

Fraud and Bribery Prevention Policy

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Document Information

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Gifts and Hospitality Policy			
<p>The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): Sexual Orientation; Gender; Age; Gender Reassignment; Pregnancy and Maternity; Disability; Religion or Belief; Race; Marriage and Civil Partnership. In addition to these nine, the Trust will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.</p> <p>The Trust is committed to ensuring all services, policies, projects and strategies undergo equality analysis. For more information about equality analysis and Equality Impact Assessments please refer to the Equality and Diversity Policy.</p>			

Amendment History

Issue	Status	Date	Reason for Change	Authorised
V1	Created & Ratified	16/02/016	New Trust policy post integration	Trust Executive

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1. Statement/Objective

This policy provides guidance and support on how to deal with issues around Fraud and Bribery. A separate policy is available regarding Gifts and Hospitality.

Torbay and South Devon NHS Foundation Trust ('the Trust') is committed to conducting all its business in an honest and ethical manner and will uphold all laws relating to fraud, bribery and corruption in all our dealings with public and private sector organisations and in the delivery of treatment and care to individuals.

The Trust supports the NHS Counter Fraud Strategy as set out in the NHS Commissioning Board's NHS Standard Contract General Conditions

2. Roles and Responsibilities

This policy applies to all employees of the Trust to include Board members and temporary staff and any other person associated with the Trust, including volunteers. All staff have an implicit duty to protect the assets of the Trust, which include finances, information and goodwill as well as property.

All staff should familiarise themselves with the contents of this policy and be mindful of the induction training provided by the Counter-Fraud Officer. Forms and guidance provided in the appendices to this document will enable staff to report any concerns around Fraud and Bribery.

Any queries on issues of Fraud, Bribery and associated issues not covered by this policy should be referred to the Company Secretary (see appendix 1 for contact details).

3. What are Fraud and Bribery

The Fraud Act 2006 creates criminal offences carrying a maximum sentence of up to 10 years' imprisonment.

The Bribery Act 2010 creates criminal offences for both individuals and corporate entities, meaning that in the event of bribery or attempted bribery both the

individual responsible and the organisations they represent may be liable to criminal prosecution. Upon conviction bribery offences sentences include an unlimited fine for failing to prevent bribery and also a maximum sentence of up to 10 years' imprisonment.

Section 92 of the Care Act 2014 creates an offence of supplying, publishing or otherwise making available information which is false or misleading. Any alleged offences of this nature are dealt with by the police.

Further definitions are available at Appendix 2.

4. Outside Employment and Conflict of Interests

Staff are reminded of the terms and conditions agreed with the Trust through their contract of employment. Further details are provided at Appendix 5.

Staff are reminded of relevant paragraphs in the Trust's contract of employment which are reproduced at Appendix 5: any breach of these conditions may lead to disciplinary proceedings.

5. How to report any suspected incidents of Fraud or Bribery

If you suspect fraud or bribery, please report your suspicions immediately to your line manager. The Executive Director with responsibility for fraud and bribery issues is the Trust's Director of Finance. Contact information and details of alternative contacts are provided at Appendix 1.

NB Under no circumstances should you begin your own investigation.

Please see guidance notes at Appendix 1 to report any concerns around fraud or bribery. Any staff reporting concerns are protected under the terms of the Public Interest Disclosure Act 1998 if they act reasonably and responsibly.

Further information around the raising of concerns is contained in the Trust's [Whistleblowing Policy](#).

Further information in relation to counter fraud is available on the intranet <https://icon.torbayandsouthdevon.nhs.uk/areas/counter-fraud/Pages/contact.aspx>

6. Commercial Sponsorship

Acceptance of commercial sponsorship for courses and conferences is allowable where staff seek permission in advance. Staff and the Trust should be satisfied that this will not compromise purchasing decisions in any way and must be declared for inclusion in the gifts and hospitality register (separate policy refers). Commercial sponsorship for in-house conferences or courses and for printing and publication of patient/client information should also be declared.

For further guidance on sponsorship see Appendix 6.

7. Conflicts of Interest

7.1 All staff

All staff have a duty to ensure that they are not placed in a position which risks, or may be perceived to risk, conflict between their non TSDFT interests and NHS

duties. This primary responsibility applies to all NHS staff, but those who commit NHS resources directly (e.g. by the ordering of goods or services) must take special care to ensure they understand and apply these requirements. See Appendix 7 for some examples of conflicts of interest.

Further guidance on issues relating to Conflicts of Interest not covered by this policy are available from the Company Secretary (see appendix 1 for contact details). Where staff have even the slightest doubt whether a conflict of interest exists advice and guidance from the Company Secretary must be sought at the earliest opportunity.

7.2 Board members

Board members' declarations of interest will be managed by the Company Secretary and are available on the Trust's public website.

8. Charitable Funds

All offers of charitable funding and donations to the Trust should be acknowledged and the information passed to the Torbay and South Devon NHS Foundation Trust Charitable Fund. This is a registered charity governed by the Board and funds are monitored and allocated by the charitable funds committee, which is a sub-committee of the Trust Board.

9. Celebrities

9.1 The provisions of this policy should apply in the dealings of all staff with visitors and celebrities from all walks of life who make contact with or wish to visit the Trust and any such celebrities or official visitors would be expected to adhere to socially acceptable standards of behaviour.

9.2 All such visits should be recorded using the Celebrity/ Official Visitor checklist and further guidance is available in the Trust's "Celebrity and Official Visitors Access Policy" available on the Trust's intranet site at:

https://icon.torbayandsouthdevon.nhs.uk/corp_doc_mgmt/Clinical%20Effectiveness/G1738.pdf.

10. Procurement of Goods and Services

The Bribery Act 2010 requires specific requirements to be placed on potential bidders and suppliers of contracts.

If you are responsible for signing Purchase Orders or placing contracts for goods or services you are expected to adhere to professional standards as set out in the Professional ethics of the Chartered Institute of Purchasing and Supply.

Please see forms and guidance relating to Procurement issues at Appendix 9.

11. Equality and Diversity Exceptions

None identified.

12. Distribution

This policy is available to all staff and externally on the public website.

13. Appendices

- 1. How to report any fraud or bribery concerns**
- 2. Definitions**
- 3. Some do's and don'ts**
- 4. Investigation process, sanctions and redress**
- 5. Extract from Trust's contract of employment**
- 6. Commercial sponsorship**
- 7. Conflicts of Interest**
- 8. Declaration of Interests form**
- 9. Procurement guidance and forms**

Appendix 1

How to report any Fraud or Bribery concerns

1. Internal contacts

As stated in the policy the first point of contact would normally be your line manager or the Local Counter Fraud Specialist, Catriona Davidson, catriona.davidson4@nhs.net Tel: 01803 656440.

The Local Counter Fraud Specialist is responsible for ensuring all Counter Fraud work is carried out in a professional, comprehensive and ethical manner following guidance from NHS Standard Contract, NHS Counter Fraud and Corruption Manual and any other guidance issued by NHS Protect. NHS Protect leads on work to identify and tackle crime across the health service. The aim is to protect NHS staff and resources from activities that would otherwise undermine their effectiveness and their ability to meet the needs of patients and professionals. The LCFS may refer complex cases to the Area Anti-Fraud Specialist, in the NHS Protect Operations Directorate, for support.

Title	Name	Telephone No.
Director of Finance	Paul Cooper	01803655761
Company Secretary	Richard Scott	01803 655029
Local Counter Fraud Specialist	Catriona Davidson	01803 656440 07766161737
Interim Counter Fraud Manager	Paul Thomas	01803 656435 07348054149

2. External contacts

2.1 National Fraud and Corruption Reporting Line

As an alternative reporting channel, the NHS Fraud and Corruption Line can be used in confidence on **0800 028 40 60** to report any concerns about fraud or corruption.

2.2 Public Concern at Work - 0207 404 6609

Public Concern at Work is an independent charity that provides free advice for employees who wish to express concerns about fraud or other serious malpractice.

Appendix 2

1. Definitions

1.1 Fraud

Fraud is a dishonest act or omission made with the intention of making a gain or causing a loss.

The three main categories of Fraud defined in the Fraud Act 2006 are:

- i. S.2 Fraud By False Representation;
- ii. S.3 Fraud By Failing to Disclose information; and
- iii. S.4 Fraud By Abuse of Position of Trust.

Fraud related offences are also created within the Theft Act 1968 in particular section 17 which makes it an offence to dishonestly, with a view to gain for himself or another or with intent to cause loss to another destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular.

Section 92 of the Care Act 2014 False or Misleading Information (FOMI) creates an offence of supplying, publishing or otherwise making available information which is false or misleading in a material respect where that information is required to comply with a statutory or other legal obligation e.g. performance information such as mortality rates. The offence also applies to the 'controlling minds' of the organisation, where they have consented or connived in an offence committed by a care provider.

1.2 Bribery

Broadly bribery can be defined as the giving or receiving of a financial or other benefit in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith.

Bribery does not have to involve cash or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event.

The Bribery Act places a heavy onus on all organisations to have adequate policies and procedures to prevent Bribery. Organisations may be prosecuted should it be found that they have failed to prevent a bribe. Consequently the Torbay and South Devon Foundation NHS Trust adopts a zero tolerance approach towards any bribery or corruption and any allegations or suspicions of bribery will be taken with the upmost seriousness.

2. Examples

2.1 Fraud

Fraud occurs if an offender's conduct is dishonest, with the intention of making a gain or causing loss to another and could include:

- Fraud By False Representation – lying about something or misrepresenting a fact by the means of words or actions.
- Fraud By Failing to Disclose information – not saying something when you have an obligation to do so e.g. failing to notify an employer of a professional registration lapsing.
- Fraud By Abuse of Position of Trust – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation, e.g. an employed carer stealing money from patients he or she is responsible for.
- Examples of Fraud in the NHS are:
 - a) Abuse of Trust Property.
 - b) Deception or falsification of records i.e. fraudulent time or expenses claims.
 - c) Corruption concerning procurement or tendering.
 - d) Incorrectly claiming reimbursement.
 - e) Charging for goods not actually delivered.
 - f) Misuse of sick leave i.e. working elsewhere, including voluntary or unpaid work, for another employer or on a self-employed basis during the hours they are normally contracted to work for the Trust.
 - g) Pharmaceutical/ Ophthalmic/ Dental payments.

2.2 Bribery

An example of bribery in the NHS might be a supplier providing lavish hospitality and or gifts and or cash to a member of staff with the expectation or agreement that that member of staff will promote the suppliers goods/services to his employing organisation irrespective of whether those goods or services are the most appropriate for the organisation to buy.

2.3 False or Misleading Information (FOMI)

The FOMI offence is a strict liability offence applying to all providers of publicly funded Health and Social Care in England. An offence occurs when information provided is factually, false or misleading. Whether or not there was an organisational intention to provide false or misleading information is irrelevant. Usually, where an organisation is found guilty of an offence, a senior figure within that organisation will be seen to have either consented or connived for the release of false or misleading information, or alternatively have been negligent in allowing its release which in its self may constitute a criminal offence.

Appendix 3

Some Do's and Dont's

DO:

- Make an immediate note of your concerns.
- Where possible note all relevant details, such as what was said in telephone or other conversations, the date, time and the names of any parties involved.
- Convey your suspicions to someone with the appropriate authority and experience, as set out in appendix 1 of the Fraud and Bribery Prevention Policy.
- Deal with the matter promptly. Any delay may cause the Trust to suffer further financial loss.

DON'T:

- Do nothing.
- Be afraid of raising your concerns. You will not suffer any recrimination from the Trust as a result of voicing a reasonably held suspicion, and any matter you raise will be dealt with sensitively and confidentially.
- Approach or accuse any individuals directly.
- Try to investigate the matter yourself. There are special rules surrounding the gathering of evidence for use in criminal cases. Any attempt to gather evidence by people who are unfamiliar with these rules may compromise the case.
- Convey your suspicions to anyone other than those with the proper authority.

Appendix 4

Investigation Process, Sanctions and Redress

All investigations are conducted with NHS Protects 'Parallel Criminal and Disciplinary Investigations' guidance in mind thereby allowing all appropriate sanctions to be brought to bear including; Civil –civil sanctions can be taken against those who commit fraud, bribery and corruption to recover money and/or assets which have been fraudulently obtained, including interest and costs.

- Criminal –the LCFS will work in partnership with NHS Protect, the police and/or the Crown Prosecution Service to bring a case to court against an alleged offender. Outcomes can range from a criminal conviction to fines and imprisonment.
- Disciplinary – the LCFS will work with the Trusts Human Resources Department with a view to disciplinary procedures being initiated where an employee is suspected of being involved in a fraudulent or illegal act. Investigations will be conducted in such a way that people's rights under both criminal and disciplinary processes are both fully observed.
- Professional body disciplinary – if warranted, staff may be reported to their professional body as a result of a successful investigation/prosecution.

Appendix 5

Extracts from Trust's Contract of Employment

1. Outside Employment and Financial Interests

If you work for an external Agency which provides services to the Trust, you are restricted from working for the Agency on a Trust assignment. If you are offered additional work via an agency for the Trust please contact the Trust Temporary Staffing Department who will arrange additional work through the Trust Bank.

Your employment with the Trust is also covered by the provisions set out in the Standards of Business Conduct for NHS Staff (HSG(93)5) which details guidance in maintaining ethical standards in the conduct of NHS Business. The guidance set out in the document, which can be obtained from the Trust intranet, is accepted by the Trust as its own policy. It is important that all staff understand the rules regarding declaring conflicts of interest, accepting gifts and hospitality etc and related important instructions which have been issued by the Department of Health.

2. Acceptance of Gifts

You must not accept any gift and/or favour of whatever kind from any person or supplier/prospective supplier of the Employer, without the consent of your Line Manager. Failure to obtain such consent will be treated as an act of gross misconduct under the Trust's Disciplinary Procedure.

3. Intellectual Property (IP)

The Trust encourages employees to participate in the generation and exploitation of IP as part of its commitment to delivering the best possible patient care. In the course of employment an employee may generate IP which may have value in the delivery of better patient care. This IP can be in the form of inventions, discoveries, surgical techniques or methods, developments, processes, schemes, formulae, specifications, or any other improvements, which give rise to certain Intellectual Property Rights. Where such IP is created then under UK law it will generally belong to the Trust, unless agreed otherwise in writing. Research outputs and resulting IP often represent a considerable investment by the Trust and are potentially of significant value to the Trust. You should treat IP as confidential and not disclose to any third part any research results or other information of a confidential nature.

The full Department of Health national 'Framework and Guidance on IP' can be found at: <http://www.nic.nhs.uk/Pages/NHSIPGuidance.aspx>

Appendix 6

Commercial Sponsorship

Before entering into any sponsorship agreement the Trust should:

- Satisfy itself, with reference to information available, that there are no potential irregularities that may affect a company's ability to meet the conditions of the agreement or impact on it in any way e.g. checking financial standing by referring to company accounts.
- Assess the costs and benefits in relation to alternative options where applicable, and to ensure that the decision making process is transparent and defensible.
- Ensure that legal and ethical restrictions on the disclosure of confidential patient information, or data derived from such information, are complied with. Additionally, disclosure for research purposes should not take place without the approval of the appropriate research ethics committee.
- Determine how clinical and financial outcomes will be monitored.
- Ensure that sponsorship agreements have break clauses built in to enable the Trust to terminate the agreement if it becomes clear that it is not providing expected value for money or clinical outcomes.

Appendix 7

Conflicts of Interest

1. Some examples of Conflicts of Interest

- Authorising the discharge of a patient into a nursing or care home in which you, your family, friend or business acquaintance had a financial interest.
- Purchasing, or authorising or persuading another Trust employee to purchase or authorise the purchase of, goods or services from an organisation in which you, your family, friends or business acquaintances have a financial interest.
- Using the Trust's resources i.e. time or materials to provide private gain through a private company in which you, your family, friends or business acquaintances have a financial interest.

2. Some examples of financial interests which should be declared

Financial interests include:

- Interest in a business including a private company, public sector organisation, other NHS employer and/or voluntary organisation.
- Interest in any other activity or pursuit, which might reasonably become involved in the supply of goods or services to the Trust.

3. What to do if a conflict of interest arises

Any conflict or potential conflict of interest should be advised to your line manager on the form provided at appendix 7. This form should also be completed on starting employment, and on acquisition of any interest, in order that it may be known to your manager and in no way be promoted to the detriment of the Trust.

Appendix 8

Declaration of Interests Form

I have read the document, "Standards of Business Conduct for NHS Staff - a guide for employees", and confirm that I, my family, friends or associates **do not** at the present date have: either a controlling and/or significant interest in a business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation) or a business relationship (remunerated or otherwise) or other activity or pursuit in an organisation which could become involved in the supply of goods or services to the Trust.

Please tick here if this statement applies to you

(If circumstances change and I do have a declarable interest I understand it is my responsibility to complete another declaration of interest form).

I **do have** an interest to declare as set out below. I agree to notify the Trust of any changes to the interest declared below, by completing another declaration of interest form.

Please tick here if this statement applies

Declaration:

I, my family, my friend(s) and/or associate(s) have an interest in the following company/organisation:

Name:.....

Address:.....

.....

.....

.....

Please explain why you think you have an interest to declare (*eg – my spouse/partner is employed by the above mentioned company/organisation*).

The interest in the above Company/Organisation is:

.....

What position does the person who has the interest in the above company/organisation hold? (Director, Partner, Shareholder or Employee):

.....

When did this person(s) interest in the above company/organisation begin?

Date:.....

As an employee of the Trust do you receive, directly/indirectly from the company/organisation listed above:

- | | | |
|-----------------|---------|-------------------------------------|
| a) Remuneration | Yes /No | Please delete as appropriate |
| b) Hospitality | Yes/ No | Please delete as appropriate |
| c) Expenses | Yes /No | Please delete as appropriate |
| d) Other * | Yes /No | Please delete as appropriate |

***Please specify**

.....

Please complete the following section in block capitals.

Your name:.....

Job Title:.....

E mail address:.....

Signed:.....

Date:.....

Please ensure that you return this form to the Company Secretary, c/o Chief Executive's Office, Hengrave House, Torbay Hospital.

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Appendix 9

Guidance relating to Procurement of goods and services

9.1 Chartered Institute of Purchasing and Supply – Professional Ethics

All staff involved in procurement duties should be mindful of the following:-

- maintain the highest standard of integrity in all my business relationships
- reject any business practice which might reasonably be deemed improper
- never use my authority or position for my own personal gain
- enhance the proficiency and stature of the profession by acquiring and applying knowledge in the most appropriate way
- foster the highest standards of professional competence amongst those for whom I am responsible
- optimise the use of resources which I have influence over for the benefit of my organisation
- comply with both the letter and the intent of:
 - the law of countries in which I practise
 - agreed contractual obligations
 - CIPS guidance on professional practice
- declare any personal interest that might affect, or be seen by others to affect, my impartiality or decision making
- ensure that the information I give in the course of my work is accurate
- respect the confidentiality of information I receive and never use it for personal gain
- strive for genuine, fair and transparent competition
- not accept inducements or gifts, other than items of small value such as business diaries or calendars
- always to declare the offer or acceptance of hospitality and never allow hospitality to influence a business decision
- remain impartial in all business dealing and not be influenced by those with vested interests

9.2 Procurement Statements

(These statements are used for all OJEU tenders, for non OJEU tenders, a summarised version is used)

9.2.1 **Statement of good standing**

Note: The Potential Bidder must complete and sign the form below

Declaration

The managing director or equivalent of the Potential Bidder/organisation leading the bid should sign the following declaration:

I HAVE CHECKED THAT ALL QUESTIONS HAVE BEEN ANSWERED WHERE APPLICABLE AND THAT SUPPORTING DOCUMENTS ARE ENCLOSED AS REQUESTED.

I understand that it may be a criminal offence under the Bribery Act 2010, punishable by imprisonment, to promise, give or offer any gift, consideration, financial or other advantage whatsoever as an inducement or reward to any servant of a public body and that such action may result in the Trust excluding the organisation from the selected list of Potential Bidders, and potentially from all future public procurements. I hereby declare that I am authorised by the under-mentioned organisation to supply the information given above and, at the date of signing, the information given is a true and accurate record to the best of my knowledge and belief.

Signed.....

Name.....

**On behalf of [insert name of Potential Bidder]
[insert name of organisation leading the Bid].....**

Position.....

Date.....

9.2.2 **Statement relating to good standing**

STATEMENT RELATING TO GOOD STANDING — GROUNDS FOR OBLIGATORY EXCLUSION (IN ELIGIBILITY) AND CRITERIA FOR REJECTION OF CANDIDATES in accordance with Regulation 23 of the Public Contracts Regulations 2006 (as amended)

Project Title [insert title]

We confirm that, to the best of our knowledge, the Potential Provider is not in breach of the provisions of Regulation 23 of the Public Contracts Regulations 2006 (as amended) and in particular that:

Grounds for mandatory rejection (ineligibility)

The Potential Provider or its directors or any other person who has powers of representation, decision or control of the named organisation has not been convicted of any of the following offences:

- a) conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of Council Joint Action 98/733/JHA (as amended);
- b) fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of:
 - i) the offence of cheating the Revenue;
 - ii) the offence of conspiracy to defraud;
 - iii) fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;
 - iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985 or section 993 of the Companies Act 2006;
 - v) defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;
 - vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or
 - vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;
- c) money laundering within the meaning of the Money Laundering Regulations 2003 or Money Laundering Regulations 2007; or
- d) any other offence within the meaning of Article 45(1) of Directive 2004/18/EC as defined by the national law of any relevant State.

Organisation's name	
Position	
Signed	
Date	

9.3 Discretionary grounds for rejection

The Potential Provider confirms that it:

- a) being an individual is not bankrupt or has not had a receiving order or administration order or bankruptcy restrictions order made against him or has not made any composition or arrangement with or for the benefit of his creditors or has not made any conveyance or assignment for the benefit of his creditors or does not appear unable to pay or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986, or article 242 of the Insolvency (Northern Ireland) Order 1989, or in Scotland has not granted a trust deed for creditors or become otherwise apparently insolvent, or is not the subject of a petition presented for sequestration of his estate, or is not the subject of any similar procedure under the law of any other state;
- b) being a partnership constituted under Scots law has not granted a trust deed or become otherwise apparently insolvent, or is not the subject of a petition presented for sequestration of its estate;
- c) being a company or any other entity within the meaning of section 255 of the Enterprise Act 2002 has not passed a resolution or is not the subject of an order by the court for the company's winding up otherwise than for the purpose of bona fide reconstruction or amalgamation, nor had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is not the subject of similar procedures under the law of any other state;
- d) has not been convicted of a criminal offence relating to the conduct of his business or profession;
- e) has not committed an act of grave misconduct in the course of his business or profession;
- f) not been convicted of the offence of bribery (including the offence of failing to prevent bribery) as defined within the Bribery Act 2010;
- g) has fulfilled obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the relevant State in which the organisation is established;
- h) has fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the relevant State in which the economic operator is established;
- i) is not guilty of serious misrepresentation in providing any information required of him under this regulation;
- j) in relation to procedures for the award of a public services contract, is licensed in the relevant State in which he is established or is a member of an organisation in that relevant State when the law of that relevant State prohibits the provision of the services to be provided under the contract by a person who is not so licensed or who is not such a member.

Where applicable, the Candidate is registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annex IX B of Directive 2004/18/EC) under the conditions laid down by that member state*. **In the UK this condition is satisfied by registration with Companies House or a declaration on oath that the Candidate is carrying on business in the trade in question in the UK at a specific place of business and under a specific trading name.*

Organisation's name	
Position	
Signed	
Date	

9.4 Contract clause notes:

- a) Please note that the Trust will need to ensure that the “Supplier” is defined according to the terms of the specific contract and that appropriate defined terms are used throughout which are consistent with the remainder of the contract.
- b) Clause 1.1.3 requires that the Fraud and Bribery Prevention Policy is annexed to the specific contract.
- c) The “Confidentiality Clause” referred to at clause 1.5.3, and the “Termination for Material Breach Clause” at 1.8 will need to be drafted and defined within the specific contract if the Trust wish to rely on these particular provisions.
- d) **The Trust may wish to insert some or all of the following clauses into contracts with suppliers, where appropriate: Please note that the majority of these clauses are contained in the national contract.**

9.5 Compliance with relevant requirements

9.5.1 The Supplier shall:

- a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
- b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- c) comply with the Trust’s Standards of Business Conduct Policy annexed to this agreement at schedule [INSERT] ("**Relevant Policy**");
- d) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and clause 1.1.2, and will enforce them where appropriate;
- e) in addition to its obligations under clause 1.1.2, report to and acquire authority from the Trust before providing any form of gift, gratuity or hospitality to any party in connection with this agreement;
- f) ensure that any offer or provision of any form of gift, gratuity or hospitality complies with the Relevant Policy and, where relevant, the Standards of Business Conduct policy;
- g) promptly report to the Trust any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement.

9.5.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 1 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Trust for any breach by such persons of any of the Relevant Terms.

9.5.3 For the purpose of this clause 1, the meaning of adequate procedures and whether a person is associated with another person shall be determined in

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accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 1 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

9.5.4 The Supplier shall indemnify the Trust against any losses, liabilities, damages, costs including but not limited to legal fees and expenses incurred by, or awarded against, the Trust as a result of any breach of this clause 1 by the Supplier or any breach of provisions equivalent to this clause 1 in any Subcontract by any Subcontractor.

9.5.5 Additional audit and record keeping

- a) The Supplier shall keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by the Supplier in connection with this agreement and the steps taken by the Supplier to comply with the Relevant Requirements, the Relevant Policies and clause 1.1.2, in each case during the previous six years. The Supplier shall ensure that such records and books of accounts are sufficient to enable the Trust to verify the Supplier's compliance with its obligations under this clause 1.
- b) The Supplier shall permit the Trust and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause 1 to access and take copies of the Supplier's records and any other information held at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 1. Such audit rights shall continue for three years after termination of this agreement. The Supplier shall give all necessary assistance to the conduct of such audits during the term of this agreement and for a period of three years after termination of this agreement.
- c) Audit access by any third party representative of the Trust shall be subject to such representative agreeing confidentiality obligations equivalent to those in clause [**CONFIDENTIALITY CLAUSE**] in respect of the information obtained, always provided that all information obtained may be disclosed to the Trust.

9.5.6 The Supplier warrants and represents that neither the Supplier nor any of its officers, employees or other persons associated with it:

- a) has been convicted of any offence involving bribery or corruption or fraud
- b) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the relevant requirements; or
- c) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible or potentially ineligible for participation in government procurement programmes or other government contracts;

9.5.7 The Supplier shall promptly notify the Trust if, at any time during the term of this agreement, its circumstances, knowledge or awareness changes such that it would be able to repeat the warranties set out in clause 1.6 at the relevant time.

9.5.8 Breach of this clause 1 shall be deemed a material breach under clause [**TERMINATION FOR MATERIAL BREACH CLAUSE**]

9.5.9 If the Trust terminates this agreement for breach of this clause 1, the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of

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any activities or agreements with additional third parties entered into before termination.

9.5.10 Regardless of any other provision in this agreement, the Trust shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach. 9
If the Trust terminates this agreement for breach of this clause 1, the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.