

LANCASHIRE COUNTY COUNCIL (1)

AS AUTHORITY

AND

**[Insert Name]** (2)

AS PROVIDER

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CONTRACT FOR THE  
PROVISION OF SPECIALIST SUBSTANCE  
USE REHABILITATION SERVICES AND  
DETOXIFICATION SERVICES

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## SECTION A: PDPS TERMS AND CONDITIONS

This Contract is made on **[insert date of the last signature to this Contract 20[ ]]**

### PARTIES

- (1) LANCASHIRE COUNTY COUNCIL of P.O. Box 100, County Hall, Preston, PR1 0LD (the **Authority**); and
- (2) **[insert name of Provider]** of **[insert address]** (the **Provider**)

individually the "Party" and collectively the "Parties".

### BACKGROUND

- (A) The Authority must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013. In order to satisfy these obligations, the Authority wishes to secure the provision of two categories of the Services.
- (B) The Authority placed a Notice reference **[INSERT]** on **[INSERT DATE]** and a Contract Notice reference **[INSERT]** on **[INSERT DATE]** on the UK e-notification Find a Tender service seeking Requests to Participate in a Pseudo Dynamic Purchasing System for the Services (the PDPS) from prospective providers of the Services.
- (C) The Beneficiary may into an Access Agreement with the Authority to enable it to use the PDPS to call off Service Contracts in accordance with the Call Off Procedure.
- (D) On the basis of the Provider's Application, the Authority admitted the Provider to the PDPS, to enable it to bid for Service Contracts which will be allocated to the Provider by the Authority and/or the Beneficiary in accordance with the Call off Procedure.
- (E) This PDPS Contract sets out the award and ordering procedure for Service Contracts which may be required by the Authority or the Beneficiary, details of the terms and conditions applicable to any Service Contract, and the obligations of the Provider during and after the validity period of the PDPS.
- (F) It is the parties' intention that the neither the Authority nor the Beneficiary have any obligation to award Service Contracts to the Providers under this PDPS Contract or at all.

### IT IS AGREED



## **A1 CONTRACT**

- A1.1. This PDPS Contract is comprised of:
- a. the PDPS Terms and Conditions (Section A) and its appendices;
  - b. the Call-Off Terms and Conditions (Section B); and
  - c. the Special Terms and Conditions (the 'Special Conditions') in (Section C), as completed and agreed by the Parties and as varied from time to time in accordance with clause A21 (*Variations*) of the PDPS Terms and Conditions.
- A1.2. The Provider shall perform all Service Contracts entered with the Authority or the Beneficiary (as applicable) in accordance with:
- a. the requirements of this PDPS Contract; and
  - b. the terms and conditions of the respective Service Contracts.

## **A2 INTERPRETATION**

- A2.1. This PDPS Contract shall be interpreted in accordance with Appendix Q (*Definitions and Interpretation*) unless the context requires otherwise.
- A2.2. In the event of, and only to the extent of, any conflict between the terms and conditions of this PDPS Contract and the Service Contract, the application of the clauses shall prevail in the following order:
- (a) the Service Contract (including the Pan Lancashire Referral Forms);
  - (b) this PDPS Contract, excluding Appendix O;
  - (c) the Provider's Application;
  - (e) any other document referred to in the Service Contract; and
  - (g) any other document referred to in this PDPS Contract.

## **A3 COMMENCEMENT AND DURATION AND EXTENSION PERIOD**

- A3.1. The Parties agree to comply with the terms of this PDPS Contract in consideration of the payment by each Party to the other of the sum of one pound (£1), the receipt and sufficiency of which is acknowledged by each Party
- A3.2. This Agreement shall take effect on the PDPS Commencement Date and (unless it is otherwise terminated in accordance with the terms of this PDPS Contract or it is otherwise lawfully terminated) shall terminate at the end of the PDPS Term.
- A3.3. Clause A3.2 shall not apply to any Service Contract made under this PDPS Contract which is due to expire after the end of the PDPS Term which shall expire in accordance with the terms of that Service Contract.
- A3.4. The Authority may extend the term of this Contract by a maximum of two periods of up to 24 months each (the Extension Period and the Second Extension Period). If the Authority wishes to extend this Contract, it shall give the Provider at least 6 months' written notice of such intention before the Expiry Date set out in clause A3.5 (*Commencement and Duration*).
- A3.5. The PDPS initial period of six years shall expire automatically on the 31 July 2030 (the 'Expiry Date') unless it is extended or terminated earlier in accordance with the provisions of this Contract.
- A3.6. If the Authority gives such notice, the Expiry Date will be extended by the period set out in the notice, the extended period shall be for a period of up to 24 months for each extension period for no more than two periods, up to a maximum of 48 months.



- A3.7. The provisions of this Contract shall apply subject to any variation agreed in writing between the Parties throughout the Extension Period and the Second Extension Period.
- A3.8. The Providers are required to comply with the Conditions Precedent set out in Appendix V prior to the PDPS Commencement Date.

**A4 REPRESENTATIVES**

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

Name: Dr. Sakthi Karunanithi MBBS M.D. MPH FFPH  
Title: Director of Public Health and Wellbeing  
Contact Details: [Sakthi.Karunanithi@Lancashire.gov.uk](mailto:Sakthi.Karunanithi@Lancashire.gov.uk)

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

Name: [insert name]  
Title: [insert title]  
Contact Details: [insert]

A4.3 The Provider may replace the Provider Representative and the Authority may replace the Authority Representative at any time by giving notice to the other Party either in writing or by electronic mail.

**A5 NOTICES**

A5.1 Any notices given under this Contract shall be in writing and shall be served by hand or post or electronic mail by sending the same to the address or email address for the relevant Party set out in clause 0.

A5.2 Notices:

- a) by post and correctly addressed shall be effective upon the earlier of actual receipt, or five (5) Business Days after mailing; or
- b) by hand shall be effective upon delivery; or
- c) by electronic mail shall be effective at the time of transmission.

A5.3 For the purposes of clause 0, the address for service of notices on each Party shall be as follows:

- a) For the Authority:  
Address: Lancashire County Council, PO Box 100, County Hall, Preston, PR1 0LD  
For the attention of: Contract Management – Public Health  
Email: [phcontractsteam@lancashire.gov.uk](mailto:phcontractsteam@lancashire.gov.uk)
  
- b) For the Provider:  
Address: [to be completed]  
For the attention of: [to be completed]  
Tel: [to be completed]

Email: [to be completed]

A5.4. Either Party may change its address for service by serving a notice in accordance with this clause 0.

## **A6 WARRANTIES AND REPRESENTATIONS**

A6.1 The Provider warrants and represents that:

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



- A6.2 The Provider warrants that at all times for the purposes of this PDPS Contract and any Service Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- A6.3 The Authority warrants and represents that:
- a) it has full power and authority to enter into this PDPS Contract and any Service Contract and all necessary approvals and consents have been obtained and are in full force and effect;
  - b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it;
  - c) it has the right to permit disclosure and use of Confidential Information for the purpose of this PDPS Contract and any Service Contract; and
  - d) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this PDPS Contract and any Service Contract.
- A6.4 The warranties set out in this clause A6 are given on the Commencement Date and repeated on every day during the term of this PDPS Contract and the term of any Service Contract.

## **A7 CALL OFFS**

- A7.1 The Authority appoints the Provider as a PDPS Provider of the Services, and the Provider shall be eligible to be considered for the award of Service Contracts by the Authority and the Beneficiary during the Term.
- A7.2 The Authority and/or the Beneficiary may at their absolute discretion and from time-to-time order Services from the Provider during the Term in accordance with this clause A7 and the Call-off Procedure set out in Appendix B.
- A7.3 The Provider acknowledges that, in entering this PDPS Contract, no form of exclusivity or volume guarantee has been granted by the Authority or the Beneficiary for the Services and that the Authority and the Beneficiary are at all times entitled to enter other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.
- A7.4 If the Authority or the Beneficiary decide to source Services through this PDPS Contract, then either may do so:
- a) without re-opening competition by direct award as set out in Appendix B section 2 and clauses A7.6 to A7.9 (inclusive); or
  - b) conduct a mini competition of the PDPS Providers on the List to determine the most appropriate provider following the procedure set out in Appendix B section 4 and clauses A7.10 to A7.13 (inclusive).
- A7.5 For the avoidance of doubt, and without prejudice to any other rights or remedies available to the Authority and/or the Beneficiary, the parties acknowledge and agree that the Authority and the Beneficiary shall each have the right in their absolute discretion to review any Service Contract placed (and the associated Services and Charges) at any point during the term of the Service Contract for the purposes of assessing value for money and price competitiveness.



## **DIRECT AWARD**

- A7.6 The Authority or the Beneficiary may award a Service Contract without re-opening competition by:
- (a) sending a Request for Services to the PDPS Provider following the criteria set out in Appendix B section 2;
  - (b) if the PDPS Provider is not able to provide the Services, send a Request for Services to the PDPS Provider ranked next appropriate Provider (assessed in accordance with the criteria set out in Appendix B section 2);
  - (c) repeat the process set out in Clause A7.6 (b) until the Request for Services is fulfilled or there are no further PDPS Providers suitable to fulfil it.

- A7.7 Following receipt of a Request for Services, the Provider shall promptly and in any event within 24 hours acknowledge receipt of the Request for Services and within 5 working days will either:
- (a) notify the Authority or Beneficiary (as applicable) in writing and with detailed reasons that it is unable to fulfil the Request for Services; or
  - (b) notify the Authority or Beneficiary (as applicable) that it is able to fulfil the Request for Services by signing and returning the relevant Pan Lancashire Referral Form.

- A7.8 If the Provider:
- (a) notifies the Authority or Beneficiary (as applicable) that it is unable to fulfil a Request for Services; or
  - (b) the time limit referred to in clause A7.7 has expired;

then the Request for Services shall lapse and the Authority or Beneficiary may then send that Request for Services to another PDPS Provider in accordance with the procedure set out in Clause A7.6(c).

- A7.9 If the Provider modifies or imposes conditions on the fulfilment of a Request for Services, then the Authority or Beneficiary (as applicable) may either:
- (a) reissue the Request for Services incorporating the modifications or conditions; or
  - (b) treat the Provider's response as notification of its inability to fulfil the Request for Services and the provisions of Clause A7.8 shall apply.

## **MINI COMPETITION**

- A7.10 The Authority or Beneficiary ordering Services through a mini-competition under the PDPS shall:
- (a) invite responses to a Request for Services from eligible PDPS Providers by conducting a mini-competition for Services in accordance with Appendix B section 4, within the timescales set out in any invitation to respond;
  - (b) apply the Competed Services Award Criteria to any compliant responses submitted through the mini-competition; and
  - (c) subject to clause A7.13 award a Service Contract with the successful PDPS Provider.

- A7.11 The Provider agrees that all responses submitted by the Provider in relation to a mini-competition held pursuant to this clause A7 shall remain open for acceptance for or up to 60 days (or such other period specified in the invitation to respond issued by the Authority or Beneficiary in accordance with clause A7.11 and Appendix B section 4).

- A7.12 Notwithstanding the fact that the Authority or Beneficiary has followed the procedure set out above for a mini competition, the Authority or Beneficiary may cancel, postpone, delay or end the procedure without awarding a Service Contract. Nothing in this PDPS Contract shall oblige the Authority or Beneficiary to award a Service Contract.



- A7.13 If the successful PDPS Provider is not able to provide the Services, then the Authority or Beneficiary (as applicable) may award the Service Contract to the PDPS Provider ranked next highest in the mini competition.

#### **RESPONSIBILITY FOR AWARDS**

- A7.14 The Provider acknowledges that the Authority and the Beneficiary are independently responsible for the conduct of its award of Service Contracts under the PDPS Contract and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- (a) the conduct of the Beneficiary in relation to the PDPS Agreement; or
  - (b) the performance or non-performance of any Service Contracts between the Provider and the Beneficiary entered into pursuant to the PDPS Contract.
- A7.15 The Parties acknowledge and agree that the issue of a Request for Services is an "invitation to treat" by the Authority or Beneficiary issuing it. Accordingly, the Provider shall sign and return the Call Off Order Form (incorporating the Pan Lancashire Referral Forms) which shall constitute its offer to the Authority or Beneficiary (as applicable).

#### **A8 SERVICE PRE-REQUISITES AND CQC (OR EQUIVALENT) REGULATORY REQUIREMENTS**

- A8.1 The Provider shall be responsible for obtaining all Consents required in relation to the performance of this PDPS Contract and any Service Contract, including without limitation the Required CQC Standard.
- A8.2 The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this PDPS Contract and/or any Service Contract(s), including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. The following levels of insurance must be provided:
- public liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in relation to any one claim arising out of each and every event without limit on the number of claims in any one year or other period and such insurance shall expressly by its terms confer its benefits on the Authority;
  - employer's liability insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS);
  - professional indemnity insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year, to include medical malpractice and clinical negligence cover with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year, and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- A8.3 The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.
- A8.4 The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this PDPS Contract or any Service Contract(s).



- A8.5 The Provider shall maintain at all times throughout the Term of this PDPS Contract and the term of the Service Contract(s) registration with the Care Quality Commission (CQC), the Care Inspectorate for Scotland (CI) or Healthcare Inspectorate Wales (HIW) (or equivalent successor body) to the Required CQC/CI/HIW Standard for all Regulated Activity which they carry out within the scope of this PDPS Contract. Failure to comply with this requirement will amount to a Material Breach and, without prejudice to any other rights available to it, the Authority may terminate this PDPS Contract and/or any Service Contract(s) pursuant to the provisions of clause A15.2.
- A8.6 Where the Provider is engaged as part of a consortium, all consortium members (including sub-contractors) subject to CQC regulation, including the Provider, must maintain the Required CQC Standard (or equivalent Regulatory Body in the United Kingdom, where applicable) throughout the Term of this PDPS Contract and the term of any Service Contract.
- A8.7 Comply with any prospective change to the Care Quality Commission Regime (or its equivalent) and/or other Regulatory Body mandatory requirements.

## **A9 PRICES FOR SERVICES**

- A9.1 The Charges for provision of Services under any Service Contract shall be in accordance with the prices listed in Appendix E (as may be adjusted annually in accordance with the provisions of Appendix E).

## **A10 RECORDS AND AUDIT ACCESS**

- A10.1 The Provider shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this PDPS Contract (or as long a period as may otherwise be agreed between the parties in writing), full and accurate records and accounts of the operation of this PDPS Contract including the Services provided under it, the Service Contracts entered into with the Authority and/or Beneficiary and the amounts paid by the Authority and/or Beneficiary.
- A10.2 The Provider shall keep the records and accounts referred to in clause 0 above in accordance with good accountancy practice.
- A10.3 The Provider shall afford the Authority (or the Authority's external auditors) such access to such records and accounts as they may require from time to time.
- A10.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of six years after expiry of the Term to the Authority (or Beneficiary) and the Authority's external auditors.
- A10.5 The Authority shall use reasonable endeavours to ensure that the conduct of each audit carried out pursuant to this clause A10 does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Service Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Authority's external auditor is outside of the control of the Authority.
- A10.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 0, unless the audit reveals a Default or a material breach of the PDPS Contract by the Provider in which case the Provider shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

## **A11 CONFIDENTIALITY**



- A11.1 Other than as allowed in this PDPS Contract, Confidential Information is owned by the Party that discloses it (the “Disclosing Party”) and the Party that receives it (the “Receiving Party”) has no right to use it.
- A11.2 Subject to Clauses 0 and A11.4, the Receiving Party agrees:
- (a) to use the Disclosing Party’s Confidential Information only in connection with the Receiving Party’s performance under this PDPS Contract;
  - (b) not to disclose the Disclosing Party’s Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
  - (c) to maintain the confidentiality of the Disclosing Party’s Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- A11.4 The Receiving Party may disclose the Disclosing Party’s Confidential Information:
- (a) in connection with any dispute resolution under clause A18 (Dispute Resolution);
  - (b) in connection with any litigation between the Parties;
  - (c) to comply with the Law;
  - (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party’s duty set out in clause A11.2;
  - (e) to comply with a Regulatory Body’s request.
- A11.5 The obligations in clause A11.1 and clause A11.2 will not apply to any Confidential Information which:
- (a) is in or comes into the public domain other than by breach of this PDPS Contract;
  - (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
  - (c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- A11.6 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause A11.
- A11.7 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause A11 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause A11.
- A11.8 This clause A11 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- A11.9 The obligations in clause A11.1 and clause A11.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.



## **A12 DATA PROTECTION**

A12.1 The Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause A12 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

### **A12.2 DATA PROTECTION (DATA CONTROLLERS IN COMMON)**

A12.3 **Shared Personal Data.** This clause sets out the framework for the sharing of Personal Data between the Parties as Controllers. Each Party acknowledges that one Party (referred to in this clause as the Data Discloser) will regularly disclose to the other Party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

A12.4 **Effect of non-compliance with Data Protection Legislation.** Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation under this Contract, and any material breach of the Data Protection Legislation in relation to this Contract by one Party shall, if not remedied within thirty (30) days of written notice from the other Party, give grounds to the other party to terminate the Contract with immediate effect.

A12.5 **Particular Obligations relating to Data Sharing.** Each Party shall be individually and separately responsible for complying with the obligations that apply to it as Data Controller under any applicable Data Protection Laws in relation to the Personal Data Processed under this Contract.

A12.6 Each Party is a Controller of the Personal Data it discloses or makes available to the other Party and will process that Personal Data as separate and independent Data Controllers for the Agreed Purposes. The parties process the Personal Data as Data Controllers in common and **not** jointly as joint Data Controllers.

A12.7 Each Party as Data Controller shall:

- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- (b) give full information to any data subject whose Personal Data may be processed under the Contract and of the nature of such processing. This includes giving notice that, on the termination of the Contract, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- (g) not transfer any Personal Data received from the Data Discloser outside the UK unless the transferor:
- (h) complies with the provisions of Articles 26 of the UKGDPR (in the event the third party is a joint controller); and
- (i) ensures that:



- a. the transfer is to a country approved by the Information Commissioner as providing adequate protection pursuant to Article 45 of the UK GDPR; or
- b. there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or
- c. (Binding corporate rules are in place or
- d. one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer.

A12.8 **Mutual assistance.** Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation in relation to this Contract. In particular, each Party shall:

- (a) consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other Party about the receipt of any data subject access request. Data subjects have a right of access and a right of correction in respect of their Personal Data which the Provider holds about them, in accordance with Data Protection Legislation and the Provider shall be the contact point for data subjects wishing to exercise their rights in respect of personal data held about them in connection with the delivery of the Services;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other Party wherever reasonable;
- (e) assist the other Party, at the cost of the other Party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of the Contract unless required by Law to store the Personal Data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
- (i) maintain complete and accurate records and information in relation to this Contract to demonstrate its compliance with this clause and allow for audits by the other Party or the other Party's designated auditor; and
- (j) provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the Data Protection Legislation.

A12.9 Each Party shall be liable for all liabilities, damages, direct losses, fines, all interest, penalties, reasonable legal costs, and expenses incurred by the other Party arising from, or in connection with, any breach for which the relevant Party is entitled to bring a claim against the other Party under this clause A12.9. Neither Party shall be liable to the other Party except insofar as the liabilities, damages, direct losses, fines, interest, penalties, reasonable legal costs, and expenses are directly caused (or directly arise) from the negligence or breach of clause A12.9 by that Party.

A12.10 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Business Days' notice to the other Data



Controller in common amend this PDPS Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **A13 FREEDOM OF INFORMATION AND TRANSPARENCY**

A13.1 The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

A13.2 If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly, the Provider agrees:

- (a) that this PDPS Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this PDPS Contract are subject to the obligations and commitments of the Authority under the FOIA;
- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
- (c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
- (d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this PDPS Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
- (e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA and providing copies of all information requested by the Authority within five (5) Business Days of such request and without charge.

A13.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this PDPS Contract is not Confidential Information.

A13.4 Notwithstanding any other provision of this PDPS Contract, the Provider hereby consents to the publication of this PDPS Contract in its entirety including from time to time agreed changes to this PDPS Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

A13.5 In preparing a copy of this PDPS Contract for publication pursuant to clause A13.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.

A13.6 The Provider must assist and co-operate with the Authority to enable the Authority to publish this PDPS Contract.



A13.7 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this PDPS Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

#### **A14 PUBLICITY**

A14.1 Without prejudice to clause A13 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this PDPS Contract in any way.

A14.2 The Provider must take all reasonable steps to ensure the observance of the provisions of clause A14.1 by all its staff, servants, agents, consultants and sub-contractors.

#### **A15 TERMINATION**

A15.1 Either the Authority or the Provider may voluntarily terminate this PDPS Contract by giving the other party not less than 6 months' written notice at any time after the Commencement Date. Following termination under this clause A15 the Provider shall no longer be eligible for the award of Service Contracts.

A15.2 The Authority may terminate this PDPS Contract with immediate effect by written notice to the Provider if:

- (a) the Provider is using Staff that are not appropriately experienced, certified, qualified and trained in the delivery of the types of Services to which this PDPS Contract relates;
- (b) the Provider and/or its Staff, agents, subcontractor, or personnel employed by the Provider in connection with the PDPS Contract have failed to comply with any Laws;
- (c) the Provider is in persistent breach of its obligations under this PDPS Contract or any Service Contract;
- (d) the Provider:
  - (i) fails to obtain any Consent;
  - (ii) loses any Consent; or
  - (iii) has any Consent varied or restricted,

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

- (e) the Provider has breached the terms of clause A19 (Prohibited Acts);
- (f) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
- (g) the Provider fails to retain the Required CQC Standard or other Regulatory Body Standard;



- (h) either the Authority or the Beneficiary terminate a Service Contract awarded to the Provider under this PDPS Contract as a consequence of a Default by the Provider;
- (i) any warranty given in **Error! Bookmark not defined.**A6 of this PDPS Contract is found to be untrue or misleading;
- (j) the Provider commits a Material Breach of any term of this PDPS Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) Business Days after being notified in writing to do so;
- (k) the Provider materially breaches its obligations in clause A12 (Data Protection);
- (l) the Provider breaches the terms of clause A20 (Assignment and Sub-contracting);
- (m) a resolution is passed, or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order, or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- (n) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- (o) the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Regulations or subsequent legislation; or
- (p) the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Regulations including as a result of the application of regulation 57(2) and should therefore have been excluded from the procurement procedure.

## **A16       SUSPENSION OF PROVIDER'S APPOINTMENT**

A16.1 Without prejudice to the Authority's rights to terminate the PDPS Contract in **Error! Bookmark not defined.**A15, if a right to terminate this PDPS Contract arises in accordance with **Error! Bookmark not defined.**A15, the Authority may suspend the Provider's right to be awarded Service Contracts under this PDPS Contract by giving notice in writing to the Provider. If the Authority provides notice to the Provider in accordance with this **Error! Bookmark not defined.**A16, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Authority in writing from time to time.

## **A17       CONSEQUENCES OF TERMINATION**

A17.1 Notwithstanding the service of a notice to terminate the PDPS Contract, the Provider shall continue to fulfil its obligations under the PDPS Contract until the date of expiry or termination of the PDPS Contract or such other date as required under this **Error! Bookmark not defined.****Error! Reference source not found.**

A17.2 Unless expressly stated to the contrary, the service of a notice to terminate the PDPS Contract shall not operate as a notice to terminate any Service Contract made under the PDPS Contract. Termination or expiry of the PDPS Contract shall not cause any Service Contracts to terminate automatically. For the avoidance of doubt, all Service Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.



- A17.3 Expiry or termination of this PDPS Contract 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.
- A17.4 In the event of termination or expiry of this PDPS Contract, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.
- A17.5 The provisions of clause A3.8 (*Conditions Precedent*) and clauses B10 (*Staff*), B11 (*Charges and Payment*), B14 (*Serious Reportable Incidents*), B16 (*Service User Health Records*), B17 (*Information*), B26 (*Assignment and Sub-contracting*), B27 (*Audit and Inspection*), B36 (*Consequence of Expiry or Termination*), B39 (*Confidentiality*) and B42 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.
- A17.6 In the event of any termination of the PDPS Contract, and without prejudice to any other rights or remedies (including the right to recover damages) that may accrue to the benefit of the Authority under this PDPS Contract or otherwise, the Authority shall be entitled to obtain a refund of any monies paid in respect of any Services which have not been supplied by the Provider in accordance with the terms of the PDPS Contract.
- A17.7 For the avoidance of doubt, termination by the Authority in relation to one Provider in accordance with clause A15 shall not have the effect of automatically terminating agreements in place with other providers.

## **A18 DISPUTE RESOLUTION**

- A18.1 If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix M (Dispute Resolution).

## **A19 PROHIBITED ACTS**

- A19.1 Neither Party shall do any of the following:
- (a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this PDPS Contract, any Service Contract(s) or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this PDPS Contract, any Service Contract(s) or any other contract with the other Party; and
  - (b) in connection with this PDPS Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,
- (together "Prohibited Acts").
- A19.2 If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this PDPS Contract or any Service Contract(s), the non-defaulting Party shall be entitled:
- (a) to exercise its right to terminate under clause A15 (Termination) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
  - (b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and



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

A19.3 Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

A19.4 The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within five (5) Business Days of the Authority requesting it and enforced by the Provider where applicable.

A19.5 Should the Provider become aware of or suspect any breach of this clause A19, it will notify the Authority immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.

## **A20 ASSIGNMENT AND SUB-CONTRACTING**

A20.1 The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this PDPS Contract without the Authority in writing:

(a) consenting to the appointment of the Sub-contractor; and

(b) approving the Sub-contract arrangements which shall include the addition of any of the clauses in this PDPS Contract to the Sub-contract as the Authority may reasonably require.

A20.2 The Authority's consent to sub-contracting under clause A20.1 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this PDPS 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.

A20.3 Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this PDPS Contract to the extent practicable.

A20.4 The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this PDPS Contract without the consent of the Provider.

## **A21 VARIATIONS TO PDPS CONTRACT**

A21.1 Any variations to the PDPS Contract must be made only in accordance with the PDPS Contract Variation Procedure set out in Appendix T.

## **A22 THIRD PARTY RIGHTS**

A22.1 Save as expressly stated herein, no term of this PDPS Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this PDPS Contract.

## **A23 CAPACITY**



A23.1 Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this PDPS Contract, the obligations of the Authority under this PDPS Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this PDPS Contract shall operate as an obligation upon the Authority or in any way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability on the part of the Authority under this PDPS Contract (howsoever arising) in any capacity other than as contracting counterparty.

A24.2 At all times during the PDPS Term the Provider shall be an independent service provider and nothing in the PDPS Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the PDPS Contract.

#### **A24 SEVERABILITY**

A24.1 If any provision or part of any provision of this PDPS Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this PDPS Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this PDPS Contract.

#### **A25 WAIVER**

A25.1 Any relaxation or delay by either Party in exercising any right under this PDPS Contract will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

#### **A26 EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY**

A26.1 Nothing in this PDPS Contract creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Authority and the Provider.

#### **A27 ENTIRE CONTRACT**

A27.1 This PDPS Contract, the appendices and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

A27.2 Each Party acknowledges that in entering into this PDPS Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this PDPS Contract.

A27.3 Nothing in this clause shall limit or exclude any liability for Fraud or fraudulent misrepresentation.

#### **A28 COUNTERPARTS**

A28.1 This PDPS Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

#### **A29 GOVERNING LAW AND JURISDICTION**

A29.1 This Contract will be governed by and interpreted in accordance with English Law.



A29.2 Subject to the provisions of clause A18 (Dispute Resolution), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this PDPS Contract.

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

**SIGNED by Dr. Sakthi Karunanithi  
for and on behalf of  
the AUTHORITY**

.....  
**Signature**

Director of Public Health and Wellbeing  
**Title**

.....  
**Date**

**SIGNED by [Insert Authorised  
Signatory's Name]  
for and on behalf of  
the PROVIDER**

.....  
**Signature**

.....  
**Title**

.....  
**Date**

**OR**

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

.....  
[COMMON SEAL]

.....  
**Signature of Authorised signatory**

.....  
**Signature of Authorised signatory**

**[Please delete as appropriate – mechanism for execution will be subject to the Authority's constitution and Scheme of Delegation]**



**SIGNED by [Insert Authorised  
Signatory's Name]  
for and on behalf of  
the PROVIDER**

.....  
**Signature**

.....  
**Title**

.....  
**Date**



## **SECTION B: CALL-OFF TERMS AND CONDITIONS – REHABILITATION SERVICES**

### **B1 CONTRACT**

B1.1 This Service Contract is comprised of:

- (a) the Pan Lancashire Rehabilitation Referral Form;
- (b) these Call-Off Terms and Conditions (Section B) and its appendices; and
- (c) the Special Terms and Conditions (the 'Special Conditions') in (Section C), as completed and agreed by the Parties and as varied from time to time in accordance with clause B25 (Variations) of these Call-Off Terms and Conditions.

### **B2 INTERPRETATION**

B2.1 In this Service Contract references to "Party" and "Parties" shall mean as follows:

- (a) the Authority and/or the Provider, where a Service Contract has been entered into between the Authority and the Provider pursuant to clause A7 of the PDPS Contract; or
- (b) the Beneficiary and/or the Provider, where a Service Contract has been entered into between the Beneficiary and the Provider pursuant to clause A7 of the PDPS Contract.

B2.2 Where a Service Contract has been entered into between the Beneficiary and the Provider pursuant to clause A7 of the PDPS Contract, all references to the "Authority" within this Section B Call-Off Terms and Conditions and Section C the Special Conditions shall be interpreted and construed as references to the Beneficiary.

B2.3 This Service Contract shall be interpreted in accordance with Appendix Q (*Definitions and Interpretation*) save as expressly provided for in clauses B2.1 and B2.2 or unless the context requires otherwise.

B2.4 In the event of and only to the extent of any conflict between the Pan Lancashire Rehabilitation Referral Form, the clauses of this Service Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Pan Lancashire Rehabilitation Referral Form;
- (b) clauses and appendices of the Service Contract (except Appendix O);
- (c) the Provider's Application;
- (d) any other document referred to in the Service Contract.

### **B3 CONTRACT PERIOD**

B3.1 The Service Contract shall take effect on the Service Commencement Date and shall expire automatically on the date set out in the Pan Lancashire Rehabilitation Referral Form unless it is otherwise terminated in accordance with the provisions of the Service Contract.

### **B4 SERVICES**

B4.1 The Provider shall provide the Services in accordance with the Service Specification(s) in Appendix A (Service Specifications), including any service limitations set out in them, and in accordance with the provisions of this Service Contract.

### **B5 WITHHOLDING AND/OR DISCONTINUATION OF SERVICE**

B5.1 Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:



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

**B5.2** If the Provider proposes not to provide or to stop providing a Service to any Service User under clause 0:

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

PROVIDED THAT nothing in this clause 0 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

**B5.3** The Provider shall on request, make available to the Authority copies of any patient guide or other written policy, procedure or protocol. The Provider shall promptly notify the Authority of any material changes to such guides, policies, procedures and protocols and shall make any changes to such guides, policies, procedures and protocols reasonably requested by the Authority.

## **B6 SERVICE AND QUALITY OUTCOMES INDICATORS**

**B6.1** The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Authority in writing:

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



- (f) respond to any reports and recommendations made by Local HealthWatch; and
- (g) comply with the Quality Outcomes Indicators set out in Appendix C (Quality Outcomes Indicators).
- (h) meet the requirements of the Care Quality Commission (CQC), Essential Standards of Quality and Safety - Outcomes 8 to ensure it has appropriate arrangements for cleanliness and infection control in accordance with the Health and Social Care Act 2008: Code of Practice on the Prevention and Control of Infections and Related Guidance (DH 2015) last updates on 13 December 2020) and the National Institute of Health and Care Excellence (NICE): Prevention and control of healthcare associated infections – Quality Improvement Guide (NICE 2011).
- (i) observe all current health and safety legislation in the delivery of its services.

## **B7 SERVICE USER INVOLVEMENT**

- B7.1 The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.
- B7.2 As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide evidence to the Authority of the involvement of Service Users, Carers and Staff in the development of Services.
- B7.3 The Provider must carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Authority in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in Appendix D (Service User, Carer and Staff Surveys) or as otherwise agreed between the Parties in writing from time to time.
- B7.4 The Provider must review and provide a written report to the Authority on the results of each survey carried out under clause 0 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Authority, the Provider must publish the outcomes and actions taken in relation to such surveys.

## **B8 EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**

- B8.1 The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- B8.2 The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- B8.3 In performing this Service Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;



- (b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,
- (d) and for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.

B8.4 As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide the Authority with a plan detailing how it will comply with its obligations under clause 0.

B8.5 The Provider must provide to the Authority as soon as reasonably practicable, any information that the Authority reasonably requires to:

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

## **B9 MANAGING ACTIVITY**

B9.1 The Provider must manage Activity in accordance with any activity planning and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services.

## **B10 STAFF**

B10.1 At all times, the Provider must ensure that:

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

B10.2 If requested by the Authority, the Provider shall as soon as practicable and by no later than ten (10) Business Days following receipt of that request, provide the Authority with evidence of the Provider's compliance with clause B10.1.

B10.3 The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:

- (a) proper and sufficient continuous professional and personal development, training, instruction and supervision; and



- (b) 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.

- B10.4 Where applicable under section 1(F)(1) of the NHS Act 2006, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.
- B10.5 The Provider must carry out Staff surveys in relation to the Services at intervals and in the form set out in Appendix D (Service User, Carer and Staff Surveys) or as otherwise agreed in writing from time to time.
- B10.6 Subject to clause 0, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
  - (a) the Employment Checks; and
  - (b) such other checks as required by the DBS.
- B10.7 Subject to clause 0, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the written agreement of the Authority.
- B10.8 Where clause 0 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
  - (a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
  - (b) 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
  - (c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
  - (d) any other reasonable requirement of the Authority.

## **B11 CHARGES AND PAYMENT**

- B11.1 Subject to any provision of this Service Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Service Contract, the Authority shall pay the Provider the Charges.
- B11.2 The Provider shall receive an automated payment of the Charges four weekly in arrears basis via Controcc as further set out in Appendix E.

### **Budget Setting Process**



The Parties agree that as part of its budget setting process, the Authority's Cabinet may meet each year to agree the annual uplift that apply to the contracts its commissions and this uplift (to be agreed at the time by the Authority's Cabinet) may apply to the Charges each financial year.

- B11.3 The Charges are stated exclusive of VAT, which shall if lawfully due be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- B11.4 In its performance of this Service 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 Service Contract, the Law and/or Guidance).
- B11.5 If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause 0:
- a. the contesting Party shall within five (5) Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
  - b. any uncontested amount shall be paid in accordance with this Service Contract.
- B11.6 If a Party contests a payment under clause 06 and the Parties have not resolved the matter within twenty ( 20) Business Days of the date of notification under clause 05, the contesting Party may refer the matter to dispute resolution under clause 0 and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B11.2.
- B11.7 Subject to any express provision of this Service Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Service Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B11.8 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 Service Contract or any other agreement between the Parties.
- B11.9 The Provider shall operate an Open Book Policy on pricing. All cost information is to be openly shared at any time with the Authority to ensure that the Charges paid with the Authority under this Service Contract are fair and reasonable. As and when requested by the Authority, the Provider will disclose its own suppliers'/manufacturers' pricing information and a summary of the Provider's on-costs which result in the Charges payable by the Authority.
- B11.10 As a result of the Open Book Policy the Authority can request that the Provider enters into negotiations to reduce the Charges. The Provider will not unreasonably refuse to enter into negotiations or implement justified variances.

### **Annual Price Uplift**

- B11.11 At the Sole discretion of the Authority and subject to funding available to the Authority the Provider will receive an annual Charge Adjustment which shall be capped to include the actual increase in cost to the Provider limited to a maximum percentage increase in such cost equivalent to the percentage increase in the index for the corresponding item for the same period specified in the Consumer Price Indices (CPI) available from the Office for National Statistics:



B11.11.1 Inflation shall be measured as an average of three months of the Consumer Price Index (CPI) prior to the date of the Authority's Offer Letter to the Providers. The Authority will use the published CPI to calculate the Charge Adjustment as follows:

1. Using an average of the previous 12 months published CPI
2. Using an average of the previous 6 months published CPI
3. Using the previous month published CPI

B11.11.2 The Authority reserves the right to amend the way it uses the published CPI by the Office of National Statistics and to make any adjustment or adjustments it deems necessary.

B11.12 Increases in Charges once agreed between the Authority and Provider will be implemented on the first Monday of the appropriate calendar month (the 'Price Amendment Date'). No increase shall be permitted in respect of items which have been delivered or which should have been delivered prior to the Price Amendment Date but shall be limited to items which are not due for delivery until after the Price Amendment Date and to orders placed on or after the Price Amendment Date.

B11.13 Reductions in Charges available for any reason shall be accepted and implemented for the Authority immediately outside of any scheduled price review.

B11.14 The Authority agrees to consider requests from the Provider for a price review outside of the contractual review period only in the event of exceptional market price increases which are caused by global market circumstances wholly outside of the Provider's control and manageability. Agreed amendments to the Charges under this clause B11 shall be implemented not less than 28 days following notification in writing from the Authority of the agreed amendment to the Charges.

B11.15 **NOT IN USE**

B11.16 **NOT IN USE**

## **B12 SERVICE IMPROVEMENTS AND BEST VALUE DUTY**

B12.1 The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.

B12.2 In addition to the Provider's obligations under clause 0, where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.

B12.3 During the term of this Service Contract at the reasonable request of the Authority, the Provider must:

- (a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;
- (b) implement such improvements; and



(c) where practicable following implementation of such improvements decrease the price to be paid by the Authority for the Services.

B12.4 If requested by the Authority, the Provider must identify the improvements that have taken place in accordance with clause 0, by reference to any reasonable measurable criteria notified to the Provider by the Authority.

### **B13 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

B13.1 The Provider shall adopt Safeguarding Policies and such policies shall comply with the Authority's safeguarding policy as amended from time to time and may be appended at Appendix F (Safeguarding Policies).

B13.2 At the reasonable written request of the Authority and by no later than ten (10) Business Days following receipt of such request, the Provider must provide evidence to the Authority that it is addressing any safeguarding concerns.

B13.3 If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

### **B14 SERIOUS REPORTABLE INCIDENTS**

B14.1 If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Reportable Incidents to any Regulatory Body as applicable, in accordance with the Law.

B14.2 If the Provider gives a notification to the CQC or any other Regulatory Body under clause 0 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within five (5) Business Days or within the timescale set out in Appendix G Serious Reportable Incidents.

B14.3 The Provider shall immediately notify and report to the Authority in the event of any incident occurring in the performance of its obligations under this Service Contract where that incident is a Serious Reportable Incident and shall provide all reasonable assistance to the Authority in investigating and handling the incident where it arises in the course of the provision of the Services.

B14.4 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Reportable Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix G Serious Reportable Incidents.

B14.5 Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause 0 and Appendix G Serious Reportable Incidents.

### **B15 CONSENT**

B15.1 The Provider must publish, maintain and operate a Service User consent policy which complies with Good Clinical Practice and the Law.

B15.2 The Provider shall:

(a) ensure that the consent of Service Users is obtained wherever necessary in accordance with the Authority's consent policy, which is to be agreed between the Parties.



- (b) not, otherwise than in accordance with the Authority's consent policy, collect, keep, retain, sell, donate or preserve any part or parts of the human body or by-products thereof which have been removed from any Service User nor permit any third party to collect, keep, retain, sell or donate any such part or parts.

## **B16 SERVICE USER HEALTH RECORDS**

B16.1 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.

B16.2 The Provider must:

- (a) use Service User health records solely for the execution of the Provider's obligations under this Service Contract; and
- (b) give each Service User full and accurate information regarding his/her treatment and Services received.

B16.3 The Provider must at all times during the term of this Service Contract have a Caldicott Guardian and shall notify the Authority of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this Service Contract, it shall promptly notify the Authority of the identity and contact details of such replacements.

B16.4 Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.

## **B17 INFORMATION**

B17.1 The Provider must provide the Authority the information specified in Appendix H (Information Provision) to measure the quality, quantity or otherwise of the Services.

B17.2 The Provider must deliver the information required under clause 0 in the format, manner, frequency and timescales specified in Appendix H (Information Provision) and must ensure that the information is accurate and complete.

B17.3 If the Provider fails to comply with any of the obligations in this clause 0 and/or Appendix H (Information Provision), the Authority may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Appendix H (Information Provision).

B17.4 In addition to the information required under clause 0, the Authority may request from the Provider any other information it reasonably requires in relation to this Service Contract and the Provider must deliver such requested information in a timely manner.

## **B18 EQUIPMENT**

B18.1 The Provider must provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services.

## **B19 TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS**



B19.1 The Provider must comply with any Transfer of and Discharge from Care Protocols agreed by the Parties set out in Appendix I (Transfer of and Discharge from Care Protocols).

## **B20 COMPLAINTS**

B20.1 The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services.

B20.2 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Service Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Service Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in clause 0 B31 (Default and Failure to Supply).

## **B21 SERVICE REVIEW**

B21.1 The Provider must each quarter of this Service Contract deliver to the Authority a Service Quality Performance Report against the factors set out in Appendix J (Service Quality Performance Report).

B21.2 The Provider must submit each Service Quality Performance Report in the form and manner specified in Appendix J (Service Quality Performance Report).

## **B22 REVIEW MEETINGS**

B22.1 The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Service Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix K (*Details of Review Meetings*).

B22.2 Notwithstanding clause 0, if either the Authority or the Provider:

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

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

## **B23 CO-OPERATION**

B23.1 The Parties must at all times act in good faith towards each other.

B23.2 The Provider must co-operate fully and liaise appropriately with:

- (a) the Authority;
- (b) any third party provider who the Service User may be transferred to or from the Provider;



- (c) any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and
- (d) primary, secondary and social care services,

in order to:

- (i) ensure that a consistently high standard of care for the Service User is at all times maintained;
- (ii) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
- (iii) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Authority's or members of the public. For further information about the Authority's policy please contact the Health & Safety Team at [Health.SafetyCYP@lancashire.gov.uk](mailto:Health.SafetyCYP@lancashire.gov.uk).

## **B24 WARRANTIES AND REPRESENTATIONS**

B24.1 The Provider warrants and represents that:

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

B24.2 The Provider warrants that at all times for the purposes of this Service Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding



Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

B24.3 The Authority warrants and represents that:

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

B24.4 The warranties set out in this clause 0 are given on the Service Commencement Date and repeated on every day during the term of this Service Contract.

## **B25 VARIATIONS**

B25.1 This Service Contract may not be amended or varied other than in accordance with this clause B25.

B25.2 Either Party may from time to time during the term of this Service Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

B25.3 If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than twenty (20) Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Service Contract.

B25.4 No Variation to this Service Contract will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or his nominee) in accordance with clause 0 (Notices). All agreed Variations shall form an addendum to this Service Contract and shall be recorded in Appendix L (Agreed Variations).

## **B26 ASSIGNMENT AND SUB-CONTRACTING**

B26.1 The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Service Contract without the Authority in writing:

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

B26.2 The Authority's consent to sub-contracting under clause 0 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Service 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.

B26.3 Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Service Contract to the extent practicable.

B26.4 The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Service Contract without the consent of the Provider.

## **B27 AUDIT AND INSPECTION**

B27.1 The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, the General Pharmaceutical Council, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.

B27.2 Subject to Law and notwithstanding clause 0, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.

B27.3 Within ten (10) Business Days of the Authority's reasonable request, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.

B27.4 The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.

B27.5 During any audit undertaken under clause 0 or 0, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:

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

B27.6 The Provider shall keep and maintain until six (6) years after the end of the Service Contract, or for as long a period as may be agreed between the Parties, full and accurate records of this Service Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Provider shall on request afford the Authority or the Authority's representatives (including the Authority's external auditors) such access to those records as may be requested by the Authority in connection with this Service Contract.

## **B28 INDEMNITIES**



B28.1 The Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Service Contract, or breach of its statutory duty or breach of an obligation under the DPA, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Service Contract or breach of statutory duty or breach of an obligation under the DPA by the Authority.

## **B29 LIMITATION OF LIABILITY**

B29.1 Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Service Contract

B29.2 Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Service Contract.

B29.3 Subject always to clause B29.5 the Provider's total aggregate liability:

- (a) in respect of the indemnities given by the Provider in clause C7.2 and clause C7.4 (TUPE) is unlimited;
- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Service Contract, shall in no event exceed 200% of the aggregate Charges paid or payable by the Authority to the Provider, whichever is the greater.

B29.4 Subject always to clause B29.5 the Authority's total aggregate liability:

- (a) in respect of the indemnities given by the Authority in clause C7.5 (TUPE) is unlimited;
- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract, shall in no event exceed 200% of the aggregate Charges paid or payable by the Authority to the Provider, whichever is the lower.

B29.5 Nothing in this Service Contract will exclude or limit the liability of either Party for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the Data Protection Legislation ;or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

## **B30 INSURANCE**

B30.1 The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. The following levels of insurance must be provided:

public liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in relation to any one claim arising out of each and every event without limit on the number of claims in any one year or other period and such insurance shall expressly by its terms confer its benefits on the Authority;

employer's liability insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS);



professional indemnity insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year to include medical malpractice and clinical negligence cover with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year, and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

- B30.2 The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.
- B30.3 The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Service Contract.

### **B31 DEFAULTS AND FAILURE TO SUPPLY**

- B31.1 In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of this Service Contract by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Service Contract including under clause 031, consult with the Provider and then do any of the following:
- (a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within ten (10) Business Days or such other period of time as the Authority may direct;
  - (b) without terminating this Service Contract, suspend the affected Service in accordance with the process set out in clause 0;
  - (c) without terminating the whole of this Service Contract, terminate this Service Contract in respect of the affected part of the Services only in accordance with clause 0 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.
- B31.2 If the Authority exercises any of its rights under clause B31.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

### **B32 CONTRACT MANAGEMENT**

- B32.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in Appendix C (Quality Outcomes Indicators) and the Provider fails to meet the Quality Outcomes Indicator, the Authority may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Authority may have under this clause 032.
- B32.2 The provisions of this clause 0 do not affect any other rights and obligations the Parties may have under this Service Contract.



B32.3 Clauses 0, 0, 0 and 0 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Authority.

#### **Contract Query**

B32.4 If the Authority has a Contract Query it may issue a Contract Query Notice to the Provider.

B32.5 If the Provider has a Contract Query it may issue a Contract Query Notice to the Authority.

#### **Excusing Notice**

B32.6 The Receiving Party may issue an Excusing Notice to the Issuing Party within five (5) Business Days of the date of the Contract Query Notice.

B32.7 If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within ten (10) Business Days following the date of the Contract Query Notice.

#### **Contract Management Meeting**

B32.8 Unless the Contract Query Notice has been withdrawn, the Authority and the Provider must meet to discuss the Contract Query and any related Excusing Notice within ten (10) Business Days following the date of the Contract Query Notice.

B32.9 At the Contract Management Meeting the Authority and the Provider must agree either:

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

B32.10 If a Joint Investigation is to be undertaken:

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

#### **Joint Investigation**

B32.11 On completion of a Joint Investigation, the Authority and the Provider must produce and agree a JI Report. The JI Report must include (without limitation) a recommendation to be considered at the next Review Meeting that either:

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

B32.12 Either the Authority or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Service Contract to consider a JI Report.

#### **Remedial Action Plan**

B32.13 Prior to the issue of a Remedial Action Plan where a Service Provider, its Unit or Specialist, is rated:



- (a) Inadequate; or
- (b) Requires Improvement; or
- (c) Receives a score of 1 by the appropriate relevant Regulatory Body

during the term of the Contract or any Service Agreement, or at any time the Provider must inform the Authority as soon as possible without any undue delay.

B32.14 If a Remedial Action Plan is to be implemented, the Authority and the Provider must agree the contents of the Remedial Action Plan within:

- (a) Five (5) Business Days following the Contract Management Meeting; or
- (b) Five (5) Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause 0.

B32.15 The Remedial Action Plan must set out:

- (a) milestones for performance to be remedied;
- (b) the date by which each milestone must be completed; and
- (c) subject to the maximum sums identified in clause 0, the consequences for failing to meet each milestone by the specified date.

B32.16 The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.

B32.17 The Authority and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.

B32.18 If following implementation of a Remedial Action Plan:

- (a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;
- (b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

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

B32.19 If the Authority and the Provider cannot agree a Remedial Action Plan within the relevant period specified in clause 0, they must jointly notify the Boards of Directors of both the Provider and the Authority.

B32.20 If, ten (10) Business Days after notifying the Boards of Directors, the Authority and the Provider still cannot agree a Remedial Action Plan, the Authority may withhold up to 2% of the monthly sums payable by it under clause B11 (Charges and Payment) for each further month the Remedial Action Plan is not agreed.

B32.21 The Authority must pay the Provider any sums withheld under clause 0 within ten (10) Business Days of receiving the Provider's agreement to the Remedial Action Plan. Unless clause 0 applies, those sums are to be paid without interest.

#### **Exception Reports**



B32.22 If a Party breaches a Remedial Action Plan and does not remedy the breach within five (5) Business Days of its occurrence, the Provider or the Authority (as the case may be) may issue a First Exception Report to that Party's chief executive and/or Board of Directors. If the Party in breach is the Provider, the Authority may withhold payment from the Provider in accordance with clause 0.

B32.23 If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Authority or the Provider (as the case may be) may issue a Second Exception Report to:

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

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

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

B32.24 If the Provider breaches a Remedial Action Plan:

- (a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority under clause B11 (Charges and Payment), from the date of issuing the First Exception Report and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority under clause B11 (Charges and Payment) in relation to each Remedial Action Plan;
- (b) The Authority must pay the Provider any sums withheld under clause B32.23(a) within ten (10) Business Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to clause 0, no interest will be payable on those sums.

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

B32.25 If the Provider is in breach of a Remedial Action Plan the Authority may, when issuing any Second Exception Report retain permanently any sums withheld under clause 0.

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

B32.26 If the Authority withholds sums under clause 0 or clause 0 or retain sums under clause 0, and within twenty (20) Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld or retained unjustifiably, the Authority must pay those sums to the Provider within ten (10) Business Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld or retained. If the Authority does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

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

B32.27 If the Provider does not agree a Remedial Action Plan:

- (a) within 6 months following the expiry of the relevant time period set out in clause 0; or



(b) before the Expiry Date or earlier termination of this Service Contract,

whichever is the earlier, the Authority may retain permanently any sums withheld under clause 0.

B32.28 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Service Contract, the Authority may retain permanently any sums withheld under clause B32.24.

### **B33 DISPUTE RESOLUTION**

B33.1 If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix M (Dispute Resolution), unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.

### **B34 SUSPENSION AND CONSEQUENCES OF SUSPENSION**

B34.1 A suspension event shall have occurred if:

- (a) the Authority reasonably considers that a breach by the Provider of any obligation under this Service Contract:
- (b) may create an immediate and serious threat to the health or safety of any Service User; or
- (c) may result in a material interruption in the provision of any one or more of the Services; or
- (d) clause 0 does not apply, but the Authority, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of a Service or Services; or
- (e) the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each a Suspension Event).

B34.2 Where a Suspension Event occurs the Authority:

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

B34.3 During the suspension of any Service under clause 0, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to clause 0 has been referred to dispute resolution under clause B33 (Dispute Resolution).

B34.4 During the suspension of any Service under clause 0, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:



- (a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause 0; and/or
  - (b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause 0.
- B34.5 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- B34.6 Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).
- B34.7 Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:
- (a) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
  - (b) at the cost of the Provider:
    - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
    - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B34.8 As part of its compliance with clause 0 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.
- B34.9 If it is determined, pursuant to clause B33 (Dispute Resolution), that the Authority acted unreasonably in suspending a Service, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B34.10 During any suspension of a Service the Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.
- B34.11 When the Authority becomes reasonably satisfied that the Provider is able to and will perform the suspended Service, or part of the Service (as applicable) to the required standard, it may require the Provider to restore the provision of the suspended Service or part of the Service (as applicable) by issuing a notice to the Provider (a "Restoration Notice").

## **B35 TERMINATION**

- B35.1 Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 6 months' written notice at any time after the Service Commencement Date.
- B35.2 Without affecting any other right or remedy available to it, the Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:



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

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

- (d) the Provider has breached the terms of clause B43 (Prohibited Acts);
- (e) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
- (f) the Provider materially breaches its obligations in clause 0 (Data Protection);
- (g) two or more Second Exception Reports are issued to the Provider under clause B32 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
- (h) the Provider breaches the terms of clause B26 (*Assignment and Sub-contracting*);
- (i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- (j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- (k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within thirty (30) Business Days following receipt of notice from the Authority identifying the breach;
- (l) a representation and/or warranty given by the Provider pursuant to Clause B24 (Warranties and Representations) is materially untrue or misleading;
- (m) the Provider breaches any of its obligations under Clause B30 (Insurance);
- (n) if the Authority reasonably believes any of the circumstances set out in Regulation 73(1) of the Public Contract Regulations 2015 or subsequent legislation apply.

**B35.3** Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure, and such event of Force Majeure persists for more than thirty (30) Business Days without the Parties agreeing alternative arrangements.

**B35.4** The Provider may terminate this Contract or any Service with immediate effect by written notice to the Authority if the Authority is in material breach of any obligation under this Contract



provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B35.4 if the Authority has failed to remedy such breach within thirty (30) Business Days of receipt of notice from the Provider to do so.

## **B36 CONSEQUENCE OF EXPIRY OR TERMINATION**

- B36.1 Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- B36.2 On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.
- B36.3 On the expiry or termination of this Contract or termination of any Service the Provider must cooperate fully with the Authority to migrate the Services in an orderly manner to the successor provider.
- B36.4 In the event of termination or expiry of this Contract, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.
- B36.5 If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B35.3, B35.4) or if the Authority terminates under clause B35.1 (Termination), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.
- B36.6 The provisions of clauses 010 (*Staff*), B11 (*Charges and Payment*), **Error! Reference source not found.**4 (*Serious Reportable Incidents*), 0 (*Service User Health Records*), B17 (*Information*), B26 (*Assignment and Sub-contracting*), B27 (*Audit and Inspection*), B36 (*Consequence of Expiry or Termination*), 0 (*Confidentiality*) and 0 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.
- B36.7 Where the Authority terminates this Contract pursuant to clause B35.1, the Authority's total liability to the Provider is limited to payment of Charges properly incurred by the Provider, and in accordance with this Contract, in providing the Services up to the date of termination.

## **B37 BUSINESS CONTINUITY**

- B37.1 The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.
- B37.2 The Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify the Authority as soon as reasonably practicable of its activation and in any event no later than five (5) Business Days from the date of such activation.



## **B38 COUNTER-FRAUD AND SECURITY MANAGEMENT**

- B38.1 The Provider must put in place and maintain appropriate counter fraud and security management arrangements.
- B38.2 The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Authority.
- B38.3 The Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- B38.4 If the Provider or its Staff commits Fraud in relation to this or any other contract with the Authority, the Authority may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

## **B39 CONFIDENTIALITY**

- B39.1 Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.
- B39.2 Subject to Clauses B39.3 and B39.4, the Receiving Party agrees:
- (a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
  - (b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
  - (c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- B39.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:
- (a) in connection with any dispute resolution under clause B33 (Dispute Resolution);
  - (b) in connection with any litigation between the Parties;
  - (c) to comply with the Law;
  - (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B39.2;
  - (e) to comply with a regulatory bodies request.
- B39.4 The obligations in clause B39.1 and clause B39.2 will not apply to any Confidential Information which:
- (a) is in or comes into the public domain other than by breach of this Contract;
  - (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
  - (c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B39.5 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B39.



B39.6 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B39 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B39.

B39.7 This clause B39 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

B39.8 The obligations in clause B39.1 and clause B39.2(b) shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

#### **B40 DATA PROTECTION – NOT USED**

#### **B41 DATA PROTECTION - DATA CONTROLLERS IN COMMON**

B41.1 **Shared Personal Data.** This clause sets out the framework for the sharing of Personal Data between the Parties as Controllers. Each Party acknowledges that one Party (referred to in this clause as the Data Discloser) will regularly disclose to the other Party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

B41.2 **Effect of non-compliance with Data Protection Legislation.** Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation under this Contract, and any material breach of the Data Protection Legislation in relation to this Contract by one Party shall, if not remedied within thirty (30) days of written notice from the other Party, give grounds to the other party to terminate the Contract with immediate effect.

B41.3 **Particular Obligations relating to Data Sharing.** Each Party shall be individually and separately responsible for complying with the obligations that apply to it as Data Controller under any applicable Data Protection Laws in relation to the Personal Data processed under this Contract.

B41.4 Each Party is a Controller of the Personal Data it discloses or makes available to the other Party and will process that Personal Data as separate and independent Data Controllers for the Agreed Purposes. The Parties process the Personal Data as Data Controllers in common and **not** jointly as joint Data Controllers.

B41.5 Each Party as Data Controller shall:

- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- (b) give full information to any data subject whose Personal Data may be processed under the Contract and of the nature of such processing. This includes giving notice that, on the termination of the Contract, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;



- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- (g) not transfer any Personal Data received from the Data Discloser outside the UK unless the transferor:
  - a. complies with the provisions of Articles 26 of the UKGDPR (in the event the third party is a joint controller); and
  - b. ensures that:
    - i. the transfer is to a country approved by the Information Commissioner as providing adequate protection pursuant to Article 45 of the UK GDPR; or
    - ii. there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or
    - iii. Binding corporate rules are in place or
    - iv. one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer.

**B41.6 Mutual assistance.** Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation in relation to this Contract. In particular, each Party shall:

- (a) consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other Party about the receipt of any data subject access request. Data subjects have a right of access and a right of correction in respect of their Personal Data which the Provider holds about them, in accordance with Data Protection Legislation and the Provider shall be the contact point for data subjects wishing to exercise their rights in respect of personal data held about them in connection with the delivery of the Services;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other Party wherever reasonable;
- (e) assist the other Party, at the cost of the other Party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of the Contract unless required by Law to store the Personal Data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
- (i) maintain complete and accurate records and information in relation to this Contract to demonstrate its compliance with this clause and allow for audits by the other Party or the other Party's designated auditor; and



- (j) provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the Data Protection Legislation.

B41.7 Each Party shall be liable for all liabilities, damages, direct losses, fines, all interest, penalties, reasonable legal costs, and expenses incurred by the other Party arising from, or in connection with, any breach for which the relevant Party is entitled to bring a claim against the other Party under this clause B41. Neither Party shall be liable to the other Party except insofar as the liabilities, damages, direct losses, fines, interest, penalties, reasonable legal costs, and expenses are directly caused (or directly arise) from the negligence or breach of clause B41 by that Party.

## **B42 FREEDOM OF INFORMATION AND TRANSPARENCY**

B42.1 The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

B42.2 If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:

- (a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
- (c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
- (d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
- (e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within five (5) Business Days of such request and without charge.

B42.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.

B42.4 Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.



- B42.5 In preparing a copy of this Contract for publication pursuant to clause 0 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.
- B42.6 The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.
- B42.7 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

#### **B43 PROHIBITED ACTS**

B43.1 Neither Party shall do any of the following:

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

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

B43.2 If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:

- (a) to exercise its right to terminate under clause B35.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
- (b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
- (c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

B43.3 Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

B43.4 The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within five (5) Business Days of the Authority requesting it and enforced by the Provider where applicable.



B43.5 Should the Provider become aware of or suspect any breach of this clause B43, it will notify the Authority immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.

#### **B44 FORCE MAJEURE**

B44.1 Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.

B44.2 Subject to clause B44.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.

B44.3 The Party claiming relief as a result of an event of Force Majeure must serve an initial written notice on the other Party immediately it becomes aware of the event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief must then serve a detailed written notice within a further fifteen (15) Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform the relevant obligations under this Contract as is available, including the effect of the event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Services.

B44.4 A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.

B44.5 The Authority shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

#### **B45 THIRD PARTY RIGHTS**

B45.1 Save as expressly stated herein, no term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

#### **B46 CAPACITY**

B46.1 Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Contract, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon the Authority or in any way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability on the part of the Authority under this Contract (howsoever arising) in any capacity other than as contracting counterparty.



B46.2 At all times during the Contract Period the Provider shall be an independent service provider and nothing in the Service Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Service Contract.

#### **B47 SEVERABILITY**

B47.7 If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Contract.

#### **B48 WAIVER**

B48.1 Any relaxation or delay by either Party in exercising any right under this Contract will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

#### **B49 PUBLICITY**

B49.1 Without prejudice to clause B42 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.

B49.2 The Provider must take all reasonable steps to ensure the observance of the provisions of clause B49.1 by all its staff, servants, agents, consultants and sub-contractors.

#### **B50 EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY**

B50.1 Nothing in this Contract creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Authority and the Provider.

#### **B51 GOVERNING LAW AND JURISDICTION**

B51.1 This Contract will be governed by and interpreted in accordance with English Law.

B51.2 Subject to the provisions of clause B33 (Dispute Resolution), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.



**APPENDIX A: SERVICE SPECIFICATION**



**APPENDIX B: CALL-OFF PROCEDURE AND CALL OFF ORDER FORM TEMPLATE AND  
REFERRAL FORM  
REHABILITATION SERVICES**

**1 GENERAL**

- 1.1 Defined terms in this Call Off Procedure shall have the same meaning as those defined terms in the PDPS Contract.
- 1.2 The Provider shall only be eligible to be awarded Service Contracts for those Service User groups and categories set out in Appendix W. The process and criteria set out in this Appendix B for award of Service Contracts shall therefore only be applicable for Service Contracts for which the Provider is eligible pursuant to Appendix W.
- 1.3 For the avoidance of doubt a Pan Lancashire Rehabilitation Referral Form will form part of the Service Contract. The Service Contract will apply to an individual placement or a group of placements or Services as described in the Pan Lancashire Rehabilitation Referral Form.
- 1.4 Where "The Council" is referred to in any Pan Lancashire Rehabilitation Referral Form this includes the Authority or the Beneficiary (as applicable and as defined in the PDPS Contract) who are permitted to access the PDPS and to call off from the PDPS.
- 1.5 Service Contracts will at all times be awarded in compliance with the principles of equal treatment and transparency. This Call Off Procedure necessarily allows for flexibility in the way the Authority will formulate and award Service Contracts.
- 1.6 Any new requirements for Services to be considered for delivery under this PDPS will be scheduled for Call Off under the terms of this PDPS Contract. Existing service arrangements will not be transferred to the PDPS unless a placement or service requirement needs to be recommissioned.
- 1.7 PDPS Providers must be mindful of their overall workload and, if there is a possibility of over-commitment or resource shortages, to provide immediate notice of the same to the Authority's Representative.
- 1.8 When admitted to the PDPS and where the award of a Service Contract for those Services is to be the subject of Call Off Procedure, only PDPS Providers identified by the Authority or Beneficiary (as applicable), in its absolute discretion and in accordance with this Call Off Procedure, as being capable of performing the Services shall be eligible to be considered for award of a Service Contract. For the avoidance of doubt, if a PDPS Provider has been suspended from the PDPS they will not be invited to take part in the Call Off Procedure.
- 1.9 If the Authority or the Beneficiary decide to source Services through this PDPS Contract, then either may do so using one of the Call Off Procedures set out below.

**2 DIRECT AWARD**

- 2.1 Direct Award without a competition in accordance with the Provider Selection Regime 2023 Regulations under Regulation 18(4) and Schedule 2 (and, where applicable, any relevant provisions under the Procurement Act 2023) may be utilised if any specific factors pertaining to the Services, Service User or operational reasons apply including:
  - (a) A PDPS Provider's previous knowledge of the Service User;
  - (b) A PDPS Provider's specialism means it can be evidenced there is only one PDPS Provider that is capable of meeting the Service User's requirements;
  - (c) Location of the Provider's Service means it can be evidenced there is only one PDPS Provider that is capable of meeting the Service User's requirements or fulfilling Service User Choice;
  - (d) where the Service User or Carer or advocate for the Service User expressly selects a Provider. In accordance with the Care Act 2014 the individual's views, wishes, feelings



and beliefs are recognised as well as the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate;

- (e) price/value for money; and/or
- (f) any other reason or factor that the Authority acting reasonably determines as relevant to carry out a direct award taking into account Service User Choice and value for money.

2.2 To determine the Provider for direct award of a Service Contract, the Authority shall assess the following (in order of priority):

- (a) Capability of the Provider to meet Service User requirements, taking into account relevant factors as set out in section 2.1 of this Appendix B;
- (b) Capacity to deliver the Service Contract in accordance with Service User requirements, taking into account relevant factors as set out in section 2.1 of this Appendix B;
- (c) Service user choice, where applicable, taking into account section 3 of this Appendix B;
- (d) Location of the delivery of the Services, taking into account relevant factors as set out in section 2.1 of this Appendix B
- (e) Value for money.

2.3 Value for money shall be assessed based on the Maximum Charges set out in Appendix E (as may be adjusted from time to time in accordance with Appendix E and Clause A7.5) across the PDPS Providers.

2.4 The Charges for any Service Contract including block purchase of beds and/or units established through Direct Award will be based on the Providers submitted price for the referral but shall in no event exceed the Maximum Charges

2.5 The Charges for block purchase of beds and/or units may not need to be below the Maximum Charges.

### **3 Service User Choice**

3.1 For the avoidance of doubt Service User Choice includes a decision taken by, or a combination of, the Service User, their Carer, or a recognised advocate of the Service User.

3.2 A Service User may be given the choice of PDPS Provider where more than one suitable PDPS Provider has capacity to offer Services, where there isn't a large disparity in cost and where time allows for this. Where a Service User has indicated a choice of PDPS Provider to deliver all or an element of the Services, and the Authority is satisfied that the proposed Service Contract:

- (a) Will be held by a PDPS Provider that will meet the needs of the Service User(s);
- (b) Delivers Services which in the absolute discretion of the Authority are proportionate to the needs of the Service User(s); and,
- (c) Can meet the Service Users needs and deliver the Services as described in the Request for Services;
- (d) a Service Contract may be agreed.

3.3 The Charges for any Services established through Service User Choice will be at or below the Maximum Charges or, in exceptional circumstances, mutually agreed by the Authority and Provider on the basis of an open book costing exercise.

### **4 MINI-COMPETITION**



- 4.1 The Authority anticipates that, due to time constraints in placing Service Users, the majority of Service Contracts will be dealt with under the process for direct awards set out in section 2 of this Appendix B.
- 4.2 For any Service Contract, including block purchase of beds and/or units, to be awarded by mini competition following the competitive process and procedure in Regulation 18(7) and Schedule 15 of the Provider Selection Regime 2023 (and, where applicable, any relevant provisions under the Procurement Act 2023), the Authority shall contact in writing all PDPS Providers who are capable of providing the Services to submit an offer and the mini-competition documents will be made available to them.
- 4.3 For the avoidance of doubt where a PDPS Provider has been suspended from the PDPS or is presently subject to other comparable sanctions in respect of any failings in regard to the performance requirements within the Service Specification and the PDPS they will not be invited to participate in the mini-competition.
- 4.4 The proposed Service Contract will substantially be in the form advertised at the outset of the PDPS, though the mini-competition documents will provide clarity in respect of:
  - (a) the scope of the Services required to be delivered;
  - (b) any specific requirements;
  - (c) any other aspect of the Service Contract or mini-competition as appropriate.
- 4.5 The Authority shall fix a time limit which is sufficiently long to allow responses for each specific mini competition to be submitted, taking into account factors such as the complexity of the subject-matter and the time needed to prepare responses.
- 4.6 Providers' offers in response to a Request for Services shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired.
- 4.7 Mini competitions will be awarded on the basis of:
- 4.8 **Social Value Policy.** The Public Services (Social Value) Act 2012 places an obligation on the Authority to consider how what is being procured will improve the economic, social and environmental well-being of the local area. The Authority is seeking to increase Social Value in all goods, works and services that it procures and therefore Social Value is likely to form part of the Award Criteria evaluation.
- 4.9 The Authority may apply Award Criteria for a mini competition as follows. Service Contract to the Service Provider that has submitted the best tender on the basis of the award criteria set out in the Mini-Competition documents.
- 4.10 The quality weighting will range from 0-60%. Exact weightings will depend on the complexity and nature of the Services to be delivered and will be published with each Mini Competition.

Quality weightings will comprise of:

Quality Criteria	Weighting
Collaborative Working	Weighted at/between 0 and 30%
Placement Stability	Weighted at/between 0 and 20%
Emotional Health and Wellbeing	Weighted at/between 0 and 20%
Service Delivery/ Mobilisation	Weighted at/between 0 and 20%
Risks and Challenges	Weighted at/between 0 and 20%

Service Quality and Monitoring	Weighted at/between 0 and 20%
Social Value	Weighted at/between 0 and 20%
Other criteria as identified at mini-competition stage	Weighted at/between 0 and 60%

4.11 The Price Criteria weighting will range from 40-100%.

4.12 Service User Choice may be a determinative factor.

4.13 All PDPS Providers invited to take part in the mini-competition will be informed of the outcome of the mini-competition.

4.14 Mini competitions may be awarded on the basis of:

- (1) Capability to meet the requirements of a particular Service Contract/Service User;
- (2) Capacity to deliver the requirements of the Service Contract;
- (3) Service User Choice
- (4) Location
- (5) Price

Where more than one placement is considered to be suitable and the criteria listed above are satisfied, the best value option will be selected.



## **5. CALL OFF ORDER FORM TEMPLATE AND PAN LANCASHIRE REFERRAL FORM FOR REHABILITATION SERVICES**

- 5.1 Where a direct award regime or mini competition call off procedure is used; the Call Off Order Form Template and the Pan Lancashire Rehabilitation Referral Form will automatically incorporate the following documents:
- (a) The Call Off Section B Service Contract for this category of service; and
  - (b) The Appendices; and
  - (c) The Special Terms and Conditions under Section C of the PDPS Contract
- 5.2 The Call Off Procedure is set out in section 2 and section 4 of this Appendix B respectively.
- 5.3 The Pan Lancashire Rehabilitation Referral Form together with the Call Off Order Form Template shall form a Call Off Contract made between the Provider and the Referrer in relation to the Service User.
- 5.4 The Call Off Contract may be subject to variation under specific terms of the Section B Service Contract.
- 5.5 The Provider has been selected to deliver this service by the Referrer.
- 5.6 No other terms from the Provider and Referrer are part of the Call Off Contract. That includes any terms written on the back of, added to this Call Off Order Form Template or presented at the time of delivery of the category B services.
- 5.7 The Provider and the Referrer will be expected to sign the Call Off Order Form prior to the commencement of services.



**CALL OFF ORDER FORM TEMPLATE**

**Incorporated into the Call Off Order Form Template are:**

- (a) The Rehabilitation Specification Services Document;**
  - (b) The Call Off Section B Category Service Contract;**
  - (c) The Appendices;**
  - (d) The Special Terms and Conditions set out in Section C of the PDPS Contract;**
  - (e) The Pan Lancashire Referral Form**
- (together "the Core Terms")**

**THE REQUEST FOR SERVICES IS BETWEEN:**

Call Off Reference Number (if applicable):	<b>[INSERT REFERENCE NUMBER OF THE PDPS CONTRACT]</b>
The Referrer:	<b>[INSERT REFERRER DETAILS]</b>
and	
The Provider:	<b>[INSERT PROVIDER DETAILS]</b>
<p><b>Call Off Services/Deliverables:</b></p> <p>Service User(s) Treatment Details:</p> <p>Core Service:</p> <p>Lancashire Pan Referral Form Details:</p> <p>Flexible Service:</p> <p>Additional Service:</p> <p>Other Service:</p> <p>(where applicable)</p> <p>Key Personnel:</p>	<p><b>[INSERT SERVICE USER TREATMENT DETAILS (TYPE/PROGRAMME, ETC.) AND REFER TO/ATTACH THE COMPLETED PAN LANCASHIRE REHABILITATION REFERRAL FORM/REFERENCE TO THE SERVICE SPECIFICATION IN APPENDIX A, ETC.]</b></p> <p><b>[INSERT DETAILS OF KEY PERSONNEL]</b></p>



Premises, where applicable:	<b>[INSERT DETAILS OF PREMISES]</b>
Quality Standards:	<b>[INSERT DETAILS OF FOR EXAMPLE CQC QUALITY STANDARDS]</b>
Deliverables:	<b>[INSERT DETAILS OF REQUIREMENTS CONTAINED WITHIN THE SPECIFICATION SERVICES DOCUMENT]</b>
Commencement Date of Treatment:	<b>[INSERT DATE]</b>
Expiry Date of Treatment:	<b>[INSERT INDICATIVE/EXPIRY DATE]</b>
Length of Treatment:	<b>[INSERT INDICATIVE/LENGTH OF TREATMENT: [ ] DAYS; [ ] NIGHTS; [ ] WEEKS; [ ] MONTHS]</b>
Extended Length of Treatment (if applicable):	<b>[INSERT EXTENDED LENGTH OF TREATMENT: [ ] DAYS; [ ] NIGHTS; [ ] WEEKS; [ ] MONTHS]</b>
Additional Treatment (if applicable):	<b>[INSERT ADDITIONAL TREATMENT]</b>
<b>Call Off Service Commencement Date:</b>	<b>[INSERT DATE]</b>
<b>Call Off Service Expiry Date:</b>	<b>[INSERT DATE]</b>
The <b>Maximum Term</b> of the Call Off Order Form under section 2 (direct award) or section 4 (mini competition) set out in Appendix B is for:	Up to four (4) years
The <b>Call Off Charges</b> will be:	As provided for in the Specification document, Clause B11 and Appendix E of the Category B Services for Rehabilitation Services Contract and may also be subject to Clause A7.5 of the PDPS Contract.
The <b>basis</b> of the <b>Call Off Charges</b> will be:	Hourly; nightly; weekly; residential, <b>rates</b> .
<b>Call Off Service Liability:</b>	As set out in Clauses B28, B29.3 and B30 of the category Services Contract.
<b>Additional Insurances:</b>	<b>[IF APPLICABLE, INSERT]</b>
<b>SIGNATORIES TO THE CALL OFF ORDER FORM</b>	



<b>For and on behalf of the Referrer:</b>	<b>For and on behalf of the Provider:</b>
Signature:	Signature:
Name:	Name:
Role:	Role:
Date:	Date:



# FORM OF PAN-LANCASHIRE REHABILITATION MINIMUM REFERRAL DATA REQUIREMENTS FORM

<b>Date of Referral:</b>	<b>Service Required:</b> Rehab / Dayhab	<b>Form Completed By:</b>		
<b>PERSONAL DETAILS</b>		<b>REFERRER DETAILS</b>		
FORENAME(S):		KEY WORKER'S NAME:		
SURNAME:		ORGANISATION:		
DATE OF BIRTH:		ADDRESS:		
GENDER:				
ETHNIC ORIGIN:				
ADDRESS:		POSTCODE:		
		TELEPHONE NUMBER:		
		MOBILE NUMBER:		
POST CODE:				
TELEPHONE NUMBER:		EMAIL ADDRESS:		
MOBILE NUMBER:		<b>What Preparation work is the client doing/has been completed ie.</b> Attending Groups /Mutual Aid etc.		
SUBSTANCES USED:				
1. 2. 3. 4.				
<b>FUNDING INFORMATION</b>				
LOCAL AUTHORITY:		Are there any children under the age of 18 living with the client?		
FUNDING AGREED?	YES			NO
RESIDENT TO PAY CONTRIBUTION?	YES			NO
		YES	NO	
Is there currently any involvement by Social Services? If yes, please provide details of social worker here:				
<b>PLEASE ATTACH LAST RISK ASSESSMENT TO REFERRAL FORM</b>				

**Consent**



<b>Does the client consent to be contacted? (Yes/No)</b>	
<b>If yes – Please write method of contact and relevant details</b>	

<b>GP Name</b>		<b>Practice</b>	
<b>Address</b>			
<b>Email Address</b>			
<b>Postcode</b>		<b>Tel.</b>	

**PLEASE ATTACH COPY OF LATEST GP SUMMARY**

<b>Medication</b>
<p>Is the client currently on any prescribed medication? If so, please provide details below:</p> <p>How does your client manage with the prescribed medication? Do they require assistance? Please provide details below:</p> <p>Is there any history of medication mismanagement/non-compliance?</p>

<b>Next of Kin</b>		<b>Contact Number</b>	
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<b>Emergency Contact</b>		<b>Contact Number</b>	
<b>Address</b>			
<b>Postcode</b>		<b>Tel.</b>	<b>Mobile</b>

<b>Substance Misuse Treatment History</b>				
Treatment Modality	Treatment received for? (please list below)	Where?	Year/Month of previous treatment	Treatment Completed/ Declined (by client)/ Treatment Withdrawn/Moved Away
Inpatient/hospital detoxification				
Community Detoxification				
Specialist / GP Prescribing Structured Day Programmes				
Residential Rehabilitation				
Other (Please state)				

## Health - Physical and Psychological

<p><b>Any Physical Health Problems/Concerns/Treatment</b> Yes <input type="checkbox"/> /No <input type="checkbox"/></p> <p>(If yes please provide full details of all conditions)</p>
<p>Is the service user pregnant? (Yes/No)</p>
<p>If yes, what is the due date?</p>
<p>Further Details:</p>



Detail any previous or current hospital treatment:

**Disability – Does the Service User consider themselves to have a disability?**

Yes  No

**Does the Service User require any additional support for any of the categories listed below? If yes, please detail this support below.**

Behaviour and Emotional <input type="checkbox"/>	Hearing Impairment <input type="checkbox"/>	Manual Dexterity <input type="checkbox"/>	Learning Disability <input type="checkbox"/>
Mobility and Gross Motor <input type="checkbox"/>	Perception of Physical Danger <input type="checkbox"/>	Personal, self-care and continence <input type="checkbox"/>	Progressive conditions and physical health <input type="checkbox"/>

Sight Impairment

Other (please state)

Describe the effect on daily living:

**Any Psychological Treatment/Concerns? Yes  No**

If yes please provide full details

Include: diagnosis, concerns, treatment, history, psychiatric/Community Psychiatric Nurse involvement, current/recent suicide/self-harm concerns.



List any involved professionals

**Accommodation**

Stable Accommodation <input type="checkbox"/>	Vulnerably <input type="checkbox"/>	Housed	NFA – Urgent Housing Problem <input type="checkbox"/>
--	--	--------	--

Rough Sleeper

Lives Alone? **Yes**  **No**   
If No, detail with whom the client lives

Detail any housing issues and what plans are in place to address these

**Accommodation Status**

Please describe housing status post-rehab below

**Criminal Involvement and Offending**

**Any Offending Risks? Yes / No**

If yes, please tick and note if the offence is recent or in the past

	Recent/Past		Recent/Past
Violence towards others		Subject to Multi-Agency Public Protection Arrangements (MAPPA)	
Aggression without serious violence		Risk to Property, including Arson	
Client is known to possess dangerous weapon(s)		Sexual Offence against Children	
Currently known to criminal justice services		Sexual Offence against Adult	
Domestic violence (Perpetrator)		Other (please state)	



If any offending risks are ticked, please provide further details and send copies of any relevant reports and/or assessments.

**Any current legal issues? Yes / No**

If yes please provide full details below

**Additional Information**

**Contingency Plan if client discharges early**

Consider: who to contact if discharged at weekend and provisional plans to ensure clients safety

**Has client been provided with Naloxone training and accepted? Yes  No**



## APPENDIX C: QUALITY OUTCOMES INDICATORS

### QUALITY ASSURANCE FRAMEWORK AND KEY PERFORMANCE INDICATOR/PMF

#### COPIES TO BE INSERTED



APPENDIX D: SERVICE USER, CARER AND STAFF SURVEYS

***[Insert form, frequency and reporting process where required]***



**APPENDIX E: CHARGES**  
**REHABILITATION SERVICES**

**[Please list the price(s) for the Services or set out the total charges to be paid]**

This Appendix E to be read in conjunction with Contract Clause B11.

Subject always to the terms and conditions of this Contract and the Open Book Policy, the Authority will pay the Provider for charges properly incurred in providing the Services.

The Provider shall receive an automated payment of the Charges four weekly in arrears basis via Controcc.

<b>Service Category</b>	<b>Premises</b>	<b>Level</b>	<b>Price Per Week</b>
2a	<b>24-Hour Staffed</b> Rehabilitation Services (Section 3.2 Premises of the Rehabilitation Service specification)	<b>Core Offer</b> (Section 4.3 of Rehabilitation Services specification)	£[ ]
2b		<b>Enhanced Offer</b> (Section 4.4 of Rehabilitation Services specification)	£[ ]
2c	<b>Non-24 Hour Staffed</b> Rehabilitation Services (Section 3.2 Premises of the Rehabilitation Service specification)	<b>Core Offer</b> (Section 4.3 of Rehabilitation Services specification)	£[ ]
2d		<b>Enhanced Offer</b> (Section 4.4 of Rehabilitation Services specification)	£[ ]
2e	<b>Non-residential</b> day case unit (Section 3.2 Premises of the Rehabilitation Service specification)		£[ ]

Please see Clause 11 in relation to Annual Charges Uplift.

**REVIEW OF CHARGES**

1. Prior to agreeing to any additional increase in Charges outside of the annual uplift in Charges, the Provider must agree to an open book exercise to demonstrate that cost increases are due to factors outside its control, manageability, and foreseeability and the same cannot be offset by operational efficiencies. The budgetary constraints and any other considerations that the Authority deems necessary are relevant may be taken into account when assessing the Charge increase request from the Provider.
2. The Authority makes no representation and offers no guarantee that any increase will be applied to the Charges following any review or assessment carried out.
3. A Provider request for a review of Charges under Clause 11.11 must be made in advance of the relevant Contract Year to which the requested uplift of Charges relates, to take effect from the commencement of that Contract Year.
4. No requests for a retrospective uplift will be considered.
5. Where a Provider is required to take part in open book accounting:
  - a. but refuses to; or



- b. where on review of the Provider's accounts the Authority considers, in its reasonable opinion, that:
  - i. incorrect accounting procedures; and/or
  - ii. double charging; and/or
  - iii. other unacceptable practices are being conducted; and/or
  - iv. where the Provider's accounts do not represent a true reflection of the actual financial circumstances of the Provider,

the Authority reserves the right to withhold any uplift.

- 6. Decreases in Charges will be accepted without application
- 7. Notwithstanding the provisions of clause 11.14, the Provider may request an additional review of the Charges only once per calendar year.
- 8. The Authority, in its complete and sole discretion, will consider increasing the Charges payable to the Provider in the following circumstances which must be supported with relevant material evidence, and in any event only where the Provider has incurred an increase in costs due to factors entirely outside of its control, manageability and foreseeability, such as:
  - a) Changes to the living wage or inflation resulting in the delivery of Services under the Terms and Conditions being unsustainable to the Provider;
  - b) An increase in auto-enrolment pension contributions; and/or
  - c) Any other evidenced circumstances or situation deemed appropriate by the Authority.



## APPENDIX F: SAFEGUARDING POLICIES

1. The Provider will follow the [Lancashire Children's Safeguarding Board Guidelines](#) in order to assess the needs and safety of children and young people and provide access to appropriate support in line with the Children Act 1989 (as updated by the Children Act 2004), Education Act 2002, "Every Child Matters 2003" Green Paper and [Working Together To Safeguard Children \(2015\)](#).
2. In line with the <http://www.lancshiresafeguarding.org.uk/media/15006/pan-lancs-continuum-of-need-july-2017-.pdf>, the Provider must engage in Early Help processes, including: e-learning and other training; use of [Common Assessment Framework \(CAF\)](#); Well Being, Prevention and Early Help Panels; Team around the Family/Lead Professional responsibilities, as appropriate, to ensure effective assessment of children and young people in a family context.
3. The Provider must have a "Safeguarding Children and Young People Policy" which complies with the [Pan Lancashire Policy and Procedures for Safeguarding Children Manual](#). Particular attention should be paid to review contents in section 5 of the guidance around: Children in Specific Circumstances e.g. Child Sexual Exploitation (CSE), Children Missing from Home and Hidden Harm.
4. The Provider shall comply with [Lancashire structures and policy](#) to safeguard adults who are vulnerable. They must refer to the <http://www.lancshiresafeguarding.org.uk/lancashire-safeguarding-adults.aspx> to ensure they have appropriate policy and procedures to comply, especially with regard to safeguarding those with increased risk of abuse, including domestic violence, young people's transition to adult services and the Prevent agenda etc.
5. All of the Provider's workforce will have the relevant level of safeguarding training appropriate to their role as identified by the Lancashire Safeguarding Children's Board (LSCB). This will include e-learning around Child Sexual Exploitation and Common Assessment Framework (CAF)/Early Help (as above). Information on the relevant level of training for roles can be found within the [LSCB course catalogue](#), which should be regularly reviewed to ensure currency of learning.
6. The [Disclosure and Barring Service](#) (DBS) was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). Under the provisions of the Safeguarding Vulnerable Groups Act 2006 the DBS will make decisions about who should be barred from working with vulnerable groups. The Provider must comply with such requirements.
7. The new [Prevent Duty](#) (section 26 of the Counter-Terrorism and Security Act 2015) came into force in July 2015. Safeguarding from extremism is no different to how practitioners would share a concern about drugs, physical and sexual abuse or any other form of criminality. Providers must ensure that staff complete this nationally accredited [e-learning programme](#).

### Policy documents and Guidance:

- Children Act 1989: <http://www.legislation.gov.uk/ukpga/1989/41/contents>
- Children Act 2004: [http://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga\\_20040031\\_en.pdf](http://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf)
- Common Assessment Framework (CAF) and Lead Professional (LP): <http://panlancshirescb.proceduresonline.com/chapters/contents.html>
- Disclosure and Barring Service: <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>
- Lancashire Constabulary Terrorism Training: <http://www.lancashire.police.uk/help-advice/safer-communities/counter-terrorism/partner-training.aspx>



- LANCASHIRE COUNTY COUNCIL Safeguarding adults:  
<http://www.lancshiresafeguarding.org.uk/lancashire-safeguarding-adults.aspx>
- Lancashire Safeguarding Children's Board:
- PAN Lancashire and Cumbria Safeguarding adults Boards Procedures model
- Pan Lancashire Policy and Procedures for Safeguarding Children Manual
- Prevent Duty Guidance: <https://www.gov.uk/government/publications/prevent-duty-guidance>
- Working Together to Safeguard Children:  
<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>



## APPENDIX G: SERIOUS REPORTABLE INCIDENTS

### Operational procedure for the management of Serious Reportable Incidents occurring within services commissioned by Public Health

#### Patient safety

The Service Provider will have a clear procedure for the investigation of and procedures to act upon any findings for Serious Reportable Incidents (SRIs) alongside CQC reporting requirements. The Service Provider is required to report such instances within two (2) Business Days of it being discovered.

All Serious Reportable Incidents need to be reported via the Authority's secure email portal:

Part A:

<https://lccsecure.lancashire.gov.uk/corporate/questionnaires/runQuestionnaire.asp?qid=757254>

Part B:

<https://lccsecure.lancashire.gov.uk/corporate/questionnaires/runQuestionnaire.asp?qid=757336>

1. The Service Provider must proactively engage with any Post Incident Reviews in line with the guidance issued by NHS England.
2. The Service Provider must have a policy and procedures in place regarding Infection Control.

#### Background

Serious incidents requiring investigation in services are rare, but when they do occur, there must be systematic measures in place to respond to them. Service Providers are accountable via contracts to the Authority. From 1 April 2013, Public Health transferred into local government, including responsibilities for the performance management of serious incidents in services they commission.

This procedure outlines the responsibilities of Lancashire County Council in relation to performance management of serious incidents reported by public health Service Provider organisations and describes the requirements for serious incident reporting and management within Lancashire County Council contracted services.

As the system develops, changes will be made where appropriate, including in relation to any relevant actions that result from the Francis report and subsequent Government response.

#### **Serious Incidents, Patient Safety Incidents and other incidents (referred to in this procedure as Serious Reportable Incidents)**

A Serious Reportable Incident is any incident involving:

- a) Service Users, relatives or visitors
- b) Staff
- c) Contractors with equipment, in the building or property

And which may or has;



- d) Resulted in death (this includes deaths from suicide/suspected suicide or homicide) or serious injury or was life-threatening
- e) Contributed to a pattern of reduced standard of care
- f) Involved a hazard to public health
- g) Caused serious disruption of services
- h) Caused significant damage to the reputation of a Service Provider or its Staff
- i) Caused significant damage to assets
- j) Significant information governance breach
- k) Activation of Business Continuity Plan
- l) Involved fraud or suspected fraud
- m) Given rise to a significant claim for damages
- n) Involved the suspension of a member of Staff
- o) Involvement of external investigation agencies, e.g. Police, Health and Safety Executive, Care Quality Commission
- p) Raised severe criticism by an external body, e.g. Coroner's inquest, a Parliamentary and Healthcare Ombudsman
- q) Involved significant healthcare-associated infections, e.g. outbreaks, or a public health issue, especially if they require the involvement of the Health Protection Agency

### **Governance principles, performance management and monitoring**

Both the Authority and the Service Provider are accountable for effective governance and learning following a Serious Reportable Incident.

The Service Provider takes the lead in responding to a serious incident. It is the role of the Authority to monitor the response of the Service Provider and seek assurance and evidence from the Service Provider that the relevant policies and procedures are in place and implemented as necessary.

The Service Provider should be put in place a formally designated lead, responsible for patient safety and the management of Serious Reportable Incidents. In the case of the Authority, this is the Director of Public Health (DPH), deputised by the Head of Service, Patient Safety and Safeguarding. The mechanism to consider and monitor Serious Reportable Incidents will be via the relevant Governance Group.

A Serious Reportable Incident database will be held. This will be password protected, with access for the Authority's Director of Public Health, Head of Service, Patient Safety and Safeguarding, and identified lead public health Commissioners.

All actions taken should be consistent with the pan-Lancashire safeguarding policies and procedures. This policy must not interfere with existing lines of accountability nor replace the duty to inform the police and/or other organisations or agencies as required, i.e. CQC, Health and Safety Executive or Information Commissioner's Office. In particular, NHS Service Providers may still have a responsibility to report through the NHS Serious Untoward Incident process on to the StEIS system. This does not however, negate or substitute the responsibility to inform the lead commissioner at the Authority.

### **Management of a Serious Reportable Incident**

On occurrence of a Serious Reportable Incident, the Service Provider must notify the Authority as soon as they are aware of the incident. The Part A incident reporting form should be submitted within two (2) Business days.

On receipt of this form, an initial assessment of the incident will be completed using the information included on the form. After the assessment is carried out the following options will be considered;

1. No further action is needed



## 2. Further action required – Serious Incident Investigation form requires completion by the Service Provider

Where the Authority believes that the incident has significant implications for the Authority, the issue will be escalated to the DPH and any other relevant Head of Service and the relevant lead member will be informed.

In the case of a safeguarding incident, the Service Provider's designated lead officer should liaise with the Authority's lead for adult safeguarding or child protection to ensure local safeguarding procedures are followed.

The Authority is required to ensure that the Service Provider;

- a) Has robust reporting arrangements in place which comply with national guidance;
- b) Reports Serious Reportable Incidents to the commissioners within two (2) Business days of the incident being identified by the Service Provider;
- c) Report Serious Reportable Incidents to the NRLS, StEIS and other bodies as appropriate, e.g. CQC, Police, HSE.
- d) Report never events in accordance with the NHS *Never Events Framework*; and;
- e) Report safeguarding incidents to the relevant local safeguarding board(s)

### Investigating a Serious Reportable Incident

The Authority should ensure that;

- a) Serious Reportable Incidents are managed and investigated appropriately in a transparent manner
- b) They continue to monitor incidents until the Service Provider gives evidence that each action point has been implemented
- c) They close the incident when they are satisfied with the investigation, recommendations and action plans that have been submitted and that local monitoring arrangements are in place and working for all cases reported on StEIS.
- d) The action plans agreed with the Service Provider following Serious Reportable Incident investigations have a clear trajectory with named responsible leads.
- e) Learning is embedded and demonstrated through regular thematic reviews

### Communications

Serious Reportable Incidents can be triggers for media coverage and increased public scrutiny. Both the Authority and the Service Provider should; ensure openness and transparency, have a clear plan for sharing information and have a clear communications and engagement strategy. Relevant elected members will be briefed about Serious Reportable Incidents where appropriate.

### Monitoring and closure of Serious Reportable Incidents

The Authority is required to lead on the closure of Serious Reportable Incident reports. Prior to closing an incident, the Authority should ensure that the following have been submitted. Serious Reportable Incident closure checklist (Information should be included in Part B of the incident reporting form).

#### Requirement

Requirement	Check
An investigation that identifies findings, based on root causes and recommendations	



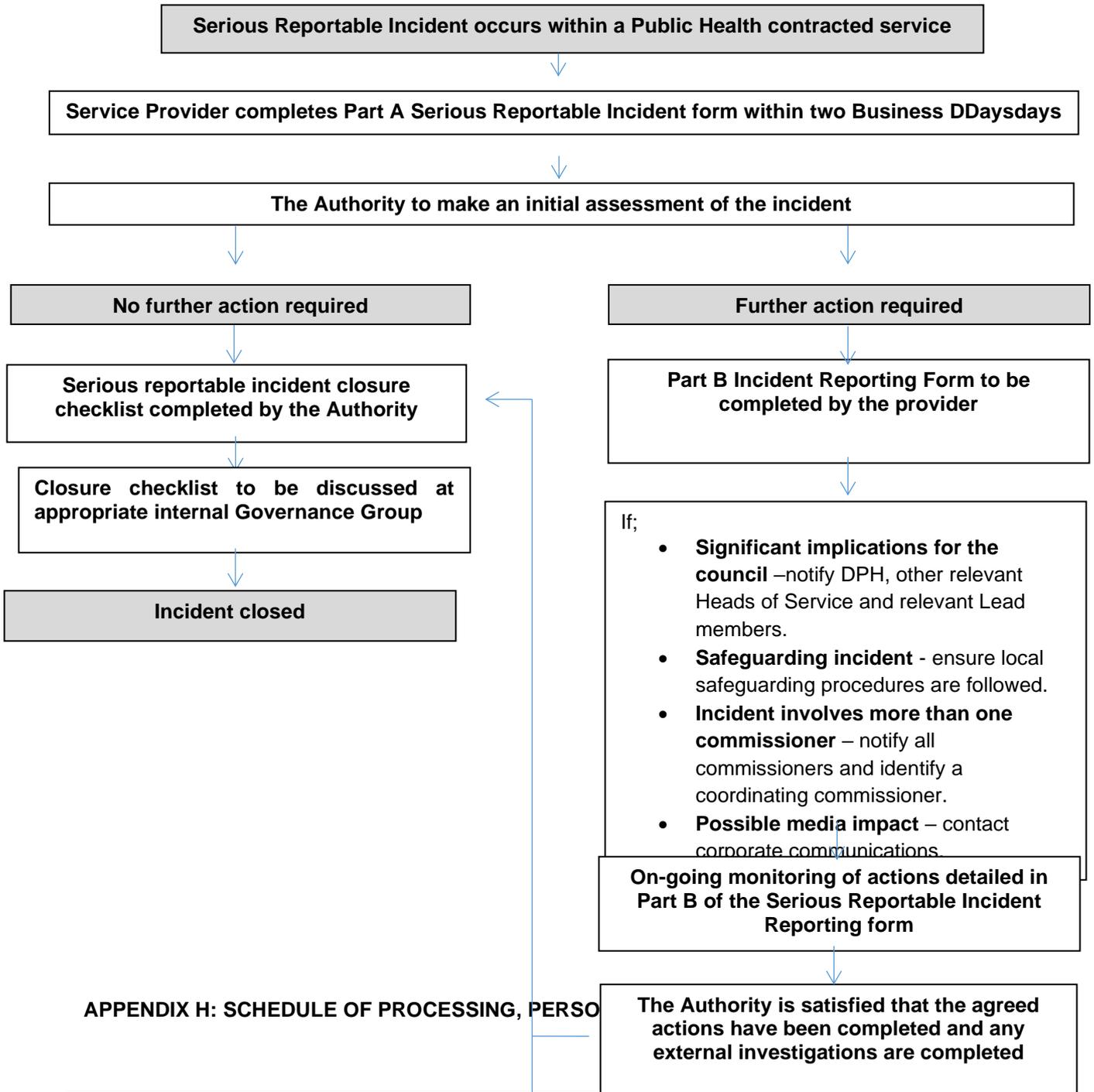
Where required, an action plan with action points addressing each root cause (with a named lead and timescale for implementation)	
Lessons learnt have been shared	
Details of other bodies notified and copies of reports	

These checklists will be submitted to the appropriate Governance Group for formal closure of the incident.

The Authority is committed to improvement in quality and safety in commissioned services. There will be a systematic approach to analysing the Serious Reportable Incident intelligence in order to support a culture of learning and the commissioning of safe and effective services.



**Process for the reporting and management of Serious Reportable Incidents related to public health contracted service**



**APPENDIX H: SCHEDULE OF PROCESSING, PERSONS**

Description	Details



Identity of the Controller and Controller	The Parties acknowledge that for the purposes of the Data Protection Legislation, each Party is a Controller.
Subject matter of the processing	The data is to be processed as part of the Council's [enter the subject matter].
Duration of the processing	<p>The processing will commence on [date] and shall expire automatically on [date] unless an extension to the Contract is agreed.</p> <p>The Contract term will be [number of years] years with an option to extend by any number of defined periods provided that the total period does not exceed [enter number of years] years.</p> <p>In the event that the Contract is extended, the processing shall be carried out during the period(s) of extension.</p>
Nature and purposes of the processing	The nature of the processing covers the collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means), but only insofar as detailed in the main body of the Contract and any Schedules and Appendices as appended to it for the purposes as described in the same.
Type of Personal Data being Processed	<p>To include any or all of the following:</p> <ul style="list-style-type: none"> <li>• Name</li> <li>• Address</li> <li>• Date of birth</li> <li>• National Insurance number</li> <li>• NHS number</li> <li>• Financial, pay, income and benefits information</li> <li>• Images or other such types of data</li> <li>• Education records</li> <li>• Employment records</li> <li>• Medical records</li> <li>• Hospital and other medical practitioner correspondence</li> <li>• Prescription and medication information</li> <li>• Social service, police and other agency case notes</li> <li>• Correspondence in relation to the Criminal Justice System and other services and providers in that field. For example prison, probation and CRC records</li> <li>• Service User case notes</li> <li>• Service User family and third party contact details, including but not limited to telephone numbers, addresses, National Insurance and NHS numbers</li> </ul>



	<ul style="list-style-type: none"> <li>Service User family and third party information in relation to any services, statutory or otherwise, which they have received. For example, substance misuse support services</li> </ul> <p>The types of data to be processed shall be defined only insofar as they relate to the detail of the main body of the Contract and any Schedules and Appendices as appended to it</p>
Categories of Data Subject	To include any or all of the following: staff (including volunteers, agents and temporary workers), customers, Beneficiaries, service users, service users' family, suppliers, patients, students, pupils, members of the public or any other such data subjects as detailed in the main body of the Contract and any Schedules and Appendices as appended to it such as the Pan Lancashire Referral Forms.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>On termination of the Contract, the Provider must return Personal Data (and any copies of it) to the Council and certify to the Council that it has done so within ten (10) Business Days of the Contract being terminated.</p> <p>If the Provider is required by any Law or Regulatory or Supervisory Body to retain any Data that it would otherwise be required to return, it must notify the Council in writing of that retention giving details of the Data that it must retain and the reasons for its retention.</p> <p>The Provider must co-operate fully with the Council during any handover arising from the termination of the Contract, and if the Council directs the Provider to migrate Data to the Council or to a third party, it must provide all reasonable assistance with ensuring safe migration including ensuring the integrity of Data and the nomination of a named point of contact for the Council to communicate with.</p>



APPENDIX I: TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS

**[To be inserted from Service Specifications if appropriate]**



## APPENDIX J: SERVICE QUALITY PERFORMANCE REPORT

***[Insert format and manner of provision of the Service Quality Performance Report, together with the factors to be measured and reported on]***

Please refer to the relevant Service Specification Section, the Quality Assurance Framework and the Quality Outcome Tab of the PMF/KPI document.



## APPENDIX K: DETAILS OF REVIEW MEETINGS

### **[Insert frequency and manner of Review Meetings]**

1. Authorised representatives
  - 1.1 The Authority's initial Authorised Representative: [INSERT DETAILS]
  - 1.2 The Service Provider's initial Authorised Representative: [INSERT DETAILS]
2. Key personnel  
[INSERT DETAILS]
3. Meetings
  - 3.1 Type
  - 3.2 **Quorum** :
  - 3.3 **Frequency** : **on a quarterly basis with details to be confirmed**
  - 3.4 **Agenda** :
4. Reports
  - 4.1 Type : **TBC**
  - 4.2 Contents :
  - 4.3 Frequency :
  - 4.4 Circulation list :



## APPENDIX L: AGREED VARIATIONS

*[Insert agreed Variations]*



## APPENDIX M: DISPUTE RESOLUTION

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

#### 1. ESCALATED NEGOTIATION

- 1.1 Except to the extent that any injunction is sought relating to a matter arising out of clause 0 (Confidentiality), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the fifteen (15) Business Days following receipt of the first such offer (the “Negotiation Period”) each of the Parties shall negotiate in good faith and be represented:
  - 1.1.1 for the first ten ( 10 )Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter that led to the Dispute and has authority to settle the Dispute; and
  - 1.1.2 for the last five (5) Business Days, by its chief executive, director, or board member who has authority to settle the Dispute, provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

#### 2 MEDIATION

- 2.1 If the Parties are unable to settle the Dispute by negotiation, they must within five (5) Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in Part 2 of this Appendix M.
- 2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.
- 2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.



Part 2 of Appendix M - Nominated Mediation Body

**[If other mediation body is agreed under paragraph 2.1 of Part 1 of Appendix M, insert details of body here]**

**[Insert Expert Determination details - CEDR]**



**Part 3 of Appendix M - Recorded Dispute Resolutions**



## APPENDIX N: SUCCESSION PLAN

### 1. Contract Handover Document

The purpose of this contract handover document is to ensure the contract management team has ceased LCC contract in compliance with the succession plan. This template is to be completed in conjunction with the provider and in line with the contract that is being ceased.

Name of Person in Attendance	Position	Organisation
Date of Completion:	Completed By:	Contract:

Areas for discussion	Contract Management Team notes and actions
<b>Service</b>  What is the contract start date?  What is the contract cease date?	
<b>Staffing</b>  What is the number of staff?  What is the plan for transfer of <i>staff</i> ?  <i>Redeployment, redundancies, TUPE transfer, etc</i>	
<b>Service users</b>  Number of service users currently?  Up to date SU list and visit details each week from XXX and final visit  Final SU list required by XXX to include brief details of next visit and what is required.  Any specific SU needs that need to be taken into account	



<p><i>(This information will need to be shared with the incoming provider).</i></p> <p><i>A separate meeting to be arranged for the outgoing and incoming provider for the transfer of SU information.</i></p>	
<p><b>Communications</b></p> <p>Have staff been informed of the transfer? Introduction from incoming provider</p> <p>Have stakeholders been informed of the transfer?</p> <p>Have service users been informed of the transfer?</p>	
<p><b>Data Transfer</b></p> <p>Consent from service users to transfer their data (provider responsibility)</p> <p>When will the data transfer take place? Will there be a test transfer? When will the systems close?</p> <p>Do the systems talk to each other?</p> <p>How will the final quarter data be accessed and submitted?</p> <p><i>EMIS involvement where relevant</i></p>	
<p><b>Partner agencies or referral agencies</b></p> <p>Have you informed partner agencies? Withdrawal from management or other agreements.</p> <p>Provide a list of partner agencies to be shared with incoming provider.</p>	
<p><b>Premises –</b> Does the cease of this contract bring about giving notice on the office lease/rent?</p> <p><i>This may or may not apply?</i></p>	
<p><b>Complaints</b></p> <p>Any complaints that are on going</p>	
<p><b>Safeguardings/ Serious Reportable Incidents</b></p> <p>Any current safeguarding's/ SRIs</p>	



<p><b>Organisational issues for the provider –</b></p> <p>Is there any disposal of assets that have been funded by this contract?</p> <p>What are the assets and what has been agreed with the provider for these assets when the contract ceases i.e. laptop, equipment etc?</p> <p>Have you checked how the records are to be archived/stored? (check the contract for how long records are required to be kept).</p> <p>Is this GDPR compliant?</p> <p>Change of Address/location inform LCC if within the archive period of keeping records</p>	
<p><b>Regulation</b></p> <p>Ensure compliance with other regulatory regimes i.e. CQC or others</p>	
<p><b>Risks</b></p> <p>Any anticipated risks with the demobilisation / transfer</p>	



## 2. Service Level Succession Plan

### Introduction

As a general definition, succession planning is the process of preparing to hand over control. Specifically, organisation succession planning is the process of preparing to hand over control of the business or service to others, in this instance the newly appointed provider, in a way that is the least disruptive to the organisation's Staff and Service Users. The template as below is intended to support the process of succession planning and enable a smooth transition and continuity for Service Users.

<b>Service-Level Succession Plan</b>	
Service Name	
Provider	
Contracting Authority/Authorities	
Annual Contract Value	
Expiration Date	
Reason for Decommissioning	
Decommissioning Impact Assessment Complete	
Date of Notice Served	
Est. Procurement Advert Issue Date	
Est. Contract Award Date	
Est. Successor Start Date	
Notes: This plan will apply where there is a change of provider following a procurement. 'LA' refers to Local Authority 'PROVIDER' refers to the incumbent (outgoing) provider 'Newly appointed (incoming) provider' refers to the provider that will be providing the services as from <div style="background-color: yellow; width: 150px; height: 15px; margin-top: 5px;"></div>	



		TASKS	LA/PROVIDER	OFFICER	DUE DATE	RISKS/CONSTRAINTS	PROGRESS (RED, AMBER, GREEN)
TASK 1	<b>COMMUNICATION</b>						
Subtasks							
	1.1	Maintain communication between provider and Local Authority in regards to procurement plans monthly via Contract Management Meeting.					
	1.2	PROVIDER to identify referral sources					
	1.3	Newly appointed provider to send out communication to referral sources notifying them of the change in process with agreed cessation date and confirm any new arrangements.					
	1.4	PROVIDER to manage communication with the Newly appointed provider and all communications to be agreed by LCC					
	1.5	LA to communicate service exit and ongoing arrangements to CCG / NHSE / LMC /LPC					
	1.6	LA to communicate service exit and ongoing arrangements to the public.					



	1.7	PROVIDER to inform existing service user of any changes which may impact on them (if applicable)						
	1.8	PROVIDER to identify any interdependencies and notify.						
	1.9	Develop legacy documentation						
	1.10	Relevant approval/information routes to be followed.						

		TASKS	LA/PROVIDER	OFFICER	DUE DATE	RISKS/CONSTRAINTS	PROGRESS (RED, AMBER, GREEN)	
TASK 2	<b>SERVICE-USER RELATED TASKS</b>							
Subtasks								
	2.1	Care standards and quality outcomes continually reviewed to ensure continuity of service is not affected via contract meeting						
	2.2	PROVIDER and LAs to agree cessation of new service users date.						



	2.3	PROVIDER to review caseloads to identify number of caseloads to be transferred.						
	2.4	PROVIDER, Newly appointed provider and Authorities to develop agreed process for managing transfer of care, where indicated						
	2.5	PROVIDER and Newly appointed provider to instigate agreed referral/transition process.						
	2.6	All service-users safely exited from the service through managed discharge.						
	2.7	All service-users safely transferred to another provider. As indicated						

		TASKS	LA/PROVIDER	OFFICER	DUE DATE	RISKS/CONSTRAINTS	PROGRESS (RED, AMBER, GREEN)
TASK 3	STAFFING						
	3.1	LA's Request TUPE information from PROVIDER					
	3.2	Trust to link with HR Manager and establish regular updates to Staff.					
	3.3	30 day Staff consultation to commence.					
	3.4	PROVIDER to report to Authorities on any staffing losses					



	3.5	PROVIDER to corporate with Newly appointed provider with regards to TUPE process to ensure safe transfer of staff (where applicable)						
<b>TASK 4</b>	<b>MANAGEMENT OF SERVICE USER RECORDS</b>							
	4.1	PROVIDER to confirm existing arrangements for storage and retention of records.						
	4.2	PROVIDER to confirm number of records held, format, size:  Paper/electronic?						
	4.3	LA and PROVIDER to review policy and procedures with regards to safe transfer, retention or disposal of patient/Service User records						
	4.4	PROVIDER, LA and or new provider to agree process to be followed. NB. IG & IT system requirements to be identified to support safe transfer.						
	4.5	PROVIDER to instigate agreed process.						

		<b>TASKS</b>	<b>LA/PROVIDER</b>	<b>OFFICER</b>	<b>DUE DATE</b>	<b>RISKS/CONSTRAINTS</b>	<b>PROGRESS (RED, AMBER, GREEN)</b>
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<b>TASK 5</b>	<b>MANAGEMENT OF SERVICE INFORMATION</b>							
	5.1	LA & PROVIDER to review contract information requirements						
	5.2	PROVIDER to map service information flows						
	5.3	PROVIDER to complete submission of local and national data returns or agree alternative processes						
<b>TASK 6</b>	<b>EQUIPMENT/FACILITIES</b>							
	6.1	PROVIDER to provide a list of estates that services operate from, including costs applicable to the contract.						
	6.2	PROVIDER to serve notice on premises if applicable.						
	6.3	PROVIDER / LA to agree LA-owned assets within contract, e.g. equipment, IT systems, licenses, resources, branding, training programmes and process for transfer or disposal						
	6.4	PROVIDER to update Authorities of any issue in relation to estates, ensuring services and Staff in the run-up to expiration are operating out of safe, secure and appropriate accommodation and any anticipated disruption to services is communicated at the earliest opportunity.						



	6.5	Any other legacy issues to be considered and captured by the PROVIDER						
--	-----	---	--	--	--	--	--	--

		TASKS	LA/PROVIDER	OFFICER	DUE DATE	RISKS/CONSTRAINTS	PROGRESS (RED, AMBER, GREEN)	COMMENTS
<b>TASK 7</b>		<b>TENDER/CONTRACTING ISSUES</b>						
	7.1	Review of provider and authority contract responsibilities in relation to termination/expiry of contract (clause B33)						
	7.2	Notice formally served to provider.						
	7.3	TUPE contract clause comes into effect						
	7.4	PROVIDER to identify any subcontract arrangements and serve notice.						
	7.5	LA and PROVIDER to agree final reconciliation of payment process.						
<b>TASK 8</b>		<b>MANAGEMENT OF RISK</b>						
	8.1	Decommissioning Impact Assessment complete if required						
	8.2	Equality Impact Assessment complete						



	8.3	Trust exit plan agreed and approved by appropriate service heads and boards e.g. IG						
	8.4	Any service risks identified and alerted to the Contract Manager for discussion and management by both parties						
	8.5	Exit planned reviewed at contract management meeting						



## APPENDIX O: PROVIDER'S APPLICATION

[Insert]



## APPENDIX P: TEMPLATES

### CONTRACT QUERY NOTICE

#### Private and Confidential

Manager/Owner/Director  
Address line 1  
Address line 2  
Town  
County (if not Lancashire)  
Post code

Phone:  
Email:  
Your ref:  
Our ref: ***your initials/Contract  
Query Notice Ref***  
Date:

Dear << enter name>>

#### CONTRACT QUERY NOTICE

##### Contract Query Notice Reference:

This Contract Query Notice concerns the agreement between [DETAILS OF PROVIDER] and Lancashire County Council the "Council" dated [DATE] for the provision of [DETAILS OF CONTRACT] ("the Contract").

This Contract Query Notice is issued pursuant to clause B29 of the Contract, to query instances of performance or non-performance.

This Contract Query Notice is being issued because:

Ref No.	Contract Query	Previous Correspondence	Source documentation/reports (s)
1	[DETAILS OF QUERY]	[REFER TO ANY PREVIOUS CORRESPONDENCE]	[REFERENCE THE SOURCE DOCUMENTATION/REPORTS USED TO MAKE THE DECISION TO ISSUE THE CONTRACT QUERY NOTICE]
2	[DETAILS OF QUERY]	[REFER TO ANY PREVIOUS CORRESPONDENCE]	[REFERENCE THE SOURCE DOCUMENTATION/REPORTS USED TO MAKE THE DECISION TO ISSUE THE CONTRACT QUERY NOTICE]

You are reminded that, under Clause B29.6 (Excusing Notice) of the contract, you may issue an Excusing Notice within five (5) Business Days of the date of the Contract Query Notice.

If the explanation set out in the Excusing Notice is accepted, the Contract Query Notice must be withdrawn in writing within ten (10) Business Days following the date of the Contract Query Notice.



Unless the Contract Query Notice is withdrawn, the Authority and Provider must meet to discuss the Contract Query and any related Excusing Notice within ten (10) Business Days following the date of the Contract Query Notice.

Possible outcomes of the Contract Management Meeting, as detailed in Clause B29.9, are:

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

Please acknowledge receipt of this notice by signing, scanning and returning a copy, to [INSERT EMAIL ADDRESS] no later than 48 hours after receipt.

Yours sincerely,

Manager/Owner/Director

.....Sign below and return.....

We acknowledge receipt of this letter.

Signed .....

[PARTY 2]

Date .....



## EXCUSING NOTICE

Private and Confidential  
Manager/Owner/Director  
Address line 1  
Address line 2  
Town  
County (if not Lancashire)  
Post code

Phone:  
Email:  
Your Ref:  
Our Ref: ***your initials/Contract Query Notice Ref:***

*Date:*

Dear << enter name>>

### EXCUSING NOTICE

#### Contract Query Notice Reference:

This Excusing Notice concerns the agreement between [DETAILS OF PROVIDER] and Lancashire County Council the "Council" dated [DATE] for the provision of [DETAILS OF CONTRACT] ("the Contract").

This Excusing Notice is issued by [RECEIVING PARTY DETAILS] to [ISSUING PARTY DETAILS] under Clause B29.6 (Excusing Notice) of the Contract, with reference to the receipt of the Contract Query Notice referred to above and is issued within five (5) Business Days of the date of the Contract Query Notice.

The [RECEIVING PARTY DETAILS] considers the following explanation to be excusing grounds within the scope of Clause B29.7. Unless the [ISSUING PARTY DETAILS]:

- accepts the explanation set out in this Excusing notice; and
- withdraws the Contract Query Notice within ten (10) Business Days of the date of the Contract Query Notice,

the [RECEIVING PARTY DETAILS] will attend a Contract Management Meeting within ten (10) Business Days following the date of the Contract Query Notice, to discuss the Contract Query and this Excusing Notice.

#### Excusing Grounds:

Provide reasonable detail of the excusing explanation and supporting information where possible to enable the other Party to make an informed decision as to whether to accept this Excusing Notice

Ref No.	Contract Query	Excusing Explanation	Supporting Information
1.	[DETAILS OF QUERY]	[DETAIL OF THE EXCUSING EXPLANATION]	[SUPPORTING INFORMATION WHERE POSSIBLE]
2.	[DETAILS OF QUERY]	[DETAIL OF THE EXCUSING EXPLANATION]	[SUPPORTING INFORMATION WHERE POSSIBLE]

Yours sincerely,

Manager/Owner/Director

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[lancashire.gov.uk](http://lancashire.gov.uk)

**REMEDIAL ACTION PLAN**

<b>Action No.</b>	<b>Milestones for performance to be remedied</b>	<b>Date that milestones must be completed by</b>	<b>Person Responsible</b>	<b>Consequences for failing to meet the specified date</b>	<b>Progress Made</b>	<b>Date of Completion</b>
1						
2						



## APPENDIX Q: DEFINITIONS AND INTERPRETATION

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

**Access Agreement** means the agreement between the Authority and any contracting body or authority which must be entered into prior to the contracting body or authority securing category Service Contracts under the PDPS

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

**Agreed Purposes** means the data to be processed as part of the Services.

**Application** means the Provider's application to join the PDPS as set out in Appendix O.

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

**Authority Representative** means the person identified in clause A4 or their replacement

**Beneficiary** means any contracting body or authority able to secure category Service Contracts under the PDPS via the Access Agreement

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

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

**Business Continuity Plan** means the Provider's plan referred to in Clause 0 (*Business Continuity*) relating to continuity of the Services, as agreed with the Authority and as may be amended from time to time

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

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

**Call-off Procedure** means the method by which Service Contracts are awarded to Providers as set out in clauses A7.6 to A7.13 and Appendix B of the PDPS Contract.



**Call-Off Terms and Conditions** means the terms and conditions set out in Section B which will apply to any Service Contract awarded under the PDPS.

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

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

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

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

**Commencement Date** means 1 August 2024

**Competed Services Award Criteria** means the criteria set out in Appendices B and S under the PDPS.

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

**Conditions Precedent** means the Conditions Precedent referred to in clause A3.8 and set out in Appendix V under the PDPS Contract.

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

**Consents means:**

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

**Contract Notice** means the contract notice reference [INSERT] placed on the UK e-notification Find a Tender service on [INSERT DATE].

**Contract Period** means the period from the Service Commencement Date to:

- a) the date of expiry set out in **Error! Bookmark not defined.**B3 of the Call-Off Terms and Conditions; or
- b) such earlier date of termination or partial termination of the Service Contract in accordance with the Law or the provisions of the Service Contract.

**Contract Query** means:



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

as appropriate

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

**Contract Management Meeting** means a meeting of the Authority and the Provider held in accordance with clause 0 (*Contract Management*)

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the UK GDPR

**Controller, Processor, Data Subject, Joint Controller, Personal Data, Personal Data Breach, Processing, Data Protection Officer and appropriate technical and organisational measures:** as set out in the Data Protection Legislation in force at the time.

**CQC** means the Care Quality Commission

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

**Data Controller in Common** means each Party is a Controller of Personal Data as a separate and independent Data Controller and **not** jointly as Data Controllers.

**Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract including any Personal Data Breach

**Data Processor** **NOT IN USE**

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

**Data Discloser:** a party that discloses Shared Personal Data to the other Party.

**Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the DPA 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended, and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party

**Data Subject Request** means 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

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

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

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



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

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

**DPA 2018** means the Data Protection Act 2018

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

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

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

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

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

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

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

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

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

- (i) due wholly or partly to an act or omission by the Issuing Party; or
- (ii) a direct result of the Receiving Party following the instructions of the Issuing Party; or
- (iii) due to circumstances beyond the Receiving Party's reasonable control but which do not constitute an event of Force Majeure

**Expert** means the person designated to determine a Dispute by virtue of paragraphs [XX] or [XX] of Appendix M (*Dispute Resolution*) - **TBC**

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

**Expiry Date** means the date set out in clause **Error! Reference source not found.**



**First Exception Report** means a report issued in accordance with clause 0 (*Contract Management*) notifying the relevant Party's chief executive and/or Board of Directors of that Party's breach of a Remedial Action Plan and failure to remedy that breach

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

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

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

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

**General Conditions** has the meaning given to it in clause A1

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

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

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

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

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

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

**Joint Controllers** **NOT IN USE**

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

**Law** means:

- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (ii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- (iii) National Standards;
- (iv) Guidance; and

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(v) any applicable industry code

in each case in force in England and Wales

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

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

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

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

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

**Maximum Charges** means the ceiling price submitted within the Providers Application for the PDPS.

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

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

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

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

**Open Book Policy** in respect of costs/price/Charges means transparency of how those costs/price/Charges are made up

**Pan Lancashire Referral Form** means the document used to place an order for Services together with the Call Off Order Form Template in accordance with clauses A7.6 to A7.15 of the PDPS Contract, which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards.

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

**Patient Health Record** means a Patient Health Record which is not a Public Health Record and is prepared by the Provider in connection with the care of the NHS patient as part of the provision of the Services

**PDPS** means this Pseudo Dynamic Purchasing System for the Services

**PDPS Commencement Date** means 1 August 2024



**PDPS Contract** means the PDPS agreement concluded between and the Authority and the Provider for the provision of the Services during the Term, comprising of the PDPS Terms and Conditions, the Call-Off Terms and Conditions and the Special Conditions, as may be varied from time to time in accordance with clause A21 (*Variations*) of the PDPS Terms and Conditions.

**PDPS Provider** means the Provider and other providers appointed as potential providers of the Services under this PDPS.

**PDPS Term** means the period commencing on the PDPS Commencement Date and (unless it is otherwise terminated in accordance with the terms of this PDPS Contract or it is otherwise lawfully terminated) ending on the tenth anniversary of the PDPS Commencement Date

**PDPS Terms and Conditions** means the terms and conditions set out in Section A of the PDPS Contract.

**Permitted Recipients:** the Parties to this Contract, the employees of each Party, any third parties engaged to perform obligations in connection with this Contract.

**Personal Data:** shall have the same meaning as set out in the Data Protection Legislation.

**Price Amendment Date** means increases in Charges once agreed between the Authority and the Provider will be implemented on the first Monday of the appropriate calendar month.

**Processor Personnel** **NOT IN USE**

**Prohibited Acts** has the meaning given to it in Clause A19 of the PDPS Contract and clause 0 of the category Service Contract (*Prohibited Acts*)

**Protective Measures** means appropriate technical and organisational 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 such measures adopted by it

**Provider Representative** means the person identified in clause 0 or their replacement

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

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

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

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

**Regulations** means the Public Contracts Regulations 2015 and any relevant subsequent legislation to include **The Provider Selection Regime (PSR 2023)** (in force 1 January 2024) and the **Procurement Act 2023** (coming into force October 2024)

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



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

**Request for Services** means a request for a detoxification or rehabilitation placement.

**Required CQC Standard** means a set of minimum requirements that the care provider needs to meet when providing care in England and can refer to either/or CQC fundamental standards or the CQC 5 standards: <https://www.theaccessgroup.com/en-gb/blog/cqc-standards-the-cqc-fundamental-standards-and-cqc-5-standards/>

**Required Insurances** means the types of policy or policies providing levels of cover as specified in the Service Specification(s), PDPS Clause A8.2 and Category Services Contract Clause 30.1.

**Review Meeting** means a meeting to be held in accordance with clause 0 (*Review Meetings*) or as otherwise requested in accordance with clause 0 (*Review Meetings*)

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

**Second Exception Report** means a report issued in accordance with clause 0 (*Contract Management*) notifying the recipients of a breach of a Remedial Action Plan and the continuing failure to remedy that breach

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

**Service Commencement Date** means the service commencement date set out in the Call Off Order Form Template and Pan Lancashire Rehabilitation Form.

**Service Contract** shall have the meaning ascribed in clause B1 of the Call-Off Terms and Conditions

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

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

**Service User Choice** means a recognition that the individual is best placed to judge their own needs and wellbeing. The must be involved in person-centred care and support planning in line with the Care Act (2014).

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

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

**Shared Personal Data:** the personal data to be shared between the Parties under clause B41.1 of this Contract. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:



a) Data Subjects to include any or all of the following: Staff (including volunteers, agents and temporary workers), Service Users, Service Users' family, suppliers or any other such data subjects as detailed in the main body of this Contract and any Schedules and Appendices as appended to it.

b) The categories of data to be processed shall be defined only insofar as they relate to the detail of the main body of the Contract and any Schedules and Appendices as appended to it.

**Special Conditions** means the special terms and conditions set out in Section C which will apply to any Service Contract awarded under the PDPS

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

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

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

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

**Sub-contractor** means any third party appointed by the Provider and approved by the Authority under clause 0 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

**Sub-processor** **NOT IN USE**

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

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

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

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

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

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

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

**Variation Notice** means a notice to vary a provision or part of a provision of this Contract issued under clause 0 (*Variations*).





**APPENDIX R: SUPPLIER INCENTIVE SCHEME - NOT USED**



## APPENDIX S: AWARD CRITERIA

The Award criteria will be confirmed as part of the relevant call off procedure, and will be in line with the award criteria set out within the call off procedure section of this document (Appendix B)





## APPENDIX U: ENHANCED SERVICES



## APPENDIX V: CONDITIONS PRECEDENT

Provide the Authority with a copy of the Provider's registration with the CQC or equivalent where the Provider has indicated must be so registered under the Law and in accordance with Clause A8.5 under the PDPS Contract.

	INSERT NAME OF PROVIDER	OTHER UNITS, ETC.
CQC PROVIDER ID	INSERT ID	INSERT ID
CI PROVIDER ID (CARE INSPECTORATE FOR SCOTLAND (CI))	INSERT ID	INSERT ID
HIW PROVIDER ID (HEALTHCARE INSPECTORATE WALES (HIW))	INSERT ID	INSERT ID

### Other Conditions Precedent:

- (a) The Provider must provide the Authority with copies of the Required Insurances as set out in Clause A8.2 of the PDPS Contract and Clause B30, Insurance, in the Category Services Contract; and
- (b) The Provider shall supply a copy of its Safeguarding Policy to the Authority before commencement of the Services.



## APPENDIX W: SERVICE USER GROUPS AND CATEGORIES

*[Insert – linked to the Providers]*



## **SECTION B: CALL-OFF TERMS AND CONDITIONS – DETOXIFICATION SERVICES**

### **B1 CONTRACT**

B1.1 This Service Contract is comprised of:

- (c) the Pan Lancashire Detoxification Referral Form;
- (d) these Call-Off Terms and Conditions (Section B) and its appendices; and
- (c) the Special Terms and Conditions (the 'Special Conditions') in Section C, as completed and agreed by the Parties and as varied from time to time in accordance with clause B25 (Variations) of these Call-Off Terms and Conditions.

### **B2 INTERPRETATION**

B2.1 In this Service Contract references to "Party" and "Parties" shall mean as follows:

- (c) the Authority and/or the Provider, where a Service Contract has been entered into between the Authority and the Provider pursuant to clause A7 of the PDPS Contract; or
- (d) the Beneficiary and/or the Provider, where a Service Contract has been entered into between the Beneficiary and the Provider pursuant to clause A7 of the PDPS Contract.

B2.2 Where a Service Contract has been entered into between the Beneficiary and the Provider pursuant to clause A7 of the PDPS Contract, all references to the "Authority" within this Section B Call-Off Terms and Conditions and Section C the Special Conditions shall be interpreted and construed as references to the Beneficiary.

B2.3 This Service Contract shall be interpreted in accordance with Appendix Q (*Definitions and Interpretation*) save as expressly provided for in clauses B2.1 and B2.2 or unless the context requires otherwise.

B2.4 In the event of and only to the extent of any conflict between the Pan Lancashire Detoxification Referral Form, the clauses of this Service Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Pan Lancashire Detoxification Referral Form;
- (b) clauses and appendices of the Service Contract (except Appendix O);
- (c) the Provider's Application;
- (d) any other document referred to in the Service Contract.

### **B3 CONTRACT PERIOD**

B3.1 The Service Contract shall take effect on the Service Commencement Date and shall expire automatically on the date set out in the Pan Lancashire Detoxification Referral Form unless it is otherwise terminated in accordance with the provisions of the Service Contract.

### **B4 SERVICES**

B4.1 The Provider shall provide the Services in accordance with the Service Specification(s) in Appendix A (Service Specifications), including any service limitations set out in them, and in accordance with the provisions of this Service Contract.

### **B5 WITHHOLDING AND/OR DISCONTINUATION OF SERVICE**

B5.1 Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:



- (e) who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
- (f) who displays abusive, violent or threatening behaviour unacceptable to the Provider (acting reasonably and taking into account the mental health of that Service User);
- (g) 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
- (h) 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.

**B5.2** If the Provider proposes not to provide or to stop providing a Service to any Service User under clause 0:

- (d) 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 two (2) Business Days);
- (e) 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;
- (f) the Provider must inform the Authority in writing without delay and wherever possible in advance of taking such action;

PROVIDED THAT nothing in this clause 0 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

**B5.3** The Provider shall on request, make available to the Authority copies of any patient guide or other written policy, procedure or protocol. The Provider shall promptly notify the Authority of any material changes to such guides, policies, procedures and protocols and shall make any changes to such guides, policies, procedures and protocols reasonably requested by the Authority.

## **B6 SERVICE AND QUALITY OUTCOMES INDICATORS**

**B6.1** The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Authority in writing:

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



- (f) respond to any reports and recommendations made by Local HealthWatch; and
- (g) comply with the Quality Outcomes Indicators set out in Appendix C (Quality Outcomes Indicators).
- (h) meet the requirements of the Care Quality Commission (CQC), Essential Standards of Quality and Safety - Outcomes 8 to ensure it has appropriate arrangements for cleanliness and infection control in accordance with the Health and Social Care Act 2008: Code of Practice on the Prevention and Control of Infections and Related Guidance (DH 2015) last updates on 13 December 2022 and the National Institute of Health and Care Excellence (NICE): Prevention and control of healthcare associated infections – Quality Improvement Guide (NICE 2011).
- (i) observe all current health and safety legislation in the delivery of its services.

## **B7 SERVICE USER INVOLVEMENT**

- B7.1 The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.
- B7.2 As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide evidence to the Authority of the involvement of Service Users, Carers and Staff in the development of Services.
- B7.3 The Provider must carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Authority in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in Appendix D (Service User, Carer and Staff Surveys) or as otherwise agreed between the Parties in writing from time to time.
- B7.4 The Provider must review and provide a written report to the Authority on the results of each survey carried out under clause 0 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Authority, the Provider must publish the outcomes and actions taken in relation to such surveys.

## **B8 EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**

- B8.1 The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- B8.2 The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- B8.3 In performing this Service Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and



- (c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,
- (d) and for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.

B8.4 As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide the Authority with a plan detailing how it will comply with its obligations under clause 0.

B8.5 The Provider must provide to the Authority as soon as reasonably practicable, any information that the Authority reasonably requires to:

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

## **B9 MANAGING ACTIVITY**

B9.1 The Provider must manage Activity in accordance with any activity planning and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services.

## **B10 STAFF**

B10.1 At all times, the Provider must ensure that:

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

B10.2 If requested by the Authority, the Provider shall as soon as practicable and by no later than ten (10) Business Days following receipt of that request, provide the Authority with evidence of the Provider's compliance with clause B10.1.

B10.3 The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:

- (a) proper and sufficient continuous professional and personal development, training, instruction and supervision; and
- (b) 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.

- B10.4 Where applicable under section 1(F)(1) of the NHS Act 2006, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.
- B10.5 The Provider must carry out Staff surveys in relation to the Services at intervals and in the form set out in Appendix D (Service User, Carer and Staff Surveys) or as otherwise agreed in writing from time to time.
- B10.6 Subject to clause 0, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
- (c) the Employment Checks; and
  - (d) such other checks as required by the DBS.
- B10.7 Subject to clause 0, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the written agreement of the Authority.
- B10.8 Where clause 0 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
- (a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
  - (b) 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
  - (c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
  - (d) any other reasonable requirement of the Authority.

## **B11 CHARGES AND PAYMENT**

- B11.1 Subject to any provision of this Service Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Service Contract, the Authority shall pay the Provider the Charges.
- B11.2 The Provider shall invoice the Authority for payment of Charges at the end of each calendar month (or such other frequency agreed between the Parties in writing). The Authority shall pay within 30 calendar days of receipt. Each invoice shall include such supporting information as may be required by the Authority to verify the accuracy of the invoice, including the relevant purchase order number, the relevant invoice number, and a breakdown of the Services supplied in the invoice period. Please note: In order to avoid any payment/processing delays, please



forward your invoice/correspondence to [inpatientdetox@lancashire.gov.uk](mailto:inpatientdetox@lancashire.gov.uk) (alternative mailing address: Contract Management, Patient Safety & Safeguarding, Lancashire County Council, PO Box 1337, County Hall, Preston, PR1 8XJ). **PLEASE DO NOT** forward them to Accounts Payable as instructed on the electronically generated Purchase Order.

In the event of an underpayment of an invoice due to the Provider's failure to submit the correct supporting information required pursuant to this clause, the Authority's sole liability shall be to pay the underpayment within 30 days of notification of the same. In the event the Authority incorrectly overpays an invoice incurring a loss either accidentally or on reliance upon incorrect, misleading or false information provided by the Provider pursuant to this clause, the Provider shall reimburse the Authority the full overpayment within 14 days of identifying the overpayment, or being notified of the same by the Authority.

- B11.3 The Charges are stated exclusive of VAT, which shall if lawfully due be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- B11.4 In its performance of this Service 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 Service Contract, the Law and/or Guidance).
- B11.5 If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause 0:
- i. the contesting Party shall within five (5) Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
  - ii. any uncontested amount shall be paid in accordance with this Service Contract.
- B11.6 If a Party contests a payment under clause 06 and the Parties have not resolved the matter within twenty ( 20) Business Days of the date of notification under clause 05, the contesting Party may refer the matter to dispute resolution under clause 0 and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B11.2.
- B11.7 Subject to any express provision of this Service Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Service Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B11.8 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 Service Contract or any other agreement between the Parties.
- B11.9 The Provider shall operate an Open Book Policy on pricing. All cost information is to be openly shared at any time with the Authority to ensure that the Charges paid with the Authority under this Service Contract are fair and reasonable. As and when requested by the Authority, the Provider will disclose its own suppliers'/manufacturers' pricing information and a summary of the Provider's on-costs which result in the Charges payable by the Authority.
- B11.10 As a result of the Open Book Policy the Authority can request that the Provider enters into negotiations to reduce the Charges. The Provider will not unreasonably refuse to enter into negotiations or implement justified variances.

### **Review of Charges**



B11.11 Charges and the Review of Charges shall be those set out in Appendix E. Following the Service Commencement Date increases in Charges will be considered and negotiated no more frequently than once every 12 calendar months on condition that the Provider's price amendment proposal is received by the Authority Representative in writing with at least three calendar months' notice before its intended implementation. For the avoidance of doubt, Charges increase proposals will not be considered during the first 12 months of the Contract term. All proposed increases in Charges must be supported by evidence in respect of the increase in cost to the Provider. Any proposed increase in Charges shall be capped to include the actual increase in cost to the Provider limited to a maximum percentage increase.

### **Annual Charges Uplift**

The Provider may receive, at the sole discretion of the Authority, an annual uplift to the Charges in line with the percentage rate applied to the funding for the Services under the Public Health Grant, excluding any increases in the Public Health Grant for specific purposes and/or services not included in the Contract.

B11.12 Increases in Charges once agreed between the Authority and Provider will be implemented on the first Monday of the appropriate calendar month (the 'Price Amendment Date'). No increase shall be permitted in respect of items which have been delivered or which should have been delivered prior to the Price Amendment Date but shall be limited to items which are not due for delivery until after the Price Amendment Date and to orders placed on or after the Price Amendment Date.

B11.13 Reductions in Charges available for any reason shall be accepted and implemented for the Authority immediately outside of any scheduled price review.

B11.14 The Authority agrees to consider requests from the Provider for a price review outside of the contractual review period only in the event of exceptional market price increases which are caused by global market circumstances wholly outside of the Provider's control and manageability. Agreed amendments to the Charges under this clause B11 shall be implemented not less than 28 days following notification in writing from the Authority of the agreed amendment to the Charges.

B11.15 **NOT USED**

B11.16 **NOT USED**

### **B12 SERVICE IMPROVEMENTS AND BEST VALUE DUTY**

B12.1 The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.

B12.2 In addition to the Provider's obligations under clause 0, where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.

B12.3 During the term of this Service Contract at the reasonable request of the Authority, the Provider must:

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



(b) implement such improvements; and

(c) where practicable following implementation of such improvements decrease the price to be paid by the Authority for the Services.

B12.4 If requested by the Authority, the Provider must identify the improvements that have taken place in accordance with clause 0, by reference to any reasonable measurable criteria notified to the Provider by the Authority.

### **B13 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

B13.1 The Provider shall adopt Safeguarding Policies and such policies shall comply with the Authority's safeguarding policy as amended from time to time and may be appended at Appendix F (Safeguarding Policies).

B13.2 At the reasonable written request of the Authority and by no later than ten (10) Business Days following receipt of such request, the Provider must provide evidence to the Authority that it is addressing any safeguarding concerns.

B13.3 If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

### **B14 SERIOUS REPORTABLE INCIDENTS**

B14.1 If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Reportable Incidents to any Regulatory Body as applicable, in accordance with the Law.

B14.2 If the Provider gives a notification to the CQC or any other Regulatory Body under clause 0 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within five (5) Business Days or within the timescale set out in Appendix G Serious Reportable Incidents.

B14.3 The Provider shall immediately notify and report to the Authority in the event of any incident occurring in the performance of its obligations under this Service Contract where that incident is a Serious Reportable Incident and shall provide all reasonable assistance to the Authority in investigating and handling the incident where it arises in the course of the provision of the Services.

B14.4 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Reportable Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix G Serious Reportable Incidents.

B14.5 Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause 0 and Appendix G Serious Reportable Incidents.

### **B15 CONSENT**

B15.1 The Provider must publish, maintain and operate a Service User consent policy which complies with Good Clinical Practice and the Law.

B15.2 The Provider shall:



- (c) ensure that the consent of Service Users is obtained wherever necessary in accordance with the Authority's consent policy, which is to be agreed between the Parties.
- (d) not, otherwise than in accordance with the Authority's consent policy, collect, keep, retain, sell, donate or preserve any part or parts of the human body or by-products thereof which have been removed from any Service User nor permit any third party to collect, keep, retain, sell or donate any such part or parts.

## **B16 SERVICE USER HEALTH RECORDS**

B16.1 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.

B16.2 The Provider must:

- (a) use Service User health records solely for the execution of the Provider's obligations under this Service Contract; and
- (b) give each Service User full and accurate information regarding his/her treatment and Services received.

B16.3 The Provider must at all times during the term of this Service Contract have a Caldicott Guardian and shall notify the Authority of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this Service Contract, it shall promptly notify the Authority of the identity and contact details of such replacements. [Caldicott Guardian guidance v1.0 27.08.21.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/2018/08/27/caldicott-guardian-guidance-v1.0-27-08-21)

B16.4 Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.

## **B17 INFORMATION**

B17.1 The Provider must provide the Authority the information specified in Appendix H (Information Provision) to measure the quality, quantity or otherwise of the Services.

B17.2 The Provider must deliver the information required under clause 0 in the format, manner, frequency and timescales specified in Appendix H (Information Provision) and must ensure that the information is accurate and complete.

B17.3 If the Provider fails to comply with any of the obligations in this clause 0 and/or Appendix H (Information Provision), the Authority may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Appendix H (Information Provision).

B17.4 In addition to the information required under clause 0, the Authority may request from the Provider any other information it reasonably requires in relation to this Service Contract and the Provider must deliver such requested information in a timely manner.

## **B18 EQUIPMENT**

B18.1 The Provider must provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services.



## **B19 TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS**

B19.1 The Provider must comply with any Transfer of and Discharge from Care Protocols agreed by the Parties set out in Appendix I (Transfer of and Discharge from Care Protocols).

## **B20. COMPLAINTS**

B20.1 The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services.

B20.2 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Service Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Service Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in clause B31 (*Default and Failure to Supply*).

## **B21 SERVICE REVIEW**

B21.1 The Provider must each quarter of this Service Contract deliver to the Authority a Service Quality Performance Report against the factors set out in Appendix J (*Service Quality Performance Report*).

B21.2 The Provider must submit each Service Quality Performance Report in the form and manner specified in Appendix J (*Service Quality Performance Report*).

## **B22 REVIEW MEETINGS**

B22.1 The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Service Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix K (Details of Review Meetings).

B22.2 Notwithstanding clause 0, if either the Authority or the Provider:

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

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

## **B23 CO-OPERATION**

B23.1 The Parties must at all times act in good faith towards each other.

B23.2 The Provider must co-operate fully and liaise appropriately with:

- (a) the Authority;
- (b) any third party provider who the Service User may be transferred to or from the Provider;



- (c) any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and
- (d) primary, secondary and social care services,

in order to:

- (i) ensure that a consistently high standard of care for the Service User is at all times maintained;
- (ii) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
- (iii) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Authority's or members of the public. For further information about the Authority's policy please contact the Health & Safety Team at [Health.SafetyCYP@lancashire.gov.uk](mailto:Health.SafetyCYP@lancashire.gov.uk).

## **B24 WARRANTIES AND REPRESENTATIONS**

B24.1 The Provider warrants and represents that:

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

B24.2 The Provider warrants that at all times for the purposes of this Service Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.



B24.3 The Authority warrants and represents that:

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

B24.4 The warranties set out in this clause 0 are given on the Service Commencement Date and repeated on every day during the term of this Service Contract.

## **B25 VARIATIONS**

B25.1 This Service Contract may not be amended or varied other than in accordance with this clause B25.

B25.2 Either Party may from time to time during the term of this Service Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

B25.3 If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than twenty (20) Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Service Contract.

B25.4 No Variation to this Service Contract will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or his nominee) in accordance with clause 0 (Notices). All agreed Variations shall form an addendum to this Service Contract and shall be recorded in Appendix L (Agreed Variations).

## **B26 ASSIGNMENT AND SUB-CONTRACTING**

B26.1 The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Service Contract without the Authority in writing:

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

B26.2 The Authority's consent to sub-contracting under clause 0 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Service 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.



- B26.3 Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Service Contract to the extent practicable.
- B26.4 The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Service Contract without the consent of the Provider.

## **B27 AUDIT AND INSPECTION**

- B27.1 The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, the General Pharmaceutical Council, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.
- B27.2 Subject to Law and notwithstanding clause 0, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.
- B27.3 Within ten (10) Business Days of the Authority's reasonable request, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- B27.4 The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- B27.5 During any audit undertaken under clause 0 or 0, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:
- (a) all reasonable information requested within the scope of the audit;
  - (b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
  - (c) access to the Staff.
- B27.6 The Provider shall keep and maintain until six (6) years after the end of the Service Contract, or for as long a period as may be agreed between the Parties, full and accurate records of this Service Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Provider shall on request afford the Authority or the Authority's representatives (including the Authority's external auditors) such access to those records as may be requested by the Authority in connection with this Service Contract.

## **B28 INDEMNITIES**

- B28.1 The Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Service Contract, or breach of its



statutory duty or breach of an obligation under the DPA, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Service Contract or breach of statutory duty or breach of an obligation under the DPA by the Authority.

## **B29 LIMITATION OF LIABILITY**

- B29.1 Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Service Contract
- B29.2 Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Service Contract.
- B29.3 Subject always to clause B29.5 the Provider's total aggregate liability:
- (a) in respect of the indemnities given by the Provider in Section C of the PDPS, clause C7.2 and clause C7.4 (TUPE) is unlimited;
  - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Service Contract, shall in no event exceed 200% of the aggregate Charges paid or payable by the Authority to the Provider, whichever is the greater.
- B29.4 Subject always to clause B29.5 the Authority's total aggregate liability:
- (a) in respect of the indemnities given by the Authority in Section C of the PDPS, clause C7.5 (TUPE) is unlimited;
  - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract, shall in no event exceed 200% of the aggregate Charges paid or payable by the Authority to the Provider, whichever is the lower.
- B29.5 Nothing in this Service Contract will exclude or limit the liability of either Party for:
- (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the Data Protection Legislation ;or
  - (d) any other act or omission, liability for which may not be limited under any applicable law.

## **B30 INSURANCE**

- B30.1 The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. The following levels of insurance must be provided:

public liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in relation to any one claim arising out of each and every event without limit on the number of claims in any one year or other period and such insurance shall expressly by its terms confer its benefits on the Authority;

employer's liability insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS);

professional indemnity insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year, and to include medical malpractice and clinical negligence cover with



a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year, and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

B30.2 The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.

B30.3 The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Service Contract.

### **B31 DEFAULTS AND FAILURE TO SUPPLY**

B31.1 In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of this Service Contract by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Service Contract including under clause 031, consult with the Provider and then do any of the following:

(a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within ten (10) Business Days or such other period of time as the Authority may direct;

(b) without terminating this Service Contract, suspend the affected Service in accordance with the process set out in clause 0;

(c) without terminating the whole of this Service Contract, terminate this Service Contract in respect of the affected part of the Services only in accordance with clause 0 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.

B31.2 If the Authority exercises any of its rights under clause B31.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

### **B32 CONTRACT MANAGEMENT**

B32.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in Appendix C (Quality Outcomes Indicators) and the Provider fails to meet the Quality Outcomes Indicator, the Authority may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Authority may have under this clause 032.

B32.2 The provisions of this clause 0 do not affect any other rights and obligations the Parties may have under this Service Contract.

B32.3 Clauses 0, 0, 0 and 0 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Authority.

#### **Contract Query**



- B32.4 If the Authority has a Contract Query it may issue a Contract Query Notice to the Provider.
- B32.5 If the Provider has a Contract Query it may issue a Contract Query Notice to the Authority.

### **Excusing Notice**

- B32.6 The Receiving Party may issue an Excusing Notice to the Issuing Party within five (5) Business Days of the date of the Contract Query Notice.
- B32.7 If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within ten (10) Business Days following the date of the Contract Query Notice.

### **Contract Management Meeting**

- B32.8 Unless the Contract Query Notice has been withdrawn, the Authority and the Provider must meet to discuss the Contract Query and any related Excusing Notice within ten (10) Business Days following the date of the Contract Query Notice.
- B32.9 At the Contract Management Meeting the Authority and the Provider must agree either:
- (a) that the Contract Query Notice is withdrawn; or
  - (b) to implement an appropriate Remedial Action Plan; or
  - (c) to conduct a Joint Investigation.

B32.10 If a Joint Investigation is to be undertaken:

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

### **Joint Investigation**

- B32.11 On completion of a Joint Investigation, the Authority and the Provider must produce and agree a JI Report. The JI Report must include (without limitation) a recommendation to be considered at the next Review Meeting that either:
- (a) the Contract Query be closed; or
  - (b) Remedial Action Plan be agreed and implemented.

B32.12 Either the Authority or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Service Contract to consider a JI Report.

### **Remedial Action Plan**

B32.13 Prior to the issue of a Remedial Action Plan where a Service Provider, its Unit or Specialist, is rated:

- (a) Inadequate; or
- (b) Requires Improvement; or
- (c) Receives a score of 1 or equivalent by the appropriate relevant Regulatory Body

during the term of the Contract or any Service Agreement, or at any time the Provider must inform the Authority as soon as possible without delay.



B32.14 If a Remedial Action Plan is to be implemented, the Authority and the Provider must agree the contents of the Remedial Action Plan within:

- (a) Five (5) Business Days following the Contract Management Meeting; or
- (b) Five (5) Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause 0.

B32.15 The Remedial Action Plan must set out:

- (a) milestones for performance to be remedied;
- (b) the date by which each milestone must be completed; and
- (c) subject to the maximum sums identified in clause B32.24, the consequences for failing to meet each milestone by the specified date.

B32.16 The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.

B32.17 The Authority and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.

B32.18 If following implementation of a Remedial Action Plan:

- (a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;
- (b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

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

B32.19 If the Authority and the Provider cannot agree a Remedial Action Plan within the relevant period specified in clause B32.14, they must jointly notify the Boards of Directors of both the Provider and the Authority.

B32.20 If, ten (10) Business Days after notifying the Boards of Directors, the Authority and the Provider still cannot agree a Remedial Action Plan, the Authority may withhold up to 2% of the monthly sums payable by it under clause B11 (Charges and Payment) for each further month the Remedial Action Plan is not agreed.

B32.21 The Authority must pay the Provider any sums withheld under clause B32.20 within ten (10) Business Days of receiving the Provider's agreement to the Remedial Action Plan. Unless clause 0 applies, those sums are to be paid without interest.

#### **Exception Reports**

B32.22 If a Party breaches a Remedial Action Plan and does not remedy the breach within five (5) Business Days of its occurrence, the Provider or the Authority (as the case may be) may issue a First Exception Report to that Party's chief executive and/or Board of Directors. If the Party in breach is the Provider, the Authority may withhold payment from the Provider in accordance with clause B32.24.



B32.23 If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Authority or the Provider (as the case may be) may issue a Second Exception Report to:

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

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

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

B32.24 If the Provider breaches a Remedial Action Plan:

- (a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority under clause B11 (*Charges and Payment*), from the date of issuing the First Exception Report and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority under clause B11 (*Charges and Payment*) in relation to each Remedial Action Plan;
- (b) The Authority must pay the Provider any sums withheld under clause B32.24(a) within ten (10) Business Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to clause B32.27, no interest will be payable on those sums.

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

B32.25 If the Provider is in breach of a Remedial Action Plan the Authority may, when issuing any Second Exception Report retain permanently any sums withheld under clause 04.

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

B32.26 If the Authority withholds sums under clause B32.20 or clause B32.24 or retain sums under clause B32.25, and within twenty (20) Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld or retained unjustifiably, the Authority must pay those sums to the Provider within ten (10) Business Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld or retained. If the Authority does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

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

B32.27 If the Provider does not agree a Remedial Action Plan:

- (c) within 6 months following the expiry of the relevant time period set out in clause B32.14; or
- (d) before the Expiry Date or earlier termination of this Service Contract,

whichever is the earlier, the Authority may retain permanently any sums withheld under clause B32.20.



B32.28 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Service Contract, the Authority may retain permanently any sums withheld under clause B32.24.

### **B33 DISPUTE RESOLUTION**

B33.1 If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix M (Dispute Resolution), unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.

### **B34 SUSPENSION AND CONSEQUENCES OF SUSPENSION**

B34.1 A suspension event shall have occurred if:

- (a) the Authority reasonably considers that a breach by the Provider of any obligation under this Service Contract;
- (b) may create an immediate and serious threat to the health or safety of any Service User; or
- (c) may result in a material interruption in the provision of any one or more of the Services; or
- (d) clause 0 does not apply, but the Authority, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of a Service or Services; or
- (e) the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each a Suspension Event).

B34.2 Where a Suspension Event occurs the Authority:

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

B34.3 During the suspension of any Service under clause 0, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to clause 0 has been referred to dispute resolution under clause B33 (*Dispute Resolution*).

B34.4 During the suspension of any Service under clause 0, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

- (a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause 0; and/or
- (b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause 0.



- B34.5 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- B34.6 Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).
- B34.7 Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:
- (a) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
  - (b) at the cost of the Provider:
    - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
    - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B34.8 As part of its compliance with clause 0 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.
- B34.9 If it is determined, pursuant to clause B33 (*Dispute Resolution*), that the Authority acted unreasonably in suspending a Service, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B34.10 During any suspension of a Service the Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.
- B34.11 When the Authority becomes reasonably satisfied that the Provider is able to and will perform the suspended Service, or part of the Service (as applicable) to the required standard, it may require the Provider to restore the provision of the suspended Service or part of the Service (as applicable) by issuing a notice to the Provider (a "Restoration Notice").

## **B35 TERMINATION**

- B35.1 Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 6 months' written notice at any time after the Service Commencement Date.
- B35.2 Without affecting any other right or remedy available to it, the Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:
- (a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
  - (b) the Provider is in persistent breach of its obligations under this Contract;
  - (c) the Provider:
    - i. fails to obtain any Consent;



- ii. loses any Consent; or
- iii. has any Consent varied or restricted,

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

- (d) the Provider has breached the terms of clause B43 (*Prohibited Acts*);
- (e) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
- (f) the Provider materially breaches its obligations in clause B41 (*Data Protection*);
- (g) two or more Second Exception Reports are issued to the Provider under clause B32  $\theta$  (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
- (h) the Provider breaches the terms of clause B26 (*Assignment and Sub-contracting*);
- (i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- (j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- (k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within thirty (30) Business Days following receipt of notice from the Authority identifying the breach;
- (l) a representation and/or warranty given by the Provider pursuant to Clause B24 (*Warranties and Representations*) is materially untrue or misleading;
- (m) the Provider breaches any of its obligations under Clause B30 (*Insurance*);
- (n) if the Authority reasonably believes any of the circumstances set out in Regulation 73(1) of the Public Contract Regulations 2015 or subsequent legislation apply.

**B35.3** Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure, and such event of Force Majeure persists for more than thirty (30) Business Days without the Parties agreeing alternative arrangements.

**B35.4** The Provider may terminate this Contract or any Service with immediate effect by written notice to the Authority if the Authority is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B35.4 if the Authority has failed to remedy such breach within thirty (30) Business Days of receipt of notice from the Provider to do so.

## **B36 CONSEQUENCE OF EXPIRY OR TERMINATION**



- B36.1 Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- B36.2 On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.
- B36.3 On the expiry or termination of this Contract or termination of any Service the Provider must co-operate fully with the Authority to migrate the Services in an orderly manner to the successor provider.
- B36.4 In the event of termination or expiry of this Contract, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.
- B36.5 If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B35.3, B35.4) or if the Authority terminates under clause B35.1 (*Termination*), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.
- B36.6 The provisions of clauses 0 (*Staff*), B11 (*Charges and Payment*), B14 (*Serious Reportable Incidents*), 0 (*Service User Health Records*), B17 (*Information*), B26 (*Assignment and Sub-contracting*), B27 (*Audit and Inspection*), B36 (*Consequence of Expiry or Termination*), B39 (*Confidentiality*) and 0 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.
- B36.7 Where the Authority terminates this Contract pursuant to clause B35.1, the Authority's total liability to the Provider is limited to payment of Charges properly incurred by the Provider, and in accordance with this Contract, in providing the Services up to the date of termination.

### **B37 BUSINESS CONTINUITY**

- B37.1 The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.
- B37.2 The Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify the Authority as soon as reasonably practicable of its activation and in any event no later than five (5) Business Days from the date of such activation.

### **B38 COUNTER-FRAUD AND SECURITY MANAGEMENT**

- B38.1 The Provider must put in place and maintain appropriate counter fraud and security management arrangements.
- B38.2 The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Authority.



- B38.3 The Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- B38.4 If the Provider or its Staff commits Fraud in relation to this or any other contract with the Authority, the Authority may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

## **B39 CONFIDENTIALITY**

- B39.1 Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the “Disclosing Party”) and the Party that receives it (the “Receiving Party”) has no right to use it.
- B39.2 Subject to Clauses B39.3 and B39.4, the Receiving Party agrees:
- (a) to use the Disclosing Party’s Confidential Information only in connection with the Receiving Party’s performance under this Contract;
  - (b) not to disclose the Disclosing Party’s Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
  - (c) to maintain the confidentiality of the Disclosing Party’s Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- B39.3 The Receiving Party may disclose the Disclosing Party’s Confidential Information:
- (a) in connection with any dispute resolution under clause B33 (*Dispute Resolution*);
  - (b) in connection with any litigation between the Parties;
  - (c) to comply with the Law;
  - (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party’s duty set out in clause B39.2;
  - (e) to comply with a regulatory bodies request.
- B39.4 The obligations in clause B39.1 and clause B39.2 will not apply to any Confidential Information which:
- (a) is in or comes into the public domain other than by breach of this Contract;
  - (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
  - (c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B39.5 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B39.
- B39.6 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B39 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B39.
- B39.7 This clause B39 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.



B39.8 The obligations in clause B39.1 and clause B39.2(b) shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

#### **B40 DATA PROTECTION – NOT USED**

#### **B41 DATA PROTECTION - DATA CONTROLLERS IN COMMON**

B41.1 **Shared Personal Data.** This clause sets out the framework for the sharing of Personal Data between the Parties as Controllers. Each Party acknowledges that one Party (referred to in this clause as the Data Discloser) will regularly disclose to the other Party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

B41.2 **Effect of non-compliance with Data Protection Legislation.** Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation under this Contract, and any material breach of the Data Protection Legislation in relation to this Contract by one Party shall, if not remedied within thirty (30) days of written notice from the other Party, give grounds to the other party to terminate the Contract with immediate effect.

B41.3 **Particular Obligations relating to Data Sharing.** Each Party shall be individually and separately responsible for complying with the obligations that apply to it as Data Controller under any applicable Data Protection Laws in relation to the Personal Data Processed under this Contract.

B41.4 Each Party is a Controller of the Personal Data it discloses or makes available to the other Party and will process that Personal Data as separate and independent Data Controllers for the Agreed Purposes. The parties process the Personal Data as Data Controllers in common and **not** jointly as joint Data Controllers.

B41.5 Each Party as Data Controller shall:

- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed **Purposes**;
- (b) give full information to any data subject whose **Personal Data may be processed under the Contract and of the nature of such processing. This includes giving notice that, on the termination of the Contract, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees**;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other **than the Permitted Recipients**;
- (e) ensure that all Permitted Recipients are **subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract**;



- (f) ensure that it has in place appropriate technical and organisational measures, **reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.**
- (g) not transfer any **Personal Data received from the Data Discloser outside the UK unless the transferor:**
  - a. complies with the provisions of Articles 26 of the UKGDPR (in the **event the third party is a joint controller**); and
  - b. ensures that:
    - i. the transfer is to a country approved by the Information Commissioner as providing **adequate protection pursuant to Article 45 of the UK GDPR**; or
    - ii. there are appropriate safeguards in place pursuant to **Article 46 of the UK GDPR**; or
    - iii. Binding corporate rules are in place or
    - iv. one of the derogations for specific situations in **Article 49 of the UK GDPR applies to the transfer.**

B41.6 **Mutual assistance.** Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation in relation to this Contract. In particular, each Party shall:

- (a) consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other Party about the receipt of any data subject access request. Data subjects have a right of access and a right of correction in respect of their Personal Data which the Provider holds about them, in accordance with Data Protection Legislation and the Provider shall be the contact point for data subjects wishing to exercise their rights in respect of personal data held about them in connection with the delivery of the Services;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other Party wherever reasonable;
- (e) assist the other Party, at the cost of the other Party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of the Contract unless required by Law to store the Personal Data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
- (i) maintain complete and accurate records and information in relation to this Contract to demonstrate its compliance with this clause and allow for audits by the other Party or the other Party's designated auditor; and
- (j) provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the Data Protection Legislation.

B41.7 Each Party shall be liable for all liabilities, damages, direct losses, fines, all interest, penalties, reasonable legal costs, and expenses incurred by the other Party arising from, or in connection with, any breach for which the relevant Party is entitled to bring a claim against the other Party



under this clause B41. Neither Party shall be liable to the other Party except insofar as the liabilities, damages, direct losses, fines, interest, penalties, reasonable legal costs, and expenses are directly caused (or directly arise) from the negligence or breach of clause B41 by that Party.

## **B42 FREEDOM OF INFORMATION AND TRANSPARENCY**

B42.1 The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

B42.2 If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:

- (a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
- (c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
- (d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
- (e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within five (5) Business Days of such request and without charge.

B42.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.

B42.4 Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

B42.5 In preparing a copy of this Contract for publication pursuant to clause 0 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.

B42.6 The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.



B42.7 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

#### **B43 PROHIBITED ACTS**

B43.1 Neither Party shall do any of the following:

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

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

B43.2 If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:

- (a) to exercise its right to terminate under clause B35.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
- (b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
- (c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

B43.3 Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

B43.4 The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within five (5) Business Days of the Authority requesting it and enforced by the Provider where applicable.

B43.5 Should the Provider become aware of or suspect any breach of this clause B43, it will notify the Authority immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.

#### **B44 FORCE MAJEURE**



- B44.1 Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.
- B44.2 Subject to clause B44.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.
- B44.3 The Party claiming relief as a result of an event of Force Majeure must serve an initial written notice on the other Party immediately it becomes aware of the event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief must then serve a detailed written notice within a further fifteen (15) Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform the relevant obligations under this Contract as is available, including the effect of the event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Services.
- B44.4 A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.
- B44.5 The Authority shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

#### **B45 THIRD PARTY RIGHTS**

- B45.1 Save as expressly stated herein, no term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

#### **B46 CAPACITY**

- B46.1 Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Contract, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon the Authority or in any way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability on the part of the Authority under this Contract (howsoever arising) in any capacity other than as contracting counterparty.
- B46.2 At all times during the Contract Period the Provider shall be an independent service provider and nothing in the Service Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Service Contract.

#### **B47 SEVERABILITY**

- B47.7 If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Contract.



**B48 WAIVER**

B48.1 Any relaxation or delay by either Party in exercising any right under this Contract will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

**B49 PUBLICITY**

B49.1 Without prejudice to clause B42 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.

B49.2 The Provider must take all reasonable steps to ensure the observance of the provisions of clause B49.1 by all its staff, servants, agents, consultants and sub-contractors.

**B50 EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY**

B50.1 Nothing in this Contract creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Authority and the Provider.

**B51 GOVERNING LAW AND JURISDICTION**

B51.1 This Contract will be governed by and interpreted in accordance with English Law.

B51.2 Subject to the provisions of clause B33 (*Dispute Resolution*), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.



## APPENDIX A: SERVICE SPECIFICATION



**APPENDIX B: CALL-OFF PROCEDURE AND CALL-OFF ORDER FORM TEMPLATE AND  
REFERRAL FORM  
DETOXIFICATION SERVICES**

**1 GENERAL**

- 1.1 Defined terms in this Call Off Procedure shall have the same meaning as those defined terms in the PDPS Contract.
- 1.2 The Provider shall only be eligible to be awarded Service Contract for those Service User groups and categories set out in Appendix W. The process and criteria set out in this Appendix B for award of Service Contracts shall therefore only be applicable for Service Contracts for which the Provider is eligible pursuant to Appendix W.
- 1.3 For the avoidance of doubt a Pan Lancashire Detoxification Referral Form will form part of the Service Contract. The Service Contract will apply to an individual placement or a group of placements or Services as described in the Pan Lancashire Detoxification Referral Form.
- 1.4 Where "The Council" is referred to in any Pan Lancashire Detoxification Referral Form this includes the Authority or the Beneficiary (as applicable and as defined in the PDPS Contract) who are permitted to access the PDPS and to call off from the PDPS.
- 1.5 Service Contracts will at all times be awarded in compliance with the principles of equal treatment and transparency. This Call Off Procedure necessarily allows for flexibility in the way the Authority will formulate and award Service Contracts.
- 1.6 Any new requirements for Services to be considered for delivery under this PDPS will be scheduled for Call Off under the terms of this PDPS Contract. Existing service arrangements will not be transferred to the PDPS unless a placement or service requirement needs to be recommissioned.
- 1.7 PDPS Providers must be mindful of their overall workload and, if there is a possibility of over-commitment or resource shortages, to provide immediate notice of the same to the Authority's Representative.
- 1.8 When admitted to the PDPS and where the award of a Service Contract for those Services is to be the subject of Call Off Procedure, only PDPS Providers identified by the Authority or Beneficiary (as applicable), in its absolute discretion and in accordance with this Call Off Procedure, as being capable of performing the Services shall be eligible to be considered for award of a Service Contract. For the avoidance of doubt, if a PDPS Provider has been suspended from the PDPS they will not be invited to take part in the Call Off Procedure.
- 1.9 If the Authority or the Beneficiary decide to source Services through this PDPS Contract, then either may do so using one of the Call Off Procedures set out below.

**2 DIRECT AWARD**

- 2.1 Direct Award without a competition in accordance with the Provider Selection Regime 2023 (PSR 2023) under Regulation 18(4) and Schedule 2 (and, where applicable, any relevant provisions in the Procurement Act 2023) may be utilised if any specific factors pertaining to the Services, Service User or operational reasons apply including:
  - (a) A PDPS Provider's previous knowledge of the Service User;
  - (b) A PDPS Provider's specialism means it can be evidenced there is only one PDPS Provider that is capable of meeting the Service User's requirements;
  - (c) Location of the Provider's service means it can be evidenced there is only one PDPS Provider that is capable of meeting the Service User's requirements or fulfilling Service User Choice;
  - (d) where the Service User or Carer or advocate for the Service User expressly selects a provider. In accordance with the Care Act 2014 the individual's views, wishes, feelings and beliefs are recognised as well as the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and



being provided with the information and support necessary to enable the individual to participate;

- (e) price/value for money; and/or
- (f) any other reason or factor that the Authority acting reasonably determines as relevant to carry out a direct award taking into account Service User Choice and value for money.

2.2 To determine the Provider for direct award of a Service Contract, the Authority shall assess the following (in order of priority):

- (a) Capability of the Provider to meet Service User requirements, taking into account relevant factors as set out in section 2.1 of this Appendix B;
- (b) Capacity to deliver the Service Contract in accordance with Service User requirements, taking into account relevant factors as set out in section 2.1 of this Appendix B
- (c) Service user choice, where applicable, taking into account section 3 of this Appendix B;
- (d) Location of the delivery of the Services, taking into account relevant factors as set out in section 2.1 of this Appendix B
- (e) Value for money.

2.3 Value for money shall be assessed based on the Price submitted in relation to the Call Off Maximum Charges set out in Appendix E (as may be adjusted from time to time in accordance with Appendix E and Clause A7.5) across PDPS Providers.

2.4 The Prices for any Service Contract established through Direct Award will be based on the Providers' price for the referral but shall in no event exceed the Maximum Charges.

2.5 The Charges for block purchase of beds and/or units may not need to be below the Maximum Charges.

### **3 SERVICE USER CHOICE**

3.1 For the avoidance of doubt Service User Choice includes a decision taken by, or a combination of, the Service User, their Carer, or a recognised advocate of the Service User.

3.2 A Service User may be given the choice of PDPS Provider where more than one suitable PDPS Provider has capacity to offer Services, where there isn't a large disparity in cost and where time allows for this. Where a Service User has indicated a choice of PDPS Provider to deliver all or an element of the Services, and the Authority is satisfied that the proposed Service Contract:

- (a) Will be held by a PDPS Provider that will meet the needs of the Service User(s);
- (b) Delivers Services which in the absolute discretion of the Authority are proportionate to the needs of the Service User(s); and,
- (c) Can meet the Service Users needs and deliver the Services as described in the Request for Services;
- (d) a Service Contract may be agreed.

3.3 The Charges for any Services established through Service User Choice will be at or below the Maximum Charges or, in exceptional circumstances, mutually agreed by the Authority and Provider on the basis of an open book costing exercise.

### **4 MINI-COMPETITION**



- 4.1 The Authority anticipates that, due to time constraints in placing Service Users, the majority of Service Contracts will be dealt with under the process for direct awards set out in section 2 of this Appendix B.
- 4.2 For any Service Contract, including block purchase of beds and/or units, to be awarded by mini-competition following the competitive process and procedure in Regulation 18(7) and Schedule 15 of the PSR 2023 (and, where applicable, any relevant provisions in the Procurement Act 2023), the Authority shall contact in writing all PDPS Providers who are capable of providing the Services to submit an offer and the mini-competition documents will be made available to them.
- 4.3 For the avoidance of doubt where a PDPS Provider has been suspended from the PDPS or is presently subject to other comparable sanctions in respect of any failings in regard to the performance requirements within the Service Specification and the PDPS they will not be invited to participate in the mini-competition.
- 4.4 The proposed Service Contract will substantially be in the form advertised at the outset of the PDPS, though the mini-competition documents will provide clarity in respect of:
- (a) the scope of the Services required to be delivered;
  - (b) any specific requirements;
  - (c) any other aspect of the Service Contract or mini-competition as appropriate.
- 4.5 The Authority shall fix a time limit which is sufficiently long to allow responses for each specific mini competition to be submitted, taking into account factors such as the complexity of the subject-matter and the time needed to prepare responses.
- 4.6 Providers' offers in response to a Request for Services shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired.
- 4.7 Mini competitions will be awarded on the basis of:
- (1) Capability to meet the requirements of a particular Service Contract/Service User;
  - (2) Capacity to deliver the requirements of the Service Contract;
  - (3) Service User Choice
  - (4) Location
  - (5) Price

Where more than one placement is considered to be suitable and the criteria listed above are satisfied, the best value option will be selected.

Exact weightings will depend on the complexity and nature of the Services to be delivered and will be published with each mini competition. Service User Choice may be a determinative factor.

- 4.8 **Social Value Policy.** The Public Services (Social Value) Act 2012 places an obligation on the Authority to consider how what is being procured will improve the economic, social and environmental well-being of the local area. The Authority is seeking to increase Social Value in all goods, works and services that it procures and therefore Social Value is likely to form part of the Award Criteria evaluation.

- 4.9 The Authority may apply Award Criteria for a mini competition as follows. Service Contract to the Service Provider that has submitted the best tender on the basis of the award criteria set out in the Mini-Competition documents.



4.10 The quality weighting will range from 0-60%. Exact weightings will depend on the complexity and nature of the Services to be delivered and will be published with each Mini Competition. Quality weightings will comprise of:

<b>Quality Criteria</b>	<b>Weighting</b>
Collaborative Working	Weighted at/between 0 and 30%
Placement Stability	Weighted at/between 0 and 20%
Health and Wellbeing	Weighted at/between 0 and 30%
Service Delivery/ Mobilisation	Weighted at/between 0 and 20%
Risks and Challenges	Weighted at/between 0 and 20%
Service Quality and Monitoring	Weighted at/between 0 and 20%
Social Value	Weighted at/between 0 and 20%
Other criteria as identified at mini-competition stage	Weighted at/between 0 and 60%

4.11 The Price Criteria weighting will range from 40-100%.

4.12 Exact weightings will depend on the complexity and nature of the Services to be delivered and will be published with each mini competition. Health and Wellbeing Choice may be a determinative factor.

4.13 All PDPS Providers invited to take part in the mini-competition will be informed of the outcome of the mini-competition.



## **5. CALL OFF ORDER FORM TEMPLATE AND PAN LANCASHIRE REFERRAL FORM FOR DETOXIFICATION SERVICES**

- 5.1 Where a direct award regime or mini competition call off procedure is used; the Call Off Order Form Template and the Pan Lancashire Detoxification Referral Form will automatically incorporate the following documents:
- (a) The Call Off Section B Service Contract for this category of service; and
  - (b) The Appendices; and
  - (c) The Special Terms and Conditions under Section C of the PDPS Contract
- 5.2 The Call Off Procedure is set out in section 2 and section 4 of this Appendix B respectively.
- 5.3 The Pan Lancashire Detoxification Referral Form together with the Call Off Order Form Template shall form a Call Off Contract made between the Provider and the Referrer in relation to the Service User.
- 5.4 The Call Off Contract may be subject to variation under specific terms of the Section B Service Contract.
- 5.5 The Provider has been selected to deliver this service by the Referrer.
- 5.6 No other terms from the Provider and Referrer are part of the Call Off Contract. That includes any terms written on the back of, added to this Call Off Order Form Template or presented at the time of delivery of the category B services.
- 5.7 The Provider and the Referrer will be expected to sign the Call Off Order Form prior to the commencement of services.



## CALL OFF ORDER FORM TEMPLATE

Incorporated into the Call Off Order Form Template are:

- (a) The Detoxification Specification Services Document;
- (b) The Call Off Section B Category Service Contract;
- (c) The Appendices;
- (d) The Special Terms and Conditions set out in Section C of the PDPS Contract;
- (e) The Pan Lancashire Detoxification Referral Form and, where applicable,
- (f) The Form of Inpatient Detoxification Agreement (IPDA) for Funding Arrangements.
- (g) (together "the Core Terms")

### THE REQUEST FOR SERVICES IS BETWEEN:

Reference Number (if applicable):

**[INSERT REFERENCE NUMBER OF THE PDPS CONTRACT]**

The Referrer:

**[INSERT REFERRER DETAILS]**

and

The Provider:

**[INSERT PROVIDER DETAILS]**

#### Call Off Services:

Service User(s) Treatment Details:

Core Service:

Lancashire Pan Referral Form Details:

Flexible Service:

Additional Service:

Other Service:

(where applicable)

Key Personnel:

**[INSERT DETAILS OF KEY PERSONNEL]**

Premises, where applicable:

**[INSERT DETAILS OF PREMISES]**



Quality Standards:	[INSERT DETAILS OF FOR EXAMPLE CQC QUALITY STANDARDS]
Deliverables:	[INSERT DETAILS OF REQUIREMENTS CONTAINED WITHIN THE SPECIFICATION SERVICES DOCUMENT]
Commencement Date of Treatment:	[INSERT DATE]
Expiry Date of Treatment:	[INSERT INDICATIVE/EXPIRY DATE]
Length of Treatment:	[INSERT INDICATIVE/LENGTH OF TREATMENT: [ ] DAYS; [ ] NIGHTS; [ ] WEEKS; [ ] MONTHS]
Extended Length of Treatment (if applicable):	[INSERT EXTENDED LENGTH OF TREATMENT: [ ] DAYS; [ ] NIGHTS; [ ] WEEKS; [ ] MONTHS]
Additional Treatment (if applicable):	[INSERT ADDITIONAL TREATMENT]
<b>Call Off Service Commencement Date:</b>	[INSERT DATE]
<b>Call Off Service Expiry Date:</b>	[INSERT DATE]
The <b>Maximum Term</b> of the Call Off Order Form under section 2 (direct award) or section 4 (mini competition) set out in Appendix B is for:	Up to four (4) years
The <b>Call Off Charges</b> will be:	As provided for in the Specification document, Clause B11 and Appendix E of the Category B Services for Detoxification Services Contract and may also be subject to Clause A7.5 of the PDPS Contract.
The <b>basis</b> of the <b>Call Off Charges</b> will be:	Hourly; nightly; weekly; residential, <b>rates</b> .
<b>Call Off Service Liability:</b>	As set out in Clauses B28, B29.3 and B30 of the category Services Contract.
<b>Additional Insurances:</b>	[IF APPLICABLE, INSERT]
<b>Form of Inpatient Detoxification Agreement (IPDA) for funding arrangements, where applicable:</b>	[ATTACH COMPLETED FORM]



**SIGNATORIES TO THE CALL OFF ORDER FORM**

<b>For and on behalf of the Referrer:</b>	<b>For and on behalf of the Provider:</b>
Signature:	Signature:
Name:	Name:
Role:	Role:
Date:	Date:



**FORM OF PAN LANCASHIRE DETOXIFICATION REFERRAL FORM**

Name of Service Provider	
Name of Community Treatment Service / Authority	Inspire North and Central Lancashire
Referrer contact number/ email address	All correspondence to: <a href="mailto:InspireIPD@cgl.org.uk">InspireIPD@cgl.org.uk</a>
Date referral received	
Clinic / assessment date	
Medically Monitored / Managed	
Please specify reason for admission / treatment plan	<p><b>Priority</b> <input type="checkbox"/></p> <p>Drug detox only <input type="checkbox"/></p> <p>Alcohol detox only <input type="checkbox"/></p> <p>Alcohol &amp; drug detox <input type="checkbox"/></p> <p>Stabilisation of alcohol, opiate, crack / cocaine, amphetamine, benzodiazepine, other <input type="checkbox"/></p> <p>Dual diagnosis assessment <input type="checkbox"/></p> <p>Other <input type="checkbox"/></p>
Proposed length of Stay	
Please specify any identified complex issues that may indicate a possible higher risk in patient detox	
Please specify if there is requirement to remain on any prescribed medication such as Diazepam or other drug	
Who prescribes this medication:	
General Practitioner Name, Address & Contact details	



Pharmacy Name, Address & Contact details	
Please confirm that an up-to-date RISK ASSESSMENT has been provided with this application	Yes <input type="checkbox"/> No <input type="checkbox"/>

**Please continue with the referral form. The additional Information sheet at the end of the referral form can be utilised for any further comments / concerns / issues (please use headings) the referrer might wish to make which could benefit the Service Provider's knowledge and understanding of the Service User's needs and therefore promote a successful treatment plan.**



Lancashire County Council

**FORM OF INPATIENT DETOXIFICATION AGREEMENT (IPDA) FOR FUNDING ARRANGEMENTS**

This agreement is between Lancashire County Council (the Commissioner), and the Service Provider named in **Section A**, for the Detoxification or stabilisation of Substance Misusing clients who are the commissioning responsibility of Lancashire County Council.

**Conditions of the Agreement**

The purpose of this agreement is to ensure that a high quality of service is provided to the individual identified in **Section A**. The agreement for the current funding arrangements will be reviewed through the contract management of the framework agreement. A referral represents a 'call off' of activity against the requirements of the Framework Agreement.

Rationale for placement: The Framework Agreement requires the selection of the preferred provider unless there is a clear rationale for a different choice of provider.

If a reserve provider has been chosen, please outline the rationale for this choice.

For extensions, please provide the rationale from the service provider and resend the original IPDA form including the extended number of nights requested (page 2) and sign and date the extension option (Page 3).

In making a referral the following steps must be followed:

**Section A** must be completed by the nominated referrer.

**Section B** is completed by the Commissioner. All sections must be completed.

The completed IPDA is returned to the referrer for onward transmission onto the Service Provider.

**Section A: Value of the Agreement.**

This agreement is for the care of:

<b>Patient ID</b>		<b>NHS Number</b>		<b>Agreed Bed Nights</b>	
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<b>Detox Type or stabilisation</b>	Alcohol		Opiates		Non- opiate	(define)	
	Opiates and crack		Alcohol and opiates		<i>Alcohol and non- opiate</i>	<i>(define)</i>	

Please indicate (Y) where appropriate	Alcohol and opiate/crack			Other		(define)	
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<b>GP Address</b>		<b>GP Postcode</b>	
<b>IPD Service Provider</b>		<b>Planned Admission Date</b>	
<b>Doctor</b> (Provider medic approving IPD)		<b>Provider Key Worker</b>	

<b>Medically Managed</b>		<b>Extension Only:</b>	
<b>Medically Monitored</b>		Ext Nights Number Only	

<b>Number of Pre-detox sessions attended</b>	
<b>Residential Rehabilitation (RR) Y/N*</b>	
<b>Structured Day Care Unit (SCU) Y/N*</b>	

<b>*Name of RR/SCU</b>	
Admission Date	

<b>Summary of post detox recovery plan – First 12 weeks</b>

<b>Previous Detox (community/Inpatient) and rehabilitation history (including dates)</b>	
Dates:	History:

**Addition key factors / risk(s) associated with the individual:**

<b>Key Factors:</b>  Please indicate (Y) where	Mental Health		Suicidal Ideation		Criminal Justice	
	Domestic Abuse		Homeless/vulnerably housed		Learning disability	
			Preston Rough Sleeper			

Appropriate	Disability		Long Term Condition		Lack of / fluctuating capacity	
	Pregnant		Safeguarding		Child Protection	

<b>Mental Health Factors:</b> (including suicidal ideation/ capacity issues)
<b>Physical Factors:</b> (including disability and long-term conditions)
<b>Social Factors</b> (including lack of support/housing/employment)
<b>Extension Request</b> (stating reason)

**Section B:**

Confirm that the identified responsible Commissioner is Lancashire County Council.

**Yes / No**                      *(delete as appropriate)*

Contracting issues will be dealt with by – Behaviour Change, Lancashire County Council.

Invoices should be sent to **Lancashire County Council, via email to: [behaviourchange@lancashire.gov.uk](mailto:behaviourchange@lancashire.gov.uk)**

**Submission of a signed IPDA by the referrer confirms that:**

- The identified patient has been appropriately assessed as requiring inpatient detoxification and agrees to the plan;
- That clinical suitability, access and client choice have supported this referral;
- That this is an agreed element of the individual’s recovery plan;
- That there is medical support for this treatment intervention;
- All relevant requirements of the Framework Agreement have been adhered to by the referrer

**For and on behalf of the Referrer:**

Signed		Date	
		DD/MM/YY	

Name		Designation	
Extension		Date Approved	
Provider	CGL Inspire North / Inspire East / Inspire Central / or WAWY Delete above as appropriate.		

**For and on behalf of Lancashire County Council:**

Signed		Date DD/MM/YY	
Name		Designation	
Extension		Date Approved	

The Service Provider will invoice for bed nights used on a monthly basis from the date of admission up to the day of discharge.

Please mark the invoices clearly with reference to the Tier 4 Lancashire Inpatient Detoxification Framework Agreement and for the attention of Behaviour Change Team, Lancashire County Council.

**A copy of the signed IPDA must be attached to each invoice.**

**Duration**

The Service Provider will inform the referrer of the commencement date of the admission as soon as it is known.

The agreement is for the duration of the stay of the named patient and refers to that patient only; if the admission date is deferred by more than 6 weeks from the date stated the referral must be discussed with the Commissioner prior to admission. In the event of new referrals, further agreements will be required on a named patient basis.

The expected length of stay of this client is agreed with the referrer and Service Provider prior to admission as per recovery plan and is stated on this IPDA; any changes or extensions must be agreed with the referrer and Commissioner via a new IPDA which must include a clear rationale from the Service Provider for such change/extension.

The Service Provider will inform the referrer immediately of any termination or change in status of the placement.

**Reports and Review Meetings**

It is expected that there will be regular communication between the Service Provider and the Referrer regarding the client progress. Upon discharge, a discharge review must be forwarded to the referrer. Date of discharge and / or reasons for unplanned discharges to be forwarded to the referrer.

**Failure to provide reports as required may result in delays in payment.**



## APPENDIX C: QUALITY OUTCOMES INDICATORS

### QUALITY ASSURANCE FRAMEWORK AND KEY PERFORMANCE INDICATOR/PMF



FINAL Rehab and  
Detox QAF.docx



FINAL Detox  
KPI\_PMF.xlsx



APPENDIX D: SERVICE USER, CARER AND STAFF SURVEYS

***[Insert form, frequency and reporting process where required]***



**APPENDIX E: CHARGES**  
**DETOXIFICATION SERVICES**

**[Please list the price(s) for the Services or set out the total charges to be paid]**

Appendix E to be read in conjunction with Contract Clause B11.

Subject always to the terms and conditions of this Contract and the Open Book Policy, the Authority will pay the Provider for charges properly incurred in providing the Services.

The Provider must invoice the Authority via email to the following address:  
inpatientdetox@lancashire.gov.uk

<b>Service Category</b>	<b>Strands</b>	<b>Price Per Bed Per Night</b>
1a	Residential Medically Managed Detoxification Services (Section 4.3 of Detoxification Services specification)	£[ ]
1b	Residential Medically Monitored Detoxification Services (Section 4.4 of Detoxification Services specification)	£[ ]
1c	Block purchase of beds medically managed (Section 4.3 of Detoxification Services specification)	£[ ]

Please see Clause B11 in relation to annual uplift of Charges.

**REVIEW OF CHARGES**

9. Prior to agreeing to any additional increase in Charges, the Provider must agree to an open book exercise to demonstrate that cost increases are due to factors outside its control, manageability, and foreseeability and the same cannot be offset by operational efficiencies. The budgetary constraints and any other considerations that the Authority deems necessary are relevant may be taken into account when assessing the Charge increase request from the Provider.
10. The Authority makes no representation and offers no guarantee that any increase will be applied to the Charges following any review or assessment carried out.
11. A Provider request for a review of Charges under Clause 11.11 must be made in advance of the relevant Contract Year to which the requested uplift of Charges relates, to take effect from the commencement of that Contract Year.
12. No requests for a retrospective uplift will be considered.
13. Where a Provider is required to take part in open book accounting:
  - a. but refuses to; or
  - b. where on review of the Provider's accounts the Authority considers, in its reasonable opinion, that:
    - i. incorrect accounting procedures; and/or
    - ii. double charging; and/or
    - iii. other unacceptable practices are being conducted; and/or



- iv. where the Provider's accounts do not represent a true reflection of the actual financial circumstances of the Provider,

the Authority reserves the right to withhold any uplift.

14. Decreases in Charges will be accepted without application
15. Notwithstanding the provisions of clause 11.14, the Provider may request an additional review of the Charges only once per calendar year.
16. The Authority, in its complete and sole discretion, will consider increasing the Charges payable to the Provider in the following circumstances which must be supported with relevant material evidence, and in any event only where the Provider has incurred an increase in costs due to factors entirely outside of its control, manageability and foreseeability, such as:
  - a) Changes to the living wage or inflation resulting in the delivery of Services under the Terms and Conditions being unsustainable to the Provider;
  - b) An increase in auto-enrolment pension contributions; and/or
  - c) Any other evidenced circumstances or situation deemed appropriate by the Authority.



## APPENDIX F: SAFEGUARDING POLICIES

8. The Provider will follow the [Lancashire Children's Safeguarding Board Guidelines](#) in order to assess the needs and safety of children and young people and provide access to appropriate support in line with the Children Act 1989 (as updated by the Children Act 2004), Education Act 2002, "Every Child Matters 2003" Green Paper and [Working Together To Safeguard Children \(2015\)](#).
9. In line with the <http://www.lancshiresafeguarding.org.uk/media/15006/pan-lancs-continuum-of-need-july-2017-.pdf>, the Provider must engage in Early Help processes, including: e-learning and other training; use of [Common Assessment Framework \(CAF\)](#); Well Being, Prevention and Early Help Panels; Team around the Family/Lead Professional responsibilities, as appropriate, to ensure effective assessment of children and young people in a family context.
10. The Provider must have a "Safeguarding Children and Young People Policy" which complies with the [Pan Lancashire Policy and Procedures for Safeguarding Children Manual](#). Particular attention should be paid to review contents in section 5 of the guidance around: Children in Specific Circumstances e.g. Child Sexual Exploitation (CSE), Children Missing from Home and Hidden Harm.
11. The Provider shall comply with [Lancashire structures and policy](#) to safeguard adults who are vulnerable. They must refer to the <http://www.lancshiresafeguarding.org.uk/lancashire-safeguarding-adults.aspx> to ensure they have appropriate policy and procedures to comply, especially with regard to safeguarding those with increased risk of abuse, including domestic violence, young people's transition to adult services and the Prevent agenda etc.
12. All of the Provider's workforce will have the relevant level of safeguarding training appropriate to their role as identified by the Lancashire Safeguarding Children's Board (LSCB). This will include e-learning around Child Sexual Exploitation and Common Assessment Framework (CAF)/Early Help (as above). Information on the relevant level of training for roles can be found within the [LSCB course catalogue](#), which should be regularly reviewed to ensure currency of learning.
13. The [Disclosure and Barring Service](#) (DBS) was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). Under the provisions of the Safeguarding Vulnerable Groups Act 2006 the DBS will make decisions about who should be barred from working with vulnerable groups. The Provider must comply with such requirements.
14. The new [Prevent Duty](#) (section 26 of the Counter-Terrorism and Security Act 2015) came into force in July 2015. Safeguarding from extremism is no different to how practitioners would share a concern about drugs, physical and sexual abuse or any other form of criminality. Providers must ensure that staff complete this nationally accredited [e-learning programme](#).

### Policy documents and Guidance:

- Children Act 1989: <http://www.legislation.gov.uk/ukpga/1989/41/contents>
- Children Act 2004: [http://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga\\_20040031\\_en.pdf](http://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf)
- Common Assessment Framework (CAF) and Lead Professional (LP): <http://panlancshirescb.proceduresonline.com/chapters/contents.html>
- Disclosure and Barring Service: <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>
- Lancashire Constabulary Terrorism Training: <http://www.lancashire.police.uk/help-advice/safer-communities/counter-terrorism/partner-training.aspx>



- LANCASHIRE COUNTY COUNCIL Safeguarding adults:  
<http://www.lancshiresafeguarding.org.uk/lancashire-safeguarding-adults.aspx>
- Lancashire Safeguarding Children's Board:
- PAN Lancashire and Cumbria Safeguarding adults Boards Procedures model
- Pan Lancashire Policy and Procedures for Safeguarding Children Manual
- Prevent Duty Guidance: <https://www.gov.uk/government/publications/prevent-duty-guidance>
- Working Together to Safeguard Children:  
<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>



## APPENDIX G: SERIOUS REPORTABLE INCIDENTS

### Operational procedure for the management of Serious Reportable Incidents occurring within services commissioned by Public Health

#### Patient safety

The Service Provider will have a clear procedure for the investigation of and procedures to act upon any findings for Serious Reportable Incidents (SRIs) alongside CQC reporting requirements. The Service Provider is required to report such instances within two (2) Business Days of it being discovered.

All Serious Reportable Incidents need to be reported via the Authority's secure email portal:

#### Part A:

<https://lccsecure.lancashire.gov.uk/corporate/questionnaires/runQuestionnaire.asp?qid=757254>

#### Part B:

<https://lccsecure.lancashire.gov.uk/corporate/questionnaires/runQuestionnaire.asp?qid=757336>

3. The Service Provider must proactively engage with any Post Incident Reviews in line with the guidance issued by NHS England.
4. The Service Provider must have a policy and procedures in place regarding Infection Control.

#### Background

Serious incidents requiring investigation in services are rare, but when they do occur, there must be systematic measures in place to respond to them. Service Providers are accountable via contracts to the Authority. From 1 April 2013, Public Health transferred into local government, including responsibilities for the performance management of serious incidents in services they commission.

This procedure outlines the responsibilities of Lancashire County Council in relation to performance management of serious incidents reported by public health Service Provider organisations and describes the requirements for serious incident reporting and management within Lancashire County Council contracted services.

As the system develops, changes will be made where appropriate, including in relation to any relevant actions that result from the Francis report and subsequent Government response.

#### **Serious Incidents, Patient Safety Incidents and other incidents (referred to in this procedure as Serious Reportable Incidents)**

A Serious Reportable Incident is any incident involving:

- r) Service Users, relatives or visitors
- s) Staff
- t) Contractors with equipment, in the building or property

And which may or has;



- u) Resulted in death (this includes deaths from suicide/suspected suicide or homicide) or serious injury or was life-threatening
- v) Contributed to a pattern of reduced standard of care
- w) Involved a hazard to public health
- x) Caused serious disruption of services
- y) Caused significant damage to the reputation of a Service Provider or its Staff
- z) Caused significant damage to assets
  - aa) Significant information governance breach
  - bb) Activation of Business Continuity Plan
  - cc) Involved fraud or suspected fraud
  - dd) Given rise to a significant claim for damages
  - ee) Involved the suspension of a member of Staff
  - ff) Involvement of external investigation agencies, e.g. Police, Health and Safety Executive, Care Quality Commission
  - gg) Raised severe criticism by an external body, e.g. Coroner's inquest, a Parliamentary and Healthcare Ombudsman
  - hh) Involved significant healthcare-associated infections, e.g. outbreaks, or a public health issue, especially if they require the involvement of the Health Protection Agency

### **Governance principles, performance management and monitoring**

Both the Authority and the Service Provider are accountable for effective governance and learning following a Serious Reportable Incident.

The Service Provider takes the lead in responding to a serious incident. It is the role of the Authority to monitor the response of the Service Provider and seek assurance and evidence from the Service Provider that the relevant policies and procedures are in place and implemented as necessary.

The Service Provider should be put in place a formally designated lead, responsible for patient safety and the management of Serious Reportable Incidents. In the case of the Authority, this is the Director of Public Health (DPH), deputised by the Head of Service, Patient Safety and Safeguarding. The mechanism to consider and monitor Serious Reportable Incidents will be via the relevant Governance Group.

A Serious Reportable Incident database will be held. This will be password protected, with access for the Authority's Director of Public Health, Head of Service, Patient Safety and Safeguarding, and identified lead public health Commissioners.

All actions taken should be consistent with the pan-Lancashire safeguarding policies and procedures. This policy must not interfere with existing lines of accountability nor replace the duty to inform the police and/or other organisations or agencies as required, i.e. CQC, Health and Safety Executive or Information Commissioner's Office. In particular, NHS Service Providers may still have a responsibility to report through the NHS Serious Untoward Incident process on to the StEIS system. This does not however, negate or substitute the responsibility to inform the lead commissioner at the Authority.

### **Management of a Serious Reportable Incident**

On occurrence of a Serious Reportable Incident, the Service Provider must notify the Authority as soon as they are aware of the incident. The Part A incident reporting form should be submitted within two (2) Business days.

On receipt of this form, an initial assessment of the incident will be completed using the information included on the form. After the assessment is carried out the following options will be considered;

1. No further action is needed



## 2. Further action required – Serious Incident Investigation form requires completion by the Service Provider

Where the Authority believes that the incident has significant implications for the Authority, the issue will be escalated to the DPH and any other relevant Head of Service and the relevant lead member will be informed.

In the case of a safeguarding incident, the Service Provider's designated lead officer should liaise with the Authority's lead for adult safeguarding or child protection to ensure local safeguarding procedures are followed.

The Authority is required to ensure that the Service Provider;

- a) Has robust reporting arrangements in place which comply with national guidance;
- b) Reports Serious Reportable Incidents to the commissioners within two (2) Business days of the incident being identified by the Service Provider;
- c) Report Serious Reportable Incidents to the NRLS, StEIS and other bodies as appropriate, e.g. CQC, Police, HSE.
- d) Report never events in accordance with the NHS *Never Events Framework*; and;
- e) Report safeguarding incidents to the relevant local safeguarding board(s)

### Investigating a Serious Reportable Incident

The Authority should ensure that;

- a) Serious Reportable Incidents are managed and investigated appropriately in a transparent manner
- b) They continue to monitor incidents until the Service Provider gives evidence that each action point has been implemented
- c) They close the incident when they are satisfied with the investigation, recommendations and action plans that have been submitted and that local monitoring arrangements are in place and working for all cases reported on StEIS.
- d) The action plans agreed with the Service Provider following Serious Reportable Incident investigations have a clear trajectory with named responsible leads.
- e) Learning is embedded and demonstrated through regular thematic reviews

### Communications

Serious Reportable Incidents can be triggers for media coverage and increased public scrutiny. Both the Authority and the Service Provider should; ensure openness and transparency, have a clear plan for sharing information and have a clear communications and engagement strategy. Relevant elected members will be briefed about Serious Reportable Incidents where appropriate.

### Monitoring and closure of Serious Reportable Incidents

The Authority is required to lead on the closure of Serious Reportable Incident reports. Prior to closing an incident, the Authority should ensure that the following have been submitted. Serious Reportable Incident closure checklist (Information should be included in Part B of the incident reporting form).

#### Requirement

Requirement	Check
An investigation that identifies findings, based on root causes and recommendations	



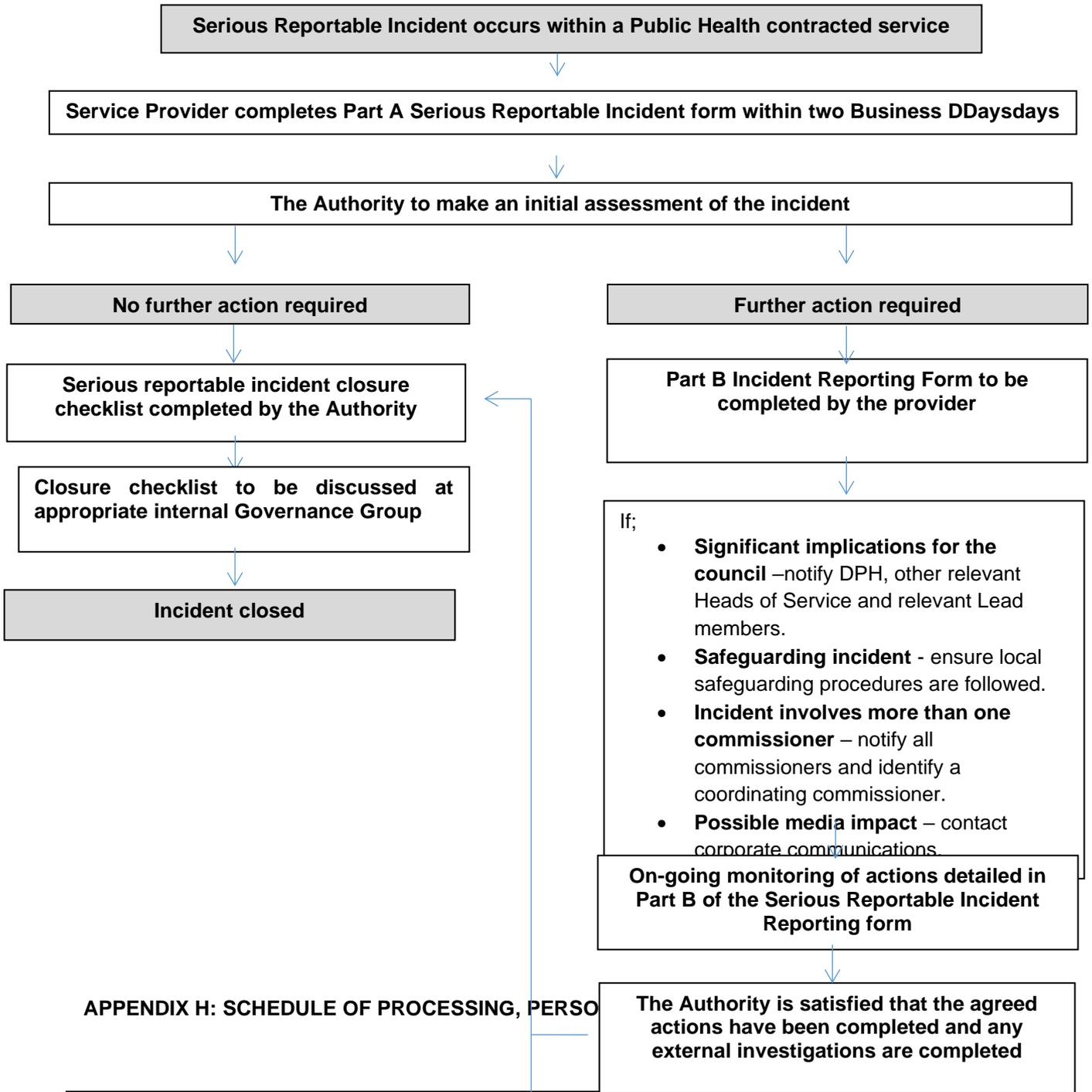
Where required, an action plan with action points addressing each root cause (with a named lead and timescale for implementation)	
Lessons learnt have been shared	
Details of other bodies notified and copies of reports	

These checklists will be submitted to the appropriate Governance Group for formal closure of the incident.

The Authority is committed to improvement in quality and safety in commissioned services. There will be a systematic approach to analysing the Serious Reportable Incident intelligence in order to support a culture of learning and the commissioning of safe and effective services.



**Process for the reporting and management of Serious Reportable Incidents related to public health contracted service**



**APPENDIX H: SCHEDULE OF PROCESSING, PERSONNEL**

Description	Details
-------------	---------



Identity of the Controllers	The Parties acknowledge that for the purposes of the Data Protection Legislation, each Party is a Controller.
Subject matter of the processing	The data is to be processed as part of the Council's [enter the subject matter].
Duration of the processing	<p>The processing will commence on [date] and shall expire automatically on [date] unless an extension to the Contract is agreed.</p> <p>The Contract term will be [number of years] years with an option to extend by any number of defined periods provided that the total period does not exceed [enter number of years] years.</p> <p>In the event that the Contract is extended, the processing shall be carried out during the period(s) of extension.</p>
Nature and purposes of the processing	The nature of the processing covers the collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means), but only insofar as detailed in the main body of the Contract and any Schedules and Appendices as appended to it for the purposes as described in the same.
Type of Personal Data being Processed	<p>To include any or all of the following:</p> <ul style="list-style-type: none"> <li>• Name</li> <li>• Address</li> <li>• Date of birth</li> <li>• National Insurance number</li> <li>• NHS number</li> <li>• Financial, pay, income and benefits information</li> <li>• Images or other such types of data</li> <li>• Education records</li> <li>• Employment records</li> <li>• Medical records</li> <li>• Hospital and other medical practitioner correspondence</li> <li>• Prescription and medication information</li> <li>• Social service, police and other agency case notes</li> <li>• Correspondence in relation to the Criminal Justice System and other services and providers in that field. For example prison, probation and CRC records</li> <li>• Service User case notes</li> <li>• Service User family and third party contact details, including but not limited to telephone numbers, addresses, National Insurance and NHS numbers</li> </ul>



	<ul style="list-style-type: none"> <li>• Service User family and third party information in relation to any services, statutory or otherwise, which they have received. For example, substance misuse support services</li> </ul> <p>The types of data to be processed shall be defined only insofar as they relate to the detail of the main body of the Contract and any Schedules and Appendices as appended to it</p>
Categories of Data Subject	To include any or all of the following: staff (including volunteers, agents and temporary workers), customers, Beneficiaries, service users, service users' family, suppliers, patients, students, pupils, members of the public or any other such data subjects as detailed in the main body of the Contract and any Schedules and Appendices as appended to it such as the Referral Forms.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>On termination of the Contract, the Provider must return Personal Data (and any copies of it) to the Council and certify to the Council that it has done so within ten (10) Business Days of the Contract being terminated.</p> <p>If the Provider is required by any Law or Regulatory or Supervisory Body to retain any Data that it would otherwise be required to return, it must notify the Council in writing of that retention giving details of the Data that it must retain and the reasons for its retention.</p> <p>The Provider must co-operate fully with the Council during any handover arising from the termination of the Contract, and if the Council directs the Provider to migrate Data to the Council or to a third party, it must provide all reasonable assistance with ensuring safe migration including ensuring the integrity of Data and the nomination of a named point of contact for the Council to communicate with.</p>



APPENDIX I: TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS

*To be inserted from Service Specifications if appropriate*



## APPENDIX J: SERVICE QUALITY PERFORMANCE REPORT

***[Insert format and manner of provision of the Service Quality Performance Report, together with the factors to be measured and reported on]***

Please refer to the relevant Service Specification Section, the Quality Assurance Framework and the Quality Outcome Tab of the PMF/KPI Document.



## APPENDIX K: DETAILS OF REVIEW MEETINGS

### **[Insert frequency and manner of Review Meetings]**

1. Authorised representatives
  - 1.1 The Authority's initial Authorised Representative: [INSERT DETAILS]
  - 1.2 The Service Provider's initial Authorised Representative: [INSERT DETAILS]
2. Key personnel  
  
[INSERT DETAILS]
3. Meetings
  - 3.1 Type
  - 3.2 **Quorum** :
  - 3.3 **Frequency** : on a quarterly basis with details to be confirmed
  - 3.4 **Agenda** :
4. Reports
  - 4.1 Type : TBC
  - 4.2 Contents :
  - 4.3 Frequency :
  - 4.4 Circulation list :



APPENDIX L: AGREED VARIATIONS

**[Insert agreed Variations]**



## APPENDIX M: DISPUTE RESOLUTION

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

#### 3. ESCALATED NEGOTIATION

2.1 Except to the extent that any injunction is sought relating to a matter arising out of clause 0 (Confidentiality), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the fifteen (15) Business Days following receipt of the first such offer (the “Negotiation Period”) each of the Parties shall negotiate in good faith and be represented:

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

2.1.2 for the last five (5) Business Days, by its chief executive, director, or board member who has authority to settle the Dispute, provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

#### 3 MEDIATION

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

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

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



Part 2 of Appendix M - Nominated Mediation Body

**[If other mediation body is agreed under paragraph 2.1 of Part 1 of Appendix M, insert details of body here]**

**[Insert Expert Determination details - CEDR]**



Part 3 of Appendix M - Recorded Dispute Resolutions

**Insert**



## APPENDIX N: SUCCESSION PLAN

### 1. Contract Handover Document

The purpose of this contract handover document is to ensure the contract management team has ceased LCC contract in compliance with the succession plan. This template is to be completed in conjunction with the provider and in line with the contract that is being ceased.

Name of Person in Attendance	Position	Organisation
Date of Completion:	Completed By:	Contract:

Areas for discussion	Contract Management Team notes and actions
<b>Service</b>  What is the contract start date?  What is the contract cease date?	
<b>Staffing</b>  What is the number of staff?  What is the plan for transfer of <i>staff</i> ?  <i>Redeployment, redundancies, TUPE transfer, etc</i>	
<b>Service users</b>  Number of service users currently?  Up to date SU list and visit details each week from XXX and final visit  Final SU list required by XXX to include brief details of next visit and what is required.  Any specific SU needs that need to be taken into account	



<p><i>(This information will need to be shared with the incoming provider).</i></p> <p><i>A separate meeting to be arranged for the outgoing and incoming provider for the transfer of SU information.</i></p>	
<p><b>Communications</b></p> <p>Have staff been informed of the transfer? Introduction from incoming provider</p> <p>Have stakeholders been informed of the transfer?</p> <p>Have service users been informed of the transfer?</p>	
<p><b>Data Transfer</b></p> <p>Consent from service users to transfer their data (provider responsibility)</p> <p>When will the data transfer take place? Will there be a test transfer? When will the systems close?</p> <p>Do the systems talk to each other?</p> <p>How will the final quarter data be accessed and submitted?</p> <p><i>EMIS involvement where relevant</i></p>	
<p><b>Partner agencies or referral agencies</b></p> <p>Have you informed partner agencies? Withdrawal from management or other agreements.</p> <p>Provide a list of partner agencies to be shared with incoming provider.</p>	
<p><b>Premises –</b> Does the cease of this contract bring about giving notice on the office lease/rent?</p> <p><i>This may or may not apply?</i></p>	
<p><b>Complaints</b></p> <p>Any complaints that are on going</p>	
<p><b>Safeguardings/ Serious Reportable Incidents</b></p> <p>Any current safeguarding's/ SRIs</p>	



<p><b>Organisational issues for the provider –</b></p> <p>Is there any disposal of assets that have been funded by this contract?</p> <p>What are the assets and what has been agreed with the provider for these assets when the contract ceases i.e. laptop, equipment etc?</p> <p>Have you checked how the records are to be archived/stored? (check the contract for how long records are required to be kept).</p> <p>Is this GDPR compliant?</p> <p>Change of Address/location inform LCC if within the archive period of keeping records</p>	
<p><b>Regulation</b></p> <p>Ensure compliance with other regulatory regimes i.e. CQC or others</p>	
<p><b>Risks</b></p> <p>Any anticipated risks with the demobilisation / transfer</p>	



#### 4. Service Level Succession Plan

##### Introduction

As a general definition, succession planning is the process of preparing to hand over control. Specifically, organisation succession planning is the process of preparing to hand over control of the business or service to others, in this instance the newly appointed provider, in a way that is the least disruptive to the organisation's Staff and Service Users. The template as below is intended to support the process of succession planning and enable a smooth transition and continuity for Service Users.

<b>Service-Level Succession Plan</b>	
Service Name	
Provider	
Contracting Authority/Authorities	
Annual Contract Value	
Expiration Date	
Reason for Decommissioning	
Decommissioning Impact Assessment Complete	
Date of Notice Served	
Est. Procurement Advert Issue Date	
Est. Contract Award Date	
Est. Successor Start Date	
Notes: This plan will apply where there is a change of provider following a procurement. 'LA' refers to Local Authority 'PROVIDER' refers to the incumbent (outgoing) provider 'Newly appointed (incoming) provider' refers to the provider that will be providing the services as from <div style="background-color: yellow; width: 150px; height: 15px; margin-top: 5px;"></div>	



		TASKS	LA/PROVIDER	OFFICER	DUE DATE	RISKS/CONSTRAINTS	PROGRESS (RED, AMBER, GREEN)
TASK 1	<b>COMMUNICATION</b>						
Subtasks							
	1.1	Maintain communication between provider and Local Authority in regards to procurement plans monthly via Contract Management Meeting.					
	1.2	PROVIDER to identify referral sources					
	1.3	Newly appointed provider to send out communication to referral sources notifying them of the change in process with agreed cessation date and confirm any new arrangements.					
	1.4	PROVIDER to manage communication with the Newly appointed provider and all communications to be agreed by LCC					
	1.5	LA to communicate service exit and ongoing arrangements to CCG / NHSE / LMC /LPC					
	1.6	LA to communicate service exit and ongoing arrangements to the public.					



	1.7	PROVIDER to inform existing service user of any changes which may impact on them (if applicable)						
	1.8	PROVIDER to identify any interdependencies and notify.						
	1.9	Develop legacy documentation						
	1.10	Relevant approval/information routes to be followed.						

		TASKS	LA/PROVIDER	OFFICER	DUE DATE	RISKS/CONSTRAINTS	PROGRESS (RED, AMBER, GREEN)	
TASK 2	<b>SERVICE-USER RELATED TASKS</b>							
Subtasks								
	2.1	Care standards and quality outcomes continually reviewed to ensure continuity of service is not affected via contract meeting						
	2.2	PROVIDER and LAs to agree cessation of new service users date.						



	2.3	PROVIDER to review caseloads to identify number of caseloads to be transferred.						
	2.4	PROVIDER, Newly appointed provider and Authorities to develop agreed process for managing transfer of care, where indicated						
	2.5	PROVIDER and Newly appointed provider to instigate agreed referral/transition process.						
	2.6	All service-users safely exited from the service through managed discharge.						
	2.7	All service-users safely transferred to another provider. As indicated						

		TASKS	LA/PROVIDER	OFFICER	DUE DATE	RISKS/CONSTRAINTS	PROGRESS (RED, AMBER, GREEN)	
TASK 3		<b>STAFFING</b>						
	3.1	LA's Request TUPE information from PROVIDER						
	3.2	Trust to link with HR Manager and establish regular updates to Staff.						
	3.3	30 day Staff consultation to commence.						
	3.4	PROVIDER to report to Authorities on any staffing losses						



	3.5	PROVIDER to corporate with Newly appointed provider with regards to TUPE process to ensure safe transfer of staff (where applicable)						
<b>TASK 4</b>	<b>MANAGEMENT OF SERVICE USER RECORDS</b>							
	4.1	PROVIDER to confirm existing arrangements for storage and retention of records.						
	4.2	PROVIDER to confirm number of records held, format, size:  Paper/electronic?						
	4.3	LA and PROVIDER to review policy and procedures with regards to safe transfer, retention or disposal of patient/Service User records						
	4.4	PROVIDER, LA and or new provider to agree process to be followed. NB. IG & IT system requirements to be identified to support safe transfer.						
	4.5	PROVIDER to instigate agreed process.						

TASKS TASKS	LA/PROVIDER	OFFICER	DUE DATE	RISKS/CONSTRAINTS	PROGRESS (RED, AMBER, GREEN)	COMMENTS
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<b>TASK 5</b>	<b>MANAGEMENT OF SERVICE INFORMATION</b>							
	5.1	LA & PROVIDER to review contract information requirements						
	5.2	PROVIDER to map service information flows						
	5.3	PROVIDER to complete submission of local and national data returns or agree alternative processes						
<b>TASK 6</b>	<b>EQUIPMENT/FACILITIES</b>							
	6.1	PROVIDER to provide a list of estates that services operate from, including costs applicable to the contract.						
	6.2	PROVIDER to serve notice on premises if applicable.						
	6.3	PROVIDER / LA to agree LA-owned assets within contract, e.g. equipment, IT systems, licenses, resources, branding, training programmes and process for transfer or disposal						
	6.4	PROVIDER to update Authorities of any issue in relation to estates, ensuring services and Staff in the run-up to expiration are operating out of safe, secure and appropriate accommodation and any anticipated disruption to services is communicated at the earliest opportunity.						



	6.5	Any other legacy issues to be considered and captured by the PROVIDER						
--	-----	---	--	--	--	--	--	--

		TASKS	LA/PROVIDER	OFFICER	DUE DATE	RISKS/CONSTRAINTS	PROGRESS (RED, AMBER, GREEN)	COMMENTS
<b>TASK 7</b>		<b>TENDER/CONTRACTING ISSUES</b>						
	7.1	Review of provider and authority contract responsibilities in relation to termination/expiry of contract (clause B33)						
	7.2	Notice formally served to provider.						
	7.3	TUPE contract clause comes into effect						
	7.4	PROVIDER to identify any subcontract arrangements and serve notice.						
	7.5	LA and PROVIDER to agree final reconciliation of payment process.						
<b>TASK 8</b>		<b>MANAGEMENT OF RISK</b>						
	8.1	Decommissioning Impact Assessment complete if required						
	8.2	Equality Impact Assessment complete						



	8.3	Trust exit plan agreed and approved by appropriate service heads and boards e.g. IG						
	8.4	Any service risks identified and alerted to the Contract Manager for discussion and management by both parties						
	8.5	Exit planned reviewed at contract management meeting						



**APPENDIX O: PROVIDER'S APPLICATION**

**[INSERT]**



## APPENDIX P: TEMPLATES

### CONTRACT QUERY NOTICE

#### Private and Confidential

Manager/Owner/Director  
Address line 1  
Address line 2  
Town  
County (if not Lancashire)  
Post code

Phone:  
Email:  
Your ref:  
Our ref: ***your initials/Contract  
Query Notice Ref***  
Date:

Dear << enter name>>

#### CONTRACT QUERY NOTICE

##### Contract Query Notice Reference:

This Contract Query Notice concerns the agreement between [DETAILS OF PROVIDER] and Lancashire County Council the "Council" dated [DATE] for the provision of [DETAILS OF CONTRACT] ("the Contract").

This Contract Query Notice is issued pursuant to clause B29 of the Contract, to query instances of performance or non-performance.

This Contract Query Notice is being issued because:

Ref No.	Contract Query	Previous Correspondence	Source documentation/reports (s)
1	[DETAILS OF QUERY]	[REFER TO ANY PREVIOUS CORRESPONDENCE]	[REFERENCE THE SOURCE DOCUMENTATION/REPORTS USED TO MAKE THE DECISION TO ISSUE THE CONTRACT QUERY NOTICE]
2	[DETAILS OF QUERY]	[REFER TO ANY PREVIOUS CORRESPONDENCE]	[REFERENCE THE SOURCE DOCUMENTATION/REPORTS USED TO MAKE THE DECISION TO ISSUE THE CONTRACT QUERY NOTICE]

You are reminded that, under Clause B29.6 (Excusing Notice) of the contract, you may issue an Excusing Notice within five (5) Business Days of the date of the Contract Query Notice.

If the explanation set out in the Excusing Notice is accepted, the Contract Query Notice must be withdrawn in writing within ten (10) Business Days following the date of the Contract Query Notice.



Unless the Contract Query Notice is withdrawn, the Authority and Provider must meet to discuss the Contract Query and any related Excusing Notice within ten (10) Business Days following the date of the Contract Query Notice.

Possible outcomes of the Contract Management Meeting, as detailed in Clause B29.9, are:

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

Please acknowledge receipt of this notice by signing, scanning and returning a copy, to [INSERT EMAIL ADDRESS] no later than 48 hours after receipt.

Yours sincerely,

Manager/Owner/Director

.....Sign below and return.....

We acknowledge receipt of this letter.

Signed .....

[PARTY 2]

Date .....

**EXCUSING NOTICE**



Private and Confidential  
Manager/Owner/Director  
Address line 1  
Address line 2  
Town  
County (if not Lancashire)  
Post code

Phone:  
Email:  
Your Ref:  
Our Ref: ***your initials/Contract Query Notice Ref:***

Date:

Dear << enter name>>

**EXCUSING NOTICE**

**Contract Query Notice Reference:**

This Excusing Notice concerns the agreement between [DETAILS OF PROVIDER] and Lancashire County Council the "Council" dated [DATE] for the provision of [DETAILS OF CONTRACT] ("the Contract").

This Excusing Notice is issued by [RECEIVING PARTY DETAILS] to [ISSUING PARTY DETAILS] under Clause B29.6 (Excusing Notice) of the Contract, with reference to the receipt of the Contract Query Notice referred to above and is issued within five (5) Business Days of the date of the Contract Query Notice.

The [RECEIVING PARTY DETAILS] considers the following explanation to be excusing grounds within the scope of Clause B29.7. Unless the [ISSUING PARTY DETAILS]:

- accepts the explanation set out in this Excusing notice; and
- withdraws the Contract Query Notice within ten (10) Business Days of the date of the Contract Query Notice,

the [RECEIVING PARTY DETAILS] will attend a Contract Management Meeting within ten (10) Business Days following the date of the Contract Query Notice, to discuss the Contract Query and this Excusing Notice.

**Excusing Grounds:**

Provide reasonable detail of the excusing explanation and supporting information where possible to enable the other Party to make an informed decision as to whether to accept this Excusing Notice

<b>Ref No.</b>	<b>Contract Query</b>	<b>Excusing Explanation</b>	<b>Supporting Information</b>
1.	[DETAILS OF QUERY]	[DETAIL OF THE EXCUSING EXPLANATION]	[SUPPORTING INFORMATION WHERE POSSIBLE]
2.	[DETAILS OF QUERY]	[DETAIL OF THE EXCUSING EXPLANATION]	[SUPPORTING INFORMATION WHERE POSSIBLE]

Yours sincerely,

Manager/Owner/Director

**REMEDIAL ACTION PLAN  
PUBLIC HEALTH SERVICES PDPS**



Action No.	Milestones for performance to be remedied	Date that milestones must be completed by	Person Responsible	Consequences for failing to meet the specified date	Progress Made	Date of Completion
1						
2						



## APPENDIX Q: DEFINITIONS AND INTERPRETATION

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

**Access Agreement** means the agreement between the Authority and any contracting body or authority which must be entered into prior to the contracting body or authority securing category Service Contracts under the PDPS

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

**Agreed Purposes** means the data to be processed as part of the Services.

**Application** means the Provider's application to join the PDPS as set out in Appendix O.

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

**Authority Representative** means the person identified in clause A4 or their replacement

**Beneficiary** means any contracting body or authority able to secure category Service Contracts under the PDPS Contract via the Access Agreement.

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

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

**Business Continuity Plan** means the Provider's plan referred to in Clause 0 (*Business Continuity*) relating to continuity of the Services, as agreed with the Authority and as may be amended from time to time

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

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

**Call-off Procedure** means the method by which Service Contracts are awarded to Providers as set out in clauses A7.6 to A7.13, and Appendix B of the PDPS Contract.



**Call-Off Terms and Conditions** means the terms and conditions set out in Section B which will apply to any Service Contract awarded under the PDPS.

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

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

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

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

**Commencement Date** means 1 August 2024

**Competed Services Award Criteria** means the criteria set out in Appendices B and S under the PDPS Contract.

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

**Conditions Precedent** means the Conditions Precedent referred to in clause A3.8 and set out in Appendix V under the PDPS Contract.

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

**Consents means:**

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

**Contract Notice** means the contract notice reference [INSERT] placed on the UK e-notification Find a Tender service on [INSERT DATE].

**Contract Period** means the period from the Service Commencement Date to:

- a) the date of expiry set out in **Error! Bookmark not defined.**B3 of the Call-Off Terms and Conditions; or
- b) such earlier date of termination or partial termination of the Service Contract in accordance with the Law or the provisions of the Service Contract.

**Contract Query** means:



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

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

**Contract Management Meeting** means a meeting of the Authority and the Provider held in accordance with clause 0 (*Contract Management*)

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the UK GDPR

**Controller, Processor, Data Subject, Joint Controller, Personal Data, Personal Data Breach, Processing, Data Protection Officer and appropriate technical and organisational measures:** as set out in the Data Protection Legislation in force at the time.

**CQC** means the Care Quality Commission

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

**Data Controller in Common** means each Party is a Controller of Personal Data as a separate and independent Data Controller and **not** jointly as Data Controllers

**Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract including any Personal Data Breach

**Data Processor** **NOT IN USE**

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

**Data Discloser:** a party that discloses Shared Personal Data to the other Party.

**Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the DPA 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended, and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party

**Data Subject Request** means 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

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

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

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

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



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

**DPA 2018** means the Data Protection Act 2018

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

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

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

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

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

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

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

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

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

- (i) due wholly or partly to an act or omission by the Issuing Party; or
- (ii) a direct result of the Receiving Party following the instructions of the Issuing Party; or
- (iii) due to circumstances beyond the Receiving Party's reasonable control but which do not constitute an event of Force Majeure

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

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

**Expiry Date** means the date set out in clause **Error! Reference source not found.**

**First Exception Report** means a report issued in accordance with clause 0 (*Contract Management*) notifying the relevant Party's chief executive and/or Board of Directors of that Party's breach of a Remedial Action Plan and failure to remedy that breach



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

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

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

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

**General Conditions** has the meaning given to it in clause A1

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

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

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

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

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

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

**Joint Controllers** **NOT IN USE**

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

**Law** means:

- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (ii) any 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



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

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

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

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

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

**Maximum Charges** means the ceiling price submitted within the Providers Application for the PDPS.

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

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

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

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

**Open Book Policy** in respect of costs/price/Charges means transparency of how those costs/price/Charges are made up

**Pan Lancashire Detoxification Referral Form** means the document together with the Call Off Order Form Template used to place an order for Services in accordance with clauses A7.6 to A7.15 of the PDPS Contract, which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards.

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

**Patient Health Record** means a Patient Health Record which is not a Public Health Record and is prepared by the Provider in connection with the care of the NHS patient as part of the provision of the Services

**PDPS** means this Pseudo Dynamic Purchasing System for the Services

**PDPS Commencement Date** means 1 August 2024

**PDPS Contract** means the PDPS agreement concluded between and the Authority and the Provider for the provision of the Services during the Term, comprising of the PDPS Terms and Conditions, the Call-Off Terms and Conditions and the Special Conditions, as may be varied from time to time in accordance with clause A21 (*Variations*) of the PDPS Terms and Conditions.

**PDPS Provider** means the Provider and other providers appointed as potential providers of the Services under this PDPS.



**PDPS Term** means the period commencing on the PDPS Commencement Date and (unless it is otherwise terminated in accordance with the terms of this PDPS Contract or it is otherwise lawfully terminated) ending on the tenth anniversary of the PDPS Commencement Date

**PDPS Terms and Conditions** means the terms and conditions set out in Section A of the PDPS Contract.

**Permitted Recipients:** the Parties to this Contract, the employees of each Party, any third parties engaged to perform obligations in connection with this Contract.

**Personal Data:** shall have the same meaning as set out in the Data Protection Legislation. **Price Amendment Date means** increases in Charges once agreed between the Authority and the Provider will be implemented on the first Monday of the appropriate calendar month.

**Processor Personnel** **NOT IN USE**

**Prohibited Acts** has the meaning given to it in clause 43 (*Prohibited Acts*)

**Protective Measures** means appropriate technical and organisational 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 such measures adopted by it

**Provider Representative** means the person identified in clause 0 or their replacement

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

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

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

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

**Regulations** means the Public Contracts Regulations 2015 and any relevant subsequent legislation to include **The Provider Selection Regime (PSR 2023)** (in force 1 January 2024) and the **Procurement Act 2023** (coming into force October 2024)

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

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

**Request for Services** means a request for a detoxification referral placement

**Required CQC Standard** means a set of minimum requirements that the care provider needs to meet when providing care in England and can refer to either/or CQC fundamental standards or the CQC 5 standards

**Required Insurances** means the types of policy or policies providing levels of cover as specified in the Service Specification(s) and stipulated in Clause B30



**Review Meeting** means a meeting to be held in accordance with clause 0 (*Review Meetings*) or as otherwise requested in accordance with clause 0 (*Review Meetings*)

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

**Second Exception Report** means a report issued in accordance with clause B32.25 (*Contract Management*) notifying the recipients of a breach of a Remedial Action Plan and the continuing failure to remedy that breach

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

**Service Commencement Date** means the service commencement date set out in the Call Off Order Form Template and Pan Lancashire Detoxification Form.

**Service Contract** shall have the meaning ascribed in clause B1 of the Call-Off Terms and Conditions

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

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

**Service User Choice** means a recognition that the individual is best placed to judge their own needs and wellbeing. The must be involved in person-centred care and support planning in line with the Care Act (2014).

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

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

**Shared Personal Data:** the personal data to be shared between the Parties under clause B41.1 of this Contract. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

c) Data Subjects to include any or all of the following: Staff (including volunteers, agents and temporary workers), Service Users, Service Users' family, suppliers or any other such data subjects as detailed in the main body of this Contract and any Schedules and Appendices as appended to it.

d) The categories of data to be processed shall be defined only insofar as they relate to the detail of the main body of the Contract and any Schedules and Appendices as appended to it.

**Special Conditions** means the special terms and conditions set out in Section C which will apply to any Service Contract awarded under the PDPS

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



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

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

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

**Sub-contractor** means any third party appointed by the Provider and approved by the Authority under clause 0 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

**Sub-processor** **NOT IN USE**

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

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

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

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

**UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.**

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

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

**Variation Notice** means a notice to vary a provision or part of a provision of this Contract issued under clause 0 (*Variations*).





## APPENDIX S: AWARD CRITERIA

**The Award Criteria will be confirmed within the call off procedure document and will be in line with the call off procedure section of this document.**





**APPENDIX U: ENHANCED SERVICES**



## APPENDIX V: CONDITIONS PRECEDENT

Provide the Authority with a copy of the Provider's registration with the CQC where the Provider has indicated must be so registered under the Law and in accordance with Clause A8.5 under the PDPS Contract.

	INSERT NAME OF PROVIDER	OTHER UNITS, ETC.
CQC PROVIDER ID	INSERT ID	INSERT ID
CI PROVIDER ID (CARE INSPECTORATE FOR SCOTLAND (CI))	INSERT ID	INSERT ID
HIW PROVIDER ID (HEALTHCARE INSPECTORATE WALES (HIW))	INSERT ID	INSERT ID

### Other Conditions Precedent:

- (a) The Provider must provide the Authority with copies of the Required Insurances as set out in Clause A8.2 of the PDPS Contract and Clause B30, Insurance, in the Category Services Contract; and
- (b) The Provider shall supply a copy of its Safeguarding Policy to the Authority before commencement of the Services.



## APPENDIX W: SERVICE USER GROUPS AND CATEGORIES

*[Insert – linked to the Providers]*



## SECTION C: SPECIAL TERMS AND CONDITIONS

### C1 HUMAN RIGHTS

- C1.1. The Provider must not do or permit to allow anything to be done which is incompatible with the Human Rights Act 1998. The Provider will be liable to the Authority against any loss, claims and expenditure resulting from the Provider's breach of this clause.

### C2 DISCLOSURE AND BARRING SERVICE

- C2.1 The Provider must have policies and procedures which acknowledge and provide for ongoing monitoring of the Staff, including undertaking further DBS disclosures every three years.
- C2.2 The Provider must keep and must procure that the Authority is kept advised at all times of any Staff who, subsequent to their commencement of employment, receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider (or any employee of a Sub-Contractor involved in the provision of the Services).

### C3 BRANDING POLICY

- C3.1 The Provider must comply with the Authority's local brand policy and guidelines, as revised, updated or re-issued from time to time.

### C4 INTELLECTUAL PROPERTY

- C4.1 Except as set out expressly in this Contract, no Party will acquire the IPR of the other Party.
- C4.2 The Provider now grants the Authority a fully paid-up non-exclusive licence to use Provider IPR for the duration of this Contract for the purposes of the exercise of its functions and obtaining the full benefit of the Services, which will include the dissemination of best practice to other providers who have a contract with the Authority.
- C4.3 The Authority now grants the Provider a fully paid up non-exclusive licence to use Authority IPR for the duration of this Contract for the sole purpose of providing the Services.
- C4.4 In the event that the Provider or the Authority at any time devise, discover or acquire rights in any Improvement, they must promptly notify the other Party of the IPR to which that Improvement relates giving full details of the Improvement and whatever information and explanations as that Party may reasonably require to be able to use the Improvement effectively and must assign to that Party all rights and title in any such Improvement without charge.
- C4.5 For the purposes of this clause:
- "Authority IPR"** means any IPR owned by or licensed to the Authority which is relevant and necessary to the performance of the Services by the Provider, including Improvements
- "Improvements"** means any improvement, enhancement or modification to the Provider IPR which cannot be used independently of the Provider IPR or any improvement, enhancement or modification to the Authority IPR which cannot be used independently of the Authority IPR



"IPR" means inventions, copyright, patents, database right, trademarks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights

"Provider IPR" means any IPR owned by or licensed to the Provider (other than by the Authority) that will be used by the Provider in the delivery of the Services, including Improvements.

## **C5 CHANGE IN CONTROL**

C5.1 This clause applies to any Provider Change in Control and/or any Material Sub-Contractor Change in Control, but not to a Change in Control of a company which is a Public Company.

C5.2 The Provider must:

(a) as soon as possible on, and in any event within five (5) Business Days following, a Provider Change in Control; and/or

(b) immediately on becoming aware of a Sub-contractor Change in Control,

notify the Authority of that Change in Control and submit to the Authority a completed Change in Control Notification.

C5.3 If the Provider indicates in the Change in Control Notification an intention or proposal to make any consequential changes to its operations then, to the extent that those changes require a change to the terms of this Contract in order to be effective, they will only be effective when a Variation is made in accordance with clause B25 (*Variations*). The Authority will not and will not be deemed by a failure to respond or comment on the Change in Control Notification to have agreed to or otherwise to have waived its rights under clause B25 (*Variations*) in respect of that intended or proposed change.

C5.4 The Provider must specify in the Change in Control Notification any intention or proposal to make a consequential change to its operations which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract. If the Provider does not do so it will not be entitled to propose a Variation in respect of that for a period of 6 months following the date of that Change in Control Notification, unless the Authority agrees otherwise.

C5.5 If the Provider does not specify in the Change in Control Notification an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Provider's Premises as a result of or in connection with the Change in Control then, unless the Authority provides its written consent to the relevant action, the Provider must:

- i. ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract; and
- ii. continue providing the Services from the Provider's Premises,

in each case for at least 12 months following the date of that Change in Control Notification. The provisions of this clause will not apply to an assignment by way of security or the grant of any other similar rights by the Provider consequent upon a financing or re-financing of the transaction resulting in Change of Control.



C5.6 The Provider must supply (and must use its reasonable endeavours to procure that the relevant Sub-contractor supplies) to the Authority, whatever further information relating to the Change in Control the Authority may, within twenty(20) Business Days after receiving the Change in Control Notification, reasonably request.

C5.7 The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Sub-contractor include a provision obliging the Sub-contractor to inform the Provider in writing on, and in any event within five ( 5) Business Days following, a Sub-contractor Change in Control in respect of that Sub-contractor.

C5.8 If:

- (a) there is a Sub-contractor Change in Control; and
- (b) following consideration of the information provided to the Authority in the Change in Control Notification or under clause C6.6, the Authority reasonably concludes that, as a result of that Sub-contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Sub-contractor to provide Services in accordance with this Contract (and, in reaching that conclusion, the Authority may consider any factor, in its absolute discretion, that it considers relevant to the provision of Services),

then:

- (c) the Authority may, by serving a written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within ten (10) Business Days (or other period reasonably specified by the Authority taking into account the interests of Service Users and the need for the continuity of Services); and
- (d) the Provider must duly replace the relevant Sub-contractor within the period specified under clause C6.8.(c).

C5.9 Notwithstanding any other provision of this Contract:

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

C5.10 If the Provider breaches clause C5.9.(b), the Authority may by serving written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within:

- (a) Five (5) Business Days; or
- (b) whatever period may be reasonably specified by the Authority (taking into account any factors which the Authority considers relevant in its absolute discretion, including the interests of Service Users and the need for the continuity of Services),

and the Provider must replace the relevant Sub-contractor within the period specified in that notice.



C5.11 Nothing in this clause will prevent or restrict the Provider from discussing with the Authority a proposed Change in Control before it occurs. In those circumstances, all and any information provided to or received by the Authority in relation to that proposed Change in Control will be Confidential Information.

C5.12 Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.

C5.13 For the purposes of this clause:

**Change in Control** means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the ability to control the exercise of 50% or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters), provided that a Change in Control will be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation

**Change in Control Notification** means a notification in the form to be provided to the Provider by the Authority and to be completed as appropriate by the Provider

**Holding Companies** means has the definition given to it in section 1159 of the Companies Act 2006

**Institutional Investor means** an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pension fund, private equity firm, venture capitalist, insurance company or investment trust

**Provider Change in Control** means any Change in Control of the Provider or any of its Holding Companies

**Public Company** means:

a company which:

- (i) has shares that can be purchased by the public; and
- (ii) has an authorised share capital of at least £50,000 with each of the company's shares being paid up at least as to one quarter of the nominal value of the share and the whole of any premium on it; and
- (iii) has securities listed on a stock exchange in any jurisdiction

**Restricted Person** means:

- (i) any person, other than an Institutional Investor, who has a material interest in the production of tobacco products or alcoholic beverages; or
- (ii) any person who the Authority otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider or in a Sub-contractor

**Security** means shares, debt securities, unit trust schemes (as defined in the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing debt securities, warrants or options to subscribe or purchase securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company



**Sub-contractor Change in Control** means any Change in Control of a Sub-contractor or any of its Holding Companies.

## **C6 TUPE**

C6.1 If the Authority has notified the Provider that it intends to tender or retender any Services, the Provider must within twenty (20) Business Days following written request (unless otherwise agreed in writing) provide the Authority with the anonymised details of Staff engaged in the provision of the relevant Services who may be subject to TUPE, to include:

- (a) Job title
- (b) Grading/banding
- (c) Date of employment commencement
- (d) Annual salary
- (e) Other payments including bonus and allowances
- (f) Full time/ Part Time (state whole time equivalent)
- (g) Length of Continuous Service
- (h) Holiday Entitlement in days (includes Bank Holidays)
- (i) Whether a member of local NHS Pension Scheme or other pension scheme

C6.2 The Provider must indemnify and keep indemnified the Authority and at the Authority's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this clause.

C6.3 During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not and must procure that its sub-contractors do not, without the prior written consent of the Authority, in relation to any persons engaged in the provision of the Services or the relevant Service:

- (a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);
- (b) increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any sub-contractor by more than 5% (except in the ordinary course of business);
- (c) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
- (d) replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
- (e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.

C6.4 The Provider must indemnify and keep indemnified the Authority and, at the Authority's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or any Service, against any Losses in respect of:



- (f) the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any sub-contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any sub-contractor;
  - (g) claims brought by any other person employed or engaged by the Provider and/or any sub-contractor who is found to or is alleged to transfer to the Authority or new provider under TUPE; and/or
  - (h) any failure by the Provider and/or any sub-contractor to comply with its obligations under TUPE in connection with any transfer to the Authority or new provider.
- C6.5 The Authority must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any sub-contractor against any Losses in respect of:
- (a) any failure by the new provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new provider;
  - (b) any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service; and/or
  - (c) any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service.
- C6.6 This clause C6 shall survive the termination or expiry of this Agreement.

## **C7 PENSIONS**

- C7.1 The Provider shall secure Pension Protection from the Commencement Date for all Staff and the provisions of this clause shall be directly enforceable by affected Staff against the Provider.
- C7.2 The Provider shall provide the Authority promptly following a request to do so and in any event by no later than the Commencement Date with evidence to the reasonable satisfaction of the Authority that appropriate Pension Protection has been secured by the Provider for all affected Staff.
- C7.3 Any default by the Provider in respect of its obligations under these clauses **C7.1 to C7.3** shall constitute a Default in respect of which the provisions of **clause B28** shall apply.
- C7.4 "Pension Protection" is secured for the transferring Staff if after the Commencement Date he has, as an employee of the Provider, rights to acquire pension benefits whether in respect of Fair Deal, New Fair Deal or any other relevant initiatives that may be introduced from time to time and may apply in respect of the Staff and those rights –
- (a) are the same as, or
  - (b) count as being broadly comparable to or better than,



those that he had, or had a right to acquire, before the transfer to the Provider.

## **C8 PATIENT HEALTH RECORDS**

- C8.1 The Provider shall comply and shall secure that its Staff comply with any duty arising from the Service User's entitlement to confidentiality of his/her Patient Health Record and any other information (including Personal Data) relating to him/her as an NHS patient in accordance with the Human Rights Act 1998, the Data Protection Act 2018 and the common law duty of confidentiality.
- C8.2 The Provider shall comply with the reasonable requirements of the Authority relating to the transfer, sharing, maintenance and storage of Patient Health Records.
- C8.3 The Provider shall provide contact names and details of those members of its Staff to whom the Provider shall address all requests for copies of or access to Patient Health Records and shall promptly notify any change in the identity of such contacts to the Authority.
- C8.4 The Provider shall ensure that the Provider Patient Health Record and any NHS Patient Health Record in the custody or control of the Provider under the terms of this Contract is available for inspection at any time by the Authority and the Provider shall provide a complete copy of any Provider Patient Health Record requested by the Authority within 48 (forty eight) hours of such request.
- C8.5 Any NHS Patient Health Record provided by an NHS Body is and all other information relating to NHS Patients shall at all times remain the property of that NHS Body. Likewise, the Provider's Patient Health Record shall at all times remain the property of the Provider. The Provider shall promptly return any original NHS Patient Health Record and any other information supplied by an NHS Body in relation to the NHS Patient to that NHS Body upon request at any time.
- C8.6 Where the Provider is required to retain originals of any of the documents or in order to comply with any legislative or regulatory requirement or Court order, then it shall provide full copies of all such documents or information at the request of the Authority.
- C8.7 The Provider shall be entitled to retain copies of any records.
- C8.8 This clause C8 shall survive the termination or expiry of this Contract

## **C9 AUTHORITY OVERVIEW AND SCRUTINY COMMITTEES**

- C9.1 The Parties acknowledge that the Authority's Overview and Scrutiny Committee ("the **Committee**") has a legitimate interest in the provision of all Public Health services and the Provider agrees to provide all assistance the Authority may reasonably request in relation to the Committee in so far as they relate to the provision of the Services to NHS patients. Such assistance shall include (but not be limited to) attendance of appropriate members of the Staff at meetings of the Committee where that part of the meeting relates to the provision of the Services.

## **C10 FINANCIAL AUDIT**



- C10.1 The Provider shall maintain accurate accounts and records of all payments, receipts and other financial information in relation to the provision of the Services (collectively referred to as “**Financial Records**”).
- C10.2 The Provider shall allow the Authority or any independent auditor to conduct an audit of the Financial Records owned or controlled by the Provider at any time on reasonable notice, and in any event not later than 7 (seven) days of the date of the request, to ensure the Provider’s compliance with this Contract and shall permit access by the Authority to the Financial Records for the inspection and making and retaining copies thereof. The Provider shall provide all reasonable assistance to the Authority, and or the Authorised Person in the conduct of any such audit or inspection.
- C10.3 If the Authority has been overcharged for the Services as determined by agreement or, where appointed, as identified by the independent auditor, the Provider shall, within 7 (seven) days of receiving written notice of such overcharge from the Authority, reimburse the Authority the amount of the overcharge and if agreed between the parties, or if any audit carried out by the independent auditor shall have revealed an overcharge exceeding 4% of the amount that should have been charged the Provider shall in addition, within the 7 (seven) day period, reimburse the Authority reasonable costs incurred by it procuring the audit. For the avoidance of doubt, if no overcharge, or an overcharge of not more than 4% is revealed, the costs of procuring the audit shall be borne by the Authority.
- C10.3 The Provider shall provide all reasonable assistance and co-operation to any auditors as reasonably required in the carrying out by the latter of statutory functions in relation to the Authority.
- C10.4 For the purposes of:
- a) the examination and certification of the Authority’s accounts; or
  - b) any examination, efficiency and effectiveness with which the Authority has used its resources;
- the Comptroller and Auditor General may examine such Financial Records which he would be entitled within his statutory powers to require from the Authority as he may reasonably require which are owned, held or otherwise within the control of the Provider (and the Provider shall procure that Independent Consultants and any person acting on its behalf who has such documents and/or other information shall also provide access) and may reasonably require the Provider to produce such oral or written explanations as he considers necessary in order to comply with his statutory obligations. To avoid doubt, it is hereby declared that the carrying out of an examination under Section 6(3) (d) of the National Audit Act 1983 in relation to the Provider is not a function exercisable under this clause.
- C10.5 This clause C11 shall survive the termination or expiry of this Contract.

## **C11 HANDOVER**

- C11.1. At the end of the term of the Contract (howsoever arising), the Provider, at its own cost and expense, shall:



- (a) immediately return to the Authority all Confidential Information, Authority data, personal data and Authority IPR in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services.
  - (b) immediately deliver to the Authority all property (including materials, documents, information and access keys) provided to the Provider by the Authority. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Successor Provider and/or the completion of any work in progress.
  - (d) promptly provide all information (other than that they are prohibited by law from disclosing) concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Beneficiary or the Successor Provider to conduct due diligence.
- C11.2 The Provider shall co-operate free of charge with the Authority and any Successor Provider appointed by the Authority to continue or take over the performance of this Contract in order to ensure an effective handover of all work then in progress.
- C11.3 The provisions of this Clause C11 shall survive the termination or expiry of this Contract.

