



Fraud and Bribery Prevention Policy

Date: September 2017

This is a controlled document. It should not be altered in any way without the express permission of the author or their representative.

On receipt of a new version, please destroy all previous versions.

Version 2 September 2017

Document Information

Date of Issue:	February 2016	Next Review Date:	September 2019
Version:	2	Last Review Date:	September 2017
Author:	M Trist		
Owner:	R Scott		
Directorate:	Corporate		
Approval Route			
Approved By:		Date Approved:	
Executive Team		16 February 2016	
Executive Team		19 February 2017	
Links or overlaps with other policies:			
Gifts and Hospitality Policy			
Standards of Business Conduct 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
v0.1	Created	15-Dec-15	New Trust policy post integration	CoSec
v0.2	Draft	Feb-15	Incorporating amendments from Counter Fraud Officer	CoSec
v0.3	Draft	12-Feb-15	s 9.2 – link added to	M Trist
v1.1	Draft	Sep 17	New legislation	CoSec / Counter Fraud

Contents

1	Statement/Objective.....	3
2	Roles and Responsibilities.....	3
3	Fraud.....	4
4	Bribery.....	4
5	Misleading Information.....	4
6	Declarations of Interest, Gifts and Hospitality.....	4
7	Charitable Funds	5
8	Procurement of Goods and Services.....	5
9	Reporting Fraud and Bribery (Corruption).....	5
10	Investigation and Sanctions and Redress.....	5
11	Equality and Diversity Exceptions.....	6
12	Review.....	6
13	Appendices.....	7-21

1. Statement/Objective

This policy provides guidance and support on how to deal with issues around Fraud and Bribery.

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 SC24 (see below link)

[NHS Standard Contract](#)

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 Local Counter-Fraud Specialist (LCFS). The guidance provided in section 9 will enable staff to report any concerns around Fraud and Bribery.

3. Fraud

The Fraud Act 2006 is the criminal legislation which deals with offences of Fraud in the UK. The Act creates three main offences, each of which carries a maximum sentence of up to 10 years imprisonment.

The three main offences are:

- 1 Fraud By False Representation
- 2 Fraud By Abuse of Position
- 3 Fraud by Failing to Disclose

The offences are described in more detail in Appendix 1.

4. Bribery

The Bribery Act 2010 is the criminal legislation which deals with criminal offences in relation to Bribery. The Act creates four main offences, each of which carries a maximum sentence of 10 years imprisonment.

The four main offences are:

- 1 Bribing another Person
- 2 Being Bribed by another Person
- 3 Bribery of Foreign Public Officials
- 4 Failure of a Commercial Organisations to Prevent Bribery

The offences are described in more detail in Appendix 2.

Fraud and Bribery offences are often referred to as Corruption.

5. Misleading Information

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

The offence under s92 of the Care Act 2014 is described in more detail in Appendix 3.

6. Declarations of Interest, Gifts and Hospitality

Separate policies are available regarding Declarations of Interest and Gifts and Hospitality.

(See below Links)

[Standards of Business Conduct Policy](#)
[Gifts and Hospitality Policy](#)

7. Charitable Funds

Torbay and South Devon Charitable Fund is a Registered Charity. The receipt of donations, gifts and other monies in relation to the Charitable Funds are governed by section 5 of the Trusts Financial Procedures Rules.

The overall objectives of the financial procedures are to ensure that:

- The procedures in place are designed to safeguard the assets of the Trust or Charitable Fund;
- Transactions are made in compliance with the Standing Orders and Standing Financial Instructions of the Trust and all relevant national guidance and legislation;
- All income to which the Trust or Charitable Fund is entitled is properly and promptly collected;
- All expenditure is in respect of costs necessarily incurred in the business of the Trust or Charitable Fund;
- All transactions are properly approved and recorded.

Further guidance can be found in the link below:

[Charitable Funds Procedures](#)

8. 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.

9. Reporting Fraud and Bribery (Corruption)

If you suspect fraud or bribery, please report your suspicions to:

The Local Counter Fraud Specialist (LCFS): Kev Forrest 01803 656438 / 07585405047 kevin.forrest@nhs.net

or

NHS Counter Fraud Authority Fraud Reporting Line 0800 0284060

or

NHS Counter Fraud Authority at <https://www.reportnhsfraud.nhs.uk/>

NB Under no circumstances should you begin your own investigation.

10. Investigation and Sanctions and Redress

The LCFS 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 Counter Fraud Authority.

LCFS Investigations will be conducted under rules and codes of the Police And Criminal Evidence Act 1984 and the Criminal Procedure and Investigation Act 1996. In addition all investigations will be conducted with NHS Counter Fraud Authority 'Parallel Criminal and Disciplinary Investigations' guidance in mind.

NHS Counter Fraud Authority 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 Counter Fraud Authority Operations Directorate, for support.

The LCFS or NHS Counter Fraud Authority will seek to consider and recommend the implementation of all appropriate sanctions. The sanctions are:

- **Criminal Prosecution**—the LCFS will work in partnership with NHS Counter Fraud Authority, and other agencies such as the local authority, the police and the Crown Prosecution Service to bring a case to court against an alleged offender.
- **Professional Body Disciplinary** – the LCFS may report staff to their professional body as a result of a successful investigation/prosecution.
- **Disciplinary** – the LCFS will work with the Trust's Human Resources Department and provide assistance in disciplinary procedures where an employee is suspected of being involved in a fraud or bribery.
- **Civil Recovery** – civil court orders can be sought against those who commit fraud, bribery and corruption to recover money and/or assets which have been fraudulently obtained, including interest and costs.

11. Equality and Diversity Exceptions

None identified.

12. Review

- 12.1 A review of this document will be conducted every two years or following a change to associated legislation or national/local terms and conditions of service and is the responsibility of the Company Secretary.

13. Appendices

1. Fraud Act 2006 Offences
2. Bribery Act 2010 Offences
3. s92 Care Act 2014 offences

Appendix 1

Fraud Act 2006 Offences

Fraud by False Representation section 2 of the Fraud Act 2006

A person is in breach of this section if he dishonestly makes a false representation, and intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

A Representation is False if:

It is untrue or misleading, and the person making it knows that it is, or might be, untrue or misleading.

Representation means any representation as to fact or law, including a representation as to the state of mind of the person making the representation, or any other person.

A representation may be expressed or implied.

A representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

Fraud by Failing to Disclose Information section 3 of the Fraud Act 2006

A person is in breach of this section if he dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and intends, by failing to disclose the information to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

Fraud by Abuse of Position section 4 of the Fraud Act 2006

A person is in breach of this section if he occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, dishonestly abuses that position, and intends, by means of the abuse of that position to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

Appendix 2

The Bribery Act 2010 Offences

Bribing Another Person section 1 of the Bribery Act 2010

A person (P) is guilty of an offence if either of the following cases applies.

Case 1

Where P offers, promises or gives a financial or other advantage to another person, and intends the advantage to induce a person to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity.

It does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

Case 2

Where P offers, promises or gives a financial or other advantage to another person, and knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

In both cases it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

Being Bribed section 2 of the Bribery Act 2010

A person (R) is guilty of an offence if any of the following cases applies.

Case 3

Where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).

Case 4

Where R requests, agrees to receive or accepts a financial or other advantage, and the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

Case 5

Where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

Case 6

Where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by R, or by another person at R's request or with R's assent or acquiescence.

In cases 3 to 6 it does not matter whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party or whether the advantage is (or is to be) for the benefit of R or another person.

In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.

In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

Bribery of foreign public officials section 6 of the Bribery Act 2010

A person ("P") who bribes a foreign public official ("F") is guilty of an offence if P's intention is to influence F in F's capacity as a foreign public official.

P must also intend to obtain or retain business, or an advantage in the conduct of business.

P bribes F if, and only if directly or through a third party, P offers, promises or gives any financial or other advantage to F, or to another person at F's request or with F's assent or acquiescence, and F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the offer, promise or gift.

References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, which include any omission to exercise those functions, and any use of F's position as such an official, even if not within F's authority.

"Foreign public official" means an individual who holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), exercises a public

function for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or for any public agency or public enterprise of that country or territory (or subdivision), or is an official or agent of a public international organisation.

“Public international organisation” means an organisation whose members are any of the following:

- (a) countries or territories,
- (b) governments of countries or territories,
- (c) other public international organisations,
- (d) a mixture of any of the above.

Failure of commercial organisations to prevent bribery section 7 of the Bribery Act 2010

A relevant commercial organisation (“C”) is guilty of an offence under this section if a person (“A”) associated with C bribes another person intending to obtain or retain business for C, or to obtain or retain an advantage in the conduct of business for C.

But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

For the purposes of this section, A bribes another person if, and only if, A is, or would be, guilty of an offence under section 1 or 6 (whether or not A has been prosecuted for such an offence), or would be guilty of such an offence if section 12(2)(c) and (4) were omitted.

In this section —

- “partnership” means a partnership within the Partnership Act 1890, or a limited partnership registered under the Limited Partnerships Act 1907, or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,
- “relevant commercial organisation” means a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom, or a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom, and, for the purposes of this section, a trade or profession is a business.

Appendix 3

Section 92 Care Act 2014 Offence

Care provider of a specified description commits an offence if it supplies, publishes or otherwise makes available information of a specified description.

The supply, publication or making available by other means of information of that description is required under an enactment or other legal obligation, and the information is false or misleading in a material respect.

But it is a defence for a care provider to prove that it took all reasonable steps and exercised all due diligence to prevent the provision of false or misleading information.

Care provider means a public body which provides health or adult social care services in England, or a person who provides health or adult social care services in England pursuant to arrangements made with a public body exercising functions in connection with the provision of such services or care, or a person who provides health services or adult social care services in England all or part of the cost of which is paid for by means of a direct payment under section 12A of the National Health Service Act 2006 or under Part 1 of this Act.

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 Trust's 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.

Section 6 above refers.

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 party 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

Guidance relating to Procurement of goods and services

7.1 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 business relationships
- reject any business practice which might reasonably be deemed improper
- never use authority or position for 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 for all staff
- optimise the use of resources which for the benefit of my organisation
- comply with both the letter and the intent of:
 - National and international laws
 - agreed contractual obligations
 - CIPS guidance on professional practice
- declare any personal interest that might affect, or be seen by others to affect, impartiality or decision making
- ensure that the information given in the course of my work is accurate
- respect the confidentiality of information received 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

7.2 Procurement Statements

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

7.2.1 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.....

7.2.2 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	

7.3 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	

7.4 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.**

7.5 Compliance with relevant requirements

7.5.1 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.

7.5.2 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.

7.5.3 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

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.

7.5.4 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.

7.5.5 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.

7.5.6 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;

7.5.7 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.

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

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

7.5.10 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.

7.5.11 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.