

SCHEDULE 1
CONTRACT FOR PHARMACY BASED EMPLOYEE
SEASONAL FLU VACCINATION VOUCHER SERVICE
STANDARD TERMS AND CONDITIONS

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1 DEFINITIONS AND INTERPRETATION

The following terms shall have the following meanings:-

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| “Activity” | any levels of clinical services and/or Service User flows set out in the Specification; |
| “Authorised Persons” | the Council and any body or person concerned with the provision of the Service 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 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 |

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| 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; |
| “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;

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| “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; |
| “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; |
| “CQC” | the Care Quality Commission or such other successor Regulatory body; |
| “Data Controller” | Has the same meaning as set out in the DPA; |
| “Data Processor” | Has the same meaning as set out in the DPA; |

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| “DBS” | Disclosure and Barring Service or such other similar or successor body established under any subsequent legislation; |
| “DPA” | Data Protection Act 1998; |
| “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 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; |

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| “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, at the time the Service 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; |

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| “Information Governance Lead” | the senior health professional responsible for safeguarding the confidentiality of Service User information; |
| “ITT” | The Council’s Invitation to Tender; |
| “Law” | <p>any applicable statute or proclamation or any delegated or subordinate legislation or regulation;</p> <ul style="list-style-type: none"> (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 <p>in each case in force in England and Wales</p> |
| “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; |
| “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 Indicators” | the key performance indicators and outcomes to be achieved as set out in the Specification; |

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| “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; |
| “Price” | The price specified in the Specification; |
| “Pricing Schedule” | the pricing schedule within the Specification; |
| “Provider” | the provider named in the Contract Particulars and where applicable this shall include the Provider’s Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members; |
| “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 any Premises” | means premises controlled or used by the Provider for 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 |
| “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 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.

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| “Service” | the provision of flu vaccination voucher service as fully described in the Specification; |
| “Service Commencement Date” | The service commencement date stated in the Contract Particulars; |
| “Service User” | any individual(s) to whom the Service is/are to be provided; |
| “Specification” | The specification included in the ITT setting out the Council's detailed requirements in relation to the Service; |
| “Tender” | the Provider’s tender for the Service 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 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 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 from the Service Commencement Date.

- 2.3 This Contract shall commence on the Commencement Date and shall remain in force for six (6) months or until terminated earlier in accordance with this Contract when, in either case, the Provider will cease provision of the Service.
- 2.4 Where the Contract should terminate either in accordance with Clause 2.3 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, 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.
- 2.5 This Contract, from the Commencement Date, extinguishes and replaces all previous contracts for the Service between the parties.

3 THE SERVICE

- 3.1 The Provider shall provide the Service in accordance with the applicable Specification 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 where to do so would be contrary to the Law.

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

3.5 In providing the Service 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;
- 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;
- 3.5.7 The Performance Indicators set out in the Specification.
- 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 to the Council in accordance with the requirements contained in this Contract.
- 4.2 To provide the Service with due skill, care and diligence, to the satisfaction of the Council's Nominated Representative, so as to deliver the Service to the standards to be expected of a competent provider of services of a similar kind to the Service.

- 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 prior to commencing provision of the Service.
- 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 in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Service.
- 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 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 in respect of which they are engaged.
 - 7.2.2 There is an adequate number of Employees to provide the Service properly in accordance with the provisions of the Specification.
 - 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 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, or in any activity related to, or connected with, the provision of the Service, 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 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 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 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).

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 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 Where the Provider fails to deliver any elements of the Service 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 that has/have not been delivered.

11.4 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.

11.5 In its performance of this Contract the Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).

11.6 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 AND TUPE

- 12.1 Where the Council has notified the Provider that it intends to tender or retender any of the Service, 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 including but not limited to the Council delivering the Service 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 deliver the information required under the Specification in the format, manner, frequency and timescales specified in the Specification and must ensure that the information is accurate and complete.

14.2 If the Provider fails to comply with any of the obligations in this clause 14.1 the Council may take action under Clause 24.

14.3 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 to measure the quality, quantity or otherwise of the Service.

15.2 The Provider must deliver the information required under Clause 15.1 in the format, manner, frequency and timescales specified in the Specification 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.

- 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.
- 15.6 The Provider must carry out Service User surveys with each Service User or Carer completing the Service 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. 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 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.
- 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 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 Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

18.2 The Provider shall comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

18.3 Notwithstanding the general obligation in Clause 18.2 where the Provider is processing personal data (as defined by the DPA) as a Data Processor the Provider shall ensure that it has in place appropriate technical and contractual measures (including, where appropriate, data sharing agreements in accordance with the guidance provided by the Information Commissioner's Office in its Data Sharing Code of Practice) to ensure the security of the personal data and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data, as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

18.3.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;

18.3.2 promptly comply with any request from the Council requiring the Provider to amend, transfer or delete any data;

18.3.3 promptly notify the Council of any breach of the security measures required to be put in place pursuant to Clause 18.2;

and

- 18.3.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Councils' obligations under the DPA.

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 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 or exclusively for the purpose of delivering the Service.

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 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. 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.

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 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 or about the manner in which any of the Service 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.

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 can resume.

24.5 Where the Council suspends the whole of the Service 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 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 3 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
 - 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.

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 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 for any reason the Provider must co-operate fully with the Council, and if appropriate any future provider, to migrate the Service 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.
- 26.3 Expiry, termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- 26.4 During the term of the Contract or alternatively on the expiry or termination of this Contract or termination of any Service 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 as set out in the Specification 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. Unannounced visits are likely to occur when the Council has serious concerns about the performance of the Service.
- 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 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.
- 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 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.

- 29.1 The Provider must compile and maintain such information as the Council may reasonably require.
- 29.2 In addition to Clause 29.1, 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 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 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 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 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 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 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 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; 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 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 Local Healthwatch 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, and for information relating to the provision of the Service. 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 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. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Service 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, or services of a similar nature to the Service 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.
- 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 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 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; 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 subsection (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 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 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;

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 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 is/are to be provided or to the content of the Service 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

This Serious Incident Reporting Procedure is an interim procedure to deal with the transition of public health services from the NHS to the Council under the Health & Social Care Act 2012.

The Council during the period of transition will review the Serious Incident Reporting Procedure and consider whether a multi-agency serious incident reporting procedure may be appropriate.

The Provider is expected to co-operate with the Council during this time of transition.

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.

The Serious Incident Reporting Procedure may be varied by the Council as part of the transition of public health services into the Council.

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:

Serious Incident means an incident or near miss occurring on the Provider’s premises or in relation to the Services 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.

2. Criteria for Reporting Serious incidents

The definition of a Serious Incident can be quite broad so the following criteria has been adopted, based on current guidance from the NPSA Information Resource to Support the Reporting of Serious Incidents, which outlines the type of incidents that are likely to be included as follows:

2.1.1. Never Events:

- Any incident identified as being on the core set of “Never Events” (see list below of “never events”)
 - Wrong site surgery
 - Wrong implant/prosthesis
 - Retained foreign object post-operation
 - Wrongly prepared high-risk injectable medicine
 - Maladministration of potassium-containing solutions
 - Wrong administration of oral/enteral treatment
 - Intravenous administration of epidural medication
 - Maladministration of Insulin
 - Overdose of midazolam during conscious sedation
 - Opioid overdose of opioid-naïve Patient
 - Inappropriate administration of daily oral methotrexate

- Falls from an unrestricted window
- Air embolism
- Misidentification of patients
- Severe scalding of patients

2.1.2. Unexpected death, serious harm or injury:

- Patients, individuals, or groups of individuals suffering serious harm or catastrophic harm or unexpected death whilst in receipt of health services, including screening and immunisation, radiation errors and equipment failures. Examples could include:
 - false negative screening test results
 - blood testing issues
 - inappropriate vaccination of patients in a care home.
- Serious injury or unexpected death of any individual to whom the organisation owes a duty of care including staff, visitor, contractor, or another person. Examples could include:
 - Patient receives incorrect dosage of medication/wrong medication, suffers an adverse reaction, has a cardiac arrest and suffers brain damage as a result or dies.
 - Female catheter being used on a male patient and causing damage to the urethra
- Patient suicide, attempted suicide, or self-harm that results in serious injury, while being cared for in a healthcare setting.
- Death or injury where foul play is suspected.

2.1.3. Mortality/Morbidity/Care Incidents:

- Category 3 and above pressure ulcers should be reported following initial rapid root cause analysis and appropriate investigations
- Clusters of unexpected or unexplained deaths
- Where the death results in adverse comments from a coroner
- Suicide of any person currently in receipt of NHS services on or off NHS premises, or who has been discharged within the last 12 months.
- Where there is obvious evidence or strong suspicion of self-harm
- Abuse that has perpetrated within the remit of the organisation. This may be by a member of staff, visitor or member of the public.
- Situations when a patient requires additional intervention(s) as a result of failures in the assessment or diagnosis process.
- Out of county critical care transfers or any other transfer that could have resulted in a serious incident.

2.1.4. Children

- Significant harm to a child where reported under the local child protection procedures. Examples could include:
 - A child death where abuse or neglect is suspected to be a factor in the death
 - When a child has suffered significant injuries suspected to be as a result of child abuse
 - Where a child has suffered further harm as a result of health care worker failing to follow procedures
 - Unexplained child death in a health care setting
 - Unexplained death or more than one sibling
 - Where a serious case review is to be undertaken
 - Children and adults with complex health needs failing to obtain their assessed and agreed packages of health care, thus putting their health at serious risk
 - Multiple attendances at A&E for a single child or more than one sibling
 - Death of a child on the child protection register

2.1.5. Screening Programmes

- An actual or possible failure of the screening service that has consequences for the clinical management of patients. Examples could include:
 - Loss of test results
 - Failure to detect cancers
 - Incorrect notification of results to a patient or groups of patients.

National and regional guidelines exist in relation to screening programmes which should be adhered to in conjunction with this policy

2.1.6. Abuse of Adults

- The abuse of an adult described in 'No Secrets'. Examples of this could include:
 - Death or injury to a vulnerable adult where abuse or neglect is suspected to be a factor
 - Where a vulnerable adult has suffered harm as a result of staff failing to follow agreed procedures or acceptable

practice

- When a vulnerable adult has suffered significant injuries suspected to be a result of abuse.

The Provider should also report these events in accordance with the Council's Safeguarding Policies.

2.1.7. Health Protection

- Outbreaks of infection that involve presumed transmission **within** healthcare settings (acute, community). Examples could include:
 - norovirus
 - C.difficile
 - Panton-valentine leukociden (PVL) positive
 - MRSA
- Cases/outbreaks of infection with an NHS-attributable food, water or environmental source. Examples could include:
 - nosocomial legionnaires disease
 - salmonella
- failed vaccination cold chain
- failed sterilisation of instruments
- an outbreak, such as viral gastroenteritis, necessitating ward closures to new patients and resulting in significant restrictions of hospital activity.
- Exposure to chemical agents or radiation caused by failures in healthcare settings
- An outbreak/health protection incident that is poorly managed, resulting in harm.

2.1.8. Medical devices:

- Any serious harm to staff or patients involving medical equipment whether due to human error or due to equipment found to be suspected of being faulty or to have failed. Examples could include:
 - hoist collapsing
 - defibrillator failing
- Any serious injury or death associated with the use/function of a device in which the device is used/functions other than as intended.
- Any medical device-related incident that causes, or has the potential to cause, unexpected or unwanted side effects involving the safety of device users (including patients) or other persons.

2.1.9. Information Technology

- Any IT systems failure occurring which impacts on clinical care of

patients and service users, including all systems used or required to deliver patient and/or service user care, such as PAS, GP systems, results reporting systems . Examples could include:

- High number of pathology results, including smear and INR results, being sent to GP practices due to software problem
- Loss of network connectivity for a large number of staff

2.1.10. Information Governance

- Major breaches of confidentiality such as the loss or theft of personal identifiable records or information (including missing notes).
- Actual or potential loss of personal information that could lead to identity fraud or have other significant impact on individuals.

2.1.11. Staff-Related Incidents:

- Allegations/ criminal proceedings instigated regarding serious professional misconduct
- Serious complaints about a member of staff or independent contractor or any incident relating to a staff member where adverse media interest could occur.
- Where a member of staff is suspected of committing serious fraud.
- Where a member of staff is suspected of harming patients.
- Suspicion of a serious error(s) by a member of staff, independent contractor or other healthcare contractor.
- Where a member of staff shows a gross disrespect for the dignity of a patient/deceased patient.
- Serious verbal or physical aggression

2.1.12. Emergency Plan Invoked:

- Adverse incident which would invoke an emergency plan (affecting business continuity including multiple ward or practice closure, due to infection, serious damage to occupied NHS property through fire, flood or criminal damage, IT failure).
- Wilful damage to property, destruction and vandalism.
- Terrorist threats/incidents which include incendiary devices or the use of other weapons including chemical, biological, radiological or nuclear agents (CBRN).

2.1.13. Media Issues:

- Matters likely to attract interest from local, regional or national

newspapers, TV or radio.

- All incidents reported to or involving the police that are considered serious or may have an adverse media effect.
- Cancellation of surgery by a Trust for a patient on more than 3 occasions.
- Serious fraud or security-related media matters.

2.1.14. Mental Health, Substance Misuse and Learning Disabilities:

- A serious offence including homicide committed by an individual in receipt of mental health and/or learning disability services
- Patients detained under the Mental Health Act (1983) who abscond from health services and who present a serious risk to themselves and/or others. Specific national guidance governs incidents such as homicides and other serious incidents involving mentally ill people (Health Service Guidance 94,27) Arrangements for dealing with major incidents (Health Service Circular 98,197).
- A serious offence that involves an assault of staff by patients.

2.1.15. Premises/Equipment incidents

- Failure of equipment so serious as to endanger life, whether or not injury results
- Suspicion of malicious activity, such as tampering with equipment
- Serious damage that occurs on the premises of the Council, NHS, primary care or independent sector providing NHS work
- Serious damage to property belonging to the NHS or the Council
- Any serious service failure occurring which impacts on clinical care of patients and service users. Examples could include:
 - Mains power failure
 - Closure of ward due to flooding

2.1.16. 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 Director of Public Health in order to notify and discuss the incident.

3. Procedure

- 3.1 On receipt of the Serious Incident Reporting Form the Serious Incident will be logged by the Council.
- 3.2 The Council will liaise with the Provider for further information if required and

will agree timescales for the provision of information with the Provider.

- 3.3 The Council will review the nature of the Serious Incident and will agree an action plan with the Provider in respect of the Serious Incident
- 3.4 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 NHS, Clinical Commissioning Group or CQC.
- 3.5 The Council will prepare a report on the outcome of the Serious Incident and share the same with the Provider.
- 3.6 The Serious Incident and the outcome of the Serious Incident will be reported to the appropriate governance and commissioning (s) Boards of the Council.
- 3.7 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: |
| Date Incident Reported to Gateshead Council |
| Council Reference Number: |
| Date Incident Reported to NHS: |
| STEIS Reference Number: |

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