



Kirklees Council

Public Health

Service Contract

General Terms and Conditions

2018/19

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GC1 DEFINITIONS AND INTERPRETATION

- GC1.1 The headings in this Contract shall not affect its interpretation.
- GC1.2 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.
- GC1.3 References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
- GC1.4 References to Sections, Clauses and Appendices are to the Sections, Clauses and Appendices of this Contract, unless expressly stated otherwise.
- GC1.5 References to any body, organisation or office shall include reference to its applicable successor from time to time.
- GC1.6 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.
- GC1.7 Use of the singular includes the plural and vice versa.
- GC1.8 The following terms shall have the following meanings:

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

Accountable Emergency Officer means the individual appointed by the Provider as required by section 252A (9) of the NHS Act 2006.

Authorised Person means the Authority and/or any body or person concerned with the provision of the Service or care of a Service User, (including (but not limited to), any one working within the Authority's Public Health Directorate, the Authority's Legal Services Department, or the Authority's Internal and External Auditors or any duly appointed professional, legal and/or financial advisers acting on behalf of the Authority).

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

Best Endeavours means taking all steps that a prudent, determined and reasonable person, acting in its own interests and enthusiastic to achieve a given result, would take. A Party that has assumed a "**Best Endeavours**" obligation must exhaust all of a number of reasonable courses which could be taken to achieve that aim.

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.

Business Continuity Plan means the Provider's plan referred to in Clause GC42.2 (**Business Continuity**) relating to continuity of the Services, as agreed with the Authority and as may be amended from time to time.

Business Day means any day the Council's Civic Centre III offices are open which at a minimum excludes Saturday, Sunday or a bank holiday; and "bank holiday" means any day designated a bank holiday by the Banking and Financial Dealings Act 1971 or by Royal Proclamation.

Bribery Act means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

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

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

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 B attached to the Particulars (**Charges**).

Commencement Date means the date identified in Clause A3.1 of the Particulars (**Commencement and Duration**).

Commercially Sensitive Information means the information listed in Appendix O attached to the Particulars (**Freedom of Information Schedule**) comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Provider significant commercial disadvantage or material financial loss.

Competent Body means any body that has authority to issue standards or recommendations with which either Party must comply.

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

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

Consents means:

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

Consultant means a person employed or engaged by the Provider of equivalent standing and skill as a person appointed by an NHS Body in accordance with the Law governing the appointment of consultants.

Contract has the meaning given to it in Clause A1.1 of the Particulars (**Contract**).

Contract Period has the meaning given to it in Clause A3.2 of the Particulars (**Commencement and Duration**)

Contract Query means:

- 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
- b) 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 GC37.8 (**Contract Management**).

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

Data Controller and **Data Processor** shall each have the same meaning as set out in the Data Protection Legislation.

Data Subject has the same meaning given in Appendix N attached to the Particulars (**Data Protection Schedule**).

Data Protection Legislation shall mean

- a) **Until 25th May 2018**, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; or
- b) **On or after 25th May 2018**, the GDPR, the Data Protection Act 2018, and all such other applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Data Subject shall have the same meaning as set out in the Data Protection Legislation.

Data Subject Access Request means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his or her 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 the three per cent (3%) below the prevailing rate of default interest provided by the Late Payment of Commercial Debts (rate of Interest) (No. 3) Order 2002.

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.

EIR means the Environmental Information Regulations 2004 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.

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.

EPRR Guidance means the emergency preparedness, resilience and response guidance published by the Department of Health and NHS England from time to time, including:

- a) NHS England Emergency Preparedness, Resilience and Response Framework;
- b) NHS England Core Standards for Emergency Preparedness, Resilience and Response (EPRR); and
- c) NHS England Business Continuity Management Framework (Service Resilience),

all available via: <http://www.england.nhs.uk/ourwork/epr/>.

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:

- a) due wholly or partly to an act or omission by the Issuing Party; or
- b) a direct result of the Receiving Party following the instructions of the Issuing Party; or
- c) 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 L attached to the Particulars (**Dispute Resolution**).

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

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

First Exception Report means a report issued in accordance with Clause GC37.21 (**Contract Management**) notifying the relevant Party's chief executive and/or Board of Directors of that Party's breach of a Remedial Action Plan and failure to remedy that breach.

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

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:

- d) any industrial action occurring within the Provider's or any Sub-contractor's organisation; or
- e) 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.

GDPR refers to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such Data, and repealing Directive 95/46/EC (the General Data Protection Regulation);

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

Good Practice means using standards, practices, methods and procedures conforming to the Law and reflecting up-to-date published evidence 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 and a person providing services the same as or similar to the Services at the time the Services are provided, including (where appropriate) assigning a Consultant to each Service User who will be clinically responsible for that Service User at all times during the Service User's care by the Provider.

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.

Intellectual Property Rights means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

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

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

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

Key Clinical Data Fields means structured clinical information relating to significant aspects of a Service User's health, care or treatment, held by the Provider within Service User Health Records and identified in Guidance published by NHS Digital and/or NHS England from time to time as information to be made available, as appropriate, through open interfaces to other providers of health and social care.

Law means:

- a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- b) any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
- c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- d) National Standards;
- e) Guidance; and
- f) 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.

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

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

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

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

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

NHS means National Health Service.

NHS Act 2006 means the National Health Service Act 2006.

NHS Digital means the Health and Social Care Information Centre <https://digital.nhs.uk/>.

NHS England means the National Health Service Commissioning Board established by section 1H of the 2006 Act, also known as NHS England.

Occasion of Tax Non-compliance:

- a) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 being found on or after 1 April 2013 to be incorrect as a result of either a Relevant Tax Authority successfully challenging the Provider under the General Anti-abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to either, or the failure of an avoidance scheme in which the Provider was involved and which was or should have been notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
- b) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 giving rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion.

Open API Policy means the guidance available at:

<https://www.england.nhs.uk/digitaltechnology/inforevolution/interoperability/open-api/>.

Particulars means the Particulars to this Contract.

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

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

Personal Data means the personal data (as defined in the Data Protection Legislation) which is permitted to be shared and/or processed under the terms of Appendix N (**Data Protection Schedule**) appended to the Particulars of this Contract. For the purposes of this Contract, any reference to "**Personal Data**" under this Contract shall (where applicable) include "**Sensitive Personal Data**" as defined under the Data Protection Legislation.

Privacy Impact Assessment means a process which helps assess privacy risks to individuals in the collection, use and disclosure of Personal Data, and identify privacy risks and foresee problems and bring forward solutions.

Process shall have the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic Processing. The nature, duration and purpose of any processing, the type of data and the categories of Data Subjects are set out in Part 2 of Appendix N (**Data Protection Schedule**) appended to the Particulars of this Contract.

Prohibited Act means the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i. induce that person to perform improperly a relevant function or activity;
or
 - ii. reward that person for improper performance of a relevant function or activity;
 - iii. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- b) committing any offence:
 - i. under the Bribery Act;
 - ii. under legislation creating offences concerning fraudulent acts;
 - iii. at common law concerning fraudulent acts relating to this Contract or any other contract with the Authority; or
 - iv. defrauding, attempting to defraud or conspiring to defraud the Authority.

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

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

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

Service Performance Indicators means the agreed key performance indicators and outcomes to be achieved as set out in Appendix D attached to the Particulars (**Service Performance Indicators**).

Reasonable Endeavors means taking steps that a prudent, determined and reasonable person, acting in its own interests and enthusiastic to achieve a given result, would take. A Party that has assumed a “**Reasonable Endeavours**” obligation that has a number of reasonable courses which could be taken to achieve that aim, need only pursue one course (when only following one of a number of possible courses, the Provider shall invite the Authority to select which one it prefers and the Provider shall follow the Authority’s choice).

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

Referral means the referral of any Service User to the Provider by a Referrer or (for a Service for which a Service User may present or self-refer for assessment and/or treatment in accordance with this Contract and/or Guidance) presentation or self-referral by a Service User.

Referrer means:

- a) an authorised person qualified in a healthcare-related profession who is responsible for the Referral of a Service User to the Provider; and
- b) any organisation, legal person or other entity which is permitted or appropriately authorised in accordance with the Law to refer the Service User for assessment and/or treatment by the Provider.

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

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

Replacement Services means any services that are fundamentally the same as any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Provider.

Replacement Provider means any third Party supplier of Replacement Services appointed by the Authority from time to time.

Required Insurances means the types of policy or policies providing levels of cover as specified in Clause B3 of the Special Conditions of the Particulars **Required Insurances**).

Review Meeting means a meeting to be held in accordance with Clause GC26 (**Review Meetings**) or as otherwise requested in accordance with Clause GC26.2 (**Review Meetings**).

Safeguarding Policies means the Provider's written policies for safeguarding children and adults, as amended from time to time, and as may be appended at Appendix H attached to the Particulars (**Safeguarding Policies**).

Second Exception Report means a report issued in accordance with Clause GC37.22 (**Contract Management**) notifying the recipients of a breach of a Remedial Action Plan and the continuing failure to remedy that breach.

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

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

Service Specifications means each of the service specifications defined by the Authority and set out at Appendix A attached to the Particulars (**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 Health Record means a record which consists of information and correspondence relating to the particular physical or mental health or condition of a Service User (whether in electronic form or otherwise), including any such record generated by a previous provider of services to the Service User which is required to be retained by the Provider for medico-legal purposes.

Service Quality Performance Report means a report as described in Appendix E attached to the Particulars (**Information Provision**).

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

Special Conditions has the meaning given to it in Clause A1.1 (b) of the Particulars (**Contract**).

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

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

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

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

Sub-contractor means any third party appointed by the Provider and approved by the Authority under Clause GC31.1 (**Assignment, Sub-contracting and Novation**) to deliver or assist with the delivery of part of the Services as defined in a Service Specification.

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

Summary Care Records Service means the national system providing those treating Service Users in any emergency or out-of-hours with fast access to key clinical information, as described at: <http://www.systems.hscic.gov.uk/scr>.

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

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

Variation means a variation to a provision or part of a provision of this Contract, provided that such variation does not amount to a material change to the Service Specification.

Variation Notice means a notice to vary a provision or part of a provision of this Contract issued under Clause GC30 (**Variations**).

GC2 THE PROVIDER'S STATUS (PRINCIPAL)

GC2.1 In carrying out the Services the Provider shall be acting as principal and not as the agent of the Authority.

GC2.2 Accordingly:

- a) the Provider shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Authority; and

- b) nothing in this Contract shall impose any liability on the Authority in respect of any liability incurred by the Provider to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Provider that may arise by virtue of either a breach of this Contract or by negligence on the part of the Authority.

GC3 THE AUTHORITY'S OBLIGATIONS

GC3.1 Save as otherwise expressly provided within 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, or in any other 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 under this Contract (howsoever arising) on the part of the Authority to the Provider.

GC4 SERVICES

GC4.1 The Provider shall provide the Services in accordance with the Service Specification(s) in Appendix A attached to the Particulars (***Service Specifications***), including any service limitations set out in them, and in accordance with the provisions of this Contract.

GC4.2 The Provider shall satisfy any Conditions Precedent set out in Appendix C attached to the Particulars (***Conditions Precedent***) prior to commencing provision of the Services.

GC5 WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

GC5.1 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.

GC5.2 If the Provider proposes not to provide or to stop providing a Service to any Service User under Clause GC5.1:

- a) where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 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;
- d) provided that nothing in this Clause GC5 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

GC6 **SERVICE AND QUALITY OUTCOMES INDICATORS**

GC6.1 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 Service Performance Indicators set out in Appendix D attached to the Particulars (***Service Performance Indicators***).

GC7 **SERVICE USER INVOLVEMENT**

- GC7.1 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.
- GC7.2 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.
- GC7.3 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 G attached to the Particulars (***Service User, Carer and Staff Surveys***) or as otherwise agreed between the Parties in writing from time to time.
- GC7.4 The Provider must review and provide a written report to the Authority on the results of each survey carried out under Clause GC7.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Authority, the Provider must publish the outcomes and actions taken in relation to such surveys.
- GC8 **EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**
- GC8.1 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.
- GC8.2 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).
- GC8.3 In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and

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

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

GC8.4 Promptly 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 GC8.3

GC8.5 The Provider must promptly provide to the Authority 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.

GC8.6 The Provider agrees to indemnify and keep indemnified and defend at its own expense the Authority against all costs, claims, damages or expenses incurred by the Authority or for which the Authority may become liable due to any failure by the Provider or its Staff to comply with any of its obligations under this Clause GC8 or any breach of any of its obligations or duties under the relevant law of equality and/or non-discrimination in force from time-to-time (including (but not strictly limited to) the Equality Act 2010 and any subordinate legislation made under this Act from time-to-time, together with any guidance and/or codes of practice issued by in relation to such legislation). For the avoidance of any doubt, this indemnity will cover any and all costs, claims, damages or expenses where the provider disputes the reasonableness of any adjustments referred to under Clause GC8.2 above.

GC8.7 In addition to its obligations under Clause GC8.6 immediately above, and its obligations under Clause GC35 below (**Insurance**), the Provider shall take out insurance sufficient to cover any payment that may be required under the indemnity required under GC8.6 above, and produce the policy and receipt for premium paid, to the Authority on request.

GC9 **MANAGING ACTIVITY**

GC9.1 The Provider must manage Activity in accordance with any activity planning assumptions and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services.

GC10 **STAFF**

GC10.1 At all times, the Provider must ensure that:

- a) all Staff engaged for the purposes of the Services are at all times skilled, honest, suitably qualified and experienced, instructed, trained, supervised 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 Specifications;
- c) such Staff must perform all duties in accordance with any relevant codes of practice, copies of which must be made available to Staff by the Provider;
- d) adequate management arrangements are in place to guarantee effective deployment, supervision and monitoring of the performance of Staff, each in accordance with Good Practice and the standards of any applicable relevant professional body;
- e) where applicable, Staff are registered with the appropriate professional regulatory body; and
- f) Staff are aware of and respect equality and human rights of colleagues and Service Users and will take responsibility for maintaining and improving their knowledge in these areas.

GC10.2 If requested by the Authority, the Provider shall as soon as practicable and by no later than twenty (20) Business Days following receipt of that request, provide the Authority with evidence of the Provider's compliance with Clause GC10.1.

GC10.3 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 and instruction; and
- b) full and detailed appraisal (in terms of performance and on-going education and training),
- c) each in accordance with Good Practice and the standards of any applicable relevant professional body.

GC10.4 Where applicable under section 1(F) (1) of the NHS Act 2006, the Provider must cooperate 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.

- GC10.5 The Provider must carry out Staff surveys in relation to the Services at intervals and in the form set out in Appendix G attached to the Particulars (***Service User, Carer and Staff Surveys***) or as otherwise agreed in writing from time to time.
- GC10.6 Subject to Clause GC10.7 below, 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 further to Clause GC17 (***Safeguarding Children and Vulnerable Adults***) below.
- GC10.7 The Provider shall institute and maintain a written recruitment and selection policy and procedure and shall ensure that it takes due precautions and (further to Clause GC17 (***Safeguarding Children and Vulnerable Adults***)) has due regard to the vulnerabilities of the Service Users when recruiting and selecting or appointing Staff in relation to the provision of the Services under this Contract.
- GC10.8 The Provider will contribute to the social and economic benefits for the Authority's administrative area as a whole by implementing the proposals in its Tender Submission, which may include (but not limited to):
- a) recruiting from the local community;
 - b) employing suitable people who have been on the unemployment register for more than three (3) months;
 - c) supporting succession planning such as the provision of an apprentice scheme leading to permanent employment and where appropriate are willing to provide work experience placements for local schools/colleges;
 - d) provision of training that ensures Staff are given the opportunity to take up more challenging roles (if available) within the organisation; and
 - e) provision of work placements for volunteers as appropriate for example, links to local youth services, school reading schemes.
- GC10.9 The Provider shall supply on written request, a reference for a previous Staff member who applies for a position with another Provider within the Authority's administrative area. The reference must state as a minimum, information pertaining to dates of employment and describe any disciplinary matters.
- GC10.10 Unless otherwise agreed in writing by the Authority, the Provider shall use all reasonable endeavours to maintain continuity of Staff in order that:
- a) the Service Users do not have unnecessary additional Staff to relate to; and

- b) the number of people with access to Confidential Information is kept to a minimum.

- GC10.11 The Provider shall ensure that all Staff carry photographic identification approved by the Authority. Photographic identification must be renewed if a member of Staff's appearance changes significantly or at least every three (3) years, whichever is the sooner.
- GC10.12 The Provider shall ensure that Staff are available to provide any necessary relief care and support to Service Users in the absence of their regular Staff member(s) and that Service Users are kept informed.
- GC10.13 Where necessary for the proper performance of the Services, the Provider shall ensure that Staff are properly and presentably dressed in appropriate work wear. The Provider shall ensure that where necessary, Staff wear appropriate personal protective equipment which is readily available from the Provider.
- GC10.14 The Authority may require, by notice in writing (but not unreasonably or vexatiously) the removal from the provision of the Services of any person engaged by the Provider in connection with the Services if the Authorised Officer has reasonable grounds for believing that such Staff's conduct or ability is not of a sufficient standard for the proper provision of the Services. The Provider shall forthwith remove from duties relating to the Services such person specified in the notice and if necessary provide a replacement. The person will not be reinstated without the written permission of the Authority. For the avoidance of doubt, this Clause does not require Staff to be dismissed from the Provider's employment or the employment of its agent or sub-contractor. The Authority shall in no circumstances be liable either to the Provider or any person in respect of the exercise of the Authority's rights pursuant to this Clause and the Provider shall fully indemnify the Authority in respect of any claim made by such person.
- GC10.15 Without limiting any other obligations in this Contract, further to Schedule 6 of the Counter Terrorism and Security Act 2015 the Provider shall ensure that it and any of its Staff, agents and/or Sub-Contractors comply with its duty to have due regard to the need to prevent any of the Authority's employees, agents, members, Service Users and/or customers from being drawn into terrorism in accordance with Section 26 of the Counter Terrorism and Security Act 2015 (the **Prevent Duty**), and the guidance published by the Secretary of State. Further, the Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause GC10.15 have been met.
- GC10.16 For the avoidance of doubt, this Clause GC10 and all other Clauses within this Contract relating to Staff shall apply both to Staff employed and paid by the Provider and to anyone working with or for the Provider in a voluntary or training capacity.

GC11 **CHARGES AND PAYMENT**

GC11.1 Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Authority shall pay the Provider the Charges.

GC11.2 The Parties shall, to the extent reasonably practicable, agree the Charges in a transparent and equitable manner, and the Charges shall be as set out in Appendix B attached to the Particulars (**Charges**).

GC11.3 The Provider shall invoice the Authority for payment of the Charges in accordance with the relevant payment profile(s) set out in Appendix B attached to the Particulars (**Charges**). In the absence of any specific payment profile(s) in Appendix B (**Charges**), the Provider shall invoice the Authority for payment of the Charges at the end of each three (3) calendar month quarterly period following the Commencement Date (or such other frequency set out in Appendix B (**Charges**) or otherwise agreed between the Parties in writing).

GC11.4 Where the Provider submits an invoice to the Authority in accordance with Clause GC11.3 above, the Authority will consider and verify that invoice in a timely fashion. Where there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of this Clause GC11 after a reasonable time has passed.

GC11.5 The Authority shall use reasonable endeavours to pay the Provider within thirty (30) calendar days from the date on which the Authority has determined that the invoice is valid and undisputed.

GC11.6 **NOT USED**

GC11.7 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

GC11.8 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Authority to substantiate the invoice. Any tax, where applicable, shall be shown separately on valid invoices as a strictly net extra charge. For the avoidance of any doubt, both Parties acknowledge and accept that any errors or omission in any invoice or supporting document will entitle the Council to treat the said invoice as invalid for the purposes of Clause GC11.4, and that the Council will not be obliged to pay any Charges to the Provider until the Provider submits a full and correct invoice and supporting documentation and the Council has verified and confirmed its approval of said invoice and supporting documentation in accordance with Clause GC11.4.

- GC11.9 In its performance of this Contract the Provider shall not provide or offer to a Service User any clinical, medical or care services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).
- GC11.10 If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this Clause GC11:
- 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 Contract.
- GC11.11 Where any Party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with Clause GC38 (***Dispute Resolution***) and Appendix L attached to the Particulars (***Dispute Resolution***). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the parties.
- GC11.12 Subject to Clause GC11.11 above, the Default Interest Rate shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement. The Provider shall not suspend the supply of the Services if any payment is overdue.
- GC11.13 Any overpayment by either Party, whether of any Charges, duties, rates, taxes or any other sums payable under this Contract or otherwise, shall be recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- GC11.14 The Provider shall make any payments due to the Authority without any deduction, whether by way of set-off, counterclaim, discount, abatement, or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.
- GC12 **ANNUAL ADJUSTMENT TO CHARGES**
- GC12.1 Except as otherwise expressly stated in the Contract, the Charges shall remain fixed for the duration of the Contract Period set out in Clauses A3.1 to A3.3 (inclusive) of the Particulars (***Commencement and Duration of the Contract Period***).
- GC12.2 Thereafter, if Clause A3 of the Particulars (***Commencement and Duration of the Contract Period***) allows for the Authority to extend the Contract Period, then the Charges may be adjusted but only in accordance with any provisions for any adjustments included within Appendix B attached to the Particulars (***Charges***).

GC12.3 In the event that the cost to the Provider of performing its obligations under this Contract increases or decreases as a result of a change in the Law, the provisions of Clauses GC29 (***Change of Law***) and GC30 (***Variations***) shall apply.

GC13 **PAYMENT OF SUB-CONTRACTORS**

GC13.1 Where the Provider enters into a Sub-contract, the Provider shall include in that Sub-contract:

- a) provisions having the same effect as Clauses GC11.3 to GC11.5 (***Charges and Payment***) of this Contract; and
- b) a provision requiring the counterparty to that Sub-contract to include in any Sub-contract which it awards provisions having the same effect as Clauses GC11.3 to GC11.5 of this Contract.

GC13.2 For the purposes of this Clause GC13, "***Sub-Contract***" means a contract between two (2) or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

GC14 **MITIGATION OF COSTS**

GC14.1 The Provider shall, at all times, use all of its reasonable endeavours to avoid and/or mitigate any loss, costs, and/or expenses which it is entitled to bring a claim for against the Authority under this Contract.

GC15 **MONIES RECOVERABLE**

GC15.1 Wherever under the Contract any sum of money shall become recoverable or payable by the Provider, any such sum may be deducted from or reduced by the amount of any sum or sums due or which at any time thereafter may become due to the Provider under the Contract or any other agreement between the Authority and the Provider or (where applicable) any holding, subsidiary or associated company of the Provider.

GC16 **SERVICE IMPROVEMENTS AND BEST VALUE DUTY**

GC16.1 The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.

GC16.2 In addition to the Provider's obligations under Clause GC16.1, where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority.

GC16.3 During the Contract Period 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 Charges to be paid by the Authority for the Services.

GC16.4 If requested by the Authority, the Provider must identify the improvements that have taken place in accordance with Clause GC16.3, by reference to any reasonable measurable criteria notified to the Provider by the Authority.

GC16.5 Further to Clause GC16.4 above, any Service improvements or adjustment to any Charges made pursuant to this Clause GC16 will be subject to the provisions of Clause GC30 (**Variations**).

GC17 **SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

GC17.1 The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

GC17.2 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 H attached to the Particulars (**Safeguarding Policies**).

GC17.3 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.

GC17.4 If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

GC17.5 The Provider shall ensure that all individuals engaged in the provision of the Services are:

- a) subject to a valid enhanced disclosure check undertaken through the DBS, including a check against the adults' barred list or the children's barred list, as appropriate; and

- b) the Provider shall monitor the level and validity of the checks under this Clause GC17.5 for each member of staff.

GC17.6 Subject to Clause GC17.5 above, the Provider may temporarily 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), but only with the prior agreement of the Authority, and provided that the Provider shall ensure that no person who discloses any conviction or is found to have any conviction or concerns following the checks referred to in Clause GC17.5 above is engaged by the Provider in the provision of the Services involving working/contact with vulnerable adults, children or young people, if those convictions or concerns might reasonably indicate that such person is unsuitable for work/contact with vulnerable adults, children or young people. If requested by the Authority, the Provider shall promptly justify to the satisfaction of the Authority the engagement of any person to provide the Services having a conviction by written submission.

GC17.7 In addition, where Clause GC17.6 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 additional 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.

GC17.8 The Provider warrants that at all times for the purposes of this 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.

GC17.9 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Service Users.

GC17.10 The Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause GC17 have been met.

GC18 **INCIDENTS REQUIRING REPORTING**

GC18.1 If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.

GC18.2 If the Provider gives a notification to the CQC or any other Regulatory Body under Clause GC18.1 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 I attached to the Particulars (***Incidents Requiring Reporting Procedure***).

GC18.3 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix I attached to the Particulars (***Incidents Requiring Reporting Procedure***).

GC18.4 Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this Clause B.17 and Appendix I attached to the Particulars (***Incidents Requiring Reporting Procedure***).

GC19 **CONSENT**

GC19.1 The Provider must publish, maintain and operate a Service User consent policy which complies with Good Practice and the Law.

GC20 **SERVICE USER HEALTH RECORDS**

GC20.1 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.

GC20.2 The Provider must:

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

- GC20.3 The Provider must at all times during the Contract Period of this Contract have a Caldicott Guardian and shall notify the Authority of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the Contract Period of this Contract, it shall promptly notify the Authority of the identity and contact details of such replacements.
- GC20.4 Subject to Guidance and where appropriate, the Service User Health Records should include the Service User's verified NHS number.
- GC20.5 Insofar as they do not conflict with this Clause GC20, the Law or the relevant Guidance relevant to Service User health records, this Clause GC20 is also subject to the provisions of Clause GC48 (**Data Protection**) and Appendix N attached to the Particulars (**Data Protection Schedule**).
- GC21 **INFORMATION**
- GC21.1 The Provider must provide the Authority the information specified in Appendix E attached to the Particulars (**Information Provision**) to measure the quality, quantity or otherwise of the Services.
- GC21.2 The Provider must deliver the information required under Clause GC21.1 in the format; manner, frequency and timescales specified in Appendix E attached to the Particulars (**Information Provision**) and must ensure that the information is accurate and complete.
- GC21.3 If the Provider fails to comply with any of the obligations in this Clause GC21 and/or Appendix E attached to the Particulars (**Information Provision**), the Authority may (without prejudice to any other rights it may have under this Contract) exercise any of its rights under Clauses GC36 (**Defaults and Failure to Supply**), GC39 (**Suspension and Consequences of Suspension**), GC40 (**Termination**) and GC41 (**Consequences of Termination**) and any consequence for failing to satisfy the relevant obligation specified in Appendix E attached to the Particulars (**Information Provision**).
- GC21.4 In addition to the information required under Clause GC21, the Authority may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner
- GC22 **EQUIPMENT**
- GC22.1 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.
- GC23 **NOT USED**

GC24 **COMPLAINTS**

GC24.1 The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services, including (but not strictly limited to) the Local Authority, Social Services and NHS Complaints (England) Regulations 2009 (SI 2009/309) and the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Health Watch) Regulations 2012 (SI 2012/3094).

GC24.2 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider’s obligations under this Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in Clause GC36 (***Default and Failure to Supply***).

GC25 **SERVICE REVIEW**

GC25.1 In accordance with Appendices E (***Information Provision***) and F (***Details of Review Meetings***) attached to the Particulars, the Provider must deliver to the Authority a Service Quality Performance Report against all the Service Performance Indicators outlined in Appendix D attached to the Particulars (***Service Performance Indicators***).

GC25.2 The Provider must submit each Service Quality Performance Report in a format and manner to be agreed in accordance with Appendix E attached to the Particulars (***Information Provision***).

GC26 **REVIEW MEETINGS**

GC26.1 The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix F attached to the Particulars (***Details of Review Meetings***).

GC26.2 Notwithstanding Clause GC26.1, if either the Authority or the Provider:

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

- c) 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.

GC27 CO-OPERATION

GC27.1 The Parties must, at all times, act in good faith towards each other.

GC27.2 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,
- e) 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.

GC28 WARRANTIES AND REPRESENTATIONS

GC28.1 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, Monitor's Licence, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- c) in entering this Contract it has not committed any Fraud;

- d) all reasonably material information supplied by it to the Authority during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Authority which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract;
- e) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract;
- f) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract;
- g) in the 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 on-going business concern or its ability to fulfil its obligations under this Contract;
- h) any Sub-contractors it intends to use to deliver all or any part of the Services will have and maintain all Indemnity Arrangements and Consents and will deliver the subcontracted services in accordance with the Provider's obligations under this Contract;
- i) 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; and
- j) it has notified the Authority in writing of any Occasions of Tax Non-compliance or any litigation in which it is involved in connection with any Occasions of Tax Non-compliance.

GC28.2 The Authority warrants and represents that:

- a) it has full power and authority to enter into this Contract and all necessary approvals and consents have been obtained and are in full force and effect;

- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it;
- c) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract; and
- d) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract.

GC28.3 The warranties set out in this Clause GC28 are given on the Commencement Date and repeated on every day during the Contract Period of this Contract.

GC29 **CHANGE OF LAW**

GC29.1 The Provider shall neither be relieved of its obligations to perform the Services in accordance with the terms of this Contract nor be entitled to an increase in the Charges and/or any charges payable by the Provider as the result of:

- a) a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services (a **General Change in Law**); or
- b) a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services (a **Specific Change in Law**), where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

GC29.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than those referred to in Clause GC29.1), the Provider shall notify the Authority of the likely effects of that change, including:

- a) whether any change is required to the Services, the Charges or this Contract; and
- b) whether any relief from compliance with the Provider's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

- GC29.3 As soon as practicable after any notification in accordance with Clause GC29.2 the Parties shall discuss and agree the matters referred to in that Clause and any ways in which the Provider can mitigate the effect of the Specific Change of Law, including:
- a) providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;
 - b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Provider before it occurred;
 - c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.
- GC29.4 Any increase in the Charges or relief from the Provider's obligations agreed by the Parties pursuant to this Clause GC29 shall be implemented in accordance with Clause GC30 (**Variations**).
- GC30 **VARIATIONS**
- GC30.1 This Contract may not be amended or varied other than in accordance with this Clause GC30.
- GC30.2 Either Party may from time to time during the Contract Period of this Contract, by written notice to the other Party, request a Variation, provided that such Variation does not amount to a material change to the Service Specification. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).
- GC30.3 If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than thirty (30) 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 Contract.
- GC30.4 No Variation to this 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 A5 of the Particulars (**Notices**).
- GC30.5 All agreed Variations shall form an addendum to this Contract and shall be recorded in Appendix K attached to the Particulars (**Agreed Variations**).

GC31 **ASSIGNMENT, SUB-CONTRACTING AND NOVATION**

- GC31.1 The Provider must not assign, delegate, transfer, Sub-contract, sub-let, charge or otherwise dispose of all or any of its rights or obligations under this Contract without notifying the Authority in writing:
- a) permitting the Provider shall be entitled to novate the Contract, provided that both Parties acknowledge and agree that the Authority shall only consider a requested change in contractor from the Provider where:
 - i. the specific change in contractor was provided for in the procurement process for the award of this Contract; or
 - ii. there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Contract;
 - b) consenting to the appointment of the Sub-contractor and approving the Sub-contract arrangements (such consent and approval not to be unreasonably withheld or delayed).
- GC31.2 The Authority's consent to Sub-contracting under Clause GC31.1 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.
- GC31.3 Any Sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed Sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.
- GC31.4 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- GC31.5 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Contract.

GC31.6 The Authority shall be entitled to disclose to any person or company to whom it may transfer its rights and obligations under this Contract (the “**Transferee**”) any Confidential Information of the Provider which relates to the performance of this Contract by the Provider. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of this Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

GC32 **AUDIT AND INSPECTION**

GC32.1 The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, the Audit Commission and/or 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.

GC32.2 Subject to the Law, and notwithstanding Clause GC32.1 above, the Authority and/or the relevant 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. The purposes of such an audit/inspection may include (but will not be strictly limited to) any of the following:

- a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract);
- b) to review the integrity, confidentiality and security of any data relating to the Authority or any Service users;
- c) to review the Provider’s compliance with the DPA, the FOIA, in accordance with Appendix N attached to the Particulars (**Data Protection Schedule**) and Clause GC49 (**Freedom of Information**) and any other legislation applicable to the Service;
- d) to review any records created during the provision of the Service;
- e) to review any books of accounts kept by the Provider in connection with the provision of the Service;
- f) to carry out the audit and certification of the Authority's accounts;

- g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; and
- h) to verify the accuracy and completeness of any Service Quality Performance Reports delivered or required by this Contract, in accordance with any Service Performance Indicators listed in Appendix D attached to the Particulars (***Service Performance Indicators***).

GC32.3 Notwithstanding Clause GC32.2 above, the Authority shall wherever possible endeavour to (but is not obliged to) provide at least ten (10) Business Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

GC32.4 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.

GC32.5 Such visits, subject to Law, Good Clinical Practice and the Authority's obligations of confidentiality (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 and/or any relevant regulatory body (and/or their agents or representatives) in relation to each audit.

GC32.6 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.

GC32.7 During any audit undertaken under Clause GC32.1 or GC32.2, the Provider must provide the Authority and/or the relevant Authorised Person 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 to any equipment used (whether exclusively or non-exclusively) in the performance of the Service; and
- c) access to the Staff.

GC32.8 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause GC31, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Provider, in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

GC32.9 If an audit identifies that the Provider has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a Remedial Plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges, or the Provider's costs, then the Remedial Plan shall include a requirement for the provision of all such information.

GC33 **NOT USED**

GC34 **LIMITATION OF LIABILITY**

GC34.1 Subject to Clause GC34.5 below, and without affecting its liability for breach of any of its obligations under this Contract, the Authority will be liable to the Provider for, and must indemnify and keep the Provider indemnified against:

- a) any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever in respect of:
 - i. any loss of or damage to property (whether real or personal); and
 - ii. any injury to any person, including injury resulting in death; and
- b) any Losses of the Provider,

that result from or arise out of the Authority's negligence or breach of contract in connection with the performance of this Contract **EXCEPT** insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Provider, any Sub-contractor, their Staff or agents.

GC34.2 Subject to Clause GC34.5 below, and without affecting its liability for breach of any of its obligations under this Contract, the Provider will be liable to the Authority for, and must indemnify and keep the Authority indemnified against:

- a) any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever in respect of:
 - i. any loss of or damage to property (whether real or personal); and
 - ii. any injury to any person, including injury resulting in death; and

b) any Losses of the Authority,

that result from or arise out of the Provider's or any Sub-contractor's negligence or breach of contract in connection with the performance of this Contract or the provision of the Services (including its use of Equipment or other materials or products, and the actions or omissions of Staff or any Sub-Contractor in the provision of the Services), **EXCEPT** insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Authority, its members, employees or agents.

GC34.3 Subject to Clause GC34.5 below, and except where expressly stated to the contrary, an indemnity under this Contract will not apply and there will be no right to claim damages for breach of this Contract, in tort or on any other basis whatsoever, to the extent that any loss claimed by any Party under that indemnity or on that basis is for Indirect Losses.

GC34.4 Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract.

GC34.5 Nothing in this Contract will exclude or limit the liability of either Party for:

- a) fraud or fraudulent misrepresentation; or
- b) death or personal injury caused by its negligence; or
- c) breach of any obligation as to title implied by statute (including (but not strictly limited to) Section 2 of the Supply of Goods and Services Act 1982; or
- d) any other act or omission, liability for which may not be limited under any applicable law.

GC35 **INSURANCE**

GC35.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum as described in Special Condition B3 attached to the Particulars (**Required Insurance**).

GC35.2 For the avoidance of any doubt any excess on any of the policies described in Special Condition B3 shall be the sole responsibility and at the sole cost of the Provider, (the **Required Insurances**).

- GC35.3 The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the performance of the Services by the Provider, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- GC35.4 Within five (5) Business Days following written request from the Authority, the Provider shall give the Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- GC35.5 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- GC35.6 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.
- GC35.7 If the proceeds of any insurance policy are insufficient to cover the settlement of any claim relating to this Contract, the Provider must make good any deficiency.
- GC35.8 The Provider must not take any action or fail to take any reasonable action nor (in so far as it is reasonable and within its power) allow others to take action or fail to take any reasonable action, as a result of which any insurance policy (or policies) put in place in accordance with this Clause GC35 and Special Condition B3 attached to the Particulars (**Required Insurance**) may be rendered wholly or partly void, voidable, unenforceable, or be suspended or impaired, or which may otherwise render any sum paid out under those insurance policies wholly or partly repayable.
- GC35.9 On and following expiry or termination of this Contract, the Provider must (and must use its reasonable endeavours to procure that each of its Sub-contractors must) procure that any ongoing liability it has or may have in negligence to any Service User or the Authority arising out of a Service User's care and treatment under this Contract will continue to be the subject of appropriate insurance policies for twenty-one (21) years following termination or expiry of this Contract or (if earlier) until that liability may reasonably be considered to have ceased.
- GC35.10 No later than three (3) months prior to the expiry of this Contract, or within ten (10) Business Days following the date of service of notice to terminate or of agreement to terminate this Contract (as appropriate), the Provider must provide to the Authority satisfactory evidence in writing of its (and its Sub-contractors') arrangements to satisfy the requirements of GC35.9. If the Provider fails to do so, the Authority may itself procure appropriate indemnity arrangements in respect of such on-going liabilities and the Provider must indemnify and keep the Authority indemnified against the costs incurred by the Authority in doing so.

GC35.11 In addition to the required Insurances above, if required by the Authority the Provider shall, on execution of this Contract at the Authority's expense, promptly procure and deliver a performance bond, which shall be in such a form and subject to such terms as determined by the Authority, and in a sum either equal to the amount described in Special Condition B4 attached to the Particulars (**Performance Bond**).

GC36 **DEFAULTS AND FAILURE TO SUPPLY**

GC36.1 In the event that the Authority is of the reasonable opinion that there has been a Default by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Contract including under Clause GC36 (**Contract Management**), consult with the Provider and then do any of the following:

- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within ten (10) Business Days or such other period of time as the Authority may direct;
- b) withhold payment of any Charges invoiced by the Provider in accordance with Clause GC11 (**Charges and Payment**), until such time that the Council is satisfied that the Default has been remedied by the Provider
- c) without suspending or terminating the affected Services under Contract, claim a reduction of two per cent (2%) in relation to any Charges in respect of the affected Services invoiced at the end of the relevant period payable by the Authority under Clause GC11 (**Charges and Payment**) by way of liquidated damages, subject to a maximum reduction of ten per cent (10%) of the total Charges invoiced in respect of the affected Services for that particular period;
- d) without terminating this Contract, suspend the affected Service in accordance with the process set out in Clause GC39 (**Suspension and Consequences of Suspension**);
- e) without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with Clause GC39 (**Termination**) (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.

GC36.2 If the Authority exercises any of its rights under Clause GC35.1, 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.

GC37 **CONTRACT MANAGEMENT**

GC37.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Service Performance Indicator as set out in Appendix D attached to the Particulars (***Service Performance Indicators***) and the Provider fails to meet the Service Performance 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 GC36.

GC37.2 The provisions of this Clause GC36 do not affect any other rights and obligations the Parties may have under this Contract.

GC37.3 Clauses GC36.19, GC36.23, GC36.24 and GC36.26 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Authority.

Contract Query

GC37.4 If the Authority has a Contract Query it may issue a Contract Query Notice to the Provider.

GC37.5 If the Provider has a Contract Query it may issue a Contract Query Notice to the Authority.

Excusing Notice

GC37.6 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.

GC37.7 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

GC37.8 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.

GC37.9 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.

GC37.10 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 twenty (20) Business Days) and the appropriate clinical and/or non-clinical representatives from each Party to participate in the Joint Investigation; and
- b) the Authority and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

Joint Investigation

GC37.11 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.

GC37.12 Either the Authority or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Contract to consider a JI Report.

Remedial Action Plan

GC37.13 If a Remedial Action Plan is to be implemented, the Authority and the Provider must agree the contents of the Remedial Action Plan within:

- a) 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 GC37.11.

GC37.14 The Remedial Action Plan must set out:

- a) milestones for performance to be remedied;
- b) the date by which each milestone must be completed; and
- c) subject to the maximum sums identified in Clause GC37.23, the consequences for failing to meet each milestone by the specified date.

GC37.15 The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.

GC37.16 The Authority and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an on-going basis and in any event at the next Review Meeting.

GC37.17 If following implementation of a Remedial Action Plan:

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

Withholding Payment for Failure to Agree Remedial Action Plan

GC37.18 If the Authority and the Provider cannot agree a Remedial Action Plan within the relevant period specified in Clause GC37.13, they must jointly notify the Boards of Directors of the Provider and the Public Health Directorate of the Authority.

GC37.19 If, ten (10) Business Days after notifying the Public Health Directorate of the Authority, the Authority and the Provider still cannot agree a Remedial Action Plan, the Authority may withhold up to two per cent (2%) of the sums payable by it under Clause GC11 (***Charges and Payment***) for each further month the Remedial Action Plan is not agreed.

GC37.20 The Authority must pay the Provider any sums withheld under Clause GC37.19 within ten (10) Business Days of receiving the Provider's agreement to the Remedial Action Plan. Unless Clause GC37.25 applies, those sums are to be paid without interest.

Exception Reports

GC37.21 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 GC37.23.

GC37.22 If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Authority or the Provider (as the case may be) may issue a Second Exception Report to:

- a) the relevant Party's chief executive and/or Board of Directors; and/or;

- b) CQC or any other Regulatory Body,
- c) 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

GC37.23 If the Provider breaches a Remedial Action Plan:

- a) the Authority may withhold, in respect of each milestone not met, up to two per cent (2%) of the aggregate sums payable by the Authority under Clause GC11 (***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 withholding of ten per cent (10%) of the aggregate sums payable by the Authority under Clause GC11 (***Charges and Payment***) in relation to each Remedial Action Plan;
- b) the Authority must pay the Provider any sums withheld under Clause GC37.23 (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 GC37.25, no interest will be payable on those sums.

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

GC37.24 If the Provider is in breach of a Remedial Action Plan the Authority may, when issuing any Second Exception Report retain permanently any sums withheld under Clause GC37.23.

Unjustified Withholding or Retention of Payment

GC37.25 If the Authority withholds sums under Clause GC37.19 or Clause GC37.23 or retain sums under Clause GC37.24, 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 Contract

GC37.26 If the Provider does not agree a Remedial Action Plan:

- a) within six (6) months following the expiry of the relevant time period set out in Clause GC37.13; or
- b) before the Expiry Date or earlier termination of this Contract,

- c) whichever is the earlier, the Authority may retain permanently any sums withheld under Clause GC37.19.

GC37.27 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Authority may retain permanently any sums withheld under Clause GC37.23.

GC38 **DISPUTE RESOLUTION**

GC38.1 If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix L attached to the Particulars (***Dispute Resolution***).

GC39 **SUSPENSION AND CONSEQUENCES OF SUSPENSION**

GC39.1 A suspension event shall have occurred if:

- a) the Authority reasonably considers that a breach by the Provider of any obligation under this Contract:
 - i. may create an immediate and serious threat to the health or safety of any Service User; or
 - ii. may result in a material interruption in the provision of any one or more of the Services; or
- b) this Clause GC39.1 does not apply, but the Authority, acting reasonably, considers that the circumstances constitute an emergency, (which may or may not include an event of Force Majeure) affecting provision of a Service or Services; or
- c) the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

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

GC39.2 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.

- GC39.3 During the suspension of any Service under Clause GC39.2, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to Clause GC39.2 has been referred to dispute resolution under Clause GC38 (***Dispute Resolution***) and Appendix L attached to the Particulars (***Dispute Resolution***).
- GC39.4 During the suspension of any Service under Clause GC39.2, 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 GC39.2; and/or
 - b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with Clause GC39.5.
- GC39.5 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.
- GC39.6 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).
- GC39.7 Following suspension of a Service, the Provider must at the reasonable request of the Authority and for a minimum period of at least three (3) months:-
- a) co-operate fully with the Authority and any Replacement 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.

GC39.8 As part of its compliance with Clause GC39 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.

GC39.9 If it is determined, pursuant to Clause GC38 (***Dispute Resolution***) and Appendix L attached to the Particulars (***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.

GC39.10 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.

GC40 **TERMINATION**

GC40.1 The Authority and the Provider may terminate this Contract or any Service at any time by mutual written agreement.

GC40.2 The Authority may terminate this Contract or any part of the Service by giving the Provider not less than six (6) months written notice at any time, no earlier than twelve (12) months after the Service Commencement Date.

GC40.3 The Provider may terminate this Contract or any part of the Service by giving the Authority not less than twelve (12) months written notice at any time, no earlier than twelve (12) months after the Service Commencement Date.

GC40.4 The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:

- a) any of the Conditions Precedent set out in Appendix C attached to the Particulars (***Conditions Precedent***) have not been met by the relevant Longstop Date set out in Appendix C;
- b) the Provider is in persistent or repetitive breach of the Service Performance Indicators;
- c) the Provider is in persistent breach of its obligations under this 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 GC50 (**Prohibited Acts**);
- f) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;
- g) the Monitor's Licence for the Provider or any Sub-Contractor is revoked, varied or restricted;
- h) the Provider materially breaches its obligations in Clause GC48 (**Data Protection**) and Appendix N attached to the Particulars (**Data Protection Schedule**);
- i) two (2) or more Second Exception Reports are issued to the Provider under Clause GC37.22 (**Contract Management**) within any rolling twelve (12) month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
- j) the Provider breaches or threatens to breach the terms of Clause GC31 (**Assignment, Sub-contracting and Novation**);
- k) the Provider ceases to carry on its business or substantially all of its business;
- l) the Provider suffers any one or more of the following events:
 - i. the Provider suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts; or
 - ii. (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - iii. (being an individual) is:
 - a. deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
 - b. the subject of a bankruptcy petition or declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984; or
 - iv. (being a partnership) has any partner to whom any of the forgoing circumstances in Clause GC40.3(l)(i) to GC40.3(l)(iii) (inclusive) apply;

- v. the Provider commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors, other than for the sole purpose of a scheme for a solvent amalgamation of that Provider with one or more other companies, or the solvent reconstruction of that Provider; or
 - vi. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that Provider, other than for the sole purpose of a scheme for a solvent amalgamation of that Provider with one or more other companies, or the solvent reconstruction of that Provider; or
 - vii. an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the Provider; or
 - viii. a floating charge holder over the assets of that Provider has become entitled to appoint, or has appointed, an administrative receiver; or
 - ix. a person becomes entitled to appoint a receiver over the assets of the Provider, or a receiver is appointed over the assets of the Provider; or
 - x. a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten (10) Business Days; or
 - xi. any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses GC40.3 (l) (i) to GC40.4(l) (xi) above (inclusive); or
- m) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
 - n) the Provider (being an individual):
 - i. is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or

- ii. is incapacitated, due to illness or injury, from providing the Services for an aggregate period of 120 Business Days in any twelve (12) month consecutive period; or
- iii. dies or is adjudged to lack capacity or be incapable of making a decision for himself within the meaning of the Mental Capacity Act 2005; or
- iv. (being a partnership) has any partner to whom any of the forgoing apply; or
- o) 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 forty (40) Business Days following receipt of notice from the Authority identifying the breach;
- p) any warranty given by the Provider under GC28 (**Warranties and Representations**) is found to be materially untrue or misleading; or
- q) the Authority reasonably believes that the circumstances set out in regulation 73(1) (b) of the Public Contracts Regulations 2015 apply.

GC40.5 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.

GC40.6 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 GC40.6 if the Authority has failed to remedy such breach within forty (40) Business Days of receipt of notice from the Provider to do so.

GC40.7 The Provider shall notify the Authority Representative immediately if there is a change of control of the Provider (as defined in section 574 of the Capital Allowances Act 2001) in relation to the Provider. The Authority may then terminate this Contract by giving the Provider at least thirty (30) Business Days written notice if in the Authority's opinion the change of control is likely to have a materially adverse impact upon the Provider's performance of its obligations under the Contract. The Authority may only exercise its right to terminate under this Clause GC40.6 within six (6) months of:

- a) being notified by the Provider of the change of control; or
- b) where no notification has been made by the Provider, the date that the Authority first becomes aware of the change of control.

GC41 **CONSEQUENCE OF EXPIRY OR TERMINATION**

- GC41.1 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.
- GC41.2 If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under Clauses B40.4 to B40.7 (inclusive) (**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) in respect of the period of six (6) months following termination.
- GC41.3 On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any Replacement Provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.
- GC41.4 For reasonable period before and after termination of this Contract or of any Service, and where reasonable and appropriate before and after the expiry of this Contract, the Provider must co-operate fully with the Authority to migrate the Services in an orderly manner to the Replacement Provider, to ensure continuity and a smooth transfer of the expired or terminated Services, and to avoid any inconvenience or any risk to the health and safety of Service Users or Staff of the Authority (or the Replacement Provider) or members of the public.
- GC41.5 For reasonable period before and after termination of this Contract or of any Service, and where reasonable and appropriate before and after the expiry of this Contract, the Provider must at reasonable request of and at no extra cost to the Authority:
- a) promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of the terminated Services by a Replacement Provider;
 - b) deliver to the Authority all materials, papers, documents, and operating manuals owned by the Authority and used by the Provider in the provision of any terminated Services, on the earlier of the receipt of the Authority's written instructions or within six (6) months after the date of expiry or termination; and

- c) use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the Provider and any third party which relate to or are associated with the terminated Services.

GC41.6 On and pending expiry or termination of this Contract, or termination of any Service, the Parties must:

- a) implement and comply with their respective obligations under the Succession Plan; and
- b) use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users or prospective Service Users as a result of the expiry or termination of this Contract or any Service.

GC41.7 The Authority must pay the Provider pro rata in accordance with Clause GC11 (**Charges and Payment**) and Appendix B attached to the Particulars (**Charges**) for any Services properly delivered by the Provider following expiry or termination of this Contract, or termination of any Service, until the Provider ceases to provide those Services.

GC41.8 Without prejudice to any other rights and liabilities under this Contract, up to and including the expiry of this Contract, or throughout the relevant notice period up to and including the date of termination if this Contract is terminated in accordance with Clauses 40.1, 40.2 and/or 40.3:-

- a) the Authority reserves the right at its sole discretion to either:
 - i. reduce any final payments outstanding detailed under Appendix B attached to the Particulars (**Charges**) in respect of the Service, pro-rata in relation to the reduced Contract Period to reflect the decommissioning and the end of Service supplied by the Provider under this Contract; and/or
 - ii. the Authority reserves the right at its sole discretion to gradually reduce the number of Referrals of Service Users to the Provider accordingly in the run up to the Expiry Date or the date of termination to reflect the decommissioning and the end of Service supplied by the Provider under this Contract; and
- b) notwithstanding the reduction in the amount of Charges paid to the Provider for the remainder of the Contract Period or the amount of Referrals up to and including the Expiry Date or the relevant date of termination, the Provider acknowledges and accepts that it will still be obliged to continue delivering the Service in full to any Referrals it still receives up to and including the expiry date or the date of termination in accordance with the terms and conditions of this Contract and any Service and Quality Outcomes hereunder.

- GC41.9 On and after the expiry or termination of this Contract or termination of any Service:
- a) the Authority must ensure that no further Service Users who require any expired or terminated Service are referred to the Provider;
 - b) the Provider must stop accepting any Referrals that require any expired or terminated Service; and
 - c) subject to any appropriate arrangements made under Clauses GC41.4, GC41.5 and GC41.6, the Provider must immediately cease its treatment of Service Users requiring the expired or terminated Service, and/or arrange for their transfer or discharge as soon as is practicable in accordance with Good Practice and the Succession Plan.
- GC41.10 If termination of this Contract or of any Service takes place with immediate effect in accordance with this GC41 (**Termination**), and the Provider is unable or not permitted to continue to provide any affected Service under any Succession Plan, or implement arrangements for the transition to a Replacement Provider, the Provider must co-operate fully with the Authority to ensure that any affected Service is commissioned without delay from a Replacement Provider, and there is no interruption in the availability to the Authority and Service Users of the affected Service.
- GC41.11 The provisions of Clauses GC8 (**Equity of Access, Equality & Non-Discrimination**), GC10 (**Staff**), GC11 (**Charges and Payment**), GC15 (**Monies Recoverable**), GC18 (**Incidents Requiring Reporting**), GC20 (**Service User Health Records**), GC21 (**Information**), GC28 (**Warranties and Representations**), GC31 (**Assignment, Sub-contracting and Novation**), GC32 (**Audit and Inspection**), GC33 (**Indemnities**), GC34 (**Limitation of Liability**), GC35 (**Insurance**), GC38 (**Dispute Resolution**) and Appendix L attached to the Particulars (**Dispute Resolution**), GC40 (**Termination**), GC41 (**Consequence of Expiry or Termination**), GC43 (**Conflicts of Interest and Transparency on Gifts and Hospitality**), GC46 (**Intellectual Property**) GC47 (**Confidentiality**), GC48 (**Data Protection**) and Appendix O attached to the Particulars (**Data Protection Schedule**), GC49 (**Freedom of Information and Transparency**), GC50 (**Prohibited Acts**), GC50 (**Information Technology Systems**), GC53 (**Third Party Rights**), GC54 (**Capacity**), GC55 (**Severability**), GC56 (**Waiver**), GC57 (**Publicity**), GC58 (**Exclusion of Partnership, Joint Venture or Agency**), GC59 (**Non Solicitation**), GC60 (**Human Rights**), GC61 (**Health and Safety**), GC62 (**Emergency Preparedness, Resilience and Response**), GC63 (**Remedies Cumulative**), GC64 (**Contract Binding on Successors**), GC65 (**Governing Law and Jurisdiction**), , and (where applicable) Clause B.2 of the Special Conditions attached to the Particulars (**TUPE and Pensions**) will survive termination or expiry of this Contract.

GC42 **BUSINESS CONTINUITY**

GC42.1 The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.

GC42.2 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.

GC43 **CONFLICTS OF INTEREST AND TRANSPARENCY ON GIFTS AND HOSPITALITY**

GC43.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any member of its Staff or any of its Sub-contractors is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Authority or such persons and the duties owed to the Authority under the provisions of this Contract. The Provider will disclose to the Authority full particulars of any such conflict of interest which may arise.

GC43.2 The Provider must and must ensure that, in delivering the Services, all Staff comply with Law, guidance, and with Good Clinical and Industry Practice, in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.

GC43.3 The provisions of this Clause shall apply during the continuance of this Contract and for a period of two (2) years after its termination.

GC44 **COUNTER-FRAUD AND SECURITY MANAGEMENT**

GC44.1 The Provider must put in place and maintain appropriate counter fraud and security management arrangements.

GC44.2 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.

GC44.3 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.

GC44.4 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 Contract Period of this Contract had it not been terminated.

GC45 **BRANDING POLICY**

GC45.1 The Provider must comply with any of the Authority's local brand policy and guidelines, as revised, updated or re-issued from time to time.

GC46 **INTELLECTUAL PROPERTY RIGHTS**

GC46.1 Except as set out expressly in this Contract no Party will acquire the IPR of any other Party.

GC46.2 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or any other material:

- a) furnished to or made available to the Provider by the Authority shall remain the property of the Authority;
- b) prepared by or for the Provider for use, or intended use, in relation to the performance of this Contract shall belong to the Authority and the Provider shall not, and shall procure that the Provider's Staff and Sub-contractors shall not, (except when necessary for the implementation of this Contract) without prior written approval from the Authority, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Contract) which the Provider may obtain in performing this Contract except information which is in the public domain.

GC46.3 The Provider shall obtain the prior written approval of the Authority before using any material, in relation to the performance of this Contract which is or may be subject to any third party Intellectual Property Rights.

GC46.4 The Provider shall procure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be fully paid-up, non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.

GC46.5 It is a condition of this Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Provider shall during and after during the Contract Period on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim relates to:

- a) designs furnished by the Authority;

- b) the use of data supplied by the Authority which is not required to be verified by the Provider under any provision of this Contract.

GC46.6 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Provider.

GC46.7 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Provider, provided always that the Provider:

- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- b) shall take due and proper account of the interests of the Authority; and
- c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

GC46.8 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Contract and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in Clause GC46.5 (a) and (b) above.

GC46.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Provider in connection with the performance of this Contract.

GC46.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Provider is likely to be made, the Provider may at its own expense and subject to the consent of the Authority (such consent not to be unreasonably withheld or delayed) either:

- a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
- b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority

GC46.11 At the termination of this Contract the Provider shall at the request of the Authority immediately return to the Authority all materials, work or records held, including any back-up media.

GC46.12 The provisions of this Clause GC46 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

GC47 **CONFIDENTIALITY**

GC47.1 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.

GC47.2 Subject to Clauses GC47.3 and GC47.4, 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.

GC47.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- a) in connection with any dispute resolution under Clause GC38 (**Dispute Resolution**) and Appendix L attached to the Particulars (**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 GC47.2;
- e) to comply with any regulatory bodies request.

GC47.4 The obligations in Clause GC47.1 and Clause GC47.2 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.

GC47.5 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 GC47.

GC47.6 The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause GC47 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 GC47.

GC47.7 This Clause GC47 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

GC47.8 The obligations in Clause GC47.1 and Clause GC47.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

GC48 **DATA PROTECTION**

GC48.1 The Parties acknowledge their respective obligations arising under FOIA, the Data Protection Legislation, the EIR, the Human Rights Act 1998, and under the common law duty of confidentiality, and must assist each other as necessary to enable each other to comply with these obligations.

GC48.2 If the Provider processes any Personal Data which is given to it by the Authority in furtherance of the Services, without prejudice to Clauses GC47 (**Confidentiality**), GC48.1 above, GC49 (**Freedom of Information and Transparency**) and GC60 (**Human Rights**) of the General Conditions, the Provider shall (and shall procure that any of its Staff or subcontractors involved in the provision of the Services shall) comply with the Data Protection Legislation, the Service Order and Good Industry Practice. Attention is drawn to Clause GC32 (**Audit and Inspection**) of the General Conditions.

Notwithstanding the definition of “**Good Industry Practice**” used elsewhere under this Contract, to use “**Good Industry Practice**” in relation to Personal Data is to include following all relevant guidance issued by the UK Information Commissioner’s Office (or any successor body) and, without limitation, to secure digital data with at least two hundred and fifty-six (256) bit AES encryption or unattended hard copy data in a strong secure storage facility, to use out of bands password exchange, to use anti-malware products that have a good reputation within the information security industry and to take measures against brute force password attacks (such as locking accounts/target applications for at least fifteen (15) minutes after at least twenty (20) consecutive invalid password entries).

GC48.3 Transportation of Personal Data shall:-

- a) in electronic format only be made in one of the following ways:-
 - i. through an encrypted VPN connection, or
 - ii. through a secure file transfer facility provided by the Authority (at the date of this Contract, such a facility is the Authority server hosted AVCO AnyComms), or
 - iii. through such other method set out in an Information Sharing Agreement entered into pursuant to the Information Sharing Gateway (ISG) (https://www.informationsharinggateway.org.uk/application/home_intray.aspx) it operates from time to time, which is referred to under **Part 1** of **Appendix N (Data Protection Schedule)**, or
 - iv. any other method as may be expressly approved by the Authority in writing;
or
- b) in a physical form only be delivered by hand by the Provider or a courier approved by the Authority.

GC48.4 Unless otherwise stated in **Part 2** of **Appendix N (Data Protection Schedule)**, the Parties confirm that they are each independent Data Controllers in relation to any shared Personal Data, and that neither Party is to be a Data Processor on behalf of any other Party. Consequently:

- a) each Party disclosing data shall be entirely responsible for ensuring that it is permitted to share the data;
- b) each Party disclosing data shall be responsible for the data while it is in transit to the receiving Party;

- c) each Party receiving data shall be entirely responsible for ensuring that it processes the data it receives in accordance with the Data Protection Legislation.

GC48.5 Notwithstanding the general obligation in Clause GC48.1, where the Provider is processing Personal Data as a Data Processor on behalf of the Authority, the Provider shall comply with the requirements set out in **Part 2 of Appendix N (Data Protection Schedule)**.

GC48.6 The Provider shall not act as a Data Processor for the Authority unless or until **paragraph 1.3 of Part 2 of Appendix N (Data Protection Schedule)** has been complied with.

GC48.7 The provisions of this Clause GC48 above shall apply during the continuance of the Contract and after its expiry or termination, until the Personal Data which the Authority has responsibility for has been returned and / or verified as securely destroyed in accordance with **paragraph 1.5 of Part 2 of Appendix N (Data Protection Schedule)**.

GC49 **FREEDOM OF INFORMATION AND TRANSPARENCY**

GC49.1 The Parties acknowledge their respective duties under the FOIA and the EIR and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

GC49.2 The Provider shall comply and shall procure that its Staff comply with the requirements of the FOIA and the EIR and any codes of practice issued and revised from time to time in so far as these place any obligations upon the Provider in the performance of its obligations under the Contract.

GC49.3 The Provider's and its Staff acknowledge that the Authority is subject to the requirements of the FOIA and the EIR and will assist and co-operate, and shall procure that its Staff assist and co-operate, with the Authority (at the Provider's expense) to enable the Authority to comply with its disclosure obligations under the FOIA and the EIR. Accordingly the Provider, and its Staff, agree:

- a) that this Contract and any other recorded information held by the Provider and its Staff on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA and the EIR;
- b) that the decision on whether any exemption to the general obligations of public access to any Commercially Sensitive Information listed in Appendix O attached to the Particulars (**Freedom of Information Schedule**) or any other information applies to any request for information received under the FOIA and the EIR is a decision solely for the Authority;

- c) that if the Provider and its Staff receive a request for information under the FOIA and the EIR, 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 the EIR, and regulation 16 of the EIR, may disclose any information concerning the Provider and its Staff and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account, whether or not such information has been identified as Commercially Sensitive Information listed in Appendix O attached to the Particulars (**Freedom of Information Schedule**); 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 and the EIR) 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 the EIR, and providing copies of all information requested by the Authority within five (5) Business Days of such request and without charge.

GC49.4 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and the EIR, the content of this Contract is not Confidential Information. For the avoidance of any doubt, the Provider acknowledges that any lists, appendices, schedules or any other document in whatever format provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with this Clause GC49.

GC49.5 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 and the EIR.

GC49.6 In preparing a copy of this Contract for publication pursuant to Clause GC49.5 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.

GC49.7 The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.

GC49.8 In order to comply with the Government's policy on transparency in the areas of contracts and procurement, the Authority will be disclosing the following information on its website;

- a) Details relating to this Contract including (but not strictly limited to):

- i. the name of the Provider;
- ii. the title/description of the Contract;
- iii. the Service Commencement Date referred to in Clause A3.2 of the Particulars (**Commencement and Duration**);
- iv. the Expiry Date referred to in Clause A3.3 of the Particulars (**Commencement and Duration**); and
- v. the estimated total value of the Contract in Pounds Sterling (£) over the entire contract term (i.e. the period beginning on the Commencement Date and ending on the Expiry Date),

such information to be included in the Authority's online Contracts Register; and

- b) any monthly expenditure over five hundred Pounds Sterling (£500) 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.

GC49.9 The Authority shall not be liable for any loss and/or damage the Provider or any of its Staff may suffer from the Authority's disclosure of information in accordance with this Clause GC49.

GC50 INFORMATION TECHNOLOGY SYSTEMS

GC50.1 Subject to Clauses GC47 (**Confidentiality**), GC48 (**Data Protection**), GC49 (**Freedom of Information and Transparency**), and Appendix N attached to the Particulars (**Data Protection Schedule**) the Provider must ensure that all Staff involved in the provision of the Services are able to view (where necessary) key Service User clinical information from GP records, whether via the Summary Care Records Service or a locally integrated electronic record system supplemented by the Summary Care Records Service.

GC50.2 The Provider must use all reasonable endeavours to ensure that its clinical information technology systems provide open interfaces in accordance with Open API Policy and must ensure that all of its major clinical information technology systems enable the Key Clinical Data Fields to be accessible as structured information through open interfaces (subject to the provisions of Clauses GC47 (**Confidentiality**), GC48 (**Data Protection**), GC49 (**Freedom of Information and Transparency**), and Appendix N attached to the Particulars (**Data Protection Schedule**)) to other providers of services to Service Users.

- GC50.3 The Provider must use all reasonable endeavours to ensure that its information technology systems adopt the Government's Open Standards Principles 2012 (as amended) for software interoperability, data and document formats in government IT (see <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>).
- GC50.4 The Provider must ensure that its information technology systems comply with ISB0160 in relation to clinical risk management.
- GC51 **PROHIBITED ACTS**
- GC51.1 The Provider:
- a) shall not, and shall procure that any of its Staff or any of its Sub-contractors shall not, in connection with this Contract commit a Prohibited Act;
 - b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that a Contract has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract.
- GC51.2 The Provider shall:
- a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - b) within five (5) Business Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Provider) compliance with this Clause GC50 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.
- GC51.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any of its Staff or Sub-contractors from committing a Prohibited Act and shall enforce it where appropriate.
- GC51.4 If any breach of Clause GC50.1 above is suspected or known, the Provider must notify the Authority immediately.

- GC51.5 If the Provider notifies the Authority that it suspects or knows that there may be a breach of Clause GC50.1, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority access to audit books, records and any other relevant documentation. This obligation shall continue for six (6) years following the expiry or termination of this Contract.
- GC51.6 The Authority may terminate this Contract by written notice with immediate effect if the Provider, or any of its Staff and/or Sub-contractors (in all cases whether or not acting with the Provider's knowledge) breaches Clause CG50.1. In determining whether to exercise the right of termination under this Clause GC50.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by any member of its Staff, or any Sub-contractor or supplier not acting independently of the Provider. The expression "**not acting independently of**" (when used in relation to the Provider or a Sub-contractor) means and shall be construed as acting:
- a) with the delegated authority; or
 - b) with the actual knowledge;
 - c) of any one or more of the directors of the Provider or the Sub-contractor (as the case may be); or
 - d) in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.
- GC51.7 Any notice of termination under Clause GC50.6 must specify:
- a) the nature of the Prohibited Act;
 - b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - c) the date on which this Contract will terminate.
- GC51.8 Despite Clause GC38 (**Dispute Resolution**) and Appendix L attached to the Particulars (**Dispute Resolution**), any dispute relating to:
- a) the interpretation of this Clause B50; or
 - b) the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.
- GC51.9 Any termination under Clause GC50.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

GC52 **FORCE MAJEURE**

GC52.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under this Contract (other than a payment of money) if such delay or failure results from a Force Majeure event.

GC52.2 Notwithstanding the foregoing, each Party shall use all reasonable endeavours to mitigate the consequences of the Force Majeure event, to resume and continue to perform its obligations hereunder for the duration of such Force Majeure event, and to remedy its failure to perform its obligations under this Contract.

GC52.3 However, if any such event prevents either Party from performing all of its obligations under this Contract for a period in excess of six (6) months, either Party may terminate this Contract by notice in writing with immediate effect.

GC52.4 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.

GC52.5 This Clause GC51 does not affect the Authority's rights under Clauses GC39 (*Suspension and Consequences of Suspension*), GC40 (*Termination*) and GC41 (*Consequences of Expiry or Termination*).

GC52.6 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in Clause B51.4, it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

GC52.7 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of this Contract shall be any event qualifying for Force Majeure hereunder.

GC53 **THIRD PARTY RIGHTS**

GC53.1 Except for the purposes of Clause B2.3, and Clauses B2.7 to B2.39 (where applicable) of the Special Conditions attached to the Particulars (*TUPE and Pensions*) or elsewhere in this Contract, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

GC53.2 Despite what Clause B2.3, and Clauses B2.7 to B2.39 (where applicable) of the Special Conditions (**TUPE and Pensions**) or what any other provisions say elsewhere in this Contract, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

GC54 **CAPACITY**

GC54.1 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.

GC55 **SEVERABILITY**

GC55.1 If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Contract.

GC56 **WAIVER**

GC56.1 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.

GC57 **PUBLICITY**

GC57.1 Without prejudice to any rights the Authority may have under Clause GC49 (**Freedom of Information and Transparency**), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), or except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, the Provider must not make any press announcements in relation to this Contract or its contents in any way.

GC57.2 The Provider shall not use the Authority's name or logo in any promotion or marketing or announcement of orders except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

GC57.3 The Provider must take all reasonable steps to ensure the observance of the provisions of this Clause GC56 by its entire Staff and Sub-contractors.

GC58 **EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY**

GC58.1 Further to Clause GC2 above (*The Provider's Status (Principal)*), 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, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.

GC58.2 Further, each Party confirms it is acting on its own behalf and not for the benefit of any other person.

GC59 **NON-SOLICITATION**

GC59.1 For the continuance of the Contract, and for a period of twelve (12) months after its expiry or termination, neither the Authority or the Provider shall solicit the services of any of the other Party's Staff who have been associated with the commissioning and/or contract management and/or performance of the Services, without the other Party's prior written consent, either as principal, agent, employee, independent contractor or in any other form of employment or engagement, other than by means of an open national advertising campaign where it is apparent from the wording of the advertisement, the manner of its publication, or otherwise that the advertisement was equally likely to attract applications from individuals who were not employees of the other Party.

GC60 **HUMAN RIGHTS**

GC60.1 The Provider:

- a) shall take all necessary steps, and inform the Authority of the steps taken by the Provider or any of its agents, representatives, suppliers and/or Sub-contractors, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);
- b) shall, at all times, comply with (and shall ensure that its Staff, Sub-contractors, or anyone else under their direct control and/or supervision comply with) the provisions of the Human Rights Act 1998 in the performance of this Contract;
- c) shall also undertake, or refrain from undertaking, (and shall ensure that its Staff, Sub-contractors, or anyone else under their direct control and/or supervision undertakes, or refrains from undertaking) such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

GC60.2 Without prejudice to the rights of the Authority elsewhere under this Contract, the Provider must indemnify the Authority against any loss, claims and expenditure resulting from the Provider's breach of this Clause.

GC61 **HEALTH AND SAFETY**

GC61.1 The Provider must promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.

GC61.2 The Provider must comply with (and shall ensure that its Staff, Sub-contractors, or anyone else under their direct control and/or supervision comply with) the requirements of all applicable Law regarding health and safety, including (but not limited to) the Health and Safety at Work Act 1974 and any other acts, orders regulations and codes of practice relating to health and safety which may apply to the Provider's staff and other persons working on the Provider's Premises in the performance of this Contract, and any Service User and/or any other member of the public.

GC61.3 Further to its obligations under Clause GC60.2 above, the Provider must comply with (and shall ensure that its Staff, Sub-contractors, or anyone else under their direct control and/or supervision comply with) the provisions of any health and safety policy of the Authority, as provided to the Provider on or before the Service Commencement Date and as subsequently provided to the Provider from time to time, except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

GC61.4 The Provider must on written request of the Authority and in any event within five (5) Business Days of that request, provide the Authority with a copy of its health and safety policy statement (as required by the Health and Safety at Work Act 1974).

GC62 **EMERGENCY PREPAREDNESS, RESILIENCE AND RESPONSE**

GC62.1 The Provider must comply with EPRR Guidance if and when applicable. The Provider must identify and have in place an Accountable Emergency Officer.

GC62.2 The Provider must notify the Co-ordinating Commissioner as soon as reasonably practicable and in any event no later than five (5) Business Days following:

- a) any risk, or any actual disruption, to the Services; and/or
- b) the activation of its Business Continuity Plan.

GC62.3 The Authority must have in place arrangements that enable the receipt at all times of a notification made under Clause GC61.2.

- GC62.4 The Provider must at the request of the Authority provide whatever support and assistance may reasonably be required by the Authority and/or NHS England and/or Public Health England in response to any national, regional or local public health emergency or incident.
- GC62.5 The right of the Authority to:
- a) withhold or retain sums under Clause GC37 (***Contract Management***); and/or
 - b) suspend Services under Clause GC39 (***Suspension and Consequences of Suspension***),
- will not apply if the relevant right to withhold, retain or suspend has arisen only as a result of the Provider complying with its obligations under this GC61.
- GC62.6 The Provider must use its reasonable efforts to minimise the effect of an incident or an emergency on the Services and to continue the provision of the Services notwithstanding the incident or emergency. If a Service User is already receiving treatment when an incident or emergency occurs, or is admitted after the date it occurs, the Provider must not:
- a) discharge the Service User, unless clinically appropriate to do so in accordance with Good Practice; or
 - b) transfer the Service User, unless it is clinically appropriate to do so in accordance with Good Practice.
- GC62.7 Subject to Clause GC61.6 above, if the impact of an incident or emergency is that the demand for any particular part of the Services increases, and the Provider establishes to the satisfaction of the Authority that its ability to provide those Services is reduced as a result, the impacted Services will be suspended or scaled back as necessary for as long as the Provider's ability to provide it is reduced. The Provider must give the Authority written confirmation every two (2) calendar days of the continuing impact of the incident or emergency on its ability to provide the affected Services.
- GC62.8 During or in relation to any suspension or scaling back of any of the Services in accordance with Clause GC61.7:
- a) Clause GC39 (***Suspension and Consequences of Suspension***) will not apply to that suspension;
 - b) if requested by the Provider, the Authority must use their reasonable efforts to avoid any new Referrals in respect of the affected parts of the Service and the Provider may if necessary change its waiting lists for the affected Services; and

- c) the Provider must continue to provide non-affected Services, subject to the Provider's discretion to transfer or divert a Service User if the Provider considers that to be in the best interests of all Service Users to whom the Provider is providing non-affected Services whether or not as a result of any incident or emergency (using that discretion in accordance with Good Practice).

GC62.9 If, despite the Provider complying fully with its obligations under this Clause GC61, there are transfers, postponements and cancellations the Provider must give the Authority notice of:

- a) the identity of each Service User who has been transferred and the alternative provider;
- b) the identity of each Service User who has not been but is likely to be transferred, the probable date of transfer and the identity of the intended alternative provider;
- c) cancellations and postponements of admission dates;
- d) cancellations and postponements of out-patient appointments; and
- e) other changes in the Provider's list.

GC62.10 As soon as reasonably practicable after the Provider gives written notice to the Authority that the effects of the relevant incident or emergency have ceased, the Provider must fully restore the availability of all of the Services.

GC63 **REMEDIES CUMULATIVE**

GC63.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract are cumulative, and may be exercised concurrently or separately, and the exercise of one (1) remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

GC64 **CONTRACT BINDING ON SUCCESSORS**

GC64.1 This Contract will be binding on and will be to the benefit of the Authority and Provider and their respective successors and permitted transferees and assigns.

GC65 **GOVERNING LAW AND JURISDICTION**

GC65.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

GC65.2 Subject to the provisions of Clause GC38 (***Dispute Resolution***) and Appendix L attached to the Particulars (***Dispute Resolution***), each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).