, disability, gender re-assignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation.

30.3 The Provider shall be committed to equality and diversity in its employment practices and service provision and will ensure compliance with all anti-discrimination legislation. The Provider must regularly review their services and access to them to ensure they continue to be appropriate and accessible.

30.4 The Provider must have in place a policy relating to equality which must cover;

30.4.1 recruitment, selection, training, promotion, discipline, grievance and dismissal;

30.4.2 discrimination, harassment and victimisation making it clear that these are disciplinary offences within the Provider's organisation;

30.4.3 identification of the senior position with responsibility for the policy and its effective implementation; and

30.4.4 how the Provider communicates the policy to its Employees.

30.5 The Provider shall review the policy to reflect changes in equality legislation or within a three year period whichever occurs first.

30.6 The Provider shall provide regular Employee training on equalities and shall regularly monitor performance against their equalities policy.

30.7 The Provider shall have due regard in its performance of this Contract to the obligations contemplated by Section 149 of the Equality Act 2010 to:

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

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

30.7.3 Foster good relations between persons who share a relevant

protected characteristic (as defined in the Equality Act 2010) and persons who do not share it.

30.8 The Provider must disclose to the Council any written or verbal complaints made to them in relation to provision of the Service(s) regarding equality and discrimination.

30.9 In the event of any finding of unlawful discrimination being made against the Provider in respect of this/these Service(s) during the Term by any Court or Tribunal, or any adverse finding in any formal investigation by the Equality and Human Rights Commission in respect of this/these Service(s) during the Term, then the Provider shall inform the Council in writing of that finding within 21 days and shall take appropriate steps to prevent repetition of the discrimination.

30.10 The Provider shall on request provide the Council with details of any steps taken Clause 30.9.

30.11 The Provider shall supply any information that the Council may reasonably require to:

30.11.1 Monitor the equality of access to the Service(s); and

30.11.2 Fulfil its obligations under the law

30.12 A finding of direct or indirect discrimination against any individual employed by the Provider, or the Provider itself, in respect of this/these Service(s) may be seen by the Council as a breach of the Conditions of this Contract and the terms of Clause 25 (Termination) may apply.

31 HEALTH AND SAFETY

31.1 The Provider shall at all times comply with the requirements of the Health and Safety at Work etc Act 1974 and of any other Acts, Regulations, Orders, Rules of Law or EU Directions pertaining to health and safety and have a health and safety policy that complies with such legislative requirements.

32 ENTRY AND INSPECTION BY MEMBERS OF THE LOCAL HEALTHWATCH

32.1 The Provider shall allow members of the Local Healthwatch authorised by or under Healthwatch Regulations or such subsequent legislation to enter, view and observe the carrying on of activities at the Provider's premises for the purposes of any of the Local Healthwatch The Provider must ensure that the authorised members of the LocalHealthwatch present documentation showing their authorisation to the Provider or entry at the Provider's premises and shall wear visible identification at all times whilst on the Provider's premises. The Provider shall co-operate with the members of the Local Healthwatch as to facilitate the carrying out of such visits.

33 INFORMATION AND REQUESTS FOR INFORMATION FROM THE LOCAL HEALTHWATCH

33.1 Where the Provider receives a written request from the Local Healthwatch to produce any information which appears to the Local Healthwatch to be necessary for the effective carrying out of its functions it shall comply with that request promptly and in any event no later than the 20th working day following the date the request was made.

33.2 Where the Provider holds the information requested but the information is Exempt Personal Information the Provider shall not be required to disclose the Exempt Personal Information to the Local Healthwatch unless:

33.2.1 The information can be disclosed in a form from which the identity of the individual cannot be ascertained; or

33.2.2 The individual consents to the information being disclosed.

33.3 Where the Provider does not hold the information or where the information cannot be disclosed as it is either Exempt Information or Exempt Personal Information and the exceptions at

Clauses 33.2.1 and
33.2.2 cannot be applied, the Provider must notify the Local Healthwatch of this within 20 working days following the date of receipt by the Provider of the request for information.

34 AUDIT AND INSPECTION

34.1 The Provider must comply with all reasonable written requests made by CQC, the National Audit Office, any Authorised Person for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Service(s), and for information relating to the provision of the Service(s). 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 Service(s) or, the privacy or dignity of a Service User.

34.2 Subject to Law and notwithstanding Clause 34.1, 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 Service(s). During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Service(s) 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.

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

34.4 The Council shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Service(s).

34.5 During any audit undertaken under Clause 34.1 or 34.2, the Provider must provide the Council with all reasonable co-operation and assistance in relation to that audit, including:

34.5.1 all reasonable information requested within the scope of the audit;

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

34.5.3 access to Employees.

35 STATUTORY REQUIREMENTS

35.1 The Provider shall comply with all statutory and other provisions to be observed and performed in connection with the Service(s) and shall indemnify the Council against all actions, claims, demands, proceedings, damages, charges and expenses whatsoever in respect of any breach by the Provider of this Clause 35.

36 DISPUTES

36.1 The Council and the Provider shall use their best endeavours to resolve any dispute arising out of this Contract by agreement.

36.2 To resolve a dispute either party shall use the following procedure:

36.2.1 request a meeting between the respective Nominated Representatives such meeting to be held within five working days of the dispute occurring or such other period as shall be agreed between the parties;

36.2.2 should the dispute remain unresolved following the meeting referred to in Clause 36.2.1 above then a meeting shall be requested between senior representatives of each of the parties such meeting to be held within five working days of the request or such other period as shall be agreed between the parties;

36.2.3 should the dispute still remain unresolved following the meeting referred to in Clause 36.2.2 above then subject

to the agreement of the parties the dispute may be referred to an independent mediator acceptable to the parties as soon as is reasonably practicable for resolution.

36.3 The use of this procedure shall not prejudice the other rights and remedies of the parties under this Contract.

37 CORRUPT GIFTS

37.1 If it shall be established that either Party shall have directly or indirectly canvassed or solicited any member, officer, employee or agent of the other Party at any time in connection with this Contract or any other contract or proposed contract for the provision of the Service(s) or shall have directly or indirectly obtained or attempted to obtain information from any such member, officer, employee or agent concerning this Contract or any other contract or proposed contract for the provision of the Service(s); or shall have offered or given or agreed to give to any person any gift or inducement in relation to the obtaining or performance of this Contract or any other contract with the Council or if any of the like acts shall have been done by any person employed by either Party or acting on his behalf (whether with or without the knowledge of that Party) or where either Party or any persons employed by them or acting on their behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972 or commits any offence under the Bribery Act 2010 then the other Party may terminate the Contract by notice in writing having immediate effect.

38 ASSIGNMENT AND SUB-CONTRACTING

38.1 The Provider shall not without the prior written consent of the Council assign or transfer or sub-contract this Contract or any of its responsibilities to any other body or third party. Such consent shall not be unreasonably withheld.

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

38.3 Notwithstanding Clauses 38.1 and 38.2 the Provider may assign to a third party ("the Payment Assignee") the right to receive payment of the Price or any or any part thereof due to the Provider under this Contract. Any assignment under this Clause shall be subject to:

38.3.1 Reduction of any sums in respect of which the Council exercises its right of recovery;

38.3.2 All related rights of the Council under the Contract in relation to the recovery of sums due but unpaid; and

38.3.3 The Council receiving notification both under Clauses 38.1 and 38.4

38.4 In the event the Provider assigns the right to receive the Price under Clause 38.3 the Provider or the Payment Assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

38.5 The Provider shall notify the Council in writing of the Payment Assignee's contact information and bank account details to which the Council shall make payment.

38.6 The provisions of Clause 11 (Contract Price) shall continue to apply in all other respects after the assignment and shall not be amended except with the approval of the Council.

39 FORCE MAJEURE

39.1 If any party is affected by Force Majeure, it shall promptly notify

the other of the nature and extent of the circumstances in question.

39.2 The Provider shall have in place a detailed contingency plan setting out the steps that the Provider shall take to ensure that the Service(s) is/are maintained to Service Users where it is reasonable to do so for the first seventy two hours (72 hours) of a Force Majeure event or for any strike, lockout or other industrial dispute (in each case whether involving the Provider's workforce or the workforce of any other legal person).

39.3 Except as set out in Clause 39.2 above, no party shall be deemed to be in breach of this Contract, or otherwise be liable to the other, for any delay in performance or other non-performance of any of its obligations under this Contract to the extent that the delay or non-performance is due to Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

40 BUSINESS CONTINUITY PLAN

40.1 The Provider must be able to continue to provide the Service(s) in the event of an emergency.

40.2 The Provider shall use its reasonable endeavours:

40.2.1 to prepare a robust Business Continuity Plan that ensures the continuation of this Contract; and upon request to submit to the Council copies of the Business Continuity Plan (including any revisions made to it from time to time); for the Provider; and the contracted Service(s);

40.2.2 to allow the Council at its discretion from time to time to monitor the Provider's business continuity arrangements; and

40.2.3 to notify the Council if an incident occurs which activates the Provider's Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and

40.2.4 to provide the Council with details of how the Provider managed any incident which resulted in the activation of the Provider's Business Continuity Plan and any consequential amendments made to the Provider's processes and/or procedures thereafter.

41 SET OFF

41.1 The Council will be entitled but not obliged at any time or times without notice to the Provider to set off any liability of the Council to the Provider against any liability of the Provider to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Provider into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this Clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.

42 WHOLE CONTRACT

42.1 This Contract contains the whole Contract between the Council and the Provider and no amendment shall be binding unless made in writing and signed by or on behalf of both parties.

43 WAIVER

43.1 The failure by either party to enforce at any time for any period any one or more of the terms and conditions of this Contract shall not be a waiver of it or them or of any right at any time subsequently to enforce all terms and conditions of this Contract.

44 PROPER LAW AND JURISDICTION

44.1 This Contract shall be governed by English law in every particular including formation and interpretation and shall be deemed to

have been made in England.

45 SEVERANCE

45.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

46 NOTICES

46.1 Any Notice to be served or given under this Contract shall be sent or given by prepaid recorded delivery or registered post to the address of the relevant party shown in the Contract Particulars ~~or by facsimile transmission~~ or electronically via the Council's electronic tendering system and shall be deemed to have been received by the addressee within 48 hours of posting or within 24 hours if sent by any other of the means outlined herein.

47 VARIATION

47.1 Any variation to the terms and conditions of this Contract including any changes or variations to the manner in which the Service(s) is/are to be provided or to the content of the Service(s) shall be binding only if mutually agreed in writing by the Council and the Provider.

48 SURVIVAL

48.1 The following Clauses will survive termination or expiry of this Contract:

48.1.1 Clause 12 (Re-provision of the Service and TUPE)

48.1.2 Clause 13 (Confidentiality)

48.1.3 Clause 18 (Data Protection)

48.1.4 Clause 19 (Freedom of Information)

48.1.5 Clause 21 (Intellectual Property)

48.1.6 Clause 22 (Indemnity Limitation of Liability and Insurance)

48.1.7 Clause 26 (Consequence of Termination and Early Termination)

48.1.7.1 Clause 29 (Records and Information)

48.1.8 Clause 44 (Proper Law and Jurisdiction)

49 PUBLICITY

49.1 Unless as otherwise permitted by this Contract the Provider shall not make any press announcements, publicise the Contract in any way or use the name of the Council in any publicity releases or advertising without the prior approval in writing of the Council's Nominated Representative.

49.2 The Council shall be entitled to publicise the Contract in accordance with any legal obligation on the Council.

49.3 The Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.

50 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

50.1 No person who is not a party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Council or the Provider) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior Contract in writing of both Parties.

SCHEDULE 1

SERIOUS INCIDENT REPORTING PROCEDURE

The Provider is expected to comply with this Serious Incident Reporting Procedure in respect of Serious Incidents arising in respect of the Services commissioned by the Council under this Contract.

Where the Provider is a NHS Provider Organisation or a Foundation Trust the Provider must also continue to notify the Serious Incident through the Serious Incident Reporting Procedure with the Clinical Commissioning Group.

1. Notification

The Provider must report all Serious Incidents and Patient Safety Incidents to the Council arising in respect of the Services commissioned by this Council by sending the same in writing within 24 hours using the form set out at the end of this procedure to:

Title of Officer: Director of Public Health

Address: Gateshead Council, Civic Centre, Regent Street, Gateshead, NE8 1HH

The form can be emailed to publichealthincidents@gateshead.gov.uk

Telephone Number: 0191 433 2871

The definition of a "Serious Incident" is as set out in the Definitions within the Contract, namely:
In broad terms, serious incidents are events in health care where the potential for learning is so great, or the consequences to patients, families and carers, staff or organisations are so significant, that they warrant using additional resources to mount a comprehensive response. Serious incidents can extend beyond incidents which affect patients directly and include incidents which may indirectly impact patient safety or an organisation's ability to deliver ongoing healthcare[1].

2. Criteria for Reporting Serious incidents

The occurrence of a serious incident demonstrates weaknesses in a system or process that need to be addressed to prevent future incidents leading to avoidable death or serious harm[2] to patients or staff, future incidents of abuse to patients or staff, or future significant reputational damage to the organisations involved. Serious incidents therefore require investigation in order to identify the factors that contributed towards the incident occurring and the fundamental issues (or root causes) that underpinned these. Serious incidents can be isolated, single events or multiple linked or unlinked events signalling systemic failures within a commissioning or health system.

There is no definitive list of events/incidents that constitute a serious incident and lists should not be created locally as this can lead to inconsistent or inappropriate management of incidents. Where lists are created there is a tendency to not appropriately investigate things that are not on the list even when they should be investigated, and equally a tendency to undertake full

[1] Serious Incident Framework updated March 2015 www://improvement.nhs.uk/resources/serious-incident-framework/

[2] Serious harm: - Severe harm (patient safety incident that appears to have resulted in permanent harm to one or more persons receiving NHS-funded care); - Chronic pain (continuous, long-term pain of more than 12 weeks or after the time that healing would have been thought to have occurred in pain after trauma or surgery); or - Psychological harm, impairment to sensory, motor or intellectual function or impairment to normal working or personal life which is not likely to be temporary (i.e. has lasted, or is likely to last for a continuous period of at least 28 days).

investigations of incidents where that may not be warranted simply because they seem to fit a description of an incident on a list.

The definition below sets out circumstances in which a serious incident must be declared. Every incident must be considered on a case-by-case basis using the description below. Inevitably, there will be borderline cases that rely on the judgement of the people involved (see below)

Serious Incidents in the Service include:

• Acts and/or omissions occurring as part of Council funded care or treatment (including in the community) that result in:
o Unexpected or avoidable death[3] of one or more people. This includes
- suicide/self-inflicted death; and
- homicide by a person in receipt of mental health care within the recent past[4];
o Unexpected or avoidable injury to one or more people that has resulted in serious harm;
o Unexpected or avoidable injury to one or more people that requires further treatment by a healthcare professional in order to prevent:
- the death of the service user; or
- serious harm;
o Actual or alleged abuse; sexual abuse, physical or psychological illtreatment, or acts of omission which constitute neglect, exploitation, financial or material abuse, discriminative and organisational abuse, self-neglect, domestic abuse, human trafficking and modern day slavery where:
- healthcare did not take appropriate action/intervention to safeguard against such abuse occurring[5]; or
- where abuse occurred during the provision of Council funded care or treatment. This includes abuse that resulted in (or was identified through) a Serious Case Review (SCR), Safeguarding Adult Review (SAR), Safeguarding Adult Enquiry or other externally-led investigation, where delivery of NHS funded care caused/contributed towards the incident

• A Never Event - all Never Events are defined as serious incidents although not all Never Events necessarily result in serious harm or death. See Never Events Policy and Framework for the national definition and further information[6];
• An incident (or series of incidents) that prevents, or threatens to prevent, an organisation's ability to continue to deliver an acceptable quality of Service, including (but not limited to) the following:

o Failures in the security, integrity, accuracy or availability of information often described as data loss and/or information governance related issues;
o Property damage;

[3] Caused or contributed to by weaknesses in care/service delivery (including lapses/acts and/or omission) as opposed to a death which occurs as a direct result of the natural course of the patient's illness or underlying condition where this was managed in accordance with best practice.
[4] This includes those in receipt of care within the last 6 months but this is a guide and each case should be considered individually - it may be appropriate to declare a serious incident for a homicide by a person discharged from mental health care more than 6 months previously
[5] This may include failure to take a complete history, gather information from which to base care plan/treatment, assess mental capacity and/or seek consent to treatment, or fail to share information when to do so would be in the best interest of the client in an effort to prevent further abuse by a third party and/or to follow policy on safer recruitment.
[6] Never Events arise from failure of strong systemic protective barriers which can be defined as successful, reliable and comprehensive safeguards or remedies e.g. a uniquely designed connector to prevent administration of a medicine via the incorrect route - for which the importance, rationale and good practice use should be known to, fully understood by, and robustly sustained throughout the system from suppliers, procurers, requisitioners, training units, and front line staff alike. See the Never Events Policy and Framework available online at: http://www.england.nhs.uk/ourwork/patientsafety/never-events/

o Security breach/concern[7];
o Systematic failure to provide an acceptable standard of safe care (this may include incidents, or series of incidents, which necessitate closure or suspension of services[8]); or
o Activation of Major Incident Plan (by provider, commissioner or relevant agency)[9]

• Major loss of confidence in the service, including prolonged adverse media coverage or public concern about the quality of healthcare or an organisation[10]

3. Assessing whether an incident is a serious incident

In many cases it will be immediately clear that a serious incident has occurred and further investigation will be required to discover what exactly went wrong, how it went wrong (from a human factors and systems-based approach) and what may be done to address the weakness to prevent the incident from happening again.

Where it is not clear whether or not an incident fulfils the definition of a serious incident, the Provider and must engage in open and honest discussions with the Council to agree the appropriate and proportionate response. It may be unclear initially whether any weaknesses in a system or process (including acts or omissions in care) caused or contributed towards a serious outcome, but the simplest and most defensible position is to discuss openly, to investigate proportionately and to let the investigation decide. If a serious incident is declared but further investigation reveals that the definition of a serious incident is not fulfilled- for example there were no acts or omissions in care which caused or contributed towards the outcome- the incident can be downgraded. This can be agreed at any stage of the investigation and the purpose of any downgrading is to ensure efforts are focused on the incidents where problems are identified and learning and action are required.

4. Can a 'near miss' be a serious incident?

It may be appropriate for a 'near miss' to be a classed as a serious incident because the outcome of an incident does not always reflect the potential severity of harm that could be caused should the incident (or a similar incident) occur again. Deciding whether or not a 'near miss' should be classified as a serious incident should therefore be based on an assessment of risk that considers: o The likelihood of the incident occurring again if current systems/process remain unchanged; and o The potential for harm to staff, patients, and the organisation should the incident occur again. This does not mean that every 'near miss' should be reported as a serious incident but, where there is a significant existing risk of system failure and serious harm, the serious incident process should be used to understand and mitigate that risk.

5. How are serious incidents identified?

As described above, serious incidents are often triggered by events leading to serious outcomes for patients, staff and/or the organisation involved. They may be identified through various routes including, but not limited to, the following:
• Incidents identified during the provision of healthcare by a provider e.g. patient safety

[7] This will include absence without authorised leave for patients who present a significant risk to themselves or the public
[8] It is recognised that in some cases ward closure may be the safest/ most responsible action to take but in order to identify problems in service/care delivery , contributing factors and fundamental issues which need to be resolved an investigation must be undertaken
[9] For further information relating to emergency preparedness, resilience and response, visit: www.england.nhs.uk/ourwork/eprr/
[10] As an outcome loss in confidence/ prolonged media coverage is hard to predict. Often serious incidents of this nature will be identified and reported retrospectively and this does not automatically signify a failure to report.

incidents or serious/distressing/catastrophic outcomes for those involved;
• Allegations made against or concerns expressed about a provider by a patient or third party;
• Initiation of other investigations for example: Serious Case Reviews (SCRs), Safeguarding Adult Reviews (SARs), Safeguarding Adults Enquires (Section 42 Care Act) Domestic Homicide Reviews (DHRs) and Death in Custody Investigations (led by the Prison Probation Ombudsman) NB: whilst such circumstances may identify serious incidents in the provision of care this is not always the case and SIs should only be declared where the definition above is fulfilled;
• Information shared at Quality Surveillance Group meetings;
• Complaints;
• Whistle blowing;
• Prevention of Future Death Reports issued by the Coroner.

If an incident is identified by an organisation that is not involved in the delivery of care in which the incident occurred, then that organisation must take action to ensure that the relevant provider(s) and commissioner(s) are informed to ensure the incident is reported, investigated and learned from to prevent future risk of reoccurrence. Where the identifying organisation is another provider it must raise concerns with its commissioner, who can assist in the necessary correspondence between other organisations as required.

Serious incidents identified (or alleged) through the complaints route, or any other mechanism, must be treated in line with the principles in this Schedule to ensure that it is investigated and responded to appropriately. If the investigation reveals that there were no weaknesses/problems within the Provider's intervention which either caused or contributed to the incident in question, the incident can be downgraded.

6. Framework application and interfaces with other sectors

It is recognised that the Provider may have limited capacity and expertise to undertake investigations into serious incidents. The Council will work with the Provider to identify where there are gaps in resources, capacity, accessibility and expertise, on an incident-by-incident basis, and will offer support where it has the capacity to do so. Ultimately, the Provider is responsible for undertaking and managing investigations and consequently incur the cost for this process. This includes paying for independent investigations of the care the provider delivered and for undertaking its own internal investigations.

The principles and processes outlined in this Framework are relevant for the majority of serious incidents that occur in healthcare. However, there are occasions[11] where the processes described in this Framework will coincide with other procedures. In such circumstances, co-operation and collaborative working between partner agencies is essential for minimising duplication, uncertainty and/or confusion relating to the investigation process. Ideally, only one investigation should be undertaken (by a team comprising representatives of relevant agencies) to meet the needs/requirements of all parties. However, in practice this can be difficult to achieve. Investigations may have different aims/ purposes and this may inhibit joint investigations. Where this is the case efforts must be made to ensure duplication of effort is minimised

Wherever possible, serious incident investigations should continue alongside criminal proceedings but this should be considered in discussion with the police. In exceptional cases (i.e. following a formal request by police, Coroner or judge) the investigation may be put on hold and this should be discussed with those involved.

[11] Deaths in Custody- where health provision is delivered by the NHS, Serious Case Reviews and Safeguarding Adult Reviews, Domestic Homicide Reviews, Homicide by patients in receipt of mental health care, Serious Incidents in National Screening Programmes

7. Accountability

The primary responsibility in relation to serious incidents is from the provider of the care to the people who are affected and/or their families/carers. The key organisational accountability for serious incident management is from the provider in which the incident took place to the commissioner of the care in which the incident took place. Given this line of accountability, it follows that serious incidents must be reported to the Council as the commissioner of the Service in which the serious incident occurred.

This list is not exhaustive and not all incidents listed above will be relevant to the commissioned Service. If there are any doubts about whether an incident should be reported as a Serious Incident, please contact the Council at publichealthincidents@gateshead.gov.uk in order to notify and discuss the incident.

2. Procedure

3.1 Serious incident reports and action plans must be submitted to the Director of Public Health within 60 working days of the incident being reported to the them, unless an independent investigation is required, in which case the deadline is 6 months from the date the investigation commenced.

3.2 In certain circumstances, the Provider may find it difficult to complete a final report within these timescales. In such circumstances the Director of Public Health can agree an alternative timeframe. This should be clearly recorded within the serious incident management system and included in the serious incident report.

3.3 On receipt of the final investigation report and action plan from the Provider, the Director of Public Health should acknowledge receipt by email. They will then undertake a quality assurance review of the report within 20 calendar days. Where necessary an alternative timescale may be agreed

3.4 It may be necessary to involve other organisations in the quality assurance and sign-off process depending on the nature and circumstance of the incident, as the Provider may deliver services commissioned by different commissioning organisations. These may include, NHS England, multiple CCGs and other Local Authorities. Where such an incident occurs, the Provider will need to formally agree with the Council and other commissioners the lead commissioner for the incident.

3.5 The Council will seek assurance that the report fulfils the required standard for a robust investigation and action plan. Any concerns or areas requiring further action will be highlighted to the provider at the earliest opportunity to facilitate timely action and resolution of issues raised.

3.6 It may be necessary for the Council to share information and seek appropriate advice in respect of the Serious Incident and the grading of the Serious Incident with other agencies, such as the Clinical Commissioning Group or CQC.

3.7 The Serious Incident and the outcome of the Serious Incident will be reported to the appropriate governance and commissioning Boards of the Council.

3.8 The Council will share Lessons Learnt in respect of the Serious Incident and change appropriate practices, where appropriate, with other agencies and Providers.

SERIOUS INCIDENT (SI)
REPORTING FORM FOR PROVIDERS

Please email the completed form to publichealthincidents@gateshead.gov.uk

Reporting Provider:
Reporter name:
Reporter job role:
Telephone number:

Provider address: **Telephone number:** **Email address:**
Date of incident:
Time of incident:
Site of incident:
Description of Incident
Immediate Action Taken
Date Incident Reported to Gateshead Council
Council Reference Number:
Date Incident Reported to NHS:

Gender:	Male	Female (delete as applicable)
Date of birth:		
Media interest:	**Yes**	**No** (delete as applicable)

SCHEDULE 2

INFORMATION PROVISION

The Provider must provide the following information during the term of this Contract:

Type of Information	***Format***	***Frequency***	***Consequence for non-delivery***
Provider Policies	Copies of the following policies to be provided electronically: Data Protection Health & safety Consent Business Continuity Complaints Equalities Safeguarding	Annually	Appropriate action under Clause 24 of the Contract (*default and suspension)*
Insurance Certificates	In electronic or photocopy format	Annually	As above
Complaints and Compliments	Electronically Setting out: the number of complaints/compliments received; the nature of each complaint/compliment the outcome in respect of the complaint	Annually	As above
Service User/Carer Survey results	Electronic format	Annually	As above