

(1) PORTSMOUTH CITY COUNCIL

AND

(2) PROVIDER'S NAME

CONTRACT

**for the provision of Locally
Commissioned Public Health Services**

Legal Services
Civic Offices
Guildhall Square
Portsmouth
PO1 2AL
Reference SI/512352

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SCHEDULE 1 APPENDICES

Section A;
This Contract is made on

PARTIES

- (1) PORTSMOUTH CITY COUNCIL of Civic Offices, Guildhall Square, Portsmouth, Hampshire PO1 2XP (the **Authority**; AND
- (2) [NAME OF PROVIDER] Registered Company Number: [.....] of [REGISTERED ADDRESS] (the **Provider**).

BACKGROUND

- (A) The Authority is responsible for commissioning a range of services to support the delivery of the public health outcomes framework within its area. As part of these commissioning arrangements the Authority is entering into a series of contracts with local GP practices, pharmacies and other providers to deliver local commissioned services (formerly referred to as locally enhanced services or 'LES').
- (B) The Authority wishes to secure the provision of the Services and the Provider wishes to provide the Services.

IT IS AGREED

A1. INTERPRETATION

- A2.1. This Contract shall be interpreted in accordance with Schedule 1 (*Definitions and Interpretation*), 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) Appendix A (Specification(s));
 - b) Section B (including Schedule 1); and
 - c) Section A

A2. COMMENCEMENT AND DURATION

- A2.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the **Commencement Date**).
- A2.2. The Provider shall provide the Services from the Commencement Date (the **Service Commencement Date**).
- A2.3. This Contract shall expire automatically on 28th February 2021 (**Expiry Date**), unless it is extended or terminated earlier in accordance with the provisions of this Contract.

A3. REPRESENTATIVES

A3.1. The person set out below is authorised from the Commencement Date to act on behalf of the Authority on all matters relating to this Contract (the **Authority Representative**), or as otherwise notified to the Provider.

Name: Amanda McKenzie and Emma Richards

A3.2. The person set out below is authorised from the Commencement Date to act on behalf of the Provider on all matters relating to this Contract (the **Provider Representative**), or as otherwise notified to the Authority.

Name: [INSERT NAME]

A4. NOTICES

A4.1. 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 A4.3.

A4.2. Notices:
a) by post and correctly addressed shall be effective upon the earlier of actual receipt, or 5 Business Days after mailing; or
b) by hand shall be effective upon delivery.

A4.3. For the purposes of clause A4.2, the address for service of notices on each Party shall be as follows:

a) For the Authority:
Address: Civic Offices
Guildhall Square
Portsmouth
Hampshire
PO1 2XP

For the attention of: Amanda McKenzie
Tel: 023 9284 1792

b) For the Provider: [PROVIDER'S NAME]

Address: [PROVIDER'S ADDRESS]


For the attention of: [Insert name]
Tel: [Insert tel no]

A5. 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.

IN WITNESS of which this Contract has been duly executed by the parties.

Signed for and on behalf of the Council by:-

Signed 

(Authorised Signatory)

Printed Name: Amanda McKenzie

Position: Public Health Development Manager

Signed for and on behalf of the Provider by:-

Signed (Authorised Signatory)

Printed Name

Position.....

B1. SERVICES

B1.1. The Provider shall provide the Services in accordance with the Service Specification(s) in Appendix A (*Service Specifications*), including any service limitations set out in them, and in accordance with the provisions of this Contract.

B2. SERVICE AND QUALITY

B2.1. The Provider must carry out the Services in accordance with the Law and Good Clinical Practice (including but not limited to NICE guidance) and must comply with all regulatory requirements and respond to recommendations made by Local Healthwatch.

B3. EQUITY OF ACCESS, EQUALITY AND NON- DISCRIMINATION

B3.1. 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.

B3.2. 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).

B3.3. 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.

B3.4. 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 (as detailed in the Specification); and
- b) fulfil their obligations under the Law.

B4. MANAGING ACTIVITY

B4.1. The Provider must manage Activity in accordance with any activity planning assumptions and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services.

B5. STAFF

B5.1. 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.

B5.2. If requested by the Authority, the Provider shall as soon as practicable and by no later than 15 Business Days following receipt of that request, provide the Authority with evidence of the Provider's compliance with clause B5.1.

B5.3. Unless otherwise agreed in advance in writing by the Authority, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:

- a) the Employment Checks; and
 - b) such other checks as required by the DBS.
- B5.4. Where the Authority has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Authority and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the Authority with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.
- B5.5. 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.

B6. CHARGES AND PAYMENT

- B6.1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Authority shall pay the Provider the Charges as set out at Appendix A.
- B6.2. Payments shall be made in accordance with the remuneration details set out in each service Specification (Charges).
- B6.3. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B6:
- a) the contesting Party shall within 10 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
 - b) any uncontested amount shall be paid in accordance with this Contract.
- B6.4. If a Party contests a payment under clause B6 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B6, the contesting Party may refer the matter to dispute resolution under clause B22 (*Dispute Resolution*) and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with such resolution.
- B6.5. Subject to any express provision of this Contract to the contrary the Provider shall be entitled, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B6.6. The Authority may retain or set off any sums owed to the Authority which have fallen due and payable against any sum due under this Contract or any other agreement between the Parties.

B7. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- B7.1. The Provider shall ensure that it and its Staff are aware of good safeguarding practices, and apply these in the provision of the Services.

B8. CONSENT & SERVICE USER HEALTH RECORDS

B8.1. The Provider must publish, maintain and operate a Service User consent policy which complies with Good Clinical Practice and the Law.

B8.2. 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.

B9. EQUIPMENT

B9.1. 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.

B10. COMPLAINTS

B10.1. 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 B20 (*Defaults and Failure to Supply*).

B11. SERVICE REVIEW

B11.1. The Provider must submit to the Authority data regarding the delivery of the Service as detailed in the Specification, via the identified web platform as notified to the Provider by the Authority.

B12. CO-OPERATION

B12.1. The Parties must at all times act in good faith towards each other.

B12.2. 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.

B13. WARRANTIES AND REPRESENTATIONS

- B13.1. 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) in entering this Contract it has not committed any Fraud;
 - c) all reasonably material information supplied by it to the Authority during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Authority which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract;
 - 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;
 - e) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract;
 - f) it is not Insolvent.

B13.2. The Authority warrants and represents that 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.

B13.3. The warranties set out in this clause B13 are given on the Commencement Date and repeated on every day during the term of this Contract.

B14. VARIATIONS

B14.1. The Contract may only be varied with the express written agreement of the parties executed by an authorised signatory of the same.

B15. ASSIGNMENT AND SUB-CONTRACTING

B15.1. 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).

B15.2. The Authority's consent to sub-contracting under clause B15.1 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.

B16. AUDIT AND INSPECTION

B16.1. The Provider must comply with all reasonable written requests made by 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.

- B16.2. Subject to Law and notwithstanding clause B16.1, 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.
- B16.3. Within 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.
- B16.4. 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.
- B16.5. During any audit undertaken under clause B16.1 or B16.2, 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.

B17. INDEMNITIES

- B17.1. 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 DPA, 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 DPA by the Authority.

B18. LIMITATION OF LIABILITY

- B18.1. Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.
- B18.2. 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.
- B18.3. 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.

B19. INSURANCE

- B19.1. The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances as listed in this clause. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- B19.2. The Required Insurances referred to above are:
- a) public liability insurance with a limit of indemnity of not less than ten million

(£10,000,000) in respect of any one act or occurrence or series of acts arising out of the performance of the Service;

- b) employer's liability insurance with a limit of indemnity of not less than ten million (£10,000,000) in respect of any one act or occurrence or series of acts arising out of the performance of the Service;
- c) Professional indemnity insurance with a limit of indemnity of not less than five million (£5,000,000) in respect of any one act or occurrence or series of acts arising out of the performance of the Service;
- d) Product insurance with a limit of indemnity of not less than ten million (£10,000,000) in respect of any one act or occurrence or series of acts arising out of the performance of the Service; and
- e) Suitable medical clinical negligence insurance.

B19.3. The Required Insurances must remain in place for the Contract Period and be effective in each case not later than the date on which the relevant risk commences.

B19.4. The Provider must give the Authority, on request, a copy of or a broker's placement verification of the Required Insurances insurance, together with receipts or other evidence of payment of the latest premiums due under those policies.

B19.5. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

B20. DEFAULTS AND FAILURE TO SUPPLY

B20.1. 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 including under clause B21 (*Contract Management*), consult with the Provider and then do any of the following:

- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 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 B23 (*Suspension and Consequences of Suspension*);
- 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 B24 (*Termination*) (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.

B21. CONTRACT MANAGEMENT

- B21.1. The Authority may investigate any case where the Provider may have or appears to have failed to perform the Service in whole or in part in accordance with the provisions of the Contract (a "Default").
- B21.2. Where the Authority is satisfied that in any particular case the Provider is in Default he may instruct the Provider to remedy the failure within such reasonable period as the Authority may determine by issuing a notice (a "Remediation Notice").
- B21.3. Where the Provider fails to comply with any Remediation Notice issued by the Authority, the Authority may issue a further notice (a "Default Notice") to the Provider specifying the nature of the Default and instructing the Provider to remedy the Default within a reasonable period as determined by the Authority.
- B21.4. If the Provider fails to remedy any Default specified in a Default Notice within the reasonable period specified, the Authority may either:
- a) issue a further Default Notice every 24 hours until the Authority is satisfied that the Default concerned has been remedied, or
 - b) following notification to the Provider, take action to rectify the Default itself (including by instructing an alternative provider to rectify the same) and recover its additional costs of doing so from the Provider as a debt.
- B21.5. In addition to clause B21.4, where the failure amounts to a Persistent Breach, or is one which materially and adversely affects the performance of the Service or one which results in material damage to the reputation of the Authority, notwithstanding that a Remediation Notice and/or Default Notice(s) has been issued pursuant to this clause B21, the Authority shall be entitled to terminate the Contract forthwith.

B22. DISPUTE RESOLUTION

- B22.1. If any dispute arises out of or in connection with the Contract, the parties shall promptly notify each other of the matter in dispute ("Dispute"), which shall in the first instance be referred to the Authorised Officer and the Provider's Manager who shall use all reasonable skill, care and diligence to ensure that they receive the views of all parties and considers all solutions proposed with the objective of resolving the dispute and achieving an agreed solution.
- B22.2. Where the Authorised Officer and the Provider's Manager do not achieve within 14 days of notification of a Dispute a solution acceptable to all parties involved, and provided no right of termination has been exercised, then senior representatives of both parties shall meet promptly, and in any event within 21 days of notification of the Dispute, in good faith to discuss and seek to resolve the Dispute.
- B22.3. If within 30 days of notification of a Dispute the processes set out in this clause do not resolve such dispute to the satisfaction of both parties either party may refer any Dispute to an adjudicator.
- B22.4. If the parties are unable to agree the appointment of such adjudicator within seven (7) Working Days of the request by either party for such an appointment then an appropriate expert (willing to act in that capacity hereunder) shall be appointed by the President of the Centre for Effective Dispute Resolution and the parties agree to accept such appointment.
- B22.5. Disputes shall be decided by such adjudicator in accordance with the latest Rules of Adjudication of the Centre for Effective Dispute Resolution as in place at the time of the Dispute being referred to such adjudicator, and costs shall be borne in such proportions as the adjudicator may determine to be fair and reasonable in all the circumstances or, if the adjudicator makes no such determination, by the parties in equal proportions.
- B22.6. Nothing in this clause shall prevent either party from applying to a court for interim measures.

B23. SUSPENSION AND CONSEQUENCES OF SUSPENSION

- B23.1. 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 B23.1 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**).

B23.2. 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.

B23.3. During the suspension of any Service under clause B23.2, 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 B23.2 has been referred to dispute resolution under clause B30 (*Dispute Resolution*).

B23.4. During the suspension of any Service under clause B23.2, 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 B23.2; 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 B23.5.

B23.5. 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.

B23.6. 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).

B23.7. 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.

B24. TERMINATION

B24.1. Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 3 months' written notice at any time after the Service Commencement Date.

B24.2. The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:

- a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
- b) the Provider is in persistent breach of its obligations under this Contract;
- c) the Provider:
 - (i) fails to obtain any Consent;
 - (ii) loses any Consent; or
 - (iii) has any Consent varied or restricted,
the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;
- d) the Provider has breached the terms of clause B29 (*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 B27 (*Data Protection*);
- g) commits a Persistent Breach;
- h) the Provider breaches the terms of clause B15 (*Assignment and Sub-contracting*);
- i) the Provider becomes Insolvent;
- 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 40 Business Days following receipt of notice from the Authority identifying the breach.

B24.3. 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 30 Business Days without the Parties agreeing alternative arrangements.

B25. CONSEQUENCE OF EXPIRY OR TERMINATION

B25.1. 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.

B25.2. 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.

B26. CONFIDENTIALITY

B26.1. 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.

B26.2. Subject to Clauses B26.3 and B26.4, 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.

B26.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:

- a) in connection with any dispute resolution under clause B22 (*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 B26.2;
- e) to comply with a regulatory body's request.

B26.4. The obligations in clause B26.1 and clause B26.2 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.

B26.5. 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 B26.

B26.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B26 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 B26.

B26.7. This clause B26 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

B26.8. The obligations in clause B26.1 and clause B26.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

B27. DATA PROTECTION

B27.1. Both parties shall respectively at their own expense comply with all relevant and applicable requirements of the Data Protection Requirements. The specific obligations of the parties for data protection purposes shall be set out and further defined in Appendix B. For the avoidance of doubt, this clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Requirements.

B27.2. The parties shall where applicable, take into account any guidance issued by the Information Commissioner's Office regarding Personal Data. The Authority may on not less than thirty (30) Working Days' notice to the Provider amend the Contract to ensure that it complies with any such guidance.

B28. FREEDOM OF INFORMATION

B28.1. The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority (at the Provider's expense) to enable the Authority to comply with these information disclosure requirements.

B28.2. The Provider shall and shall procure that its sub-contractors shall:

- a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) days (or such other period as the Authority may specify) of the Authority requesting that Information;
- c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of FOIA [or regulation 5 of the EIR].

B28.3. The Authority shall be responsible for determining at its absolute discretion whether the Information:

- a) is exempt from disclosure in accordance with the provisions of FOIA or the EIR;
- b) is to be disclosed in response to a Request for Information.

B28.4. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

B28.5. The Provider acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004), be obliged under FOIA or the EIR to disclose Information;

- a) without consulting the Provider, or
- b) following consultation with the Provider and having taken its views into account

- c) provided always that where clause B28.5(b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

B28.6. The Provider shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

B28.7. The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the B28.5.

B29. PROHIBITED ACTS

B29.1. 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 or 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**").

B29.2. 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 B24.2 (*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.

B30. THIRD PARTY RIGHTS

B30.1. 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.

B31. SEVERABILITY

B31.1. 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.

B32. WAIVER

B32.1. 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.

B33. PUBLICITY

B33.1. Without prejudice to clause B28 (*Freedom of Information*), 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.

B34. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

B34.1. 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.

B35. GOVERNING LAW AND JURISDICTION

B35.1. 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.

B35.2. Subject to the provisions of clause B22 (*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 1

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 clause A3.1 (*Representatives*) or their replacement

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

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 Service Specifications

Commencement Date means the date identified in clause A2.1 (*Commencement and Duration*)

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

Confidential Information means all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which is (i) known by the receiving party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving party to be confidential

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 means this Contract including the conditions of contract and all schedules and appendices referred to herein and/or attached hereto

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

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

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

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

Default Interest Rate means 2% over the daily base lender rate from time to time of the Co-operative Bank plc applicable in England

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 means the Data Protection Act 1998

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

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

Expiry Date means the date set out in clause A2.3 (*Commencement and Duration*)

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 war, natural flood, exceptionally adverse weather conditions, strike or lockout (other than a strike or lock-out which is limited to the Provider's Representatives), civil disorder, Act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have reasonably been foreseen or avoided

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

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

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

Insolvent means in relation to the Provider:

- (a) any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed)
- (b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) upon the whole or any material part of the Provider's assets
- (c) a court makes an order that the Provider be wound up or a resolution for a voluntary winding up of the Provider is passed
- (d) ceasing or threatening to cease to carry on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 Insolvency Act 1986
- (e) being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors.

Law any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of section 2 of the European Communities Act 1972, duly applicable guidance, code of practice, direction, judgment or determination with which the Authority and/or the Provider is bound to comply including the Authority's rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time

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

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

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

Parties means the Authority and the Provider and "Party" means either one of them

Personal Data takes the meaning given in the GDPR

Persistent Breach means a continuing breach or series of breaches which has recurred 4 or more times within a two month period after the Authority has issued at least one Remediation Notice to the Provider in respect of each continuing breach or series of breaches

Prohibited Acts has the meaning given to it in clause B29.1 (*Prohibited Acts*)

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

Public Authority means as defined in section 3 of the FOIA

Quality Outcomes Indicators means the agreed key performance indicators and outcomes to be achieved as set out in the specifications

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

Required Insurances means the types of policy or policies providing levels of cover as specified in the Service Specification(s)

Service Commencement Date means the date set out in clause A2.2 (*Commencement and Duration*)

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

Service User means the person directly receiving the Services provided by the Provider as specified in the Service Specifications and includes their Carer etc 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 Specifications, 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 B15.1 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

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

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

APPENDIX A

SERVICE SPECIFICATIONS

Service	Staff Influenza Immunisation Program (Portsmouth City Council)
Authority/Commissioner Lead	Emma Richards, Public Health, Portsmouth City Council
Period	1 st November 2020 – 28 th February 2021
Detail	Provision of Influenza Immunisation in Community Pharmacies for eligible staff, by showing ID for Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council

1	Introduction and Context
1.1	This Service will increase the provision of and access to seasonal influenza immunisation for eligible employees of Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council. In particular, the quadrivalent seasonal influenza vaccine that the Joint Committee on Vaccinations and Immunisations (JCVI) recommend is issued to frontline health and social care workers.
1.2	The provision of a mechanism to Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council staff is expected to facilitate flu vaccine uptake, especially among those working with vulnerable/at risk clients. This is to reduce the serious morbidity and mortality of influenza by immunising those who care for individuals who are more likely to have a serious or complicated illness should they develop influenza.
1.3	This Service compliments the National Season Influenza Immunisation Programmes which targets those cohorts that are in the agreed clinical at risk groups.
1.4	The aims and objectives of this Service are to: <ul style="list-style-type: none"> ▪ Increase uptake of the influenza vaccine in Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council employees deemed eligible by their Employer (defined as those presenting with the relevant ID badge) ▪ Improve access to the influenza vaccine ▪ Promote awareness of the vaccination programmes ▪ Improve public health by decreasing infection across the population.
2	Portsmouth City Council Outcomes
2.1	Service Specific Outcomes <ul style="list-style-type: none"> ▪ To have increased the uptake of the seasonal influenza vaccine by employees of Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council (defined as being a person presenting with a relevant ID badge) ▪ To have demonstrably improved vaccination access (demonstrated by uptake rates and data) ▪ To have raised awareness among the broader workforce of flu-vaccination benefits.
3	Sustainability, Equalities, Social Value and Other Impacts

3.1	<p>Sustainability</p> <p>There are no potential impacts upon sustainability. The period of expected service provision, demand for and availability (including expiry) of vaccine means this programme of work has a limited longevity so that sustainability over time does not present a risk.</p>
3.2	<p>Equalities</p> <p>All Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council employees will be offered the opportunity to access an influenza vaccination by presenting their ID badge at the pharmacy. All employees already entitled to obtain free vaccination via NHS subsidised schemes will be expected to do so.</p> <p>In order to ensure equality of geographical access to the service it is important that as many providers as possible agree to deliver this provision. Where an uneven distribution of participating providers occurs then this may present a barrier to uptake though provision would remain readily available elsewhere.</p>
3.3	<p>Social Value</p> <p>Vaccination of employees protects them (and their families/household), their vulnerable clients and to a lesser extent the broader population from onward infection. This in turns reduces workforce absence, maintains productivity and populous wellbeing and reduces potential economic burden to business and households. These present social value but with intangible measures.</p>
4	Scope
4.1	<p>Administration and Eligibility</p> <p>4.1.1. The vaccine will be administered under a locally agreed or private Patient Group Direction (PGD) which allows for administering seasonal influenza vaccines, except those people exempt from or not eligible (under this scheme) for the flu vaccine.</p> <p>4.1.2 Individuals who are eligible to access this service are Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council employees who present to the provider their ID badge.</p> <p>4.1.3 The following groups are not eligible for the vaccine under the terms of this agreement:</p> <ul style="list-style-type: none"> • Known severe hypersensitivity to egg products or chicken protein. • History of true anaphylactic reaction to a dose of influenza vaccine or to any of its components. This is different for each product. Check Summary of Product Characteristics for details by brand. <p>These exclusions are set out within the local PGD. If excluded for the reasons above, the individual should be referred back to their employer for a more formal risk assessment to look at the balance of risks through occupational health. This does not necessarily mean that vaccination will not be possible, but it will fall outside the remit of this service.</p> <ul style="list-style-type: none"> • Acute illness at presentation. If this is the case, postpone vaccination until recovered.

- Individuals who are already eligible for a Flu Vaccination through the NHS England Flu Programme. This can be identified by the questions asked on PharmOutcomes. If this applies then the Pharmacist should refer to a GP or Pharmacy participating in the NHS commissioned Seasonal Influenza Vaccination Service.

4.1.4 Relevant guidelines must be adhered to in order to undertake provision of this service in line with Immunisation against Infectious Disease: The Green Book (2014). See link below: <https://www.gov.uk/government/organisations/public-health-england/series/immunisation-against-infectious-disease-the-green-book>

4.1.5 Eligible Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council employees will be vaccinated between 1st November 2020 and 28th February 2021, as stated in the header of this service specification.

4.1.6 Eligible Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council employees will be advised of their eligibility by their Employer. Eligible employees will be given an explanation of the Flu Vaccination process.

4.1.7 Once the employee has been confirmed as being eligible for a vaccination, the Provider must ask the employee for their ID Badge as this will confirm their eligibility and support evaluation of the initiative.

4.1.8 The provider shall ensure that the employee meets the vaccination requirements set out in this service specification and locally as agreed in 4.1.1

4.1.9 The Provider shall assess the need and suitability for a presenting Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council to receive the influenza vaccination in line with the PGD and the inclusion and exclusion criteria contained therein.

4.1.10 A full record of the consultation and administration of the vaccine shall be recorded on the PharmOutcomes platform or any other platform offered/provided by this Authority.

4.1.11 Eligible employees' consent for vaccination and for sharing the information with Portsmouth City Council and their employer as well as their own GP practise shall be recorded as part of the record of the vaccination on PharmOutcomes, or any other platform offered/provided by this Authority.

4.1.12 The provider shall offer a user-friendly, non-judgmental, client-centred and confidential service.

4.1.13 This service shall be made free of charge to the employee at Portsmouth City Council's expense (who will re-charge Gosport Borough Council and Portsmouth CCG).

4.1.14 There shall be as few restrictions as possible and therefore the service should be available throughout the provider's opening hours, including Saturdays and Sundays in accordance with the providers' usual opening times.

<p>4.2</p>	<p>Responsibilities of the Provider</p> <p>4.2.1 The Provider shall ensure that Practitioners involved in the provision of the service have relevant knowledge and are appropriately trained in the operation of the service.</p> <p>4.2.2 The provider shall ensure that participating practitioners meet the competence requirements of the PGD and understand the inclusion/exclusion criteria.</p> <p>4.2.3 To ensure procurement of inactivated influenza vaccination (split virion or surface antigen) through the Provider’s established procedures.</p> <p>4.2.4 To ensure that suitable processes are in place to:</p> <ul style="list-style-type: none"> • monitor and maintain the cold chain for the vaccines • dispose of used sharps and waste • maintain hygiene and has suitable hand washing facilities • deal with needle stick injuries and spillages • comply with current infection control guidelines <p>4.2.5 To provide a suitable anaphylaxis treatment pack on the premises.</p> <p>4.2.6 To ensure that practitioners providing the service have been offered Hepatitis B vaccination. This is the responsibility of the Provider as the employer.</p>
<p>4.3</p>	<p>LPC Agreement</p> <p>The Hampshire & Isle of Wight Local Pharmaceutical Committee (LPC) support the proposed programme and have agreed the Service Specification.</p>
<p>5</p>	<p>Applicable Service Standards</p>
<p>5.1</p>	<p>National Standards</p> <p>Where national standards exist they shall be applied as appropriate and stated in the national standards.</p>
<p>5.2</p>	<p>Local standards - Training and Accreditation</p> <p>5.2.1 Providers shall hold appropriate professional membership (for example, Practitioners will be registered with the GPhC or equivalent) and will meet the standards of this specification.</p> <p>5.2.2 The Provider will ensure that any practitioner who is involved in administering a vaccine has successfully completed a training course that meets the requirements of the National Minimum Standards for Immunisation Training (published by the Health Protection Agency/Public Health England).</p> <p>5.2.3 The individuals administering the vaccine shall be suitably trained, as set out in 5.2.2, and deemed competent to do so. The provider must have arrangements in place to ensure the competency of individuals to have skills necessary for administering intra-muscular injection, including:</p> <ul style="list-style-type: none"> ▪ Needle length and needle bevel – research findings on the significance of this ▪ Body mass and choice of needle length ▪ Intramuscular sites and the rationale for this choice

- How to administer an intramuscular injection, including patient assessment, side effects and contraindications to influenza administration
- Anaphylaxis – recognition and treatment

5.2.4 The Practitioner has completed and passed a recognised Basic Life Support (BLS) training course in the past 12 months, or approved update training. BLS training must be undertaken every 3 years; this can be face to face or via e-learning.

5.2.5 The Practitioner can access resuscitation update via e-learning module, PHE e-learning module (online immunisation training modules is available Skills for Health Core Learning: <https://corelearning.skillsforhealth.org.uk/local/sfhadmin/login/index.php> and NPA e-learning module or approved alternative update training).

5.2.6 The Practitioner has signed a copy of a PGD that complies with relevant legislation.

5.2.7 Providers should maintain clinical knowledge appropriate to their practice by attending relevant study days, courses and making themselves aware of appropriate literature

Premises and equipment

5.2.8 The consultation area or room shall be:

- clean and not used for storage of any stock (other than stock that is stored in closed storage units or stock that may be used, sold or supplied during a consultation – for example, hand wipes, syringe exchange stock etc.);
- laid out and organised so that any materials or equipment which are on display are healthcare related; and
- laid out and organised so that once a consultation begins, the employees' (patient's) confidentiality is respected, and no member of staff who is not involved in the consultation is able to enter the area unless authorised by the practitioner, such authority being given only if the confidentiality of the discussions during the consultation is preserved. Interruptions to the consultation must be kept to a minimum.

5.2.9 Vaccinations shall only take place in a consultation room which is large enough to allow:

- The vaccination to be administered safely;
- Sufficient workspace to allow for preparatory work, easy access to the sharps container, and easy storage of any paperwork;
- Immediate access to anaphylaxis pack and anaphylaxis algorithm; In the event of a severe anaphylactic reaction, the pharmacy shall have a facility to call for ambulance assistance immediately without leaving the patient unattended
- The individual to be vaccinated to, where necessary, remove and store any garments, with privacy and dignity, to allow safe vaccination;
- The management of any anaphylaxis or patient collapse, including putting a person into the recovery position and/or carrying out Basic Life Support. This may require that the door is opened but in all cases privacy and dignity must be maintained.

5.2.10 The Provider shall ensure that a suitable waste contract is in place to ensure the safe disposal of any waste and sharps generated as a result of this service.

	5.2.11 The Provider shall provide the equipment, at its own cost, required to deliver the scheme, e.g. sharps bins and arrangements for disposal of clinical waste.
6	Quality Standards, Performance Measures
6.1	The Provider should review its standard operating procedures and the referral pathways for the service on an annual basis.
6.2	The Provider acknowledges that the service is funded by Portsmouth City Council who will re-charge Portsmouth CCG and Gosport Borough Council for their employees.
6.3	The Provider can demonstrate that pharmacists and staff involved in the provision of the service have undertaken training relevant to this service.
6.4	The Provider participates in any Portsmouth City Council organised audit of service provision.
6.5	The Provider co-operates with any locally agreed Portsmouth City Council led assessment of service user experience
6.6	The Provider can demonstrate that clear and accurate records are kept and agrees to provide the necessary reporting information required by the authority.
7	Price
7.1	<p>Payment and reimbursement structure</p> <p>A fee of £ per quadrivalent seasonal influenza vaccine administered to an employee working for Portsmouth City Council (including Councillors and Port staff), Portsmouth CCG and Gosport Borough Council, accessing the service by showing their ID badge.</p> <p>The vaccine is an integral part of the provision of that service. As such this is an exempt activity under schedule 9 of the VAT act 1994, and there is no requirement to account for any VAT element in the fee.</p>
7.2	<p>Claims for payment</p> <p>Details of the consultation must be entered on to PharmOutcomes in a timely manner to meet claims deadlines.</p> <p>Invoices for activity will be automatically generated by PharmOutcomes at the end of each month and processed by Portsmouth City Council on a monthly basis.</p> <p>Claims for activity more than 3 months old will not be paid. Any queries relating to claims older than 3 months will not be considered.</p> <p>Providers will not be remunerated for vaccines given to patients outside of the eligibility criteria.</p> <p>No claim should be submitted more than one month after the end of this agreement.</p> <p>The Provider shall ensure that all consultations are logged on PharmOutcomes to enable the Council to monitor activity and verify payments for Services provided.</p>

APPENDIX B

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. Definitions and Background

1.1 In this Appendix:

"Controller"	shall take the meaning given in the GDPR;
"Data Loss Event"	shall mean any event that results or may result whether accidental or not, in unauthorised access to or processing of Personal Data and/or actual or potential unlawful loss, alteration, unauthorised disclosure and/or destruction of Personal Data;
"Data Protection Impact Assessment"	shall mean an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Officer"	shall take the meaning given in the GDPR;
"Data Subject"	shall take the meaning given in the GDPR;
"Data Subject Access Request"	shall mean a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Requirements to access their Personal Data;
"Processor"	shall take the meaning given in the GDPR;
"Protective Measures"	shall mean appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
"Sub-processor"	shall mean any third party appointed to process Personal Data on behalf of the Provider related to the Contract;

1.2 The parties acknowledge that for the purposes of the Data Protection Requirements, the Council is the Controller and the Provider is the Processor.

2. Obligations

2.1 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Requirements.

2.2 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing.

2.3 The Provider shall, in relation to any Personal Data processed in connection with its obligations under the Contract:

- a) process said Personal Data in accordance with the table below in this Appendix B only (unless the Provider is otherwise required to do by Law). If it is so required, the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council 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. any Representative of the Provider does not process Personal Data except in accordance with the Contract (and in particular the table below in Appendix B);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Representative of the Provider who have access to the Personal Data;
 - iii. not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (a) the Council 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 Council;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Provider complies with its obligations under the Data Protection Requirements 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 Council in meeting its obligations); and
 - (d) the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of Personal Data;
 - iv. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Provider is required by Law to retain the Personal Data.

2.4 Subject to paragraph 2.5, the Provider shall notify the Council 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 Requirements;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the 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; or
- f) becomes aware of a Data Loss Event.

2.5 Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either party's obligations under Data Protection Requirements and any complaint, communication or request made under paragraph 2.4 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

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

- 2.6 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Appendix B. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- a) the Council determines that the processing is not occasional;
 - b) the Council 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 Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.7 The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 2.8 The Provider shall designate a Data Protection Officer if required by the Data Protection Requirements.
- 2.9 Before allowing any Sub-processor to process any Personal Data related to the Contract, the Provider must:
- a) notify the Council in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Council;
 - c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this paragraph such that they apply to the Sub-processor; and
 - d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 2.10 The Provider shall remain fully liable for all acts and omissions of any Sub-processor.
- 2.11 The table below sets out the full extent of the scope, nature and purpose of processing, the duration of processing and the types of Personal Data and categories of Data Subject.

Description	Details
Type of Personal Data	<i>Name, address, date of birth, medical information etc.</i>
Subject matter of the Processing	<i>Personal details of employees of Portsmouth City Council and Gosport Borough Council including CCG staff, Port Staff and Councillors to assess vaccination eligibility</i>
Duration of the Processing	<i>Processing durations should be in accordance with requirements</i>
Nature and purpose of the Processing	<i>The purpose may include personal data storage, statutory obligations, assessment of eligibility, recording for invoicing and audit purposes etc.</i>
Categories of Data Subject	<i>Staff of the eligible organisations and supplying providers</i>
Plan for return and destruction of the Personal Data once the processing is complete unless requirement under union or member state law to preserve that type of data.	<i>In accordance with statutory requirements</i>