

**1<sup>st</sup> December 2025**

**Leicestershire Partnership Trust  
(Purchaser)**

**and**

**AMICA  
Part of UNIVERSITY HOSPITALS OF LEICESTER NHS TRUST  
(Provider)**

**Agreement for the supply of Counselling Services in relation to  
LEICESTER, LEICESTERSHIRE AND RUTLAND INTEGRATED CARE BOARD  
VOLUNTARY CARE SECTOR**

**THIS AGREEMENT** is made 1<sup>st</sup> December 2025

**BETWEEN:**

<b>The Purchaser (LPT - VCS)</b>	<b>Leicestershire Partnership Trust Bridge Park Plaza, Bridge Park Road, Thurmaston, Leicester LE4 8PQ</b>
<b>The Provider (UHL)</b>	<b>University Hospitals of Leicester NHS Trust, Trust Headquarters, Leicester Royal Infirmary, Level 3, Balmoral Building, Leicester, LE1 5WW</b>

**AGREEMENT**

This agreement commences on the date of signing and continues for 12 months, or until allocated funds are fully utilised, whichever occurs first. It is subject to the terms set out at Schedules 1 to 7 below ("**Schedules**"). The Purchaser and the Provider undertake to comply with the provisions of the Schedules in the performance of this Agreement.

The Provider shall supply to the Purchaser, and the Purchaser shall receive and pay for, the Services on the terms of this Agreement.

In this Agreement, save where the context requires otherwise, all capitalised words, terms and expressions shall have the meanings given to them in Schedule 4. The principles of interpretation set out in that Schedule shall also apply to this Agreement.

**SCHEDULES**

Schedule 1	Key Information
Schedule 2	Service and Quality Requirements and Financial Schedule
Schedule 3	General Terms and Conditions
Schedule 4	Definitions and Interpretation
Schedule 5	Complaints
Schedule 6	Clinical Requirements and Information Governance
Schedule 7	Information Sharing Agreement

**IN WITNESS OF WHICH the Parties have signed this Agreement by the following authorised representatives**

**The Purchaser:**

<b>Name:</b>	Rob Melling rob.melling@nhs.net	<b>Signature:</b>	
<b>Position:</b>	Mental Health Improvement and Transformation Lead	<b>Date:</b>	01.12.2025

**The Provider:**

<b>Name:</b>	Gary Waterhouse	<b>Signature:</b>	
<b>Position:</b>	Head of Service	<b>Date:</b>	01/12/2025

## SCHEDULE 1: KEY INFORMATION

### 1 Service Commencement

REF	SERVICE COMMENCEMENT	DETAILS
1.1	Effective Date	01/12/2025

### 2 Conditions Precedent

- a. Evidence of appropriate Indemnity Arrangements
- b. Evidence of CQC registration

### 3 Services

This Agreement relates to the delivery of Counselling Services by the Provider. Specific details of the Services to be provided by the Provider are set out at Schedule 2.

### 4 Contract Management

REF	CONTRACT MANAGEMENT	DETAILS
4.1	Addresses for Service of Notices	<a href="mailto:amicastaffcounselling@uhl-tr.nhs.uk">amicastaffcounselling@uhl-tr.nhs.uk</a> Amica Staff Counselling Services Knighton Street Offices University Hospitals of Leicester NHS Trust Leicester Royal Infirmary Leicester LE1 5WW
4.2	Frequency of Contract Review Meetings	Every 6 months
4.3	Purchaser's Authorised Officer	Rob Melling
4.4	Provider's Contract Manager	Gary Waterhouse
4.5	Purchaser's Dispute Resolution Officer	Rob Melling
4.6	Provider's Dispute Resolution Officer	Michael Dobson

### 5 Insurance Requirements

REF	TYPE OF INSURANCE REQUIRED	MINIMUM COVER
	Employer's Liability	£10 million
	Public Liability	£10 million
	Professional Indemnity	£10 million
	Medical/Clinical Negligence	£10 million

## 6 Transitional/Exit Provisions

The specific arrangements which are to take effect on the expiry or termination of the contract or termination of any service within the scope of the contract are:

That the outgoing incumbent provider will work cooperatively and collaboratively with the new incoming provider (if the contract has been re-tendered and a new provider has won the contract).

This covers arrangements in relation to the transfer of staff, the transfer of equipment, transfer of care of Service Users, and so on.

Examples of all parties working together collaboratively as part of the Exit Arrangements include:

- Early provision of detailed TUPE information (where relevant) to the new provider, i.e. the identity the employees who will transfer; Information contained in the employees' written particulars of employment; any collective agreements; any disciplinary or grievance proceedings taken by, or against, the transferring employees; any claims brought by the employees against the transferor- in the last two years or in the foreseeable future; and details about temporary workers – where they are working and how many.
- Full cooperation with the Commissioner to identify and log all assets, non-clinical maintenance contracts, and any changed material sub-contracts and to share this information at an early stage of the new provider's contract mobilisation.
- The provider will not accept any new clients into counselling one calendar month prior to the contract termination date, with exception to cases which are deemed to be of High Risk. An analysis of current client workload will be shared with the purchaser. An estimate of counselling sessions, which are likely to run over the contract termination date will be provided and a financial agreement reached to quantify this. An invoice will be raised for this, and will be paid by the purchaser within 30 days.

## 7 Other

The Provider acknowledges and confirms that it has carried out due diligence in relation to the Services and Project in order to satisfy itself that it can provide the Services in accordance with the Services Specification and for the Contract Sum.

## 8 Variation Log

REF	SUMMARY OF VARIATION	DATE OF VARIATION

## SCHEDULE 2: SERVICE SPECIFICATIONS

### Service Specification 2: Counselling Services

Service	Counselling Services
Purchaser Lead	Rob Melling, Leicestershire Partnership Trust
Provider Lead	Michael Dobson, Amica Business & Systems Manager
Period	01/012/2025 12 months or until funds utilised

#### DEFINITION OF SERVICE

All service requests, including counselling must be requested through the nominated referral agents as listed below. These named referrers are responsible for authorising and gatekeeping all requests for support commissioned through this contract. Authorised referrals are submitted from and to the designated email addresses. Amica email address is [uhl-tr.amicastaffcounselling@nhs.net](mailto:uhl-tr.amicastaffcounselling@nhs.net).

	Name	Email address	Phone number
Agent 1	Rob Melling	rob.melling@nhs.net	
Agent 2	Louise O'Reilly	louise.oreilly6@nhs.net	07917 402 388

Included

Service	Description	Costings
Counselling	1:1 Counselling, up to 4 sessions per client	£240 per block
Workforce Support Group	Approx 2 hour Support Group or Drop-in session. Charged per session	£260 each
Manager Support Group	Approx 2 hour Support Group or Drop-in session. Charged per session	£260 each
Consultancy	Pro rota (15-minute increments with 30 minute minimum)	£60 per hour
Telephone referral service	Restricted - via nominated referral agents only	-

#### Additional Services

Educational workshops and training on topics relating to mental health at work, e.g. stress, conflict resolution, managing the troubled employee	Price on application
Post Trauma support	
Trauma Therapy	
TRIM Trained Services	
Professional Mediation Services	
Leadership Support Circles	
MH advice and consultations to Managers	
Menopause Circles	
Conflict resolution	
Mindfulness sessions	
In person bespoke wellbeing events and reflections at teams away day, reorganisations, consultation	

## QUALITY STANDARDS

### PROFESSIONAL STANDARDS

- Amica will be directed and supervised by a Counsellor with a Post Graduate Diploma or a Degree in Counselling Psychology, Psychotherapy.
- All Counsellors will be qualified to Diploma level unless they are students in training.
- All Counsellors will have regular supervision of their casework.
- This supervision will be approved and monitored by the Amica Service Manager.

### DELIVERY STANDARDS

- Conform code of ethics and standards (BACP, UKCP, BPS)

### QUALITY MEASURES

- Statistics on service utilisation provided to purchaser.
- Complaints documented and actioned in compliance with the University Hospitals of Leicester NHS Trust Complaints Policy.

### CASE MIX AND VOLUME

Reports to service purchasers providing utilisation statistics and Amica activity on a monthly basis.

### LIAISON ARRANGEMENTS

Co-ordination and liaison between the Purchaser and the Provider will be undertaken by Gary Waterhouse, Head of Service on 0116 254 4388

#### **Contacts**

All University Hospitals of Leicester NHS Trust  
**OPERATIONAL QUERIES** to be made via

**Mr Gary Waterhouse**  
Head of Service  
Amica Staff Counselling Service  
Knighton Street Offices  
Leicester Royal Infirmary Hospital  
Leicester LE1 5WW  
0116 254 4388  
[Gary.Waterhouse@uhl-tr.nhs.uk](mailto:Gary.Waterhouse@uhl-tr.nhs.uk)

All PURCHASER queries to be made via:

**Mr Rob Melling**  
Mental Health Improvement and  
Transformation Lead  
Leicestershire Partnership NHS Trust  
Bridge Park Plaza  
Bridge Park Road  
Thurmaston  
Leicester LE4 8PQ  
07710 845 202  
[rob.melling@nhs.net](mailto:rob.melling@nhs.net)

All UHL **CONTRACTUAL** queries to be made via:

**Mr Michael Dobson**  
Business and Systems Manager  
Occupational Health Department  
Knighton Street Offices  
Leicester Royal Infirmary Hospital  
Leicester LE1 5WW  
0116 254 4388  
[Michael.Dobson@uhl-tr.nhs.uk](mailto:Michael.Dobson@uhl-tr.nhs.uk)

## SCHEDULE 2: FINANCIAL SCHEDULE

Core services	Description	Total Cost
Access services	Administration and management of the contract	<b>£1,400.00</b>
Flexible Services	Pay as you go (see costing details in Schedule 2)	<b>£8,600.00</b>
<b>Total (maximum spend)</b>		<b>£10,000.00</b>

The table above indicates the pricing of interventions, as agreed. LPT can decide how many of each intervention they wish to purchase to a maximum of £8,600.00 (£10,000 - £1,400 admin fee).

The prices listed above are subject to annual NHS price inflation.

Additional services provided at additional costs are as follows (price on request).

- Educational workshops and training on topics relating to mental health at work, e.g. stress, conflict resolution, managing the troubled employee
- Post Trauma Support
- Trauma Therapy
- TRIM Trained Services
- Professional Mediation Services
- Leadership Support Circles
- MH advice and consultations to Managers
- Menopause Circles
- Conflict resolution
- Mindfulness sessions
- In person bespoke wellbeing events and reflections at teams away day, reorganisations, consultation

**Prices for any additional services not listed will be shared on request.**

## SCHEDULE 3: GENERAL TERMS AND CONDITIONS

### 1 Contract Period

- 1.1 This Agreement shall commence on the Effective Date and shall terminate on:
- 1.1.1 the date that this Agreement is terminated in its entirety in accordance with Clause 12.1.2 or Clause 12.2 of this Schedule 3; or
  - 1.1.2 the 31<sup>st</sup> March 2026; or
- whichever is the earlier, save that the Purchaser may exercise an option to renew the Agreement for 2 further years at the end of the Contract Period on giving written notice to the Provider no later than 3 months before the original expiry date and if renewed the Agreement will terminate on 31<sup>st</sup> March 2026 or in accordance with the provisions of Clause 1.1.1 or 1.1.3 whichever is the earlier.
- 1.2 In respect of the Services, the obligations on each Party shall commence on the relevant Services Commencement Date and, subject to earlier termination of that Services Specification in accordance with Clause 12.1.1 or Clause 12.2 of this Schedule 3, shall cease on the relevant Services Expiry Date, unless the Parties agree otherwise in writing.
- 1.3 The Provider will begin delivery of the Services on the later of:
- 1.3.1 the Services Commencement Date; and
  - 1.3.2 the day after the date on which all Conditions Precedent are satisfied.

### 2 Services

- 2.1 Subject to the terms of this Agreement, the Provider agrees to provide the Services to the Purchaser in accordance with:
- 2.1.1 the terms of this Agreement, including the Services Specification which relates to the Services;
  - 2.1.2 all applicable Law;
  - 2.1.3 Good Clinical Practice;
  - 2.1.4 Good Industry Practice; and
  - 2.1.5 if applicable, the guidance, standards or recommendations issued by any appropriate Regulatory or Supervisory Body (including, for the avoidance of doubt, any registration or licensing requirements of such body).
- 2.2 Without prejudice to Clause 2.1 of this Schedule 3, the Provider shall conform with all reasonable instructions and directions of the Purchaser relating to the performance of the Services.
- 2.3 The Provider will inform the Purchaser as soon as possible of any actual or potential problems concerning the provision of the Services and any instances, which may preclude the Provider from meeting its contractual obligations. If, at any time, the Provider becomes aware of any act or omission or proposed act or omission by the Purchaser which may prevent or hinder the Provider from providing the Services in accordance with the terms of this Agreement, the Contract Manager shall forthwith inform the Authorised Officer of that fact. The provision of such information under this Clause shall not, though, in any way release or excuse the Provider from any of its obligations under this Agreement.
- 2.4 The Provider will be responsible for providing the Services and will, throughout the Contract Period, ensure continuity of service in respect of all of the Services.

## Equipment, Materials and Consumables

- 2.5 Except where the relevant Services Specification(s) provide otherwise the Provider shall provide such equipment, plant and other items as the Provider may reasonably require for the proper and satisfactory provision of the Services (the **Provider Equipment**). The following provisions shall apply in relation to such Provider Equipment:
- 2.5.1 the Provider will ensure that the Provider Equipment has been maintained in accordance with manufacturer instructions and Good Industry Practice and shall provide such information to the Purchaser as the Purchaser may reasonably request in respect of the maintenance and use of such Provider Equipment;
  - 2.5.2 the Provider shall take such steps as are reasonable to satisfy itself that the Provider Equipment is fit for purpose prior to each use by the Provider, which shall include:
    - 2.5.2.1 ensuring that, where relevant, the Provider Equipment is calibrated correctly;
    - 2.5.2.2 ensuring that all of its Staff involved in the operation of the Provider Equipment have undertaken appropriate training and/or induction in respect of the Provider Equipment; and
    - 2.5.2.3 ensuring that all of its Staff comply with the manufacturer's instructions in respect of the Provider Equipment;
  - 2.5.3 subject to Clauses 3.1.2, and 3.1.4 of this Schedule 3, the Provider shall ensure that the Provider Equipment is kept in good working order and repair, and is replaced as necessary; and
  - 2.5.4 the Provider shall immediately report any missing or malfunctioning Provider Equipment to the Authorised Officer.
- 2.6 Where, in accordance with a Services Specification, the Purchaser is required to provide any equipment (**Purchaser Equipment**), the Purchaser shall make such Purchaser Equipment available for use and shall ensure that such Purchaser Equipment is kept in good working order and repair at all times.
- 2.7 Subject to Clause 26 of this Schedule 3, each Party shall be liable for and shall indemnify the other Party and its employees against any Losses whatsoever arising in respect of:
- 2.7.1 a breach by that Party of any of its obligations under this Clause 3 of Schedule 3; and
  - 2.7.2 any loss of or damage to the Provider Equipment (in the case of the Purchaser) or any loss of or damage to any Purchaser Equipment (in the case of the Provider), to the extent that such loss or damage arises from any act or omission or breach of this Agreement by the other Party, their employees, contractors or sub-contractors.

## 3 Staff

- 3.1 Where the Services Specification identifies specific personnel required for the provision of a Service, the Provider shall use all reasonable endeavours:
- 3.1.1 to ensure that such personnel are made available for the purposes of providing the Services on the times and dates specified in the relevant Services Specification; and
  - 3.1.2 to avoid changes to any of the named personnel. Where changes to such named personnel are necessary, the Provider shall provide 6 months notice

to the Purchaser of any such proposed changes which the Purchaser shall be entitled to accept or reject in its absolute discretion.

- 3.2 For all Services provided under or in connection with this Agreement the Provider shall, at all times, assign to the Services sufficient adequately qualified and trained individuals and shall ensure that such individuals have the skills, competence and expertise necessary and appropriate for the proper performance of such part or parts of the Services.
- 3.3 The Provider shall ensure that the Staff engaged in the provision of the Services:
- 3.3.1 have all necessary permits and/or entitlements to work in England in relation to the provision of the Services;
  - 3.3.2 are able to communicate in English at a level appropriate to their role;
  - 3.3.3 possess the appropriate qualifications, experience and skills to perform the duties required of them;
  - 3.3.4 are careful, skilled and competent in practising those duties;
  - 3.3.5 if applicable, are registered with and where required have completed their revalidations by the appropriate professional regulatory body;
  - 3.3.6 are covered by appropriate indemnity insurance for the provision of the Services;
  - 3.3.7 have clear DBS and Vulnerable Adult checks or Independent Safeguarding Authority checks;
  - 3.3.8 have undergone such health screening and comply with such health policies as may be relevant taking into account the nature of the Services being provided by such Staff;
  - 3.3.9 are properly managed to perform their required duties in accordance with the Specification and other provisions of this Agreement; and
  - 3.3.10 are aware of and respect equality and human rights of colleagues, patients, carers and the public.
- 3.4 In performing their obligations under this Agreement both Parties must comply with the obligations contained in section 149 of the Equality Act 2010 and section 6 of the Human Rights Act 1998. If either Party is not a public authority for the purposes of those sections it must comply with them as if it were.
- 3.5 The Provider shall ensure that all Staff shall at all times be properly attired and presentable (including uniforms where appropriate).
- 3.6 The Provider shall ensure its Staff have a means of identification in a form approved by the Authorised Officer which shall be worn and kept visible at all times whilst on the Site and make it available for inspection on request by any employee of the Purchaser.
- 3.7 The Purchaser reserves the right under this Agreement to refuse to accept the provision of Services by:
- 3.7.1 any member of Staff; or
  - 3.7.2 any person employed or engaged by an independent contractor, a sub-contractor, agent or servant of the Provider,

whose continued presence would be, in the reasonable opinion of the Purchaser, undesirable.

## **4 Assignment and Subcontracting**

- 4.1 Neither Party shall assign the whole or any part of this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 4.2 The Provider shall not subcontract the supply of any part of the Services without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed). Sub-contracting any part of the Agreement shall not relieve the Provider of any obligation or duty attributable to the Provider under the Agreement.

## **5 Variations**

- 5.1 No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 5.2 Any variations agreed by the Parties in accordance with Clause 6.1 of this Schedule 3 shall be recorded on the variation log set out at paragraph 8 of Schedule 1.

## **6 Representatives**

### *Contract Manager*

- 6.1 The Provider may nominate a replacement Contract Manager (who shall be a suitably qualified and senior member of the Provider's staff) from time to time by notice in writing to the Purchaser, such replacement to take effect from the date set out in such written notice.
- 6.2 The Contract Manager (and any replacement appointed in accordance with Clause 7.1 of this Schedule 3) shall be empowered to act on behalf of the Provider under this Agreement.
- 6.3 Any notice, information or communication given or made by or to the Contract Manager shall be deemed to have been given or made by or to the Provider.

### *Authorised Officer*

- 6.4 The Purchaser may nominate a replacement Authorised Officer (who shall be a suitably qualified and senior member of the Purchaser's staff) from time to time by notice in writing to the Provider, such replacement to take effect from the date set out in such written notice.
- 6.5 The Authorised Officer will be empowered to act on behalf of the Purchaser under this Agreement.
- 6.6 Any notice, information or communication given or made by or to the Authorised Officer shall be deemed to have been given or made by or to the Purchaser.

## **7 Meetings**

- 7.1 The Authorised Officer and the Contract Manager shall hold regular meetings at times and places to be agreed between the Parties and at the frequency as set out at paragraph 4 of the Particulars or as otherwise agreed to discuss the standard of the Services, the outcome of any monitoring of the Services and any suggested improvements, variations, extensions or reductions to them and the performance of this Agreement generally.
- 7.2 In addition to the meetings set out at Clause 8.1 of this Schedule 3, the Service Representatives shall meet at least once during each quarter to discuss the Provider's performance of the Services from an operational perspective, unless stated otherwise in the relevant Services Specification.

## **8 Monitoring**

- 8.1 The Provider shall keep agreed records of:

- 8.1.1 the quantity, quality and value of the Services provided to the Purchaser;
- 8.1.2 in respect of each aspect of the Service, the information specific to that aspect as set out in the relevant Services Specification (including, where relevant, the performance of the Provider against any stated Key Performance Indicators);
- 8.1.3 any incidents requiring reporting in accordance with Schedule 6 (if applicable); and in line with statutory requirements
- 8.1.4 any complaints and compliments made to the Provider. All complaints and compliments to be sent to the Purchaser by the Provider. Resolution of complaints will take place in accordance with Schedule 5 and will be treated on a case by case basis on their individual facts.

(the **Records**) and the Provider shall provide copies of, or access to, such Records on receiving reasonable notice from the Purchaser or as otherwise may be provided for in the relevant Services Specification.

- 8.2 The Authorised Officer (or any person authorised by the Authorised Officer) may, acting reasonably at any reasonable time inspect, measure, monitor or test:
  - 8.2.1 the Services; or
  - 8.2.2 any materials, goods or equipment provided by the Provider including any Provider Equipment and used in the provision of the Services or otherwise provided pursuant to this Agreement,

and the Provider shall ensure that reasonable time and opportunity is allowed for such inspection, measurement, monitoring and testing.

## 9 Prices and Payment

- 9.1 The amount payable in respect of the Services shall be as set out in the Services Specification.
- 9.2 The Provider will invoice the Purchaser quarterly. Each invoice shall be rendered on the Provider's own invoice form and shall:
  - 9.2.1 state the agreement reference number under which the Services are being provided;
  - 9.2.2 show the period to which the invoice relates;
  - 9.2.3 set out any deductions that may have been applied to the Charges as a result of the Provider failing to achieve any relevant Key Performance Indicators;
  - 9.2.4 identify what proportion (if any) of the sum invoiced is attributable to VAT; and
  - 9.2.5 be supported by any other documentation reasonably required by the Authorised Officer to substantiate the invoice.
- 9.3 Payment of any undisputed sums is to be made within thirty (30) days after receipt of the relevant invoice, and payment of disputed sums is to be made within thirty (30) days of the sums being agreed or determined in accordance with the Dispute Resolution Procedure.
- 9.4 The Purchaser shall notify the Provider in writing within thirty (30) days after receipt of the relevant invoice if it disputes any of the Charges payable under such invoice. On the

Provider receiving such notice of dispute, the Parties shall instigate the Dispute Resolution Procedure.

- 9.5 The Purchaser shall by 31<sup>st</sup> March in each Contract Year, determine the Services the Provider has provided between 1<sup>st</sup> December and 31<sup>st</sup> March in the 1<sup>st</sup> year and then 1<sup>st</sup> Apr to 31<sup>st</sup> March in successive years of that Contract Year based upon the data the Purchaser has received.
- 9.6 Where following review of the data the Purchaser determines that the Services provided are more than 10% below the level of activity anticipated the Parties shall meet to discuss the same.
- 9.7 Following the meeting referred to in clause 9.6 above the Purchaser may require the Provider to put in place a remedial plan for the Services or the Purchaser may withhold payment from any invoices rendered by the Provider until such time as the level of activity has increased to an appropriate level.

## **10 Liability and Indemnity**

- 10.1 The Provider shall be liable for and shall indemnify the Purchaser, its officers, employees and agents against any Losses arising in respect of:
- 10.1.1 any loss of or damage to property (whether real or personal);
- 10.1.2 any injury to any person, including injury resulting in death; and
- 10.1.3 any other loss incurred by the Purchaser,
- to the extent such loss, damage or injury arises indirectly or directly from any negligence or breach of contract in connection with the performance of this Agreement or the provision of the Services (including its use of Provider and/or Purchaser Equipment or other materials or products) by the Provider, its employees, agents or sub-contractors (including the Staff).

## **11 Insurance**

The Provider shall either:

- 11.1 take out and maintain insurance against its liability under Clause 11 of this Schedule 3 with a minimum limit of indemnity as set out at paragraph 6 of Schedule 1 unless alternative levels and/or requirements are set out in the Services Specification; or
- 11.2 maintain its membership (either fully or in respect of those parts not insured against pursuant to Clause 12.1 of this Schedule 3) of the NHSLA Scheme,

and, from time to time, whenever requested by the other Party, shall produce documentary evidence to that other Party that the policy/NHSLA Scheme is properly maintained.

## **12 Termination**

*Voluntary Termination*

- 12.1 Either Party may terminate this Agreement:
- 12.1.1 in respect of the Services at any time by giving notice in writing of not less than 6 months' notice ; or
- 12.1.2 in its entirety in the event that the circumstances set out in Clause 14 of this Schedule 3 arise.

### *Termination on Default*

- 12.2 Without prejudice to any other right or remedy it may possess, either Party (the **Non-Defaulting Party**) shall be entitled to immediately terminate this Agreement either in its entirety or, where the relevant default affects the Services by written notice to the other Party (the **Defaulting Party**) (such notice to specify the date upon which this Agreement will terminate (the **Termination Date**)) upon the happening of any of the following events:
- 12.2.1 the Defaulting Party ceasing to perform its obligations under this Agreement either completely or, in the case of partial termination, in respect of an aspect of the Services only; or
  - 12.2.2 the Defaulting Party being in persistent breach of its obligations under this Agreement either completely or, in the case of partial termination, in respect of an aspect of the Services only; or
  - 12.2.3 the Defaulting Party suffering an Insolvency Event of Default; or
  - 12.2.4 the Defaulting Party breaching any of its obligations under this Agreement which were capable of remedy but which the Defaulting Party has failed to remedy within twenty (20) Working Days of receipt of notice from the Non-Defaulting Party identifying such breach; or
  - 12.2.5 the Defaulting Party committing a non-remedial breach of this Agreement; or
  - 12.2.6 the Defaulting Party is subject to investigation, enforcement action or other default notice by a Regulatory or Supervisory Body; or
  - 12.2.7 without prejudice to the generality of the foregoing, the Defaulting Party:
    - 12.2.7.1 breaching its obligations under Clause 5 of this Schedule 3; or
    - 12.2.7.2 committing a breach of Clause 17 or 18 of this Schedule 3 in respect of confidentiality; or
    - 12.2.7.3 committing a Prohibited Act or
    - 12.2.7.4 failing to satisfy the Conditions Precedent within three (3) Months of the Effective Date.

### *Effect of Termination and Expiry*

- 12.3 Upon termination of this Agreement in accordance with Clause 1 of this Schedule 3 or this Clause 12 of Schedule 3, or, upon expiry of the Services in accordance with the provisions of the Services Specification and without prejudice to any other provisions of the Agreement:
- 12.3.1 the Provider shall continue to provide the Services until the Termination Date or the Services Expiry Date (as appropriate), save where any breach of this Agreement by the Purchaser substantially frustrates or renders it impossible for the Provider to perform its obligations under this Agreement.
  - 12.3.2 the Parties shall co-operate fully in achieving an orderly and efficient handover of the Services to the Purchaser or any Replacement Provider (as directed by the Purchaser);
  - 12.3.3 the Provider shall handover the Services to the Purchaser or to any Replacement Provider (as directed by the Purchaser) on the Termination Date or the relevant Services Expiry Date (as appropriate);
  - 12.3.4 the Provider shall deliver to the Purchaser all documents, records (including Patient Healthcare Records) and other relevant data relating to the provision of the Services on the Termination Date or the relevant Services Expiry Date

(as appropriate) (except that the Purchaser acknowledges that the Provider may need to retain copies of such documents to fulfil its own statutory requirements in which case such copies shall be kept in accordance with Clause 17 of this Schedule 3);

12.3.5 save for licences provided under Clause 15, all licences granted by either Party to the other Party in respect of the Services shall terminate on the Termination Date or the relevant Services Expiry Date (as appropriate);

12.3.6 each Party shall pay (within thirty (30) days after receipt of a relevant invoice) to the other Party all sums due under this Agreement in respect of the Services; and

12.3.7 each Party shall take reasonable steps to mitigate any costs which the other Party may incur as a result of termination or expiry of the Services.

12.4 Any expiry or termination of the Agreement will not prejudice the rights, obligations and duties of the Parties arising prior to such expiry or termination taking effect.

### **13 Force Majeure**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from a Force Majeure Event. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for one hundred and eighty (180) days, the party not affected may terminate this agreement by giving fourteen days' written notice to the affected party.

### **14 Intellectual Property Rights**

14.1 The Provider warrants and undertakes to the Purchaser that either it owns or is entitled to use and licence and will continue to own or be entitled to use and licence all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Purchaser as part of the Services.

14.2 The Provider hereby grants to the Purchaser, for the life of the use by the Purchaser of any deliverables, material or any other output supplied to the Purchaser in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Purchaser's normal business operations. For the avoidance of doubt, the Purchaser shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Purchaser in any format as part of the Services.

14.3 Except as expressly provided in this Agreement, no rights or obligations in respect of a party's Intellectual Property Rights are granted to the other party or to be implied from this Agreement.

### **15 Dispute Resolution**

15.1 If a dispute arises between the Parties out of or in connection with this Agreement, it shall first be discussed between the Authorised Officer and the Contract Manager at an ad hoc meeting to be convened for this purpose and the Parties shall use their best endeavours to resolve such dispute before relying on the additional provisions of this Clause 16 of Schedule 3.

15.2 If the dispute cannot be resolved in accordance with Clause 16.1 of this Schedule 3, then it shall be referred to the Dispute Resolution Officer of each Party who shall meet within five

(5) Working Days of such referral at a meeting to be convened for this purpose and the Parties shall use their best endeavours to resolve such dispute before relying on the additional provisions of this Clause 16 of Schedule 3.

- 15.3 If the meeting referred to in Clause 16.2 of this Schedule 3 does not resolve the dispute, then the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution ("CEDR"); or (b) if agreed in writing by the Parties, with any other alternative mediation organisation, using the respective model procedures of CEDR or such other mediation organisation.
- 15.4 To initiate mediation, either Party may give notice in writing (a **Mediation Notice**) to the other requesting mediation of the dispute. The mediation shall commence within twenty (20) working days of the Mediation Notice being served. The Parties will cooperate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.
- 15.5 Should the mediation fail, in whole or in part, and provided always that both Parties agree to refer the matter to arbitration in accordance with this Clause, either party may, upon giving written notice, and within twenty eight days thereof, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators (2000 Edition), or any amendments thereof, which Rules are deemed to be incorporated by reference into this Clause. The seat of the arbitration shall be England and Wales.
- 15.6 Nothing in this Dispute Resolution Procedure shall in any way affect either Party's right to terminate this Agreement in accordance with any of its terms.

## **16 Confidentiality**

- 16.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information, materials or documents acquired in connection with this Agreement which concern such other Party, its employees or business, except where such information comes into the public domain otherwise than by breach of these obligations or otherwise as permitted by Clause 17.2 of this Schedule 3.
- 16.2 Each Party may disclose the other Party's confidential information:
- 16.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 17 of Schedule 3; and
- 16.2.2 as may be required by Law.
- 16.3 No Party shall use the other Party's confidential information for any purpose other than to perform its obligations under this Agreement.
- 16.4 Neither Party shall advertise or make any public announcement regarding the Services without the prior written consent of the other Party.

## **17a Freedom of Information**

- 17a.1 The Provider acknowledges that the Purchaser is subject to the requirements of the 2000 Act. The Provider must assist and co-operate with the Purchaser to enable it to comply with its disclosure obligations under the 2000 Act. The Provider agrees:

- 17a.1.1 that this Agreement and any other recorded information held by the Provider on the Purchaser's behalf for the purposes of this Agreement is subject to the obligations and commitments of the Purchaser under the 2000 Act;
- 17a.1.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under FOIA is a decision solely for the Purchaser to whom the request is addressed;
- 17a.1.3 that where the Provider receives a request for information under the 2000 Act and the Provider itself is subject to the 2000 Act, it will liaise with the Purchaser as to the contents of any response before a response to a request is issued and will promptly (and in any event within 2 Working Days) provide a copy of the request and any response to the Purchaser;
- 17a.1.4 that where the Provider receives a request for information under the 2000 Act and the Provider is not itself subject to the 2000 Act, it will not respond to that request (unless directed to do so by the Purchaser to whom the request relates) and will promptly (and in any event within 2 Working Days) transfer the request to the Purchaser;
- 17a.1.5 that the Purchaser, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the 2000 Act, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Agreement either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
- 17a.1.6 to assist the Purchaser in responding to a request for information, by processing information or environmental information (as the same are defined in the 2000 Act) 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 2000 Act, and providing copies of all information requested by the Purchaser within 5 Working Days of that request and without charge.
- 17a.1.7 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the 2000 Act, the content of this Agreement is not Confidential Information.

## **17 Data Protection**

- 17.1.1 In respect of this Agreement, each Party shall comply with the DPA and the information sharing agreement attached at Schedule 7. In particular, where a Party is acting as the data processor of the other Party (Data Controller), the processing Party agrees to comply with the obligations placed on the Data Controller by the seventh data protection principle (the Seventh Principle) set out in the DPA, namely:
- 17.1.2 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Data Controller by the Seventh Principle;
- 17.1.3 only to process personal data (as defined in the DPA) for and on behalf of the Data Controller, in accordance with the instructions of the Data Controller and for purposes of fulfilling the processing party's obligations to the Data Controller and to ensure the Data Controller's compliance with the DPA; and
- 17.1.4 to allow the Data Controller to audit the processing Party's compliance with the requirements of this Clause 18 of Schedule 3 on reasonable notice

and/or to provide the Data Controller with evidence of its compliance with the obligations set out in this Clause 18 of Schedule 3.

- 17.2 Each Party shall indemnify and keep the other Party indemnified against all losses (including for the avoidance of doubt, any costs, fines, claims or other expenses howsoever arising) incurred by or awarded against the other Party as a result of the indemnifying Party failing to comply with its obligations under Clause 18.1 of Schedule 3.
- 17.3 The Parties agree to use all reasonable efforts to assist each other to comply with the DPA. For the avoidance of doubt, this includes each Party providing the other Party with reasonable assistance in complying with subject access requests served under section 7 of the DPA and consulting with the other Party, as appropriate, prior to the disclosure of any personal data (as defined in the DPA) created in connection with this Agreement in relation to such requests.

## 18 Notices

- 18.1 A notice given to a party under or in connection with this Agreement shall be in writing and sent to the party at the email address (which the provider must confirm within 48 working hours, by return email) or postal address given in this Agreement at paragraph 4.1 of Schedule 1 or as otherwise notified in writing to the other party.
- 18.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

- 18.3 For the purpose of Clause 19.2 of this Schedule 3 and calculating deemed receipt:
- 18.3.1 all references to time are to local time in the place of deemed receipt; and
- 18.3.2 if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.
- 18.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 19 Rights of Third Parties

A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any of the terms of this Agreement.

## 20 Waiver

No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right or remedy.

**21 Severability**

If any provision of this Agreement, not being of a fundamental nature, shall be held to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not thereby be affected.

**22 Partnership and Agency**

At all times in connection with the Agreement, the Provider shall be an independent Provider and nothing in this Agreement shall create a relationship of agency or partnership or a joint venture as between the Parties, and accordingly neither Party shall be authorised to bind the other. For the avoidance of doubt, unless expressly stated to the contrary, nothing in this Agreement will be construed as, or have effect as, construing any relationship of employer and employee between the Provider and the Purchaser.

**23 Right to Set Off**

Each Party reserves its right to set-off any debt owed to it by the other Party under this Agreement and any liability, damage, loss, charge or expense which it has incurred in consequence of any breach by the other of this Agreement.

**24 Entire Agreement**

24.1 Except where expressly provided otherwise in this Agreement, this Agreement (including the documents referred to in this Agreement) supersedes all prior representations and agreements between the Parties (whether written or oral) relating to the subject matter of the Agreement, and sets forth the entire agreement and understanding between the Parties.

24.2 Clause 25 of this Schedule 3 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

**25 Continuing Effect**

Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

**26 Mitigation**

Each Party shall at all times take reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against any other pursuant to this Agreement.

**27 Counterparts**

This Agreement may be executed in one (1) or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Parties shall constitute a full original of this Agreement for all purposes.

**28 Governing Law**

Subject to Clause 16 of this Schedule 3, the Parties agree to submit to the jurisdiction of the English courts and agree that the Agreement is to be governed and construed according to English law.

## SCHEDULE 4: DEFINITIONS AND INTERPRETATION

### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the meanings given to them below:

**"2000 Act"**

has the meaning given to it in Clause 17.5 of Schedule 3;

**"Affected Party"**

has the meaning given to it in Clause 14 of Schedule 3;

**"Agreement"**

means this agreement;

**"Assigned Employees"**

has the meaning given to it in paragraph 1.1.1 of Part 2 of Schedule 6;

**"Authorised Officer"**

means the person as specified at paragraph 4.3 of Schedule 1 nominated by the Purchaser for the purposes of managing this Agreement in accordance with its terms, as such person may be replaced by the Purchaser from time to time in accordance with the provisions of Clause 7 of Schedule 3;

**"Charges"**

means the amount payable by the Purchaser to the Provider for the provision of each the Services such amount being that set out in the Services Specification;

**"Claim"**

has the meaning given to it in Clause 15.6 of Schedule 3;

**"Contract Manager"**

means the person as specified at paragraph 4.4 of Schedule 1 nominated by the Provider for the purposes of managing this Agreement in accordance with its terms, as such person may be replaced by the Provider from time to time in accordance with the provisions of Clause 7 of Schedule 3;

**"Contract Period"**

means the period that this Agreement remains in force, commencing on the Effective Date and expiring on the date that this Agreement terminates in accordance with its terms;

**"CQC"**

means the Care Quality Commission established under section 1 of the Health and Social Care Act 2008;

**"Data Controller"**

has the meaning given to it in the DPA;

**"Defaulting Party"**

has the meaning given to it in Clause 12.2 of Schedule 3;

**"Department of Health"**

means the Department of Health in England of HM Government or other relevant body, or such other body superseding or replacing it from time to time and/or the Secretary of State;

**"Directive"**

means EC Council Directive 2001/23/EC;

**"Dispute Resolution Officer"**

means the persons identified at paragraphs 4.5 and 4.6 of Schedule 1 as the persons nominated by the Purchaser and the Provider respectively for the purposes of Clause 16.2 of Schedule 3;

**"Dispute Resolution Procedure"**

means the procedure set out in Clause 16 of Schedule 3;

**"DPA"**

the Data Protection Act 1998;

**"Effective Date"**

means the date set out at paragraph 1.1 of Schedule 1;

**"Employee Emoluments"**

means all employment related outgoings including salaries, wages, bonus or commission, holiday pay, expenses, national insurance and pension contributions and any liability to taxation;

**"Force Majeure Event"**

means any event or occurrence which is outside the reasonable control of the Party concerned (and which is not attributable to any act or omission by the party concerned including failure to take all reasonable preventative action). This definition does not include any industrial action occurring amongst the Provider's Staff or any staff of any sub-contractor;

**"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 engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to the Agreement;

**"Good Industry 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 service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to the Agreement;

**"Healthwatch England"**

means the independent consumer champion for health and social care in England as established under section 222 of the Local Government and Public Involvement in Health Act 2007;

**"Indirect Losses"**

means loss of profits, loss of use, loss of production, loss of business opportunity, or a claim for consequential loss or indirect loss of any nature but excluding:

- (a) any loss, as part of, (regardless as to whether such claims themselves refer to consequential and/or indirect loss) relating to claims made in respect of death, personal injury and/or clinical or medical negligence; and
- (b) any loss (regardless as to whether such claims themselves refer to consequential and/or indirect loss) relating to claims made in respect of infringement or alleged infringement of any Intellectual Property Rights in accordance with Clause 15 of Schedule 3; and
- (c) any such indirect losses which have been identified as being capable of deduction from the Charges in the event that any Key Performance Indicator has not been met;

**"Insolvency Event of Default"**

means the occurrence of any of the following events in respect of a Party:

- (a) the Party is, or is deemed for the purposes of any Law to be, unable to pay its debts or insolvent;
- (b) the Party is unable to pay its debts as they fall due;
- (c) the value of the Party's assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (d) the Party suspends making payments on any of its debts or announces an intention to do so;
- (e) by reason of actual or anticipated financial difficulties, the Party commences negotiations with creditors generally with a view to rescheduling any of its indebtedness;
- (f) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Party;
- (g) a composition, assignment or arrangement with any creditor of any member of the Party;
- (h) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Party or any of its assets;
- (i) a resolution of the Party or its directors is passed to petition or apply for the Party's winding up or administration;
- (j) the Party's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver or administrator (whether out of court or otherwise); or
- (k) if the Party suffers any event analogous to the events set out in (a) to (j) of this definition in any jurisdiction in which it is incorporated or resident;

**"Insurances"**

means the insurances (including, for the avoidance of doubt, the NHSLA Scheme) to be maintained by the Parties in accordance with Clause 12 of Schedule 3;

**"Intellectual Property Rights"**

means inventions, copyright (including rights in computer software and in websites), patents, database right, trademarks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights and all and any other intellectual property;

**"Key Performance Indicators"**

means any specific measures of performance identified in a Services Specification as a Key Performance Indicator;

**"Law"**

means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21 (1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, national standards, guidance or industry code, judgment of a relevant Court of Law, or directive or requirements of any regulatory body of which the Provider is bound to comply in each case as are in force in England and Wales from time to time;

**"Losses"**

means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis),

proceedings demands and charges whether arising under statute, contract or at common law, excluding Indirect Losses;

**"Mediation Notice"**

has the meaning given to it in Clause 16.4 of Schedule 3;

**"Monitor"**

means the corporate body known as Monitor provided by section 61 of the Health and Social Care Act 2012;

**"Month"**

means a calendar month;

**"NHS England"**

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

**"NHSLA"**

means the National Health Service Litigation Authority;

**"NHSLA Scheme"**

means the NHSLA's Clinical Negligence Scheme for Trusts Existing Liabilities Scheme, Liabilities to Third Parties Scheme and Property Expense Scheme and any other scheme operated by the NHSLA;

**"NHSTDA"**

means the Special Health Authority known as the National Health Service Trust Development Authority established under the NHS Trust Development Authority (Establishment and Constitution) Order 2012 SI 901/2012;

**"NICE"**

the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health;

**"Non-Defaulting Party"**

has the meaning given to it in Clause 12.2 of Schedule 3;

**"Party"**

means the Purchaser or the Provider individually and **"Parties"** refers to the Purchaser and the Provider together. A Party shall include all permitted assigns of the Party in question;

**"Patient Healthcare Records"**

means those clinical records relating to a patient treated by the Provider in accordance with the terms of this Agreement;

**"Patient Safety Incident"**

means any unintended or unexpected incident which could have or did lead to harm to one or more patients;

**"Prohibited Act"**

means the Provider:

- (i) offering, giving, or agreeing to give to the Purchaser (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 Agreement or any other agreement with the Provider, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Provider; and
- (ii) in connection with this Agreement, paying or agreeing 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 Purchaser; or

(iii) committing an offence under the Bribery Act 2010;

**"Provider Equipment"**

means the equipment (if any) to be provided by the Provider to enable the provision of an the Services as listed in the Services Specification;

**"Purchaser Equipment"**

has the meaning given to it in Clause 3.1 of Schedule 3;

**"Records"**

has the meaning given to it in Clause 9.1 of Schedule 3;

**"Regulatory or Supervisory Body"**

means any statutory or other body having authority to issue guidance, standards or recommendations with which the Provider must comply or to which it must or should have regard, including: (i) CQC; (ii) Monitor; (iii) NHSTDA; (iv) NHS England; (v) the Department of Health; (vi) NICE; and (vii) Health Watch England;

**"Replacement Provider"**

means each and every service provider who shall provide any service similar to the Services immediately after expiry or earlier termination of the Services;

**"Re-tendering Information"**

has the meaning given to it in paragraph 1.1.1 of Part 2 of Schedule 6;

**"Return Date"**

has the meaning given to it in paragraph **Error! Reference source not found.** of Part 2 of Schedule 6;

**"Returning Employees"**

has the meaning given to it in paragraph **Error! Reference source not found.** of Part 2 of Schedule 6;

**"Serious Incident"**

means an incident or accident which could have or did lead to serious injury, major permanent harm or unexpected death at the Site of a patient, member of staff or member of the public or where the actions of the Provider, the Staff or the Purchaser are likely to be of significant public concern;

**"Services"**

means all of the services which are to be provided by the Provider to the Purchaser pursuant to and in accordance with the terms of this Agreement.

**"Services Commencement Date"**

means, in respect of the Service, the commencement date set out in the Services Specification;

**"Services Expiry Date"**

means, in respect of the Service, the expiry date set out in the Services Specification or, if earlier, the date that this Agreement is terminated in accordance with its terms;

**"Services Representatives"**

means the individual nominated by the Purchaser or the Provider (as the case may be) as having overall responsibility for the Service or any aspect of the Services on behalf of that party, such individuals to be identified in the Services Specification;

**"Services Specification"**

means, the description of the Services as set out in Schedule 2;

**"Seventh Principle"**

has the meaning given to it in Clause 18 of Schedule 3;

**"Site"**

means the location(s) where the Services are to be performed, as identified in the Services Specification;

**"Specification Reference Number"**

means the specification reference number that may be allocated to any aspect of the Service as listed in the table at paragraph 3 of Schedule 1;

**"Staff"**

means all personnel employed or engaged by or through the Provider in the provision of the Services or in connection with this Agreement, whether such personnel are partners, directors, subcontractors, agency staff or in any manner employed or engaged by the Provider or are employed on their own account as independent contractors to the Provider;

**"Termination Date"**

has the meaning given to it in Clause 12.2 of Schedule 3;

**"TUPE"**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced;

**"Working Day"**

means a day other than a Saturday, Sunday or Public Holiday in England when banks in London are open for business.

- 1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto.
- 1.3 Any headings to Clauses are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses shall mean the Clauses of this Agreement and references to paragraphs shall mean paragraphs of the Schedules to this Agreement.
- 1.4 In the event of a conflict between any terms in this Agreement, terms shall take priority in the following order:
  - 1.4.1 Schedule 1;
  - 1.4.2 the Services Specification;
  - 1.4.3 the general terms and conditions set out in Schedule 3; and
  - 1.4.4 the remaining Schedules;
- 1.5 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.6 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.7 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.8 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

- 1.9 Except where an express provision of this Agreement states the contrary, each and every obligation of a Party under this Agreement is to be performed at that Party's cost.
- 1.10 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, novated or assigned from time to time.

## **SCHEDULE 5: COMPLAINTS**

### **1 Complaints and Compliments**

- 1.1 A record of all complaints received by the Provider of whatever nature regarding any of the Services shall be kept by the Provider to include (but not be limited to) the number and classification of complaints received and shared with the Purchaser in accordance with the Purchasers complaints policy.
- 1.2 Any serious complaints received by the Provider in relation to the provision of any of the Services shall be notified to the Purchaser as soon as reasonably practicable but in any event within five (5) Working Days of the complaint being received by the Provider.
- 1.3 The Provider and the Staff shall co-operate fully with the Purchaser in investigating and resolving complaints made (including the provision of statements by the Staff where required).
- 1.4 Where either Party considers that a change to the Services should be implemented to improve the Services in the light of valid complaints received and to minimise complaints so far as possible then the relevant Party which would like to implement such change shall seek a variation to this Agreement in accordance with Clause 6 of Schedule 3.

## **SCHEDULE 6: CLINICAL REQUIREMENTS AND INFORMATION GOVERNANCE**

### **1 Incidents Requiring Reporting**

- 1.1 The Provider shall comply with the arrangements for notification of Serious Incidents to any Regulatory or Supervisory Body as appropriate, in accordance with the Law.
- 1.2 The Provider shall send the Purchaser a copy of any notification it gives to a Regulatory or Supervisory Body where that notification directly or indirectly relates to any of the Services.
- 1.3 The Provider shall comply with:
  - 1.3.1 the arrangements for investigating Serious Incidents; and
  - 1.3.2 procedures for implementing and sharing the lessons learned in relation to Serious Incidents.
- 1.4 The Provider shall comply in all respects with the procedures:
  - 1.4.1 relating to Patient Safety Incidents; and
  - 1.4.2 for implementing and sharing lessons learned in relation to Patient Safety Incidents.
- 1.5 The Purchaser shall have complete discretion to use the information provided by the Provider under this Clause 1 of Schedule 6 in any report which it makes to a Regulatory or Supervisory Body in connection with such Serious Incidents, or in relation to the prevention of Serious Incidents, provided that it shall in each case notify the Provider of the information disclosed, and the body to which it has disclosed it.

### **2 Patient Healthcare Records**

- 2.1 Patient Healthcare Records of any patients treated by the Provider during the provision of the Services may from time to time include case records of third parties and these records shall be afforded the same confidentiality by the Provider as if the Provider had created the record.
- 2.2 All Patient Healthcare Records in the possession of the Provider shall be kept in a secure location.
- 2.3 The Provider undertakes to comply with any duty arising from the entitlement of any patient treated during the provision of the Services, to confidentiality of his/her Patient Healthcare Records and any other information, including personal data, relating to him/her as a patient under the Human Rights Act, the Data Protection Act, the Access to Health Care Records Act 1990 and the common law duty of confidentiality.
- 2.4 The Provider undertakes to use Patient Healthcare Records and any information relating to any patient being treated during the provision of the Services, in the possession, custody or control of the Provider or the possession, custody or control of any person under the Provider's control, solely for the execution of the Provider's obligations under this Agreement.
- 2.5 When providing Services which are of a clinical nature, the Provider shall provide full and accurate information to each patient being treated during the provision of the relevant Services, relating to the relevant treatment or procedure and all care arrangements as part of the provision of the Services and shall evidence such information in the Patient Healthcare Records. The Provider shall ensure that Patient Healthcare Records contain evidence that informed consent to any treatment provided during the provision of the relevant Services has been given by the patient or, where appropriate, his representative.
- 2.6 In providing Services which are of a clinical nature, the Provider shall comply with, as from time to time amended or replaced including but not exclusively:

- 2.6.1 The Confidentiality Code of Practice for NHS Staff;
  - 2.6.2 The NHS Code of Practice on Confidentiality;
  - 2.6.3 Protecting and Using Patient Information (A Manual for Caldicott Guardians);
  - 2.6.4 The NHS Information Governance Toolkit; and
  - 2.6.5 The Security Management Standard BS7799-2 and the Data Protection Act.
- 2.7 Without prejudice to the generality of Clause 2.6 of this Schedule 6, the Provider must:
- 2.7.1 nominate an Information Governance Lead, to be responsible for information governance and for providing regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;
  - 2.7.2 nominate a Caldicott Guardian and Senior Information Risk Owner;
  - 2.7.3 ensure that the Purchaser is kept informed at all times of the identities of the Information Governance Lead, Caldicott Guardian and the Senior Information Risk Owner;
  - 2.7.4 adopt and implement the recommendations of the Caldicott Information Governance Review and the Response to Caldicott;
  - 2.7.5 at least once in each year, audit its practices against quality statements regarding data sharing set out in NICE Clinical Guideline 138; and
  - 2.7.6 achieve a minimum level 2 performance against all requirements in the relevant NHS Information Governance Toolkit.

## SCHEDULE 7 – INFORMATION SHARING AGREEMENT

### INFORMATION SHARING AGREEMENT RELATING TO INFORMATION SHARING FOR THE PURPOSES OF SERVICE DELIVERY AT The University Hospitals of Leicester, Leicester Royal Infirmary

#### PARTIES

- (1) **Rob Melling, Leicestershire Partnership NHS Trust, Bridge Park Plaza, Bridge Park Road, Thurmaston, Leicester LE4 8PQ**
  - (2) **University Hospitals of Leicester NHS Trust (UHL)**
- (each the “Party” and together the “Parties”)**

#### BACKGROUND

The Parties have entered into this Information Sharing Agreement to facilitate and enable the smooth transition of information sharing between them in relation to counselling services delivery by Amica at the University Hospitals of Leicester.

The Information Sharing Agreement is a requirement of the Information Governance Toolkit and also meets the best practice guidance of the Information Commissioners Data Sharing Code of Practice. This could consist of data being transferred just once or on an ongoing regular basis, as agreed by the Parties involved.

#### 1. PURPOSE

1.1 The purpose of this information sharing agreement is to provide a detailed process for information sharing between the parties which will result inter alia in benefits to patients of timely information sharing between the parties.

1.2 This Information Sharing Agreement is entered into for the purpose of the parties sharing information as required or permitted under the data protection legislation and any other relevant legislation which shall include (but not limited to):

- Data Protection Act 2018 (DPA)
- Freedom of Information Act 2000
- Human Rights Act 1998
- Mental Health Act 1983
- Health and Social Care Act 2012
- Mental Capacity Act 2005
- HSCIC Guide to Confidentiality
- Information Governance/Caldicott 2 Review: To Share or Not to Share
- Records Management NHS Code of Practice
- NHS England Safe Haven Procedure
- NHS Constitution
- Information Security Management: Code of Practice
- Data Sharing Code of Practice
- Privacy Notices Code of Practice
- Any other relevant legislation, standards or guidance

1.3 The information sharing which the Parties will participate in will cover the following areas health and social care

- (a) *Healthcare* – includes all activities that directly contribute to the diagnosis, care and treatment of an individual and the audit / assurance of the quality of the healthcare provided. It does not include research, teaching, financial audit or other management activities.

- (b) *Medical* – these include, but are wider than healthcare purposes (as stated in the Data Protection Act 2018). They include preventative medicine, medical research, financial audit, management of healthcare services and through the Health and Social Care Act 2001 includes social care.
- (c) *Social Care* – support provided to vulnerable people (adults, children and those with disabilities and sensory impairments). This excludes ‘pure’ health care (hospitals) and community care (e.g. district nurses) but may include respite care. There are no clear demarcation lines between health and social care and social care will also cover services provided by others as commissioned by CSSRs (Councils with Shared Responsibilities).

1.4 It must be stressed that all exchanges of information must have a legal justification for disclosure and that it is necessary to share this information for one of the purposes outlined above.

## **2. THE INFORMATION TO BE SHARED**

2.1 Leicestershire Partnership NHS Trust will provide the following information;

- Name
- Date of Birth
- Address
- Contact telephone number
- Any relevant information regarding the clients’ current mental state and mental health history

2.3 The types of information listed above are not exhaustive and additional information can be shared if certain criteria is met and this will be considered on a case by case basis, as appropriate.

## **3. THE BASIS FOR SHARING INFORMATION**

3.1 The Parties acknowledge and agree that they will share information whenever either or both Parties are under a statutory duty to do so. In this case, the Party requesting the information shall make clear in its Data Sharing Request the legislation underpinning the request for information and the disclosure of information shall comply with the relevant legislation and be made in accordance with the terms of this Information Sharing Agreement, if applicable.

3.2 The Parties acknowledge and agree that they will not be bound by the terms of this Information Sharing Agreement in the event either or both of them are prohibited to share information by any legislation.

3.3 If consent is deemed to be required for the sharing of personal data, this will be a transparent process.

3.4 Where it has been identified that the Parties are permitted to share information without obtaining consent, this should be justified, if required, under their statutory or legal powers. Data subjects should be made aware of this decision and provided with the details of the data share. Unless, by doing this will risk harm to others or hinder any investigation or legal proceeding.

3.5 The consent process will be agreed between the parties from time to time as required for the purposes of this Information Sharing Agreement

3.6 The decision to share information without consent will be fully documented and held within the patients’ care record.

## **4. ACCESS AND INDIVIDUALS’ RIGHTS**

4.1 Requests for information under the Data Protection Act 2018 will be dealt with by the data holding organisation in line with their internal process and procedures.

4.2 If a Freedom of Information requests is received, that organisation will notify and seek input from the relevant data controller in line with their internal process and procedures.

4.3 Each Party shall have a formal procedure which the data subject can direct their complaints regarding the application of this Information Sharing Agreement.

## **5. KEEPING INFORMATION SECURE**

5.1 Storage – No records should be left unsecured at any time, and should be secured/handled in accordance with this protocol whenever in transit, use or stored in whatever form (e.g. paper, electronic). Storage of records will be in accordance with UHL policy.

5.2 The information shared between the Parties must not be disclosed to any third party.

5.3 Each Party shall ensure that access to information provided by the other Party under this Information Sharing Agreement will only be granted to those staff who 'need to know' the information.

5.4 Any breaches of security reported will be managed in relation with each Party's incident reporting procedures.

5.5 The Parties shall comply with the requirements of the current Information Governance Toolkit or any successor tool kit or any other tool kit agreed between the parties from time to time for the purposes of this Information Sharing Agreement in handling the shared information securely.

## **6. FREQUENCY OF SHARING**

6.1 Information will be shared/accessed on a need to know basis when the requirements to view arises.

## **7. HOW INFORMATION MAY BE EXCHANGED**

7.1 Data will be exchanged in a number of formats. Electronic data and file transfer will be sent by secure email.

7.2 Written and verbal information will be relevant and proportionate to the circumstances and the individual involved and any verbal information will be entered onto the secure recording system.

## **8. DATA RETENTION**

8.1 Information will be held for no longer than necessary for the purpose that it was obtained and in accordance with UHL policy.

## **9. RESPONSIBILITY FOR EXCHANGING THESE DATA AND ENSURING DATA ARE ACCURATE**

9.1 Caldicott Guardians and Senior Information Risk Owners (SIROs) who have signed the Information Sharing Agreement as having overall responsibility within their own organisation have the duty for ensuring the organisation has the necessary powers to share the information requested. Any information shared must only be used for the purpose as requested.

9.2 The Parties in discharging their obligations under this Information Sharing Agreement shall comply with the eight Data Protection Principles.

9.3 The Parties shall ensure that the information shared is relevant and proportionate to the purpose for which it is shared and comply with the Data Protection Principles.

9.4 Information will not be passed to any third party other than allowed by law.

9.5 Retention for the intelligence purposes shall be allowed but only in line with the Data Protection Principles.

9.6 The Parties have not undertaken a Privacy Impact Assessment as under this Information Sharing Agreement information will be shared only where the Parties are legally required or permitted to do so.

9.7 Both Parties agree (subject to discussion between them as soon as possible following commencement of this Agreement) that the service users (data subjects) need to be informed of the following:

- What information is going to be shared
- In what format is the data going to be exchanged
- Who the information is going to be shared with
- For what purposes it will be used

Unless by doing so would risk harm to self or others or hinder any investigation or legal proceedings.

9.8 It is the responsibility of each Data Controller to inform their service users about the information listed in 9.7.

9.9 The information listed in section 9.7 (subject to the provision of privacy notices and fair processing) will be available to the data subjects in the following methods:

- Your health records: what you need to know (NAME OF PARTY Leaflet)
- Your health records: what you need to know (NAME OF PARTY Poster)

9.10 Each Party must appoint a single point of contact who must work together to ensure the processes of the agreement are fully adhered to.

## **10. BREACH OF CONFIDENTIALITY**

10.1 Any information breaches e.g. theft, loss, damage or inappropriate disclosure of information must be reported to the data controller immediately.

10.2 Action will be taken by each party's Information Governance Teams, as and when required.

## **11. REVIEW OF INFORMATION SHARING PROTOCOL**

11.1 This Information Sharing Agreement shall commence on the Effective Date and shall continue until terminated by either Party under clause 11.2.

11.2 Either Party may terminate this Information Sharing Agreement at any time after the Effective Date with immediate effect by written notice on the other Party.

11.3 The effectiveness and appropriateness of this Information Sharing Agreement will be monitored on a regular basis taking into account any changes in legislation / or service.

11.4 The contents of the Information Sharing Agreement will be reviewed on an annual basis. The responsible managers in the following roles will take responsibility for reviewing this document:

## **12. LIMITATION OF LIABILITY**

12.1 Neither party excludes or limits liability to the other party for:

(a) fraud or fraudulent misrepresentation;

(a) death or personal injury caused by negligence;

(b) a breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982; or

(c) any matter for which it would be unlawful for the parties to exclude liability.

12.2 Subject to Clause 12.1, neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

(a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

(b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

(c) any loss or liability (whether direct or indirect) under or in relation to any other contract.

12.3 Clause 12.2 *shall not prevent claims, for:*

(a) direct financial loss that are not excluded under any of the categories set out in Clause 12.2 (a); or

(b) tangible property or physical damage.

### 13. GENERAL

13.1 Law and Jurisdiction: The Information Sharing Agreement shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

13.2 Third parties: A person who is not a party to the Information Sharing Agreement shall not have any rights under or in connection with it.

13.3 Dispute Resolution: The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Information Sharing Agreement. By agreement, the Parties may refer a dispute to mediation by a neutral adviser or mediator appointed by the Parties or by the Centre for Dispute Resolution. Unless otherwise agreed, all negotiations occurring in the course of such mediation shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

13.4 Waiver: The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy. No waiver shall be effective unless it is communicated to the other Party in writing. A waiver of any right or remedy arising from a breach of the Information Sharing Agreement shall not constitute a waiver of any right or remedy arising from any other breach of the Information Sharing Agreement.

13.5 Severability: If any provision of the Information Sharing Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the Information Sharing Agreement shall continue in full force and effect as if the Information Sharing Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Information Sharing Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

**This Agreement has been entered into on the date stated at the beginning of it.**

For and on behalf of University Hospitals of Leicester NHS Trust by:

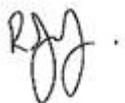
Gary Waterhouse (Amica Head of Service)

Signed: 

Date: 01/12/25

For and on behalf of Leicestershire Partnership NHS Trust by:

Rob Melling (Mental Health Improvement and Transformation Lead) rob.melling@nhs.net



Signed: .....

Date: 01/12/2025