

Contract for

**Provision of Enhanced Contraceptive Devices in
General Practice in Somerset**

between

Somerset County Council
and

Commencement Date: 01.04.2019
Expiry Date: 31.03.2021

Contract No CCS/xxxx

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SECTION A: THE PARTICULARS

This Contract is made on

2018

PARTIES

- (1) SOMERSET COUNTY COUNCIL of County Hall, Taunton, TA1 4DY (the **Authority**); and
- (2) xxxxxxxxxxxx (the **Provider**).

BACKGROUND

- A. The Authority must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations.
- B. In order to satisfy these obligations the Authority wishes to secure the provision of the Services at the general practices listed in Appendix 1.
- C. The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.

IT IS AGREED

A1. CONTRACT

- A1.1. This Contract is comprised of:
 - a) these Particulars (Section A);
 - b) the General Terms and Conditions (the 'General Conditions') in (Section B);
 - c) the Schedules and Appendicesas completed and agreed by the Parties and as varied from time to time in accordance with clause B22 (*Variations*) of the General Conditions.

A2. INTERPRETATION

- A2.1. This Contract shall be interpreted in accordance with Appendix 4 unless the context requires otherwise.
- A2.2. If there is any conflict or inconsistency between the provisions of this Contract, such conflict or inconsistency must be resolved according to the following order of priority:
 - a) Section B;
 - b) Section A;
 - c) the Schedules;
 - d) the Appendices

A3. COMMENCEMENT AND DURATION

- A3.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the 'Commencement Date') and shall continue for the Term.

- A3.2. The Provider shall provide the Services from the Service Commencement Date.
- A3.3. The Authority may, in its absolute discretion, extend this Contract beyond the Initial Term by two (2) further twelve (12) month periods. If the Authority wishes to extend this Contract, it shall give the Provider at least three (3) months' written notice of such intention before the expiry of the Initial Term (or, in respect of an extension period, three (3) months before expiry of that extension period).
- A3.4. If the Authority gives such notice then the Term shall be extended by the period set out in the notice.

A4. REPRESENTATIVES

- A4.1. The Provider Representatives and the Authority Representatives are set out in APPENDIX 3: CONTACT POINTS
- A4.2. The Provider may replace the Provider Representatives and the Authority may replace the Authority Representatives at any time by giving written notice to the other Party.

A5. NOTICES

- A5.1. Any notices given under this Contract shall be in writing and shall be served by hand or post by sending the same to the address for the relevant Party set out in clause A5.3.
- A5.2. Notices:
- a) by post and correctly addressed shall be effective upon the earlier of actual receipt, or five (5) Business Days after mailing; or
 - b) by hand shall be effective upon delivery.
- A5.3. For the purposes of clause A5.2, the address for service of notices on each Party shall be as set out in APPENDIX 3: CONTACT POINTS.
- A5.4. Either Party may change its address for service by serving a notice in accordance with this clause A5.

A6. ENTIRE CONTRACT

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

A7. COUNTERPARTS

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

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

**SIGNED for and on behalf of
the AUTHORITY**

.....

Signature

Alison Bell.....

Name

Consultant in Public Health.....

Position

.....

Date

**SIGNED for and on behalf of
the AUTHORITY**

.....

Signature

Stephen Barker.....

Name

Commercial and Procurement.....

Position

.....

Date

**SIGNED for and on behalf of
the PROVIDER**

.....

Signature

.....

Name

.....

Position

.....

Date

SECTION B: GENERAL TERMS AND CONDITIONS

B1. SERVICES

- B1.1. The Provider shall provide the Services in accordance with the Service Specification at the general practices listed in APPENDIX 1:

B2. NOT USED

B3. SERVICE STANDARDS

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

- a) comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
- b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
- c) consider and respond, where applicable, to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
- d) comply, where applicable, with the recommendations issued from time to time by a Competent Body;
- e) comply, where applicable, with the recommendations from time to time contained in guidance and appraisals issued by NICE; and
- f) where applicable respond to any reports and recommendations made by Local HealthWatch;
- g) comply with any applicable Quality Assurance Frameworks;
- h) in performing the Services, have regard to the NHS Constitution.
- i)

B4. SERVICE USER INVOLVEMENT

- B4.1. The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.

- B4.2. NOT USED

- B4.3. NOT USED

- B4.4. NOT USED

B5. EQUITY OF ACCESS AND EQUALITY

- B5.1. The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- B5.2. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- B5.3. In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,
- and for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.
- B5.4. NOT USED.
- B5.5. The Provider must provide to the Authority as soon as reasonably practicable, any information that the Authority reasonably requires to:
- a) monitor the equity of access to the Services; and
 - b) fulfil their obligations under the Law.
- B6. NOT USED**
- B7. STAFF**
- B7.1. At all times, the Provider must ensure that:
- a) each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - b) there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;
 - c) where applicable, Staff are registered with the appropriate professional regulatory body; and
 - d) Staff are aware of and respect equality and human rights of colleagues and Service Users.
 - e) NOT USED.

B7.2. NOT USED.

B7.3. NOT USED.

B7.4. NOT USED.

B7.5. NOT USED.

B7.6. NOT USED.

B7.7. NOT USED.

B7.8. NOT USED.

B7.9. NOT USED.

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

B8. CHARGES AND PAYMENT

B8.1. In consideration for the provision of the Services, the Authority shall pay the Provider the Charges in accordance with the Payment Schedule.

B8.2. If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract in accordance with clause B32.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause B30.

B8.3. The Authority is entitled to reclaim any overpayment made for whatever reason. This will be carried out in accordance with the Payment Schedule by a reduction in payments or, if the Services have ceased and/or the Contract has expired or been terminated, the Authority will issue an invoice to the Provider and the invoiced sum will be recoverable by the Authority as a debt.

B8.4. If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Provider interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

- B8.5. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Provider a sum equal to the VAT chargeable in respect of the Services.
- B8.6. The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Contract. Such records shall be retained for inspection by the Authority for six (6) years.
- B8.7. If any sum of money is recoverable from or payable by the Provider under the Contract (including any sum which the Provider is liable to pay to the Authority in respect of any breach of the Contract), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Provider under the Contract or under any other agreement or contract with the Authority. The Provider shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.
- B8.8. Any proposed variation to the Charges by either Party shall be notified to the other Party in accordance with clause B22. The Payment Schedule shall be updated where any variation to the Charges is agreed by the Parties.
- B9. NOT USED**
- B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS, PREVENT AND MODERN SLAVERY**
- B10.1. In delivering the Services the Provider shall ensure that safeguarding the welfare of children and vulnerable adults is paramount.
- B10.2. The Provider shall comply with the Safeguarding Vulnerable Groups Act 2006 and, in the case of Regulated Activity, the Provider will be a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006
- B10.3. The Provider shall comply with the Safeguarding Policies.
- B10.4. The Provider shall:
- a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service (DBS); and
 - b) monitor the level and validity of the checks under this clause B10.4 for each member of staff;
 - c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- B10.5. 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.

- B10.6. 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 B10 have been met.
- B10.7. 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 the Service Users.
- B10.8. The Provider shall at all times have due regard to the Authority's statutory obligations in relation to the Prevent Duty and provide the Authority with such information and assistance as it may reasonably require to satisfy those obligations and, but only where so requested by the Authority:
- a) nominate or appoint a Prevent Lead;
 - b) procure timely and sufficient training for the Prevent Lead and the Provider's Personnel on the Prevent Duty;
 - c) submit to the Authority for approval and thereafter implement a policy on the Prevent Duty, including but not limited to a procedure for raising concerns, sanctions and the maintenance of records; and
 - d) disclose to the Authority on request copies of such records and any other information the Authority may reasonably require from the Provider in the discharge of the Prevent Duty.
- B10.9. The Authority has a statutory duty under Section 17 of the Crime and Disorder Act 1998 and the Police and Justice Act 2006 to prevent crime, disorder and the misuse of drugs, alcohol and other substances in the County of Somerset. The Provider will take reasonable and appropriate action to inhibit the causes and consequences of criminal, abusive, intimidating and antisocial behaviour in the course of performing the Services and the Authority may require the Provider to include reporting on such matters to the Authority.
- B10.10. The Provider shall at all times during the Term comply with its obligations under the Modern Slavery Act 2015 and shall provide the Authority with evidence of such compliance as the Authority may reasonably require within fourteen (14) days (or such longer period as the parties may agree) of receiving a request in writing.

B11. INCIDENTS REQUIRING REPORTING

- B11.1. The Provider must be open and honest with a Service User where there is an Incident and the Provider shall:
- a) advise the Service User of the Incident;
 - b) apologise to the Service User;
 - c) offer an appropriate remedy or support to rectify, if possible, the matter; and
 - d) explain fully to the Service User the short-term and long-term effects of the Incident.
- B11.2. In relation to any Incident, the Provider must act openly and honestly with its Staff and any regulator, raise concerns where appropriate and participate in any review or investigation.
- B11.3. The Provider must promote a culture that encourages candour, openness and honesty at all levels and should be an integral part of a culture of safety that supports organisational and personal learning. The Provider is required to commit to being open and transparent at board or its equivalent level, such as a governing body.
- B11.4. The Provider shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations.
- B11.5. If the Provider gives a notification to the CQC under clause B11.4 which directly or indirectly concerns any Service User, the Provider must send a copy of the notification to the Authority within 5 Working Days or within the timescale set out in APPENDIX 2: SERIOUS INCIDENTS REQUIRING REPORTING PROCEDURE.
- B11.6. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in APPENDIX 2: SERIOUS INCIDENTS REQUIRING REPORTING PROCEDURE.
- B11.7. Subject to the Law the Authority shall have complete discretion to use the information provided by the Provider under this clause B11 and APPENDIX 2: SERIOUS INCIDENTS REQUIRING REPORTING PROCEDURE.

B12. CONSENT

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

B13. SERVICE USER HEALTH RECORDS

- B13.1. The Provider must create, maintain, store and retain Service User health records for all Service Users. The Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
- B13.2. The Provider must:
- a) use Service User health records solely for the execution of the Provider's obligations under this Contract; and
 - b) give each Service User full and accurate information regarding his/her treatment and Services received.
- B13.3. The Provider must at all times during the term of this Contract have a Caldicott Guardian and shall notify the Authority of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this Contract, it shall promptly notify the Authority of the identity and contact details of such replacements.
- B13.4. Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.

B14. INFORMATION

- B14.1. NOT USED.
- B14.2. NOT USED.
- B14.3. NOT USED.
- B14.4. The Authority may request from the Provider any information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

B15. EQUIPMENT

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

B16. NOT USED**B17. COMPLAINTS**

- B17.1. The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services.
- B17.2. If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the

performance of the Provider's obligations under this Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in clause B28 (*Default and Failure to Supply*).

B18. SERVICE REVIEW AND MONITORING

B18.1. The Provider shall provide such data in relation to the Services as is set out in the Service Specification.

B18.2. If either the Authority or the Provider reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution, 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.

B19. NOT USED

B20. CO-OPERATION

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

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

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

in order to:

- e) ensure that a consistently high standard of care for the Service User is at all times maintained;
- f) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
- g) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Authority's or members of the public.

B21. WARRANTIES AND REPRESENTATIONS

B21.1. The Provider warrants and represents that:

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

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

B21.2. The Authority warrants and represents that:

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

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

B22. VARIATIONS

- B22.1. This Contract may not be amended or varied other than in accordance with this clause B22.
- B22.2. Either Party may from time to time during the term of this Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).
- B22.3. 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.
- B22.4. 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 (*Notices*).

B23. ASSIGNMENT AND SUB-CONTRACTING

- B23.1. The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the Authority in writing:
- a) consenting to the appointment of the Sub-contractor (such consent not to be unreasonably withheld or delayed); and
 - b) approving the Sub-contract arrangements (such approval not to be unreasonably withheld or delayed) which shall include the addition of any of the clauses in this Contract to the Sub-contract as the Authority may reasonably require
- B23.2. The Authority's consent to sub-contracting under clause B23.1 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.
- B23.3. Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.
- B23.4. The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Provider.

B24. AUDIT AND INSPECTION

- B24.1. The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, the General Pharmaceutical Authority, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.
- B24.2. Subject to Law and notwithstanding clause B24.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.
- B24.3. Within 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.
- B24.4. The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- B24.5. During any audit undertaken under clause B24.1 or B24.2, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:
- a) all reasonable information requested within the scope of the audit;
 - b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
 - c) access to the Staff.

B25. INDEMNITIES

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

B26. LIMITATION OF LIABILITY

- B26.1. Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract

B26.2. Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.

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

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

B27. INSURANCE

B27.1. 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 the following levels of cover:

- (i) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- (ii) employer's liability insurance with a limit of indemnity of not less than £10,000,000;
- (iii) professional indemnity insurance where relevant to the Services with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Providers involved in the provision of the Services hold and maintain appropriate cover; and
- (iv) business interruption insurance at a level appropriate to the size and turnover of the Provider's business

(the “**Required Insurances**”) in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss.

B27.2. The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances, together with receipts or other evidence of payment of the latest premiums due under those policies.

B27.3. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

B28. DEFAULTS AND FAILURE TO SUPPLY

B28.1. In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Contract, consult with the Provider and then do any of the following:

- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within ten (10) Business Days or such other period of time as the Authority may direct;
- b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B31;

- c) without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause B32 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.

B28.2. If the Authority exercises any of its rights under clause B28.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

B29. NOT USED

B30. DISPUTE RESOLUTION

B30.1. If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("Dispute") then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:

- (i) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Authority Representative and the Provider Representative shall attempt in good faith to resolve the Dispute;
- (ii) if the Authority Representative and the Provider Representative are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Director of Public Health and the Provider's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and
- (iii) if the Authority's Director of Public Health and the Provider's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.

B30.2. The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 32 which clause shall apply at all times.

B31. SUSPENSION AND CONSEQUENCES OF SUSPENSION

B31.1. A suspension event shall have occurred if:

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

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

B31.2. Where a Suspension Event occurs the Authority:

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

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

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

- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B31.2; and/or
- b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B31.5.

B31.5. The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.

B31.6. Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).

B31.7. Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:

- a) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
 - b) at the cost of the Provider:
 - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
 - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B31.8. As part of its compliance with clause B31.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.
- B31.9. If it is determined, pursuant to clause B30 (*Dispute Resolution*), that the Authority acted unreasonably in suspending a Service, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B31.10. NOT USED.

B32. TERMINATION

- B32.1. Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than three (3) months' written notice at any time after the Service Commencement Date.
- B32.2. The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:
- a) NOT USED
 - b) the Provider is in persistent breach of its obligations under this Contract;
 - c) the Provider:
 - (i) fails to obtain any Consent;
 - (ii) loses any Consent; or
 - (iii) has any Consent varied or restricted,the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;
 - d) the Provider has breached the terms of clause B39 (*Prohibited Acts*);
 - e) any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable;

- f) the Provider materially breaches its obligations in clause B37 (*Data Protection*);
 - g) NOT USED;
 - h) the Provider breaches the terms of clause B23 (*Assignment and Sub-contracting*);
 - i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
 - j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
 - k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 30 Business Days following receipt of notice from the Authority identifying the breach.
- B32.3. Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than thirty (30) Business Days without the Parties agreeing alternative arrangements.
- B32.4. The Provider may terminate this Contract or any Service with immediate effect by written notice to the Authority if the Authority is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B32.4 if the Authority has failed to remedy such breach within thirty (30) Business Days of receipt of notice from the Provider to do so.
- B33. CONSEQUENCE OF EXPIRY OR TERMINATION**
- B33.1. Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- B33.2. NOT USED.
- B33.3. On the expiry or termination of this Contract or termination of any Service the Provider must co-operate fully with the Authority to migrate the Services in an orderly manner to the successor provider.
- B33.4. In the event of termination or expiry of this Contract, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.

B33.5. If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B32.4, B32.3 or if the Authority terminates under clause B32.1), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.

B33.6. The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B23 (*Assignment and Sub-contracting*), B24 (*Audit and Inspection*), B33 (*Consequence of Expiry or Termination*), B36 (*Confidentiality*) and B38 (*Freedom of Information and Transparency*) will survive termination or expiry of this Contract.

B33.7. The Authority shall not be responsible for any redundancy costs in respect of the Staff on expiry or termination of the Contract.

B34. NOT USED

B35. COUNTER-FRAUD AND SECURITY MANAGEMENT

B35.1. The Provider must put in place and maintain appropriate counter fraud and security management arrangements.

B35.2. The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Authority.

B35.3. The Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

B35.4. If the Provider or its Staff commits Fraud in relation to this or any other contract with the Authority, the Authority may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

B36. CONFIDENTIALITY

B36.1. Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.

B36.2. Subject to Clauses B36.3 and B36.4, the Receiving Party agrees:

- a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
- b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and

- c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- B36.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:
- a) in connection with any dispute resolution under clause B30 (*Dispute Resolution*);
 - b) in connection with any litigation between the Parties;
 - c) to comply with the Law;
 - d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B36.2;
 - e) to comply with a regulatory bodies request.
- B36.4. The obligations in clause B36.1 and clause B36.2 will not apply to any Confidential Information which:
- a) is in or comes into the public domain other than by breach of this Contract;
 - b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
 - c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B36.5. The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B36.
- B36.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B36.
- B36.7. This clause B36 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- B36.8. The obligations in clause B36.1 and clause B36.2B shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

B37. DATA PROTECTION

- B37.1. The Parties acknowledge their respective duties under the Data Protection Legislation and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

- B37.2. The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- B37.3. To the extent that the Provider is acting as a Processor on behalf of the Authority, the Provider shall, in particular, but without limitation:
- a) only process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instruction given by the Authority under this Contract;
 - b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - c) ensure that:
 - (i) the Staff do not process Personal Data except in accordance with this Contract;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Provider's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;

- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Provider is required by Law to retain the Personal Data.

B37.4. Subject to clause B37.5, the Provider shall notify the Authority immediately if it:

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

B37.5. The Provider's obligation to notify under clause B37.4 shall include the provision of further information to the Authority in phases, as details become available.

B37.6. Taking into account the nature of the processing, the Provider shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause B37.4 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- a) the Authority with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Authority following any Data Loss Event;
- e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

B37.7. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

- a) the Authority determines that the processing is not occasional;

- b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- B37.8. The Provider shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- B37.9. The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- B37.10. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:
 - a) notify the Authority in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Authority;
 - c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause B37 such that they apply to the Sub-processor; and
 - d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- B37.11. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- B37.12. The Authority may, at any time on not less than thirty (30) Business Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- B37.13. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Business Days' notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

B38. FREEDOM OF INFORMATION AND TRANSPARENCY

- B38.1. The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B38.2. If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:
 - a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
 - b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;

- c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
 - d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
 - e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within five (5) Business Days of such request and without charge.
- B38.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.
- B38.4. Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- B38.5. In preparing a copy of this Contract for publication pursuant to clause B38.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.
- B38.6. The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.
- B38.7. In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

B39. PROHIBITED ACTS

- B39.1. Neither Party shall do any of the following:
- a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and

- b) in connection with this Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,

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

B39.2. If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:

- a) to exercise its right to terminate under clause B32.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
- b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
- c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

B39.3. Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

B39.4. The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within 5 Business Days of the Authority requesting it and enforced by the Provider where applicable.

B39.5. Should the Provider become aware of or suspect any breach of this clause B39, it will notify the Authority immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.

B40. FORCE MAJEURE

B40.1. Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.

B40.2. Subject to clause B40.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.

B40.3. The Party claiming relief as a result of an event of Force Majeure must serve an initial written notice on the other Party immediately it becomes aware of the event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief must then serve a detailed written notice within a further fifteen (15) Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform the relevant obligations under this Contract as is available, including the effect of the event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Services.

B40.4. A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.

B40.5. The Authority shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

B41. THIRD PARTY RIGHTS

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

B42. CAPACITY

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

B43. SEVERABILITY

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

B44. WAIVER

B44.1. 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.

B45. PUBLICITY

B45.1. Without prejudice to clause B38 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.

B45.2. The Provider must take all reasonable steps to ensure the observance of the provisions of clause B45.1 by all its staff, servants, agents, consultants and sub-contractors.

B46. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

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

B47. GOVERNING LAW AND JURISDICTION

B47.1. This Contract will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.

B47.2. Subject to the provisions of clause B30 (Dispute Resolution), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.

SCHEDULE A1: Service Specification – provision of enhanced contraceptive devices



Specification
(a).docx

SCHEDULE B1: Payment schedule –provision of enhanced contraceptive devices

1. Providers will receive £113.71 for IUC/D fitting and removal service (to include any required follow up as necessary). For implants, Providers will receive £45 per insertion service and £55 per removal service. The fees will only be payable where the Provider is using single use instruments. Providers using Sterile Services from an acute or Foundation trust are no longer eligible to receive payment under this enhanced service.
2. Payment will be made to the Provider on a monthly basis; the budget will be based on the previous years activity.
3. Payments will be reconciled after the end of the financial year on the basis of actual numbers of fittings / removals completed.
4. General Practices will be required to submit quarterly activity summaries to SCC detailing the number of fittings and removals for LARC and the numbers of those fitted primarily for non-contraceptive purposes.

APPENDIX 1: INTER-PRACTICE REFERRALS

As per the Expression of Interest form received, the practice named at p.5 of this document will be contracted to undertake the following (please sign where applicable):

Public Health Services	Signature
1. Will offer LARC service and will take referrals from other practices	
2. Will offer LARC service but <u>only</u> for registered patients.	

APPENDIX 2: SERIOUS INCIDENTS REQUIRING REPORTING PROCEDURE

1 AIM

- 1.1 The aim of this protocol is to ensure timely notification of Serious Incidents (SI) occurring within Public Health commissioned services and a co-ordinated response to both the investigation and sharing of learning, when incidents occur within Public Health or NHS services.

2 DEFINITION OF SERIOUS INCIDENT

- 2.1 There is no definitive list of events/incidents that constitute an SI and the NHS England Serious Incident Framework states that lists should not be created locally, as this can lead to inconsistent or inappropriate management of incidents. Instead, the Framework sets out the circumstances in which an SI must be declared. For clarity, Public Health will adopt this.

- 2.2 These include the following:

- acts and/or omissions occurring as part of NHS-funded¹ healthcare (including in the community) that result in:
 - unexpected or avoidable death of one or more people. This includes:
 - suicide/self-inflicted death
 - homicide by a person in receipt of mental health care within the recent past (6 months)
 - unexpected or avoidable injury to one or more people that has resulted in serious harm
 - unexpected or avoidable injury to one or more people that requires further treatment by a healthcare professional in order to prevent:
 - the death of the service user; or
 - serious harm
 - actual or alleged abuse; sexual abuse, physical or psychological ill-treatment, or acts of omission which constitute neglect, exploitation, financial or material abuse, discriminative and organisational abuse, self-neglect, domestic abuse, human trafficking and modern day slavery where:
 - healthcare² did not take appropriate action/intervention to safeguard against such abuse occurring; or where abuse occurred during the provision of NHS-funded¹ care
- an incident (or series of incidents) that prevents, or threatens to prevent, an organisation's ability to continue to deliver an acceptable quality of healthcare services, including (but not limited to) the following:

¹ Include Public Health funded services

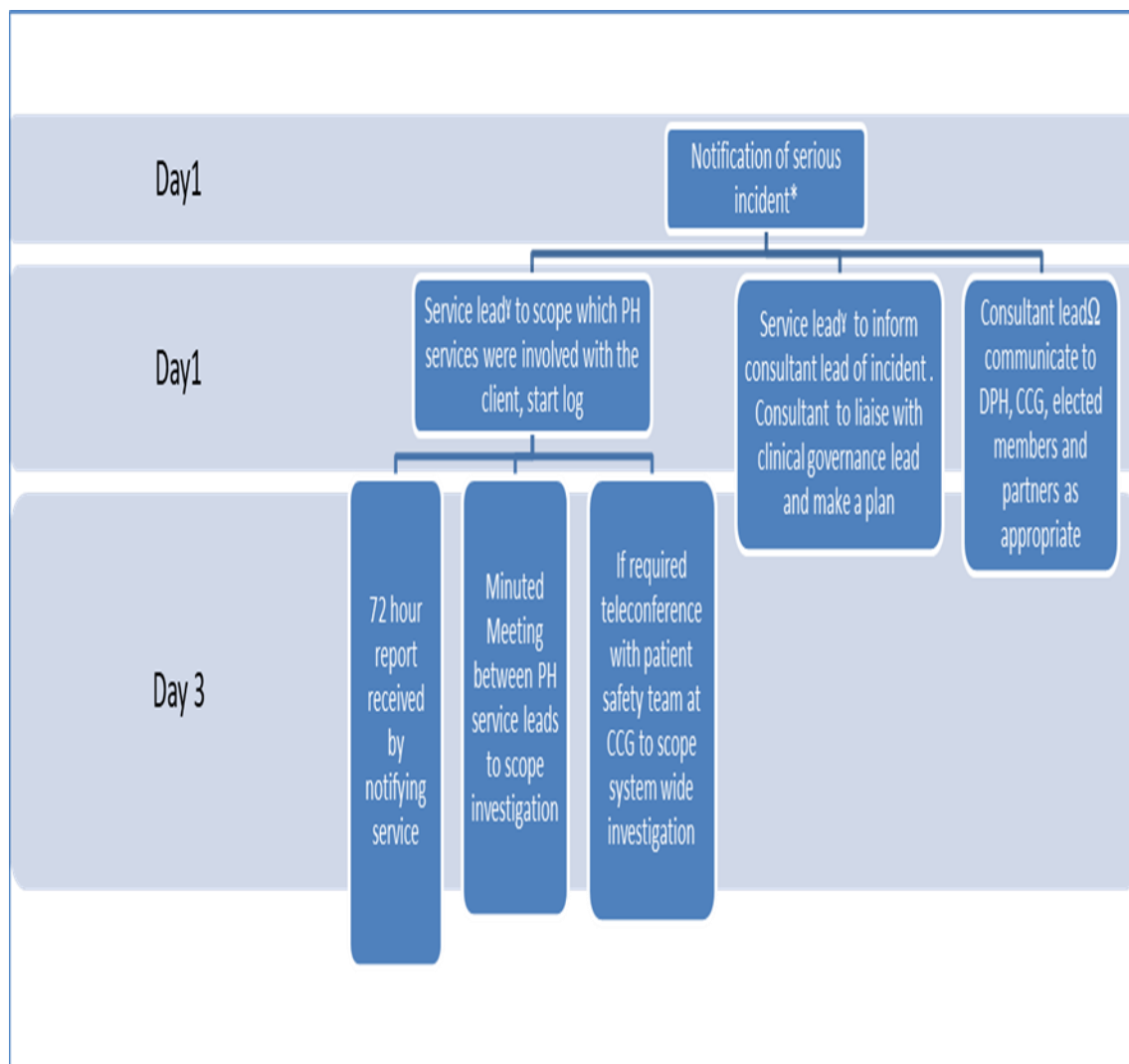
² For Public Health purposes read this as 'the service'

- failures in the security, integrity, accuracy or availability of information often described as data loss and/or information governance related issues
 - property damage
 - security breach/concern
 - incidents in population-wide healthcare activities like screening and immunisation programmes where the potential for harm may extend to a large population
 - inappropriate enforcement/care under the Mental Health Act (1983) and the Mental Capacity Act (2005) including Mental Capacity Act Deprivation of Liberty Safeguards (MCA DOLS)
 - systematic failure to provide an acceptable standard of safe care (this may include incidents, or series of incidents, which necessitate ward/unit closure or suspension of services)
 - activation of Major Incident Plan (by provider, commissioner or relevant agency)
- major loss of confidence in the service, including prolonged adverse media coverage or public concern about the quality of healthcare or an organisation
- a “Never Event” – all Never Events are defined as serious incidents although not all Never Events necessarily result in serious harm or death (see NHS England Revised Never Events Policy and Framework, published 27 March 2015 <https://www.england.nhs.uk/patientsafety/wp-content/uploads/sites/32/2015/04/never-evnts-pol-framwrk-apr2.pdf>)

3 PROCESS FOR NOTIFICATION

3.1 The process for notification is outlined in Figure 1 below.

Figure 1



*Incidents may be notified via CCG, service provider, or via PH inbox PublicHealth@somerset.gov.uk – please advise all public health service providers that this is the preferred route for notification – duty admin and consultant checks this inbox frequently

^y Public Health commissioning lead for that service

^Ω - this can be deputised to public health commissioning lead for that service, if consultant delegates

APPENDIX 3: CONTACT POINTS

Contact Points – Service Purchaser	
Name	Email address and phone number
Michelle Hawkes Public Health Specialist	mhawkes@somerset.gov.uk 07976697429
Andrew Wilson Health Promotion Manager (Sexual Health)	anwilson@somerset.gov.uk 01823 357239
Postal address: County Hall, Taunton, Somerset, TA1 4DY	

Please complete below for your organisation and return with signed copy of the Contract:

Contact Points – Service Provider		
	Name	Email address and phone number
Contract owner		
Contract manager		
Finance manager		
Postal address:		

APPENDIX 4: DEFINITIONS AND INTERPRETATION

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

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

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

Authority Representative means the person identified in APPENDIX 3: CONTACT POINTS or their replacement

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

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

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

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

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

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 the Payment Schedule

Commencement Date means the date identified in clause A3.1.

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

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

Consents means:

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

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

Controller take the meaning given in the GDPR

CQC means the Care Quality Commission

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

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

Data Protection Officer has the meaning in the GDPR

Data Protection Legislation means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy

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

Data Subject has the meaning given in the GDPR

Data Subject Access Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

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

Default means any breach of the obligations of the Provider (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of

the Provider or the Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Provider is liable to the Authority

Disclosing Party means the Party disclosing Confidential Information

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

DPA 2018 means the Data Protection Act 2018

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

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

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

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

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

GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679)

General Conditions has the meaning given to it in clause A1

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

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

Incident means an incident relating to the treatment and/or care of a Service User which causes, or has the potential to cause, harm or distress.

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

Initial Term the period commencing on the Commencement Date and ending on the first anniversary of the Service Commencement Date.

Law means:

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

LED Law Enforcement Directive (Directive (EU) 2016/680)

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

NHS Constitution shall be as defined in s.1(1) of the Health Act 2009.

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

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

NHS Act 2006 means the National Health Service Act 2006

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

Payment Schedule means SCHEDULE B1: Payment schedule –provision of enhanced contraceptive devices

Personal Data has the meaning in the GDPR

Personal Data Breach has the meaning in the GDPR

Prevent Duty means the Authority's duty under the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism.

Prevent Lead means a named individual from amongst the Staff who has authority and responsibility for providing or procuring advice, support and training to the Provider and the Staff on the Prevent Duty and who acts as the Provider's main point of contact with the Authority in relation to the Prevent Duty on any matter arising from the supply of the Services (for the purposes of the Contract, the Prevent Lead shall be the same individual as is the lead for the Supplier's obligations in respect of safeguarding, as set out in clause B10).

Processor has the meaning given in the GDPR

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

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Provider Representative means the person identified in APPENDIX 3: CONTACT POINTS or their replacement

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

Public Authority means as defined in section 3 of the FOIA

Quality Assurance Frameworks means any quality assurance frameworks contained or referred to in the Service Specification

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

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

Replacement Provider means any third party provider of Replacement Services

Replacement Services means any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Contract, whether those Services are provided by the Authority internally or by a Replacement Provider

Safeguarding Policies means the following:

- i. The Safeguarding Adults Multi-Agency Policy issued by the Somerset Safeguarding Adults Board, as amended or replaced from time to time and available from the Authority's website (<http://www.somerset.gov.uk>); and
- ii. The policies and procedures of the Somerset Safeguarding Children Board as amended or replaced from time to time and available from the Authority's website <http://sscb.safeguardingsomerset.org.uk>; and
- iii. The South West Safeguarding and Child Protection Procedures as amended and replaced from time to time and available from the Authority's website (<http://www.somerset.gov.uk>).

Serious Incident means an incident or accident or near-miss where a Service User, 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 1 April 2018.

Service Specification means SCHEDULE A1: Service Specification – provision of enhanced contraceptive devices.

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

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 Specification, and/or as otherwise provided or to be provided by the Provider under and in accordance with this 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

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

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

Sub-processor means any third Party appointed to process Personal Data on behalf of the Provider related to this Contract

Term means the period of the Initial Term as may be varied by:

- (a) any extension to this Contract which is agreed pursuant to clause A3.3; or
- (b) the earlier termination of this Contract in accordance with its terms.

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

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

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

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