

**NHS England
Custodial Health Services
Overarching Contract
2013/14**



NHS England Custodial Health Services Overarching Contract 2013/14

First published: November 2013

Gateway No: 00636

Updated:

**Prepared by Capsticks Solicitors LLP
on behalf of NHS England**

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

Index

1	AGREEMENT STATUS	6
2	PROVIDER GROUP COMMITTEE	6
3	OBLIGATIONS OF EACH PROVIDER	6
4	SERVICES AND EQUIPMENT	7
5	SERVICE USER TRANSFER AND DISCHARGE FROM CARE PROTOCOL	8
6	SAFEGUARDING ADULTS IN VULNERABLE CIRCUMSTANCES	8
7	PATIENT RECORDS	8
8	QUALITY AND REVIEW	9
9	EXPERIENCE SURVEYS	10
10	COMPLAINTS	11
11	LIABILITY AND INDEMNITY	11
12	INTRODUCING AND EXCLUDING PROVIDERS	12
13	GOVERNANCE, TRANSACTION RECORDS AND AUDIT	12
14	TERMINATION IN WHOLE OR IN PART OF THIS AGREEMENT	12
15	FURTHER CONSEQUENCES OF EXPIRY OR TERMINATION	13
16	DISPUTE RESOLUTION	13
17	VARIATIONS	13
18	WARRANTIES	14
19	CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION	14
20	NOTICES	14
21	FORCE MAJEURE	15
22	THIRD PARTY RIGHTS	15
23	WAIVER	15
24	ENTIRE AGREEMENT	15
25	SEVERABILITY	16
26	ASSIGNMENT AND SUB-CONTRACTING	16
27	EXCLUSION OF PARTNERSHIP	16

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

28	PROVISIONS SURVIVING TERMINATION	17
29	COUNTERPARTS	17
30	REMEDIES	17
31	COSTS AND EXPENSES	17
32	GOVERNING LAW AND JURISDICTION	17
	SCHEDULE 1 DEFINITIONS AND INTERPRETATION	19
	SCHEDULE 2 COMMISSIONER AND PROVIDERS	25
	SCHEDULE 3 FACILITIES	27
	SCHEDULE 4 PROVIDER GROUP COMMITTEE	28
	PROVIDER GROUP COMMITTEE – DELEGATED FUNCTIONS	35
	SCHEDULE 6 PRIORITY SERVICES	36
	SCHEDULE 7 OVERARCHING CONTRACT KPIS	37
	SCHEDULE 8 PAYMENT MECHANISM	38
	SCHEDULE 9 Co-ORDINATING PROVIDER ROLE	39
	ANNEX 1 BUSINESS CONTINUITY PLAN	40
	ANNEX 2 INTEGRATED TRANSFER AND DISCHARGE PLAN	41
	ANNEX 3 PRIORITY SERVICES CONTINUITY PLAN	42
	ANNEX 4 SERVICES DEVELOPMENT PLAN	43

PARTIES

(1) **The Commissioner**

(2-**[]**) **The Providers**

BACKGROUND:

- A Each of the Providers is a party to a Services Agreement with the Commissioner for the provision of the Commissioned Services at the Facilities.
- B The Commissioner requires the Providers (and any other provider who becomes a Provider during the term of this Agreement) to form the Provider Group Committee for the purpose of the efficient and effective management of the provision of the Commissioned Services.
- C The purpose of this Agreement is to establish the Provider Group Committee and to establish certain rights and obligations of the Providers for the purposes of collaboration in providing the Commissioned Services within the scope of the terms of reference of the Provider Group Committee, this Agreement and each Services Agreement.

1 Agreement Status

- 1.1 This Agreement is **[not [as between all parties]]**¹ an NHS Contract pursuant to the National Health Service Act 2006, section 9.

2 Provider Group Committee

- 2.1 In consideration of the promise by the Commissioner to pay to each Provider the sum of £1 (receipt of which is acknowledged by each Provider), the Providers agree to form the Provider Group Committee in accordance with the provisions of Schedule 4 and to comply with their obligations under this Agreement.

3 Obligations Of Each Provider

- 3.1 The Providers must act collaboratively and in good faith and co-operate with each other in accordance with Guidance, National Standards, the Law and Good Practice to ensure the performance of the Commissioned Services in

¹ The Overarching Contract may or may not be treated as an NHS contract between certain parties depending on the status of each Provider for the purposes of Section 9.

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

accordance with this Agreement and the each of the Services Agreements, having at all times regard to the welfare of Service Users.

- 3.2 The Providers must co-operate fully and liaise appropriately with each other in order to ensure a co-ordinated approach to promoting the quality of Service User care across all pathways and so as to achieve continuity in the provision of the Commissioned Services from the Facilities that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Providers or members of the public.
- 3.3 Each Provider remains responsible for performing its obligations and functions for delivery of the Commissioned Services to the Commissioner in accordance with their Services Agreement.
- 3.4 Each Provider recognises and agrees that each Provider will be separately and solely liable to the Commissioner for the provision of the Commissioned Services under its own Services Agreement, and for the purposes of this Agreement and as between all the Providers.

4 Services and Equipment

- 4.1 Subject at all times to the provisions of its Services Agreement, where a Provider proposes not to provide or to discontinue provision of the Commissioned Services to any Service User, the Provider must inform the Co-ordinating Provider as soon as reasonably practicable and must liaise, as appropriate, with the Co-ordinating Provider and any other Provider to resolve the issue of delivery of services to the Service User in a way that minimises any disruption to the Service User's care.
- 4.2 The Providers must have and at all times maintain a single, integrated up-to-date Priority Services Continuity Plan. The Providers must, in consultation with the Commissioner, implement the Priority Services Continuity Plan as required in any such event.
- 4.3 The Providers must maintain a single, integrated, up-to-date:
- 4.3.1 Business Continuity Plan; and
 - 4.3.2 Incident Response Plan
- and must notify the Commissioner as soon as reasonably practicable of the activation of either and in any event no later than 5 Operational Days from the date of such activation.
- 4.4 The Providers must each co-operate with each other to ensure:
- 4.4.1 the effective inter-operability of any equipment and/or systems used at the Facilities (including, without limitation, IT and telecommunications equipment and systems);

- 4.4.2 the provision of appropriate Service User reception services in accordance with Good Practice;
- 4.4.3 that the area from which it provides the Commissioned Services is a clean, safe and secure environment for Service Users, employees of the Providers and members of the public at all times; and
- 4.4.4 that the storage and distribution of, and access to, medicines and vaccines at the Facilities is properly managed and administered in accordance with the Law and Good Practice

so as to enable or facilitate the Providers duly and punctually to comply with their obligations under this Agreement and their Services Agreements.

- 4.5 The Providers must co-operate in delivering constant improvements in and integration of the Commissioned Services from the Facilities (in particular (but without limitation) regarding quality, clinical outcomes, efficiency, patient experience, information provision and the Facilities environment) and to achieve this objective the Providers will agree and maintain a single, integrated, up-to-date Services Development Plan.
- 4.6 For the purposes of this Clause 4 (*Services and Equipment*), where there is a conflict between the duties upon any Provider under this Agreement and its Services Agreement, the provisions of the Services Agreement will prevail unless this Agreement places a higher duty upon that Provider, in which case the provisions of this Agreement will prevail.

5 Integrated Transfer and Discharge Plan

- 5.1 The Providers must have and at all times maintain a single, integrated, up-to-date Integrated Transfer and Discharge Plan.

6 Safeguarding Adults In Vulnerable Circumstances

- 6.1 The Providers must have and at all times maintain a single, integrated up-to-date and consolidated Safeguarding Policy.

7 Patient Records

- 7.1 The Providers must co-operate with each other to ensure that Patient Records for all Service Users receiving treatment at the Facilities are created, maintained, processed, shared, stored and retained in accordance with the Law and Good Practice.
- 7.2 The Providers must co-operate with each other to ensure that there is an appropriate records management system in place at the Facilities so as to procure that each of the Providers can comply with their obligations under Clause 7.1 (*Patient Records*) and the terms of their Services Agreements.

7.3 The Provider Group Committee must from time to time appoint a Patient Record Guardian to procure the compliance of the Providers with the requirements of Clause 7.1 (*Patient Records*).

7.4 [Further provisions for local agreement]

8 Quality and Review

8.1 Each Provider warrants to the others that it will provide the Commissioned Services in accordance with its Services Agreement.

8.2 The Co-ordinating Provider must for each month of this Agreement produce a Quality Performance Report.

8.3 The Co-ordinating Provider must submit each Quality Performance Report to the Commissioner within 20 Operational Days of the end of the month to which it relates.

8.4 The Commissioner and the Co-ordinating Provider must:

8.4.1 review the performance of the Providers within 5 Operational Days (or such other period as the Commissioner may reasonably stipulate from time to time) of the Commissioner's receipt of the Quality Performance Report;

8.4.2 meet within 5 Operational Days (or such other period as the Commissioner may reasonably stipulate from time to time) of any request made by either the Commissioner or the Co-ordinating Provider; and

8.4.3 meet within 1 Operational Day (or such other period as the Commissioner may reasonably stipulate from time to time) of any request made by either the Commissioner or the Co-ordinating Provider in circumstances which either the Commissioner or the Co-ordinating Provider reasonably considers to constitute an emergency.

8.5 The meetings referred to in Clause 8.4 (*Quality and Review*) must consider and discuss, without limitation:

8.5.1 the Quality Performance Report;

8.5.2 any Serious Untoward Incidents or Patient Safety Incidents, Never Events, Lock Downs or reports or investigations of the same;

8.5.3 any complaints received;

8.5.4 any service innovation and/or development; and

8.5.5 any relevant incidents, reports or investigations.

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

- 8.6 Each quarter while this Agreement remains in force (and such other intervals as the Provider Group Committee may agree) the Provider Group Committee must hold a Review Meeting to review performance under this Agreement and discuss matters they consider necessary in relation to it, taking into account any or all of the following:
- 8.6.1 any complaints, Patient Safety Incidents or Serious Untoward Incidents, and any improvements to the Commissioned Services introduced as a result;
 - 8.6.2 any need for new services, treatments, procedures or technologies to be introduced at the Facilities;
 - 8.6.3 the sharing of information concerning the development of best practice; and
 - 8.6.4 any other issues or concerns regarding the Providers' ability to provide the Commissioned Services from the Facilities.
- 8.7 Each Review Meeting must be recorded in a Review Meeting Record, signed by the Chair, containing a summary of all the matters raised during the Review Meeting (including, without limitation, issues raised, actions taken, agreements reached and disputes raised).
- 8.8 The Secretary must, within 5 Operational Days of each Review Meeting, send a copy of the Review Meeting Record to the Commissioner.
- 8.9 Within 10 Operational Days of the Commissioner's request, the Provider Group Committee must meet with representatives of the Commissioner to discuss any matters arising from a Review Meeting Record.
- 8.10 Within 3 months of the end of each Contract Year the Provider Group Committee must publish a review of clinical quality in respect of the Commissioned Services in that Contract Year, which must take account of matters identified and actions taken in the Review Meetings conducted in that Contract Year, and which must include without limitation summary details of:
- 8.10.1 compliance or any failure to comply with the Quality Standards;
 - 8.10.2 an account of each Provider's performance under its Services Agreement;
 - 8.10.3 any complaints received relating to the Commissioned Services; and
 - 8.10.4 any Service User experience surveys conducted.

9 Experience Surveys

- 9.1 The Providers must act (and must ensure that any permitted sub-contractor acts) collaboratively in carrying out the Surveys. Subject to the requirements of the

Law or as otherwise required by this Agreement, the form, frequency and reporting of those Surveys will be in accordance with the requirements of the relevant Services Agreements or as otherwise agreed between the Commissioner and the Providers from time to time.

10 Complaints

- 10.1 The Providers must publish, maintain and operate a common complaints procedure that complies with the Law and ensure that Service Users are made aware of that complaints procedure and how to use it effectively.
- 10.2 The Co-ordinating Provider must provide to the Commissioner such details of the common complaints procedure as the Commissioner may require from time to time.
- 10.3 The Providers must implement learning from such complaints and demonstrate at Review Meetings the extent to which any improvements in the Commissioned Services have been made as a result.

11 Liability and Indemnity

- 11.1 Without affecting its liability for breach of any of its obligations under this Agreement, each Provider will be liable to the Commissioner and to every other Provider for, and must indemnify and keep each Commissioner and every other Provider indemnified against:

11.1.1 any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever in respect of:

- (a) any loss of or damage to property (whether real or personal); and
- (b) any injury to any person, including injury resulting in death; and

11.1.2 any Losses of the Commissioner or any other Provider

that result from or arise out of that Provider's negligence or breach of contract in connection with the performance of this Agreement or its Services Agreement, except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of the Party seeking to rely on the indemnity contained in this Clause 11 (*Liability and Indemnity*).

- 11.2 Nothing in this Agreement will exclude or limit the liability of either Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation.

- 11.3 Except where expressly stated to the contrary, an indemnity under this Agreement will not apply and there will be no right to claim damages for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by any Party under that indemnity or on that basis is for Indirect Losses.
- 11.4 Each Party will at all times take all reasonable steps to minimise and mitigate any Losses or other matters for which one Party is entitled to be indemnified by or to bring a claim against the other under this Agreement.
- 11.5 Each Provider must ensure that the Indemnity Arrangements it puts in place in accordance with the requirements of its Services Agreement are sufficient and appropriate also to cover any liability that may arise under or in connection with this Agreement.

12 Introducing And Excluding Providers

- 12.1 A New Provider may be introduced to the Facilities, and therefore become a Provider for the purposes of this Agreement, if:
- 12.1.1 the Commissioner has proposed, or otherwise consents in writing, that the New Provider be introduced to the Facilities;
 - 12.1.2 the Commissioner has executed a copy of this Agreement that includes the New Provider's details at Schedule 2 Part 4 and any other agreed amendments.
- 12.2 If a Provider fails to provide any information, or fails to sign any document, in accordance with this Agreement or as otherwise reasonably required by the Provider Group Committee, the Provider Group Committee may by further decision exclude that Provider from the decisions of the Provider Group Committee with effect from the date of that decision but the excluded Provider will continue to be bound by all of its other obligations under this Agreement.

13 Governance, Transaction Records and Audit

[For local agreement]

14 Termination In Whole Or In Part Of This Agreement

- 14.1 Subject to Clause 28 (*Provisions Surviving Termination*), this Agreement will:
- 14.1.1 in respect of a Provider, expire automatically upon the expiry or termination of that Provider's Services Agreement; or
 - 14.1.2 in respect of a Provider, be extended for the same term as the term of any extension of that Provider's Services Agreement provided that

there remains at least one other Provider who is party to this Agreement at the time of that extension;² or

14.1.3 terminate automatically and immediately where there exists just one Provider that remains party to this Agreement.

14.2 Where this Agreement expires or is terminated in part so that a Provider ceases to be a party to this Agreement:

14.2.1 this Agreement will continue in full force and effect as between any remaining parties notwithstanding a Provider ceasing to be a party to this Agreement;

14.2.2 all appointments of the representatives of the Provider in respect of which this Agreement is expiring or terminating to the Provider Group Committee and any other office of the Provider Group Committee will be terminated immediately;

14.2.3 interim accounts for the Management Fund as at the relevant Termination Date will be prepared and circulated to all Providers and any amounts agreed to be paid (if any) to the departing Provider must be paid in accordance with the requirements of Schedule 4 (*Management Fund*); and

14.2.4 the Provider in question will co-operate fully with the Provider Group Committee, the Co-ordinating Provider, the remaining Providers and any successor provider of the Commissioned Services or any part of those services in order to ensure continuity and a smooth transfer of such services, and to avoid any inconvenience or any risk to the health and safety of Service Users or employees of any Provider or any member of the public.

15 Further Consequences of Expiry or Termination³

[For local agreement]

16 Dispute Resolution Procedure

16.1 Any Dispute will be resolved in accordance with the Dispute Resolution Procedure.

17 Variations

² Delete if none of the Services Agreements specifically provides for extension.

³ For use if there are significant local, service and/or facility-specific factors requiring special treatment.

17.1 Any amendment, waiver or variation of this Agreement will not be binding on the Parties unless set out in writing, expressed to amend, waive or vary this Agreement and signed by or on behalf of each of the Parties.

18 Warranties

18.1 Each of the Parties warrants to the others that:

18.1.1 it has full power and authority to enter into this Agreement and all governmental or official approvals and consents and all necessary consents have been obtained and are in full force and effect;

18.1.2 its execution of this Agreement does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets; and

18.1.3 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 Agreement.

18.2 The warranties set out in this Clause 18 (*Warranties*) are given on the date of this Agreement and repeated on every day during the term of this Agreement.

19 Confidential Information and Freedom of Information

19.1 The Parties must comply with the terms of General Condition 20 of the NHS Standard Contract (*Confidential Information of the Parties*) as if set out here in full, the necessary changes being deemed made.

19.2 The Parties must comply with the terms of General Conditions 21.5-21.9 of the NHS Standard Contract (*Data Protection, Freedom of Information and Transparency*) as if set out here in full, the necessary changes being deemed made.

20 Notices

20.1 Any notices given under this Agreement must be in writing and must be served by hand, post or e-mail to the address for the relevant party as follows:

20.1.1 in respect of each Provider as set out in Schedule 2 Part 5;

20.1.2 in respect of the Commissioner as set out in Schedule 2 Part 2.

20.2 Notices:

20.2.1 by post will be effective upon the earlier of actual receipt, or 5 Operational Days after mailing;

20.2.2 by hand will be effective upon delivery;

20.2.3 by e-mail will be effective when sent in legible form, but only if, following transmission, the sender does not receive a non-delivery message.

21 Force Majeure

21.1 If an Event of Force Majeure occurs, the Affected Party must:

21.1.1 take all reasonable steps to mitigate the consequences of that event;

21.1.2 resume performance of its obligations as soon as practicable; and

21.1.3 use all reasonable efforts to remedy its failure to perform its obligations under this Agreement.

21.2 The Affected Party must serve an initial written notice on the other Parties immediately when it becomes aware of the Event of Force Majeure. This initial notice must give sufficient detail to identify the Event of Force Majeure and its likely impact. The Affected Party must then serve a more detailed written notice within a further 5 Operational Days. This more detailed notice must contain all relevant information as is available, including the effect of the Event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome the event and resume full delivery of its obligations under this Agreement.

21.3 If it has complied with its obligations under Clauses 21.1 and 21.2 (*Force Majeure*), the Affected Party will be relieved from liability under this Agreement if and to the extent that it is not able to perform its obligations under this Agreement due to the Event of Force Majeure.

22 Third Party Rights

22.1 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Agreement.

22.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a Party to this Agreement.

23 Waiver

23.1 Any relaxation or delay of any Party in exercising any right under this Agreement must not be taken as a waiver of that right and must not affect the ability of that Party subsequently to exercise that right.

24 Entire Agreement

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

- 24.1 This Agreement constitutes the entire agreement and understanding of the Parties and, subject to the terms of each Services Agreement, supersedes any previous agreement between the Parties relating to the subject matter of this Agreement.
- 24.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on and must have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.
- 24.3 Nothing in this Clause 24 (*Entire Agreement*) will exclude any liability for fraud or any fraudulent misrepresentation.

25 Severability

- 25.1 If any part of this Agreement is declared invalid or otherwise unenforceable, it will be severed from this Agreement and this will not affect the validity and/or enforceability of the remaining provisions.

26 Assignment And Sub-Contracting

- 26.1 No Provider may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or obligations under this Agreement without the prior written consent of the Commissioner.
- 26.2 Each Provider will be responsible for the performance of and will be liable to the other Parties for the acts and omissions of any third party to which it may assign, transfer or otherwise dispose of any obligation under this Agreement as if they were the acts or omissions of that Provider unless:
- 26.2.1 the Provider in question has obtained the prior consent of the Commissioner in accordance with Clause 26.1 (*Assignment and Sub-Contracting*); and
- 26.2.2 the terms of that assignment, transfer or disposal have been approved and accepted by that third party so that that third party is liable to the other Parties for its acts and omissions.
- 26.3 This Agreement will be binding on and will be to the benefit of the Commissioner and each Provider and their respective successors and permitted transferees and assigns.

27 Exclusion Of Partnership

- 27.1 Nothing in this Agreement will create a partnership or joint venture or relationship of employer and employee or principal and agent between any of the Parties.

28 Provisions Surviving Termination

28.1 Any rights, duties or obligations of any of the Parties which are expressed to survive, or which otherwise by necessary implication survive the expiry or termination for any reason of this Agreement, together with all indemnities, will continue after such expiry or termination, subject to any limitation of time expressed in this Agreement.

29 Counterparts

29.1 This Agreement may be executed in any number of counterparts, each of which will be regarded as an original, but all of which together will constitute one agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart.

30 Remedies

30.1 Except as expressly set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given under this Agreement or existing at law or in equity, by statute or otherwise.

30.2 Neither the expiry nor the termination of this Agreement will prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to any Provider or to the Commissioner.

31 Costs And Expenses

31.1 Each Party will be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

32 Governing Law And Jurisdiction

32.1 This Agreement will be considered as a contract made in England and will be subject to the laws of England.

32.2 Subject to the provisions of Clause 16 (*Dispute Resolution*), the Parties agree that that the courts of England will have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement.

SIGNED by

.....
Signature

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

[INSERT AUTHORISED SIGNATORY'S NAME] for and on behalf of [INSERT COMMISSIONER NAME]

Title

.....
Date

SIGNED by

.....
Signature

[INSERT AUTHORISED SIGNATORY'S NAME] for and on behalf of [INSERT PROVIDER NAME]

Title

.....
Date

[INSERT AS ABOVE FOR EACH PROVIDER]

SCHEDULE 1
Definitions and Interpretation

1. The headings in this Agreement will not affect its interpretation.
2. Reference to any statute or statutory provision, to Law or to Guidance includes a reference to that statute or statutory provision, Law or Guidance as from time to time updated, amended, extended, supplemented or re-enacted.
3. References to a statutory provision includes any subordinate legislation made from time to time under that provision.
4. References to Clauses, Conditions, Sections and Schedules are to the Conditions, Sections and Schedules of this Agreement or the NHS Standard Contract as the context requires, unless expressly stated otherwise.
5. References to any body, organisation or office includes reference to its applicable successor from time to time.
6. Any references to this Agreement or any other documents includes reference to this Agreement or those 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. Use of the masculine includes the feminine and vice versa.
9. Use of the term “including” or “includes” will be interpreted as being without limitation.
10. Words and phrases defined in the NHS Standard Contract have the same meanings when used in this Agreement.
11. The following words and phrases have the following meanings:

Agreement this agreement incorporating the Schedules

Business Continuity Plan the Providers’ plan relating to the continuity of the Commissioned Services from the Facilities, as agreed between and as amended by the Providers and approved by the Commissioner from time to time and annexed to this Agreement at Annex 1 (*Business Continuity Plan*)

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

Chair	the person appointed by the Provider Group Committee as chairman of the Provider Group Committee pursuant to the provisions of Schedule 4 (<i>Provider Group Committee</i>)
Commissioned Services	the services provided, or to be provided, by a Provider pursuant to its Services Agreement
Commissioner	the commissioner whose name and address appears at Schedule 2 Part 4 (<i>Commissioner and Providers</i>)
Contract Year	each period of 12 months starting on the date of this Agreement and each anniversary thereafter whilst this Agreement remains in effect, provided that the last Contract Year must be such period as elapses between the start of such Contract Year and the earlier of the date of the expiry and the date of termination of this Agreement
Co-ordinating Provider	the Provider appointed by the Provider Group Committee to undertake the functions referred to at Schedule 4 (<i>Provider Group Committee</i>)
Dispute	any dispute arising between two or more of the Parties in connection with this Agreement or their respective rights and obligations under it
Dispute Resolution Procedure	the procedure set out in General Condition 14 of the NHS Standard Contract (<i>Dispute Resolution</i>), and for the purposes of this Agreement Parties in Dispute means the Commissioner and/or any one or more Providers, as appropriate
Facilities	the facilities described in Schedule 3 (<i>Facilities</i>)
Indemnity Arrangement	either: (i) a policy of insurance; (ii) an arrangement made for the

purposes of indemnifying a person or organisation; or

(iii) a combination of (i) and (ii)

Indirect Losses

loss of profits (other than in the case of a Provider profits directly and solely attributable to provision by that Provider of the Commissioned 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

Integrated Transfer and Discharge Plan

a plan to ensure integration between transfer and discharge protocols and procedures to create an overarching process that applies to all Providers and Services Agreements as amended and approved by the Commissioner from time to time and annexed to this Agreement at Annex 2 (*Integrated Transfer and Discharge Plan*)

Lock Down

any course of action implemented in the case of emergency to control the movement of persons or information within the Facilities

Losses

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, to avoid doubt, excluding Indirect Losses

Management Fund

the fund (if any) contributed by the Providers to support the Provider Group Committee, its sub-committees and the Co-ordinating Provider pursuant to the provisions of Schedule 4 (*Provider Group Committee*)

New Provider

a new provider contracted to provide services at the Facilities

NHS Contract

a contract so defined in section 9 of the National Health Service Act 2006 (as amended)

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

NHS Standard Contract	the NHS Standard Contract published by NHS England from time to time
Patient Record	a record which consists of information relating to the particular physical or mental health or condition of a Service User
Patient Record Guardian	a person responsible for safeguarding Patient Records and the confidentiality of Patient information
Patient Safety Incident	any unintended or unexpected incident which could have or did lead to harm to one or more Service Users
Party	a party to this Agreement as identified at Schedule 2 (<i>Commissioner and Providers</i>)
Priority Services	those services which are identified by the Commissioner as being required as a priority at the Facilities, details of which are set out in Schedule 6 (<i>Priority Services</i>)
Priority Services Continuity Plan	a plan to ensure the continual availability of the Priority Services in the event of any interruption or suspension of a Provider's ability to provide its services from the Facilities as amended and approved by the Commissioner from time to time and annexed to this Agreement at Annex 3 (<i>Priority Services Continuity Plan</i>)
Provider Group Committee	the committee formed by the Providers for the purposes of this Agreement
Providers	the Providers whose names and addresses are set out at Schedule 2 of this Agreement (<i>Commissioner and Providers</i>)
Quality Performance Report	a report detailing the performance of the Commissioned Services at the Facilities, including without limitation: (i) the extent to which the Provider Group Committee is collaborating effectively so that the Providers are delivering the Commissioned Services in accordance with this Agreement and the Services Agreements; and

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

- (ii) details of, and reasons for, any failure of the Providers to work on a collaborative basis and/or to meet the Quality Standards

Quality Standards	the quality standards and performance indicators (as applicable) under each of the Providers' Services Agreements
Review Meeting	a meeting held in accordance with and for the purposes described in Clause 8.6 (<i>Quality and Review</i>)
Review Meeting Record	the record of the Review Meeting created in accordance with Clause 8.7 (<i>Quality and Review</i>)
Safeguarding Policy	a policy for safeguarding and promoting the welfare of adults in vulnerable circumstances
Secretary	the person appointed by the Provider Group Committee as secretary of the Provider Group Committee under Schedule 4 (<i>Provider Group Committee</i>)
Serious Untoward Incident	an incident or accident or near-miss where a Service User, member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death at any of the Facilities and where the actions of a Provider or its staff are likely to be of significant public concern
Services Agreement	a contract entered into by the Commissioner and each Provider for the provision of the Commissioned Services, and references to the Services Agreement include all or any one of those contracts
Services Development Plan	a consolidated plan developed by the Providers in accordance with the provisions of Clause 4.5 (<i>Services and Equipment</i>) as amended and approved by the Commissioner from time to time and annexed to this Agreement at Annex 4
Surveys	any surveys the Commissioner wishes to conduct
Termination Date	for the purposes of Clause 14.2 (<i>Termination in Whole Or In Part Of This Agreement</i>), the date upon which this

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

Agreement expires or terminates pursuant
to Clauses 14.1.1 or 14.1.3

SCHEDULE 2
Commissioner and Providers

Part 1: The Commissioner

NAME OF COMMISSIONER	ADDRESS

Part 2: Commissioner address for acceptance of Providers' notices

[Insert address where the Providers can send notices]

Part 3: The Provider appointed as Co-ordinating Provider

NAME OF ASSOCIATE PROVIDER APPOINTED AS CO-ORDINATING PROVIDER	ADDRESS	NAME OF CO-ORDINATING PROVIDER REPRESENTATIVE

Part 4: The Providers

NAME OF ASSOCIATE PROVIDER	ADDRESS	NAME OF COMMITTEE REPRESENTATIVE (SCHEDULE 4)

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

Part 5: Providers' address for acceptance of Commissioner notices

[Insert address where the Commissioner can send notices]

SCHEDULE 3
Facilities

[INSERT ADDRESS DETAILS OF EACH FACILITY]

SCHEDULE 4
Provider Group Committee

[For local agreement. Example provisions follow]

1. Provider Group Committee

1.1 The Providers must establish a joint committee which will be known as the Provider Group Committee.

1.2 The Providers jointly delegate such functions (set out at Schedule 5) as are required for the proper performance of the Providers' obligations under this Agreement and further as the Providers may agree from time to time to the Provider Group Committee with authority:

1.2.1 to form one or more sub-committees; and

1.2.2 to appoint one of the Providers as the Co-ordinating Provider (who at the date of this Agreement will be the body referred to at Schedule 2 part 3 of this Agreement) primarily responsible for the delivery of all services at the Facilities

and the Provider Group Committee may sub-delegate any of those functions to any member of the Provider Group Committee and/or to the Co-ordinating Provider in accordance with paragraph 5.2 on such terms and for such purposes as the Provider Group Committee thinks fit.

2. The Provider Group Committee: Membership And Meetings

2.1 The membership of the Provider Group Committee will consist of one representative appointed by each Provider from time to time. The representatives appointed as at the date of this Agreement are set out in Schedule 2 Part 3.

2.2 The period of the appointment of each member of the Provider Group Committee will be fixed by the appointing Provider who will be responsible for its representative's remuneration and expenses.

2.3 Ordinary meetings of the Provider Group Committee must be held at least once every [4 weeks] and must be convened by the Secretary by at least [7 days] prior notice by e-mail to each member of the Provider Group Committee.

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

- 2.4 Special meetings of the Provider Group Committee may be convened by at least 48 hours prior notice by e-mail to each member of the Provider Group Committee from the Chair:
- 2.4.1 at any time and for any purpose; and
- 2.4.2 immediately after receipt of a notice from a Provider given under paragraph 2.11.
- 2.5 Special meetings of the Provider Group Committee may be convened immediately or without the normal period of notice where any of the Providers reasonably conclude that there exists emergency circumstances that require the Provider Group Committee's urgent attention.
- 2.6 A Provider not having its own representative member will nevertheless be entitled to receive all notices of meetings.
- 2.7 Notices of meetings must set out the terms of any proposed decision or recommendation to be considered, or a sufficient summary of them.
- 2.8 Except where paragraph 2.2 applies [Insert number for valid quorum of Provider Group Committee] members present and representing [Insert number for valid quorum of Provider Group Committee] Providers must be a quorum for a Provider Group Committee meeting.
- 2.9 A Provider member present will have one vote for itself and, if it represents other Providers, one vote for each of them. No other persons or parties will be entitled to vote.
- 2.10 A Provider member not present itself will be entitled to one vote by proxy, addressed to the Chair by e-mail so as to be received not later than 1 hour before the time for which the meeting is convened, indicating the proposed decision(s) for which it is given and in each case whether it is for or against it.
- 2.11 Any Provider who is dissatisfied by a proposal of the Provider Group Committee may give notice by e-mail to the Chair within 2 Operational Days after receipt of the relevant minute, requiring, with reasons, the proposal to be referred to the Provider Group Committee in special meeting, which must be convened under paragraph 2.4.

3. The Provider Group Committee: Officers And Support

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

- 3.1 The Provider Group Committee, in exercising the functions delegated to it, must from time to time appoint a Chair and a Secretary, and must fix their respective periods of office.
- 3.2 The Provider Group Committee may from time to time negotiate and obtain:
- 3.2.1 Providers' agreement to provide representative members of any applicable sub-committees;
- 3.2.2 Providers' agreement to one of them being appointed to act as Co-ordinating Provider.
- 3.3 The Co-ordinated Provider will be appointed by the Provider Group Committee to exercise the functions referred to in paragraph 5 of this Schedule 4 (*The Co-ordinating Provider: Functions*).
- 3.4 It is not envisaged that there will exist any formal terms or agreement for the payment of remuneration in relation to the Chair, the Secretary and/or the Co-ordinating Provider executing their duties under this Agreement. In the event that the Providers do require such terms and/or remuneration to be agreed, it is acknowledged that this will remain a matter for the Providers and/or the Provider Group Committee to resolve themselves and the Commissioner will have no liability or any other involvement in that respect.

4. The Provider Group Committee: Decisions And Objections

- 4.1 Decisions of the Provider Group Committee may only be passed by a quorate meeting with members present or voting by proxy by a simple majority vote.
- 4.2 A decision of the Provider Group Committee may be made, provided due notice has been given but without a formal ordinary or special meeting, if it is recorded by a vote in favour by e-mail from each Provider and is certified in writing by the Chair. For such decisions each Provider will have one vote.
- 4.3 Minutes must be kept of all proceedings and decisions of the Provider Group Committee and copies of them must be circulated by the Secretary to all Providers (whether or not present) by e-mail within 48 hours after the end of the meeting to which they relate. Copies of minutes will be sent to the Commissioner by the means requested by it.
- 4.4 Any Provider who, acting in good faith, is dissatisfied by a decision of the Provider Group Committee may give notice by e-mail to the Chair within 2 Operational Days

after the decision, requiring it to be referred to the Dispute Resolution Procedure. The Dispute Resolution Procedure must be invoked as soon as reasonably practicable following the receipt of such notice and the original decision of the Provider Group Committee will be suspended until the conclusion of the Dispute Resolution Procedure.

- 4.5 A decision following the correct implementation of the Dispute Resolution Procedure will be final and binding on each of the Providers.
- 4.6 A decision not required to be referred to the Dispute Resolution Procedure within the time specified in paragraph 4.4 will be binding on all Providers.

5. The Co-ordinating Provider: Functions

- 5.1 The Co-ordinating Provider is appointed by the Provider Group Committee to co-ordinate all aspects of the Providers' compliance with obligations under this Agreement and under each of the Services Agreements, provided always that the Co-ordinating Provider acts in accordance with the delegated authority of each named Provider.
- 5.2 Subject to the agreement of the Commissioner, the Provider Group Committee may delegate such additional functions (which as at the date of this Agreement are set out at Schedule 9) to the Co-ordinating Provider as it may from time to time deem appropriate having regard at all times to the purpose of the Provider Group Committee and the best interests of Service Users.
- 5.3 As a minimum each Provider agrees the following:
 - 5.3.1 that all payments due and payable by the Commissioner to each Provider under its Services Agreement will be deemed duly discharged by the Commissioner paying such sums (if any) to the Co-ordinating Provider and the Co-ordinating Provider agrees to be liable for making payment to each Provider as appropriate and the provisions of Schedule 8 (Payment Mechanism) will apply; and
 - 5.3.2 that any increase or decrease in activity levels under any Services Agreement (for example but without limitation, by reason of re-organisation within or re-designation of any of the Facilities) will be at the risk of each Provider as the case may be and it will be the responsibility of the Co-ordinating Provider to ensure the continuity of all of the healthcare services at the Facilities in a manner satisfactory to the Commissioner and the person responsible for the operation of the Facilities.

- 5.4 The Co-ordinating Provider will be responsible for monitoring the key performance indicators set out in each of the Services Agreements and the compliance of each of the Providers generally with the terms of each applicable Services Agreement. The Co-ordinating Provider must notify the Commissioner of all matters in relation to the performance of each Provider where the Commissioner would be entitled under any Services Agreement to serve any notice in relation to the performance of the relevant Provider.
- 5.5 When reporting to the Commissioner in accordance with the provisions of Clause 8.2 (*Quality and Review*), the Co-ordinating Provider must report to the Commissioner on the Overarching Contract KPIs set out at Schedule 7 in accordance with the provisions of Schedule 7 and each Provider expressly agrees to be bound by the provisions of Schedule 7 and further agrees that such provisions are reasonable.
- 5.6 The Co-ordinating Provider will also be responsible for the exercise of those functions as are set out in Schedule 9 and any additional functions as may be determined from time to time in accordance with the provisions of paragraph 5.2.

6. Management Fund

- 6.1 The Provider Group Committee may appoint by annual rotation a Provider:
- 6.1.1 to collect contributions of amounts set out in Schedule 4 (Management Fund) or as otherwise set from time to time by the Provider Group Committee, from the Providers to the Management Fund;
 - 6.1.2 to open in the Provider's name and administer a bank account on behalf of the Provider Group Committee and designated for the Management Fund; and
 - 6.1.3 to make payments from the Management Fund from time to time authorised by the Provider Group Committee.

[Other matters for local agreement]

7. Indemnity

- 7.1 Each Provider further undertakes to indemnify:
- 7.1.1 each representative member of the Provider Group Committee;

7.1.2 the Co-ordinating Provider and the members of its board and its employees;
and

7.1.3 each of the Secretary and the Chair

against any liability, damages, costs, claims or proceedings arising out of or in connection with any act or omission (which is not recklessly negligent, fraudulent or involving criminal liability) committed or omitted by it during the course of performing its Provider Group Committee duties.

8. Further obligations

8.1 Each Provider must:

8.1.1 appoint a representative member to the Provider Group Committee;

8.1.2 respond promptly to all requests for, and promptly offer information or proposals relevant to, collaborative functions of the Provider Group Committee and the Co-ordinating Provider; and

8.1.3 pay its share of the Management Fund in the proportion, and in accordance with the requirements, set out in Schedule 4 (Management Fund).

8.2 Each Provider must, as soon as reasonably practicable, share with every other Provider the results of any audit, evaluation, inspection or investigation in relation to their Commissioned Services, to which the Provider has access and which it can disclose in accordance with the Law.

9. Reporting

9.1 Each Provider must provide the Co-ordinating Provider with such information as may be reasonably required by the Co-ordinating Provider for the proper performance of its obligations under this Agreement in a timely manner, at all times ensuring its accuracy and completeness.

9.2 Subject to the Providers complying with their obligations under paragraph 9.1, the Co-ordinating Provider must:

9.2.1 share the information submitted to it pursuant to paragraph 9.1 with the Provider Group Committee; and

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

9.2.2 provide each Provider with such summaries and/or reports of finance, activity and overall performance of the Providers under their Services Agreements and of the Facilities as a whole as the Providers may agree

each of which must be prepared and delivered in accordance with the requirements set by the Commissioner from time to time whether under the Services Agreements or otherwise.

9.3 The Co-ordinating Provider must, within 5 Operational Days of the Commissioner's request, provide the Commissioner with such of the information referred to in this paragraph 9 and any other information, policies, plans and processes as the Commissioner may reasonably require from time to time.

9.4 Where the Co-ordinating Provider reasonably believes that a Provider has failed to meet the requirements of this paragraph 9 with regard to the provision and/or accuracy and/or completeness of information, the Co-ordinating Provider must inform the relevant Provider of this by notice in writing and that such failure must be rectified and/or the information provided within 5 Operational Days.

9.5 The Co-ordinating Provider may from time to time notify any of the Providers of what further information it may reasonably require in order for the Provider Group Committee to monitor the performance of each Provider and the Facilities (including, in particular, compliance with any Quality Standards), and the Providers must provide such information in a timely manner ensuring its accuracy and completeness.

SCHEDULE 5

Provider Group Committee – delegated functions

[For local agreement]

SCHEDULE 6
Priority Services

[Insert details of those services identified by the Commissioner as being a priority]

SCHEDULE 7
Overarching Contract KPIs

[For local agreement]

SCHEDULE 8
Payment Mechanism

[For local agreement]

SCHEDULE 9
Co-ordinating Provider Role

The Co-ordinating Provider role must include:

- Facilitating meetings
- Reporting to The Commissioner
- Administrative Tasks
- Dealing with Notifications

[Further duties for local agreement]

[Insert any further provisions pursuant to Schedule 4, paragraph 5.2]

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

Annex 1
Business Continuity Plan

[for local agreement]

Annex 2
Integrated Transfer and Discharge Plan

[for local agreement]

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

Annex 3
Priority Services Continuity Plan

[for local agreement]

NHS ENGLAND
2013/14 NHS OVERARCHING CONTRACT

Annex 4
Services Development Plan

[for local agreement]