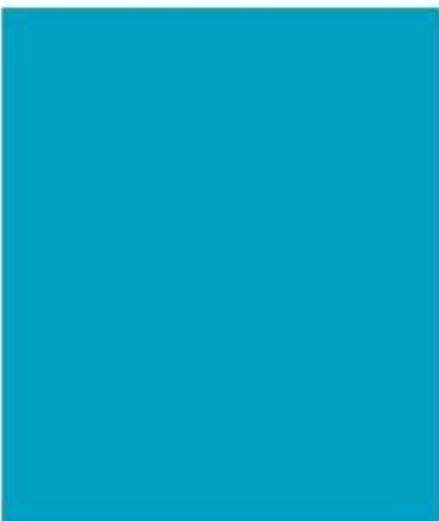


**NHS Standard Contract
2014/15**

General Conditions



NHS Standard Contract

2014/15

General Conditions

First published: December 2013

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General Conditions
2014/15 NHS Standard Contract

GC1 Definitions and Interpretation

- 1.1 This Contract is to be interpreted in accordance with the Definitions and Interpretation, unless the context requires otherwise.
- 1.2 If there is any conflict or inconsistency between the provisions of this Contract, that conflict or inconsistency must be resolved according to the following order of priority:
- 1.2.1 the General Conditions;
 - 1.2.2 the Service Conditions; and
 - 1.2.3 the Particulars,
- unless this Contract expressly states otherwise.
- 1.3 If there is any conflict or inconsistency between the provisions of this Contract and any of the documents listed or referred to in Schedule 1 Part B (*Commissioner Documents*) and/or Schedule 2 Part G (*Other Local Agreements, Policies and Procedures*) and/or Schedule 5 Part A (*Documents Relied On*) the provisions of this Contract will prevail.

GC2 Effective Date and Duration

- 2.1 This Contract will take effect on the Effective Date.
- 2.2 This Contract expires on the Expiry Date, unless terminated earlier in accordance with General Condition 17 (*Termination*).

GC3 Service Commencement

- 3.1 The Provider will begin delivery of the Services on the later of:
- 3.1.1 the Expected Service Commencement Date; and
 - 3.1.2 the day after the date on which all Conditions Precedent are satisfied.

GC4 Transition Period

- 4.1 By no later than the Expected Service Commencement Date:
- 4.1.1 the Provider must satisfy the Conditions Precedent; and
 - 4.1.2 the Co-ordinating Commissioner must deliver the Commissioner Documents to the Provider.
- 4.2 The Parties must work together and use all reasonable endeavours to assist each other to facilitate the delivery of the Services with effect from the Expected Service Commencement Date.
- 4.3 The Parties must implement any Transition Arrangements set out in Schedule 2 Part H (*Transition Arrangements*).
- 4.4 The Provider must notify the Co-ordinating Commissioner of any material change to any Conditions Precedent document it has delivered under General Condition 4.1.1 within 5 Operational Days of becoming aware of that change.

GC5 Staff

General

- 5.1 The Provider must apply the Principles of Good Employment Practice (where applicable) and the staff pledges and responsibilities outlined in the NHS Constitution.
- 5.2 The Provider must:
- 5.2.1 ensure that there are sufficient appropriately registered, qualified and experienced medical, nursing and other clinical and non-clinical Staff to enable the Services to be provided in all respects and at all times in accordance with this Contract;
 - 5.2.2 in determining planned Staff numbers and skill mix for Services, have regard to applicable Staffing Guidance;
 - 5.2.3 continually evaluate in respect of each Service individually and the Services as a whole:
 - 5.2.3.1 actual numbers and skill mix of clinical Staff on duty against planned numbers and skill mix of clinical Staff on a shift-by-shift basis; and
 - 5.2.3.2 the impact of variations in actual numbers and skill mix of clinical Staff on duty on Service User experience and outcomes, by reference to clinical audit data, NHS Safety Thermometer, data on complaints, Patient Safety Incidents and Never Events and the results of Service User and Staff involvement (including Surveys);
 - 5.2.4 undertake a detailed review of staffing requirements every 6 months to ensure that the Provider remains able to meet the requirements set out in General Condition 5.2.1;
 - 5.2.5 report to the Co-ordinating Commissioner immediately any material concern in relation to the safety of Service Users and/or the quality or outcomes of any Service arising from those reviews and evaluations;
 - 5.2.6 report to the Co-ordinating Commissioner on the outcome of those reviews and evaluations at least once every 6 months, and in any event as soon as practicable and by no later than 20 Operational Days following receipt of written request;
 - 5.2.7 implement Lessons Learned from those reviews and evaluations, and demonstrate at Review Meetings the extent to which improvements to each affected Service have been made as a result; and
 - 5.2.8 make the outcome of those reviews and evaluations and Lessons Learned available to the public by disclosure at public board meetings, publication on the Provider's website or by other means, in each case as approved by the Co-ordinating Commissioner, and in each case at least once every 6 months.
- 5.3 The Provider must ensure that all Staff:
- 5.3.1 if applicable, are registered with and where required have completed their revalidations by the appropriate professional regulatory body;
 - 5.3.2 have the appropriate qualifications, experience, skills and competencies to perform the duties required of them and are appropriately supervised (including where appropriate through preceptorship, clinical supervision and rotations arrangements), managerially and professionally;

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- 5.3.3 are covered by the Provider's (and/or by the relevant Sub-Contractor's) Indemnity Arrangements for the provision of the Services;
 - 5.3.4 carry, and where appropriate display, valid and appropriate identification in accordance with Good Health and/or Social Care Practice; and
 - 5.3.5 are aware of and respect equality and human rights of colleagues, Service Users, Carers and the public.
- 5.4 The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:
- 5.4.1 proper and sufficient continuous professional and personal development, clinical supervision, training and instruction;
 - 5.4.2 full and detailed appraisal (in terms of performance and on-going education and training) using where applicable the Knowledge and Skills Framework or a similar equivalent framework; and
 - 5.4.3 professional leadership appropriate to the Services,
- each in accordance with Good Practice and the standards of their relevant professional body, if any.
- 5.5 At the request of the Co-ordinating Commissioner, the Provider must provide details of its analysis of Staff training needs and a summary of Staff training provided and appraisals undertaken.
- 5.6 The Provider must cooperate with and provide support to the Local Education and Training Boards and Health Education England to help them to:
- 5.6.1 understand the local healthcare workforce requirements;
 - 5.6.2 plan the future local healthcare workforce requirements;
 - 5.6.3 understand education and training needs; and
 - 5.6.4 plan provision of education and training to the workforce.
- 5.7 If any Staff are members of the NHS Pension Scheme the Provider must participate and must ensure that any Sub-Contractors participate in any applicable data collection exercise and must ensure that all data relating to Staff membership of the NHS Pension Scheme is up to date and is provided to the NHS Business Services Authority in accordance with Guidance.
- 5.8 The Provider must have in place and promote (and must ensure that all Sub-Contractors have in place and promote) a code and effective procedures to ensure that Staff have appropriate means through which they may raise any concerns they may have in relation to the Services. The Provider must ensure that nothing in any contract of employment or contract for services or any other agreement entered into by it or any Sub-Contractor with any member of Staff will prevent or inhibit, or purport to prevent or inhibit, the making of any protected disclosure (as defined in the Public Interest Disclosure Act 1998) by that member of Staff nor affect the rights of that member of Staff under that Act.
- 5.9 The Provider must comply with its obligations under Service Condition 12 (*Service User Involvement*) and Schedule 6 Part F (*Surveys*) in relation to Staff Surveys.

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Pre-employment Checks

- 5.10 Subject to General Condition 5.11, before the Provider or any Sub-Contractor engages or employs any person in the provision of the Services, or in any activity related to or connected with, the provision of Services, the Provider must and must ensure that any Sub-Contractor must, at its own cost, comply with:
- 5.10.1 NHS Employment Check Standards; and
 - 5.10.2 other checks as required by the DBS or which are to be undertaken in accordance with current and future national guidelines and policies.
- 5.11 The Provider or any Sub-Contractor may engage a person in an Enhanced DBS Position or a Standard DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Co-ordinating Commissioner and subject to any additional requirement of the Co-ordinating Commissioner for that engagement.
- 5.12 The Provider must deliver to the Co-ordinating Commissioner:
- 5.12.1 on the Effective Date, a copy of each agreement entered into by the Provider or any Sub-Contractor to deliver accredited supervisory support commitments which are in force on the Effective Date. Those agreements must be recorded in Schedule 5 Part A (*Documents Relied On*); and
 - 5.12.2 within 15 Operational Days of entering into it, a copy of any agreement the Provider or any Sub-Contractor enters into during the Contract term to deliver accredited supervisory support commitments. Those agreements must be recorded in Schedule 5 Part A (*Documents Relied On*).

TUPE

- 5.13 The Provider must comply and must ensure that any Sub-Contractor will comply with their respective obligations under TUPE and COSOP in relation to any persons who transfer to the employment of the Provider or that Sub-Contractor by operation of TUPE and/or COSOP as a result of this Contract or any Sub-Contract, and that the Provider or the relevant Sub-Contractor (as appropriate) will ensure a smooth transfer of those persons to its employment. The Provider must indemnify and keep indemnified the Commissioners and any previous provider of services equivalent to the Services or any of them before the Service Commencement Date against any Losses in respect of:
- 5.13.1 any failure by the Provider and/or any Sub-Contractor to comply with its obligations under TUPE and/or COSOP in connection with any relevant transfer under TUPE and/or COSOP;
 - 5.13.2 any claim by any person that any proposed or actual substantial change by the Provider and/or any Sub-Contractor to that person's working conditions or any proposed measures on the part of the Provider and/or any Sub-Contractor are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the Provider and/or Sub-Contractor; and/or
 - 5.13.3 any claim by any person in relation to any breach of contract arising from any proposed measures on the part of the Provider and/or any Sub-Contractor, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the Provider and/or Sub-Contractor.

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- 5.14 If the Co-ordinating Commissioner notifies the Provider that any Commissioner intends to tender or retender any Services, the Provider must within 20 Operational Days following written request (unless otherwise agreed in writing) provide the Co-ordinating Commissioner with anonymised details (as set out in Regulation 11(2) of TUPE) of Staff engaged in the provision of the relevant Services who may be subject to TUPE. The Provider must indemnify and keep indemnified the relevant Commissioner and, at the Co-ordinating Commissioner's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this General Condition 5.14.
- 5.15 During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not and must procure that its Sub-Contractors do not, without the prior written consent of the Co-ordinating Commissioner, in relation to any persons engaged in the provision of the Services or the relevant Service:
- 5.15.1 terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);
 - 5.15.2 increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any Sub-Contractor by more than 5% (except in the ordinary course of business);
 - 5.15.3 propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
 - 5.15.4 replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
 - 5.15.5 assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.
- 5.16 On termination or expiry of this Contract or of any Service for any reason, the Provider must indemnify and keep indemnified the relevant Commissioners and any new provider who provides any services equivalent to the Services or any of them after that expiry or termination against any Losses in respect of:
- 5.16.1 the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any Sub-Contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any Sub-Contractor;
 - 5.16.2 claims brought by any other person employed or engaged by the Provider and/or any Sub-Contractor who is found to or is alleged to transfer to any Commissioner or new provider under TUPE and/or COSOP; and/or
 - 5.16.3 any failure by the Provider and/or any Sub-Contractor to comply with its obligations under TUPE and/or COSOP in connection with any transfer to any Commissioner or new provider.
- 5.17 The Commissioners must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any Sub-Contractor against any Losses in respect of:

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- 5.17.1 any failure by the new provider to comply with its obligations under TUPE and/or COSOP in connection with any relevant transfer under TUPE and/or COSOP to the new provider;
- 5.17.2 any claim by any person that any proposed or actual substantial change by the new provider to that person's working conditions or any proposed measures on the part of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the new provider on expiry or termination of this Contract or of any Service; and/or
- 5.17.3 any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the new provider on expiry or termination of this Contract or of any Service.

GC6 Not used

GC7 Partnership Arrangements

Provider Partnership Arrangements

- 7.1 The Provider is at the date of this Contract a party to the Original Provider Partnership Agreements.
- 7.2 The Provider must notify the Co-ordinating Commissioner within 5 Operational Days following its entering into or varying or terminating any Provider Partnership Agreements.
- 7.3 The Provider must supply to the Co-ordinating Commissioner a copy of any Provider Partnership Agreement (including any documentation relating to any variation of it) within 10 Operational Days following the Co-ordinating Commissioner's request.

Commissioner Partnership Arrangements

- 7.4 Each Commissioner is at the date of this Agreement a party to its Original Commissioner Partnership Agreements.
- 7.5 The Co-ordinating Commissioner must notify the Provider accordingly within 5 Operational Days following any Commissioner entering into or varying or terminating any Commissioner Partnership Agreement.
- 7.6 The Co-ordinating Commissioner must supply to the Provider a copy of any Commissioner Partnership Agreement (including any documentation relating to any variation of it) within 10 Operational Days following the Provider's request.

GC8 Review

- 8.1 At the intervals set out in the Particulars, the Co-ordinating Commissioner and the Provider must hold Review Meetings to review and discuss as necessary or appropriate:
 - 8.1.1 all Service Quality Performance Reports issued since the Service Commencement Date or the last Review Meeting (as appropriate);
 - 8.1.2 performance of the Parties under this Contract;
 - 8.1.3 performance of the Provider under the Provider Plans;
 - 8.1.4 levels of Activity, Referrals and utilisation under this Contract;

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- 8.1.5 any Variation (including any National Variation) proposed in relation to this Contract;
 - 8.1.6 the Prices; and
 - 8.1.7 any other matters that either considers necessary in relation to this Contract.
- 8.2 Following each Review Meeting the Co-ordinating Commissioner must prepare and both the Co-ordinating Commissioner and the Provider must sign a Review Record recording (without limitation) all the matters raised during the Review, actions taken, agreements reached, Disputes referred to Dispute Resolution, and any Variations agreed.
- 8.3 If any Dispute which has arisen during the Review is not shown in the Review Record or is not referred to Dispute Resolution within 10 Operational Days after signature of that Review Record it will be deemed withdrawn.
- 8.4 Notwithstanding General Condition 8.1, if either the Co-ordinating Commissioner or the Provider:
- 8.4.1 reasonably considers that a circumstance constitutes an emergency or otherwise requires immediate resolution; or
 - 8.4.2 considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,

that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Operational Days following that notice.

GC9 Contract Management

- 9.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Requirement and the Provider fails to meet the Quality Requirement, the Co-ordinating Commissioner will be entitled to exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Co-ordinating Commissioner may have under this General Condition 9.
- 9.2 The provisions of this General Condition 9 do not affect any other rights and obligations the Parties may have under this Contract.
- 9.3 General Conditions 9.19, 9.23, 9.24, 9.26 and 9.27 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Co-ordinating Commissioner or the relevant Commissioner.

Contract Query

- 9.4 If the Co-ordinating Commissioner has a Contract Query it may issue a Contract Query Notice to the Provider.
- 9.5 If the Provider has a Contract Query it may issue a Contract Query Notice to the Co-ordinating Commissioner

Excusing Notice

- 9.6 The Receiving Party may issue an Excusing Notice to the Issuing Party within 5 Operational Days of the date of the Contract Query Notice.

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- 9.7 If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within 10 Operational Days following the date of the Contract Query Notice.

Contract Management Meeting

- 9.8 Unless the Contract Query Notice has been withdrawn, the Co-ordinating Commissioner and the Provider must meet to discuss the Contract Query and any related Excusing Notice within 10 Operational Days following the date of the Contract Query Notice.
- 9.9 At the Contract Management Meeting the Co-ordinating Commissioner and the Provider must agree either:
- 9.9.1 that the Contract Query Notice is withdrawn; or
 - 9.9.2 to conduct a Joint Investigation; or
 - 9.9.3 to implement an appropriate Remedial Action Plan.

Joint Investigation

- 9.10 If a Joint Investigation is to be undertaken:
- 9.10.1 the Co-ordinating Commissioner and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 2 months) and the appropriate clinical and/or non-clinical representatives from each relevant Party to participate in the Joint Investigation; and
 - 9.10.2 the Co-ordinating Commissioner and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.
- 9.11 On completion of a Joint Investigation, the Co-ordinating Commissioner and the Provider must produce and agree a JI Report. The JI Report must include a recommendation to be considered at the next Review Meeting that either:
- 9.11.1 the Contract Query be closed; or
 - 9.11.2 a Remedial Action Plan be agreed and implemented.
- 9.12 Either the Co-ordinating Commissioner or the Provider may require a Review Meeting to be held at short notice in accordance with General Condition 8.4 to consider a JI Report.

Remedial Action Plan

- 9.13 If a Remedial Action Plan is to be implemented, the Co-ordinating Commissioner and the Provider must agree the contents of the Remedial Action Plan within:
- 9.13.1 5 Operational Days following the Contract Management Meeting; or
 - 9.13.2 5 Operational Days following the Review Meeting in the case of a Remedial Action Plan recommended under General Condition 9.11.
- as appropriate.
- 9.14 The Remedial Action Plan must set out:

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- 9.14.1 milestones for performance to be remedied;
- 9.14.2 the date by which each milestone must be completed;
- 9.14.3 subject to the maximum sums identified in General Condition 9.23, the consequences for failing to meet each milestone by the specified date.

If a Remedial Action Plan is agreed during the final Contract Year, that Remedial Action Plan may specify a date by which a milestone is to be completed falling after the Expiry Date.

- 9.15 The Provider and each relevant Commissioner must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.
- 9.16 The Co-ordinating Commissioner and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Co-ordinating Commissioner and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.
- 9.17 If following implementation of a Remedial Action Plan:
 - 9.17.1 the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review that the Remedial Action Plan has been completed; or
 - 9.17.2 any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Co-ordinating Commissioner or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

Withholding Payment for Failure to Agree Remedial Action Plan

- 9.18 If the Co-ordinating Commissioner and the Provider cannot agree a Remedial Action Plan within the relevant period specified in General Condition 9.13, they must jointly notify the Governing Body of both the Provider and the relevant Commissioners accordingly.
- 9.19 If, 10 Operational Days after notifying the Governing Bodies, the Co-ordinating Commissioner and the Provider still cannot agree a Remedial Action Plan, the Co-ordinating Commissioner may recommend the Commissioners to withhold up to 2% of the Actual Monthly Value for each further month the Remedial Action Plan is not agreed.
- 9.20 The Commissioners must pay the Provider any sums withheld under General Condition 9.19 within 10 Operational Days of receiving the Provider's agreement to the Remedial Action Plan. Unless General Condition 9.25 applies, those sums are to be paid without Interest.

Exception Reports

- 9.21 If a Party breaches a Remedial Action Plan and does not remedy the breach within 5 Operational Days following its occurrence, the Provider or the Co-ordinating Commissioner (as the case may be) may issue a First Exception Report to that Party's chief executive and/or Governing Body. If the Party in breach is the Provider, the Co-ordinating Commissioner may also instruct the Commissioners to withhold payment from the Provider in accordance with General Condition 9.23.
- 9.22 If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Co-ordinating Commissioner or the Provider (as the case may be) may issue a Second Exception Report to:
 - 9.22.1 the relevant Party's chief executive and/or Governing Body; and/or;

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9.22.2 any appropriate Regulatory or Supervisory Body;

in order that each of them may take whatever steps they think appropriate.

Withholding of Payment at First Exception Report for Breach of Remedial Action Plan

9.23 If the Provider is in breach of a Remedial Action Plan:

9.23.1 the Co-ordinating Commissioner may recommend the Commissioners to withhold, in respect of each milestone not met, up to 2% of the Actual Monthly Value, from the date of issuing the First Exception Report and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the Actual Monthly Value in relation to each Remedial Action Plan; and

9.23.2 the Commissioners must pay the Provider any sums withheld under General Condition 9.23.1 within 10 Operational Days following the Co-ordinating Commissioner's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to General Condition 9.25, no Interest will be payable on those sums.

Retention of Sums Withheld at Second Exception Report for Breach of Remedial Action Plan

9.24 If the Provider is in breach of a Remedial Action Plan the Co-ordinating Commissioner may, when issuing any Second Exception Report, recommend the Commissioners to retain permanently any sums withheld under General Condition 9.23.

Unjustified Withholding or Retention of Payment

9.25 If the Commissioners withhold sums under General Conditions 9.19 or 9.23 or retain sums under General Condition 9.24, and within 20 Operational Days of the date of that withholding or retention the Provider produces evidence satisfactory to the Co-ordinating Commissioner that the relevant sums were withheld or retained unjustifiably, the Commissioners must pay those sums to the Provider within 10 Operational Days following the date of the Co-ordinating Commissioner's acceptance of that evidence, together with Interest for the period for which the sums were withheld or retained. If the Co-ordinating Commissioner does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

Retention of Sums Withheld on Expiry or Termination of this Contract

9.26 If the Provider does not agree a Remedial Action Plan:

9.26.1 within 6 months following the expiry of the relevant time period set out in General Condition 9.13; or

9.26.2 before the Expiry Date or earlier termination of this Contract,

whichever is the earlier, the Co-ordinating Commissioner may recommend the Commissioners to retain permanently any sums withheld under General Condition 9.19.

9.27 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Co-ordinating Commissioner may instruct the Commissioners to retain permanently any sums withheld under General Condition 9.23.

GC10 Co-ordinating Commissioner and Representatives

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- 10.1 The Commissioners have appointed the Co-ordinating Commissioner to exercise certain functions in relation to this Contract as set out in Schedule 5 Part D (*Commissioner Roles and Responsibilities*).
- 10.2 In relation to those functions and this Contract generally the Co-ordinating Commissioner will act for itself and as agent for the Commissioners (who are separate principals) but sums payable to the Provider are to be severally attributed to the relevant Commissioner as appropriate.
- 10.3 The Commissioner Representatives and the Provider Representative will be the relevant Party's respective key points of contact for day-to-day communications.

GC11 Liability and Indemnity

- 11.1 Without affecting its liability for breach of any of its obligations under this Contract, each Commissioner will be severally liable to the Provider for, and must indemnify and keep the 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:

11.1.1.1 any loss of or damage to property (whether real or personal); and

11.1.1.2 any injury to any person, including injury resulting in death; and

11.1.2 any Losses of the Provider,

that result from or arise out of the Commissioner's negligence or breach of contract in connection with the performance of this Contract 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 Provider, any Sub-Contractor, their Staff or agents.

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

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

11.2.1.1 any loss of or damage to property (whether real or personal); and

11.2.1.2 any injury to any person, including injury resulting in death; and

11.2.2 any Losses of the Commissioner,

that result from or arise out of the Provider's or any Sub-Contractor's negligence or breach of contract in connection with the performance of this Contract or the provision of the Services (including its use of Equipment or other materials or products, and the actions or omissions of Staff or any Sub-Contractor in the provision of the Services), 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 Commissioner, its employees or agents.

- 11.3 The Provider must put in place and maintain in force (and/or procure that its Sub-Contractors put in place and maintain in force) at its (or their) own cost (and not that of any employee) appropriate Indemnity Arrangements in respect of:

11.3.1 employers' liability;

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- 11.3.2 clinical negligence, where the provision or non-provision of any part of the Services (or any other services under this Contract) may result in a clinical negligence claim;
- 11.3.3 public liability; and
- 11.3.4 professional negligence.
- 11.4 Within 5 Operational Days following written request from the Co-ordinating Commissioner, the Provider must provide documentary evidence that Indemnity Arrangements required under General Condition 11.3 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 11.5 If the proceeds of any Indemnity Arrangements are insufficient to cover the settlement of any claim relating to this Contract the Provider must make good any deficiency.
- 11.6 The Provider must not take any action or fail to take any reasonable action nor (in so far as it is reasonable and within its power) allow others to take action or fail to take any reasonable action, as a result of which any Indemnity Arrangements put in place in accordance with General Condition 11.3 may be rendered wholly or partly void, voidable, unenforceable, or be suspended or impaired, or which may otherwise render any sum paid out under those Indemnity Arrangements wholly or partly repayable.
- 11.7 On and following expiry or termination of this Contract, the Provider must (and must use its reasonable endeavours to procure that each of its Sub-Contractors must) procure that any ongoing liability it has or may have in negligence to any Service User or Commissioner arising out of a Service User's care and treatment under this Contract will continue to be the subject of appropriate Indemnity Arrangements for 21 years following termination or expiry of this Contract or (if earlier) until that liability may reasonably be considered to have ceased.
- 11.8 Unless the Co-ordinating Commissioner and the Provider otherwise agree in writing, the Provider will not require, and must ensure that no other person will require, any Service User to sign any document whatsoever containing any waiver of the Provider's liability (other than a waiver in reasonable terms relating to personal property) to that Service User in relation to the Services, unless required by medical research procedures approved by the local research ethics committee and the Service User has given consent in accordance with the Provider's Service User consent policy.
- 11.9 Nothing in this Contract will exclude or limit the liability of either Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation.
- 11.10 Except where expressly stated to the contrary, an indemnity under this Contract will not apply and there will be no right to claim damages for breach of this Contract, 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.
- 11.11 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 Contract.

GC12 Assignment and Sub-contracting

Obligations relating to the Provider

- 12.1 Subject to General Conditions 12.2 to 12.5 the Provider must not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or obligations or duties under this

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Contract without the prior written approval of the Co-ordinating Commissioner. The approval of any sub-contracting arrangement may include approval of the terms of the proposed Sub-Contract.

- 12.2 The Co-ordinating Commissioner may (at its discretion) designate any sub-contracting arrangement approved by it as a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract.
- 12.3 The Provider must enter into each Mandatory Material Sub-Contract with the relevant Mandatory Material Sub-Contractor.
- 12.4 The Provider may enter into a Permitted Material Sub-Contract with the relevant Permitted Material Sub-Contractor.
- 12.5 The Provider must not:
- 12.5.1 terminate a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract; or
 - 12.5.2 make any material changes to the terms of a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract; or
 - 12.5.3 replace a Mandatory Material Sub-Contractor under a Mandatory Material Sub-Contract or a Permitted Material Sub-Contractor under a Permitted Material Sub-Contract (and must ensure that a replacement does not otherwise occur); or
 - 12.5.4 enter into a new Mandatory Material Sub-Contract or a new Permitted Material Sub-Contract with an existing Mandatory Material Sub-Contractor or an existing Permitted Material Sub-Contractor,

without the prior written approval of the Co-ordinating Commissioner. Schedule 5 Parts B1 (*Provider's Mandatory Material Sub-Contractors*) and B2 (*Provider's Permitted Material Sub-Contractors*) must be updated as appropriate to reflect any designation made, or termination, change or replacement approved, by the Co-ordinating Commissioner.

- 12.6 If the Provider enters into a Sub-Contract it must:
- 12.6.1 ensure that a provision is included in that Sub-Contract which requires payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice;
 - 12.6.2 not vary any such provision referred to in paragraph 12.6.1 above;
 - 12.6.3 ensure that the Sub-Contractor does not further sub-contract its obligations under the Sub-contract without the approval of the Co-ordinating Commissioner (such approval not to be unreasonably withheld or delayed).
- 12.7 Sub-contracting any part of this Contract will not relieve the Provider of any of its obligations or duties under this Contract. The Provider will be responsible for the performance of and will be liable to the Commissioners for the acts and/or omissions of all Sub-Contractors as though they were its own.
- 12.8 Any positive obligation or duty on the part of the Provider under this Contract includes an obligation or duty to ensure that all Sub-Contractors comply with that positive obligation or duty. Any negative duty or obligation on the part of the Provider under this Contract includes an obligation or duty to ensure that all Sub-Contractors comply with that negative obligation or duty.

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- 12.9 The Provider will remain responsible for the performance and will be liable to the Commissioners for the acts and omissions of any third party to which the Provider assigns or transfers any obligation or duty under this Contract, unless and until:
- 12.9.1 the Provider has obtained the prior written approval of the Co-ordinating Commissioner in accordance with this General Condition 12; and
 - 12.9.2 the terms of that assignment, transfer or disposal have been accepted by the third party so that the third party is liable to the Commissioners for its acts and omissions.

Obligations relating to the Commissioner

- 12.10 The Commissioners may not transfer or assign all or any of their rights or obligations under this Contract except:
- 12.10.1 to NHS England, or
 - 12.10.2 to a CCG; or
 - 12.10.3 to a Local Authority pursuant to a Partnership Agreement; or
 - 12.10.4 otherwise with the prior written approval of the Provider.
- 12.11 The Commissioners may delegate or sub-contract or (subject to General Condition 12.10 above) otherwise dispose of all or any of their rights or obligations under this Contract without the approval of the Provider.
- 12.12 Sub-contracting any part of the Contract will not relieve the Commissioners of any of their obligations or duties under this Contract. Commissioners will be responsible for the performance of and will be liable to the Provider for the acts and/or omissions of their Sub-Contractors as though they were their own.

Replacement of Sub-contractors

- 12.13 If any Suspension Event or any Provider Default Event occurs wholly or partly as a result of any act or omission on the part of a Sub-Contractor, the Co-ordinating Commissioner may (without prejudice to any other rights the Co-ordinating Commissioner may have in relation to that event) by serving written notice upon the Provider, require the Provider to remove or replace the relevant Sub-Contractor within:
- 12.13.1 5 Operational Days; or
 - 12.13.2 whatever period may be reasonably specified by the Co-ordinating Commissioner (taking into account any factors which the Co-ordinating Commissioner considers relevant in its absolute discretion, including the interests of Service Users and the need for the continuity of Services),
- and the Provider must remove or replace the relevant Sub-Contractor (as required) within the period specified in that notice.
- 12.14 Notwithstanding General Condition 20 (*Confidential Information of the Parties*), a Commissioner which assigns, transfers, delegates or sub-contracts all or any of its rights or obligations under this Contract to any person may disclose to such person any information in its possession that relates to this Contract or its subject matter, the negotiations relating to it, or the Provider.

Tender Documentation, Publication of Contracts and E-Procurement

- 12.15 The Provider must comply with Transparency Guidance if and when applicable.

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12.16 The Provider must comply with E-Procurement Guidance if and when applicable.

General Provisions

12.17 This Contract will be binding on and will be to the benefit of the Provider and each Commissioner and their respective successors and permitted transferees and assigns.

GC13 Variations

13.1 This Contract may not be amended or varied except in accordance with this General Condition 13.

13.2 The Parties:

13.2.1 may agree to vary any of the Variable Elements; and

13.2.2 may not vary any provision of this Contract that is not a Variable Element except in order to implement a National Variation.

13.3 Subject to General Condition 13.2, the provisions of this Contract may be varied at any time by agreement in writing in the form of the Template Variation Agreement, signed by the Co-ordinating Commissioner on behalf of the Commissioners and by the authorised signatory of the Provider. All Variations agreed must be recorded in Schedule 6 Part A (*Recorded Variations*).

13.4 If a Party wishes to propose a Variation, the Co-ordinating Commissioner or the Provider must serve on the Co-ordinating Commissioner (as appropriate) a Variation Proposal.

13.5 The Parties acknowledge that any National Variation may be mandated by NHS England, in which case the Provider will be deemed to have received a Variation Proposal from the Co-ordinating Commissioner requesting the National Variation on the date that NHS England mandates the National Variation.

13.6 The Proposer must have regard to the impact of the proposed Variation on other Services, and in particular any CRS or Essential Services.

13.7 Any Variation Proposal must set out the Variation proposed and the date on which the Proposer (or, in the case of a National Variation, NHS England) requires it to take effect.

13.8 The Recipient must respond to a Variation Proposal by issuing a Recipient's Response in writing within 10 Operational Days following receipt, setting out whether:

13.8.1 it accepts the Variation; and/or

13.8.2 it has any concerns with the contents of the Variation Proposal.

13.9 If necessary, the Parties must meet within 10 Operational Days following the date of the Recipient's Response (or as otherwise agreed in writing) to discuss the Variation Proposal and the Recipient's Response and must use reasonable endeavours to agree the Variation.

13.10 As soon as reasonably practicable and in any event within 10 Operational Days following the meeting which takes place pursuant to General Condition 13.9, the Recipient must serve a written notice on the Proposer confirming either:

13.10.1 that it accepts the Variation Proposal (and whether or not that acceptance is subject to any amendments to the Variation Proposal agreed between the Parties in writing); or

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- 13.10.2 that it refuses to accept the Variation Proposal, and setting out its reasonable grounds for that refusal.
- 13.11 If a proposed Variation would or might have the effect of changing the Expected Annual Contract Value and/or any Price, the Co-ordinating Commissioner and the Provider must seek to agree that change in accordance with the National Tariff.
- 13.12 If a proposed Variation would or might have a cost implication for any Commissioner, including additional activity, new treatments, drugs or technologies:
- 13.12.1 (in respect of any Variation proposed by the Provider) the Provider must provide a full and detailed cost and benefit analysis of the proposed Variation; and
- 13.12.2 subject to Law and Guidance, the Co-ordinating Commissioner will have absolute discretion to refuse or withdraw the proposed Variation; and
- 13.12.3 the Commissioners will have no liability to the Provider for any costs arising from the proposed Variation if the Provider implements it other than in accordance with this Contract.
- 13.13 If, the Parties having followed the procedure in General Conditions 13.2 to 13.12, the Provider refuses to accept a National Variation, the Co-ordinating Commissioner may terminate this Contract by giving the Provider not less than 3 months' written notice following the issue of a notice that that National Variation is refused.
- 13.14 If, the Parties having followed the procedure in General Conditions 13.2 to 13.12, the Provider refuses to accept a proposed Service Variation, the Co-ordinating Commissioner may terminate the Service affected by the proposed Service Variation by giving the Provider not less than 3 months' written notice (or 6 months' written notice where the Service Variation is likely to have a material adverse effect on Staff) following the issue of a notice that the proposed Service Variation is refused or not accepted.
- 13.15 The right of the Co-ordinating Commissioner to terminate a Service under General Condition 13.14 will not apply if:
- 13.15.1 the proposed Service Variation is substantially a proposal that a Service should be performed for a different price to that agreed under this Contract and without material change to the delivery of that Service justifying that proposed change in price; or
- 13.15.2 the proposal does not meet the requirements of a Service Variation.
- 13.16 If the Parties fail to agree a proposed Variation which is neither a National Variation nor a Service Variation the Proposer must withdraw the Variation Proposal.
- 13.17 Where an agreed Service Variation involves the withdrawal of a Service and:
- 13.17.1 the Provider withdraws the Service before the date agreed for that withdrawal, the Provider will be liable to the Commissioners for all reasonable costs and losses directly attributable to the early withdrawal of that Service; or
- 13.17.2 a Commissioner stops commissioning the Service before the date agreed for the withdrawal, the Commissioner will be liable to the Provider for all reasonable costs and losses directly attributable to the early end to commissioning.

GC14 Dispute Resolution

- 14.1 The provisions of General Condition 14.2 to 14.21 will not apply when any Party in Dispute seeks an injunction relating to a matter arising out of General Condition 20 (*Confidential Information of the Parties*).

Escalated Negotiation

- 14.2 If any Dispute arises, the Parties in Dispute must first attempt to settle it by any of them making a written offer to negotiate to the others. During the Negotiation Period each of the Parties in Dispute must negotiate and be represented:
- 14.2.1 for the first 10 Operational Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter and has authority to settle the Dispute; and
- 14.2.2 for the last 5 Operational Days, by their chief executive, director, or member of its Governing Body who has authority to settle the Dispute.
- 14.3 Where practicable, no Party in Dispute shall be represented by the same individual under General Conditions 14.2.1 and 14.2.2.

Mediation

- 14.4 If the Parties in Dispute are unable to settle the Dispute by negotiation, they must, within 5 Operational Days after the end of the Negotiation Period, submit the Dispute:
- 14.4.1 to mediation arranged jointly by the NHSTDA and NHS England, where the Commissioners are CCGs and/or NHS England and the Provider is an NHS Trust; or
- 14.4.2 to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in the Particulars, in all other cases.
- 14.5 Mediations under General Condition 14.4.1 will follow the mediation process agreed between the NHS TDA and NHS England from time to time:
- 14.6 Mediations under General Condition 14.4.2 will follow the mediation process of CEDR or other independent body or organisation named in the Particulars.

Expert Determination

- 14.7 If the Parties in Dispute are unable to settle the Dispute through mediation, the Dispute must be referred to expert determination, by one Party in Dispute giving written notice to that effect to the other Parties in Dispute following closure of the failed mediation. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.
- 14.8 If the Parties in Dispute have agreed upon the identity of an expert and the expert has confirmed in writing their readiness and willingness to embark upon the expert determination, then that person will be appointed as the Expert.
- 14.9 Where the Parties in Dispute have not agreed upon an expert, or where that person has not confirmed their willingness to act, then any Party in Dispute may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Parties in Dispute. The other Parties in

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Dispute may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.

- 14.10 The Party in Dispute serving the Expert Determination Notice must send to the Expert and to the other Parties in Dispute within 5 Operational Days of the appointment of the Expert a statement of its case, including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.
- 14.11 The Parties in Dispute not serving the Expert Determination Notice must reply to the Expert and to the other Parties in Dispute within 5 Operational Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.
- 14.12 The Expert must produce a written decision with reasons within 30 Operational Days of receipt of the statement of case referred to in General Condition 14.11, or any longer period as is agreed by the Parties in Dispute after the Dispute has been referred.
- 14.13 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 14.14 The Parties in Dispute must comply with any request or direction of the Expert in relation to the expert determination.
- 14.15 The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties in Dispute and the Expert agree are within the scope of the expert determination. The Expert must send their decision in writing simultaneously to all Parties in Dispute. Within 5 Operational Days following the date of the decision the Parties in Dispute must provide the Expert and the other Parties in Dispute with any requests to correct minor clerical errors or ambiguities in the decision. The Expert must correct any minor clerical errors or ambiguities at their discretion within a further 5 Operational Days and send any revised decision simultaneously to the Parties in Dispute.
- 14.16 The Parties in Dispute must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- 14.17 The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, manifest error or material breach of instructions on the part of the Expert, in which case a Party will be permitted to apply to Court for an Order that:
- 14.17.1 the Expert reconsider his decision (either all of it or part of it); or
- 14.17.2 the Expert's decision be set aside (either all of it or part of it).
- 14.18 If a Party in Dispute does not abide by the Expert's decision the other Parties in Dispute may apply to Court to enforce it.
- 14.19 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 14.20 The Expert is not liable for anything done or omitted in the discharge or purported discharge of their functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.

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- 14.21 The Expert is appointed to determine the Dispute or Disputes between the Parties in Dispute and the Expert's decision may not be relied upon by third parties, to whom the Expert shall have no duty of care.

GC15 Governance, Transaction Records and Audit

- 15.1 The Provider must comply with all reasonable written requests made by any relevant Regulatory or Supervisory Body (or its authorised representatives), the National Audit Office, the Audit Commission or its appointed auditors, or any Authorised Person for entry to the Provider's Premises and/or the Services Environment and/or the premises of any Sub-Contractor for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services.
- 15.2 Subject to Law, an Authorised Person may enter the Provider's Premises and/or the Services Environment and/or the premises of any Sub-Contractor without notice for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services. During those visits, subject to Law and Good Practice (also taking into consideration the nature of the Services and the effect of the visit on Services Users), the Provider must not restrict access and will give all reasonable assistance and provide all reasonable facilities.
- 15.3 Within 10 Operational Days following the Co-ordinating Commissioner's reasonable request, the Provider must send the Co-ordinating Commissioner the results of any audit, evaluation, inspection, investigation or research in relation to the Services, the Services Environment or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- 15.4 Subject to compliance with the Law and Good Practice the Parties must implement and/or respond to all relevant recommendations:
- 15.4.1 made in any report by a relevant Regulatory or Supervisory Body;
 - 15.4.2 agreed with the National Audit Office, the Audit Commission or its appointed auditors following any audit;
 - 15.4.3 of any appropriate clinical audit; and
 - 15.4.4 that are otherwise agreed by the Provider and the Co-ordinating Commissioner to be implemented.
- 15.5 The Parties must maintain complete and accurate Transaction Records.
- 15.6 The Provider must, at its own expense, in line with applicable Law and Guidance:
- 15.6.1 implement an ongoing, proportionate programme of clinical audit of the Services in accordance with Good Practice;
 - 15.6.2 implement an ongoing, proportionate audit of the accuracy of its recording and coding of clinical activity relating to the Services; and
 - 15.6.3 provide to the Co-ordinating Commissioner on request the findings of any audits carried out under General Condition 15.6.2 and/or 15.6.3.
- 15.7 The Co-ordinating Commissioner may at any time appoint an Auditor to audit:
- 15.7.1 the quality and outcomes of any Service; and/or

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- 15.7.2 the Provider's recording and coding of clinical activity; and/or
- 15.7.3 the Provider's calculation of reconciliation accounts under Service Condition 36 (Payment Terms); and/or
- 15.7.4 the Provider's recording of performance and calculation of reconciliation accounts in relation to Quality Incentive Scheme Indicators; and/or
- 15.7.5 the Provider's recording of performance in respect of the Quality Requirements; and/or
- 15.7.6 the Provider's compliance with Other Local Agreements, Policies and Procedures and/or any Prior Approval Scheme and/or the Service Specifications; and/or
- 15.7.7 the basis of any Local Prices, taking into account the actual costs incurred by the Provider in providing the Services to which those Local Prices apply,

and subject to any applicable Service User consent requirements, the Provider must allow the Auditor reasonable access to (and the right to take copies of) the Transaction Records, books of account and other sources of relevant information, and any Confidential Information so disclosed will be treated in accordance with General Condition 20 (*Confidential Information of the Parties*). Except as provided in General Condition 15.10 and 15.11, the cost of any audit carried out under this General Condition 15.7 will be borne by the Commissioners.

- 15.8 In respect of any audit carried out under General Condition 15.7, the Co-ordinating Commissioner must share the Auditor's draft report with the Provider, to allow discussion of the findings and the correction of any inaccuracies before the production by the Auditor of a final report.
- 15.9 In respect of any audit carried out under General Condition 15.7.1 or 15.7.6, if the Auditor's final report identifies any deficiencies in the Services, the Provider must take appropriate action to address those deficiencies without delay.
- 15.10 In respect of any audit carried out under General Condition 15.7.2, 15.7.3, 15.7.4, 15.7.5 or 15.7.6 as a result of a Commissioner contesting a payment in accordance with Service Condition 36.54 (*Payment Terms – Contested Payments*):
 - 15.10.1 if the Auditor's final report identifies a net overcharging of any Commissioner by the Provider, the Provider must immediately issue a credit note and must pay to the overcharged Commissioner the amount of the net overcharge and to the Co-ordinating Commissioner the reasonable costs of the Auditor, within 10 Operational Days after receiving written notice of the Auditor's final report;
 - 15.10.2 if the Auditor's final report identifies that, as a result of actual clinical practice on the part of the Provider which is not in accordance with Other Local Agreements, Policies and Procedures, or with any Prior Approval Scheme, or with the Service Specifications, any charges by the Provider to any Commissioner are higher than would otherwise have been the case, the Provider must immediately issue a credit note and must pay to that Commissioner the amount of the excess charges and to the Co-ordinating Commissioner the reasonable costs of the Auditor, within 10 Operational Days after receiving written notice of the Auditor's final report;
 - 15.10.3 if the Auditor's final report identifies a net undercharging of any Commissioner by the Provider for completed Activity, the Provider must immediately provide an invoice and the undercharged Commissioner must pay to the Provider the amount of the net undercharge, within ten Operational Days after receiving the invoice from the Provider.

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- 15.11 In respect of any audit carried out under General Condition 15.7.2, 15.7.3, 15.7.4, 15.7.5 or 15.7.6 other than as a result of a Commissioner contesting a payment in accordance with Service Condition 36.54 (*Payment Terms – Contested Payments*), where the Auditor’s final report concludes that there have been material inaccuracies in the Provider’s recording, coding or calculations:
- 15.11.1 the Parties must agree, and the Provider must implement with immediate effect, an action plan so that these inaccuracies do not recur in future;
 - 15.11.2 (except in the case of fraud or negligence on the part of the Provider, in respect of which the Co-ordinating Commissioner may take whatever action under this Contract or otherwise as it sees fit) there will be no retrospective adjustment to payments already made between the Parties; and
 - 15.11.3 the Provider must pay to the Co-ordinating Commissioner the reasonable costs of the Auditor within 10 Operational Days after receiving written notice of the Auditor’s final report.
- 15.12 In respect of any audit carried out under General Condition 15.7.7:
- 15.12.1 the Provider must provide the Auditor with particulars of its costs (including the costs of Sub-Contractors and suppliers) and permit those costs to be verified by inspection of accounts and other documents and records;
 - 15.12.2 that audit will not lead to any adjustment to any Local Price for the relevant Contract Year, but the Parties may have regard to the Auditor’s final report in agreeing Local Prices for future Contract Years.

GC16 Suspension

- 16.1 If a Suspension Event occurs the Co-ordinating Commissioner:
- 16.1.1 may by written notice to the Provider require the Provider with immediate effect to suspend the provision of any affected Service, or the provision of any affected Service from any part of the Services Environment, until the Provider demonstrates to the reasonable satisfaction of the Co-ordinating Commissioner that it is able to and will provide the suspended Service to the required standard; and
 - 16.1.2 must promptly notify any appropriate Regulatory or Supervisory Body of that suspension.
- 16.2 If and when the Co-ordinating Commissioner is reasonably satisfied that the Provider is able to and will provide the suspended Service to the required standard, it may by written notice require the Provider to restore the provision of the suspended Service in writing to the Provider.
- 16.3 The Provider must continue to comply with any steps that the Co-ordinating Commissioner may reasonably specify in order to remedy a Suspension Event, even if the matter has been referred to Dispute Resolution.

Consequence of Suspension

- 16.4 During the suspension of any Service under General Condition 16.1, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

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- 16.4.1 all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with General Condition 16.1.1; and/or
- 16.4.2 all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with the notice served under General Condition 16.1.1.
- 16.5 Unless suspension occurs as a result of an Event of Force Majeure, the Provider will indemnify the Commissioners in respect of any Losses reasonably incurred by them in respect of a suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).
- 16.6 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- 16.7 Following and during the suspension of a Service the Commissioners must use reasonable efforts to ensure that no further Service Users are referred to the Provider who require the suspended Service.
- 16.8 Following and during the suspension of a Service the Provider must:
- 16.8.1 not accept any further referrals of Service Users who require the suspended Service;
- 16.8.2 at its own cost co-operate fully with the Co-ordinating Commissioners and any interim or successor provider of the suspended Service in order to ensure continuity and smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Commissioners or members of the public including:
- 16.8.2.1 promptly providing all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by any interim or successor provider; and
- 16.8.2.2 delivering to the Co-ordinating Commissioner all materials, papers, documents and operating manuals owned by the Commissioners and used by the Provider in the provision of the suspended Service;
- 16.8.3 ensure there is no interruption in the availability of CRS or Essential Services including, where appropriate, implementing any Essential Services Continuity Plan.
- 16.9 As part of its compliance with General Condition 16.8 the Provider may be required by the Co-ordinating Commissioner to agree a transition plan with the Co-ordinating Commissioner and any interim or successor provider.

GC17 Termination

Termination: No Fault

- 17.1 Either the Co-ordinating Commissioner or the Provider may terminate this Contract or any Service by giving the other not less than 12 months' written notice at any time after the Service Commencement Date.
- 17.2 The Co-ordinating Commissioner may by not less than 3 months' written notice to the Provider terminate this Contract where the Provider has refused to accept a National Variation as provided for in General Condition 13.13 (*Variations*).
- 17.3 The Co-ordinating Commissioner may by written notice to the Provider terminate the Service affected where a Party has refused to accept a Service Variation as provided for in General Condition 13.14 (*Variations*).

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- 17.4 Either the Co-ordinating Commissioner or the Provider may by written notice to the other terminate the Service affected where the Co-ordinating Commissioner and the Provider cannot agree the Local Price for that Service for the following Contract Year as provided for in Service Condition 36.8 (*Payment Terms*).
- 17.5 Either the Co-ordinating Commissioner or the Provider may terminate this Contract or any affected Service by written notice, with immediate effect, if and to the extent that the Commissioners or the Provider suffer an Event of Force Majeure and that Event of Force Majeure persists for more than 20 Operational Days without the Parties agreeing alternative arrangements.

Termination: Commissioner Default

- 17.6 The Provider may terminate this Contract, in whole or in respect of the relevant Commissioners, with immediate effect, by written notice to the Co-ordinating Commissioner:
- 17.6.1 subject to any express provision of this Contract to the contrary (including the Withholding and/or Retention of Payment Provisions), and provided that the Provider has complied with its obligations under Service Condition 36 (*Payment Terms*), if at any time the aggregate undisputed amount due to the Provider from the Co-ordinating Commissioner and/or any Commissioner exceeds:
- 17.6.1.1 25% of the Expected Annual Contract Value; or
- 17.6.1.2 if there is no applicable Expected Annual Contract Value or the Expected Annual Contract Value is zero, the equivalent of 3 times the average monthly income to the Provider under this Contract,
- and full payment is not made within 20 Operational Days of receipt of written notice from the Provider referring to this General Condition 17.6 and requiring payment to be made; or
- 17.6.2 if any Commissioner is in persistent material breach of any of its obligations under this Contract so as to have a material and adverse effect on the ability of the Provider to provide the Services, and the Commissioner fails to remedy that breach within 40 Operational Days of the Co-ordinating Commissioner's receipt of the Provider's written notice identifying the breach; or
- 17.6.3 if any Commissioner breaches the terms of General Condition 12.10 (*Assignment and Sub-Contracting*).

Termination: Provider Default

- 17.7 The Co-ordinating Commissioner may terminate this Contract or any affected Service, with immediate effect, by written notice to the Provider if:
- 17.7.1 any Condition Precedent is not met by the Longstop Date; or
- 17.7.2 the Provider ceases to carry on its business or substantially all of its business; or
- 17.7.3 a Provider Insolvency Event occurs; or
- 17.7.4 the Provider is in persistent or repetitive breach of the Quality Requirements or regulatory compliance standards issued by any relevant Regulatory or Supervisory Body; or

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- 17.7.5 two or more Second Exception Reports are issued to the Provider under General Condition 9.22 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution; or
- 17.7.6 the Provider does not comply with General Condition 24.2 (*Change in Control*) or General Condition 24.5 (*Change in Control*) and fails to remedy that breach within 20 Operational Days following receipt of a notice from the Co-ordinating Commissioner identifying the breach; or
- 17.7.7 there is:
- 17.7.7.1 a Provider Change in Control and, within 30 Operational Days after having received the Change in Control Notification, the Co-ordinating Commissioner reasonably determines that, as a result of that Provider Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider to provide the Services in accordance with this Contract; or
 - 17.7.7.2 a breach of General Condition 24.9.1 (*Change in Control*); or
 - 17.7.7.3 a breach of Condition 24.9.2 (*Change in Control*) and the Provider has not replaced the Material Sub-Contractor within the relevant period specified in the notice served upon the Provider under General Condition 24.10 (*Change in Control*); or
 - 17.7.7.4 a Material Sub-Contractor Change in Control and the Provider has not replaced the Material Sub-Contractor within the relevant period specified in the notice served on the Provider under General Condition 24.8.3 (*Change in Control*); or
- 17.7.8 the Provider:
- 17.7.8.1 fails to obtain any Consent; or
 - 17.7.8.2 loses any Consent; or
 - 17.7.8.3 has any Consent varied or restricted,
- and that is reasonably considered by the Co-ordinating Commissioner to have a material adverse effect on the provision of the Services; or
- 17.7.9 the Provider fails materially to comply with the requirements of General Condition 23 (*NHS Branding, Marketing and Promotion*); or
- 17.7.10 the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 40 Operational Days following receipt of notice from the Co-ordinating Commissioner identifying the breach; or
- 17.7.11 the Provider has breached the terms of General Condition 26 (*Prohibited Acts*); or
- 17.7.12 Monitor's Licence for the Provider or any Material Sub-Contractor is revoked, varied or restricted; or
- 17.7.13 the Provider breaches the terms of General Condition 12 (*Assignment and Sub-Contracting*); or

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17.7.14 the NHS Business Services Authority has notified the Commissioners that the Provider or any Sub-Contractor has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter).

GC18 Consequence of Expiry or Termination

- 18.1 Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- 18.2 If, as a result of termination of this Contract or of any Service following service of notice by the Co-ordinating Commissioner under General Condition 17.2 or 17.7 (*Termination*)), any Commissioner procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then that Commissioner, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Co-ordinating Commissioner in respect of that termination) the excess cost and all reasonable related administration costs it incurs (in each case) in respect of the period of 6 months following termination.
- 18.3 On or pending expiry or termination of this Contract or termination of any Service the Co-ordinating Commissioner, the Provider, and if appropriate any successor provider, will agree a Succession Plan.
- 18.4 For a reasonable period before and after termination of this Contract or of any Service, and where reasonable and appropriate before and after the expiry of this Contract, the Provider must:
- 18.4.1 co-operate fully with the Co-ordinating Commissioner and any successor provider of the terminated Services in order to ensure continuity and a smooth transfer of the expired or terminated Services, and to avoid any inconvenience or any risk to the health and safety of Service Users or employees of any Commissioner or members of the public; and
 - 18.4.2 at the reasonable cost and reasonable request of the Co-ordinating Commissioner:
 - 18.4.2.1 promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of the terminated Services by a successor provider;
 - 18.4.2.2 deliver to the Co-ordinating Commissioner all materials, papers, documents, and operating manuals owned by the Commissioners and used by the Provider in the provision of any terminated Services; and
 - 18.4.2.3 use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the Provider and any third party which relate to or are associated with the terminated Services.
- 18.5 On expiry or termination of this Contract, or termination of any Service, the Parties must:
- 18.5.1 implement and comply with their respective obligations under the Succession Plan; and;
 - 18.5.2 use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users or prospective service users as a result of the expiry or termination of this Contract or any Service.
- 18.6 Each Commissioner must pay the Provider pro rata in accordance with Service Condition 36 (*Payment Terms*) for any Services properly delivered by the Provider following expiry, termination or of this Contract, or termination of any Service, until the Provider ceases to provide those Services.

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- 18.7 On expiry or termination of this Contract or termination of any Service:
- 18.7.1 the Commissioners must ensure that no further Service Users who require any expired or terminated Service are Referred to the Provider;
 - 18.7.2 the Provider must stop accepting any Referrals that require any expired or terminated Service; and
 - 18.7.3 subject to any appropriate arrangements made under General Condition 18.4.1, the Provider must immediately cease its treatment of Service Users requiring the expired or terminated Service, and/or arrange for their transfer or discharge as soon as is practicable in accordance with Good Practice and the Succession Plan.
- 18.8 If termination of this Contract or of any Service takes place with immediate effect in accordance with General Condition 17 (*Termination*), and the Provider is unable or not permitted to continue to provide any affected Service under any Succession Plan, or implement arrangements for the transition to a successor provider, the Provider must co-operate fully with the Co-ordinating Commissioner and any relevant Commissioners to ensure that:
- 18.8.1 any affected Service is commissioned without delay from an alternative provider; and
 - 18.8.2 there is no interruption in the availability to the relevant Commissioners of any CRS or Essential Services.
- 18.9 On expiry or termination of this Contract, or termination of any Service, any arrangements set out in Schedule 2 Part I (*Exit Arrangements*) will apply.

GC19 Provisions Surviving Termination

- 19.1 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 Contract, together with all indemnities, will continue after expiry or termination, subject to any limitations of time expressed in this Contract.

GC20 Confidential Information of the Parties

- 20.1 Except as this Contract otherwise provides Confidential Information is owned by the Disclosing Party and the Receiving Party has no right to use it.
- 20.2 Subject to General Conditions 20.3 and 20.4, the Receiving Party agrees:
- 20.2.1 to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
 - 20.2.2 not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
 - 20.2.3 to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- 20.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:
- 20.3.1 in connection with any Dispute Resolution;

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- 20.3.2 in connection with any litigation between the Parties;
 - 20.3.3 to comply with the Law;
 - 20.3.4 to any appropriate Regulatory or Supervisory Body;
 - 20.3.5 to its staff, who in respect of that Confidential Information will be under a duty no less onerous than the Receiving Party's duty under General Condition 20.2;
 - 20.3.6 to NHS Bodies for the purposes of carrying out their duties;
 - 20.3.7 as permitted under or as may be required to give effect to General Condition 9 (*Contract Management*); and
 - 20.3.8 as permitted under or as may be required to give effect to Service Condition 24 (*NHS Counter-Fraud and Security Management*); and
 - 20.3.9 as permitted under any other express arrangement or other provision of this Contract.
- 20.4 The obligations in General Conditions 20.1 and 20.2 will not apply to any Confidential Information which:
- 20.4.1 is in or comes into the public domain other than by breach of this Contract;
 - 20.4.2 the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
 - 20.4.3 the Receiving Party can prove it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- 20.5 Subject to General Condition 25.1.3 and General Condition 25.2.3 (*Warranties*), the Disclosing Party does not warrant the accuracy or completeness of the Confidential Information.
- 20.6 The Receiving Party must indemnify the Disclosing Party and keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this General Condition 20.
- 20.7 The Parties acknowledge that damages would not be an adequate remedy for any breach of this General Condition 20 by the Receiving Party, and in addition to any right to damages the Disclosing Party will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this General Condition 20.
- 20.8 This General Condition 20 will survive the expiry or the termination of this Contract for a period of 5 years.
- 20.9 This General Condition 20 will not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

GC21 Data Protection, Freedom of Information and Transparency

Information Governance – General Responsibilities

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- 21.1 The Parties acknowledge their respective obligations arising under FOIA, DPA and HRA, and under the common law duty of confidentiality, and must assist each other as necessary to enable each other to comply with these obligations.
- 21.2 The Provider must complete and publishing an annual information governance assessment using the NHS Information Governance Toolkit.
- 21.3 The Provider must:
 - 21.3.1 nominate an Information Governance Lead, to be responsible for information governance and for providing the Provider's Governing Body with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;
 - 21.3.2 nominate a Caldicott Guardian and Senior Information Risk Owner, each of whom must be a member of the Provider's Governing Body;
 - 21.3.3 ensure that the Commissioner is kept informed at all times of the identities of the Information Governance Lead, Caldicott Guardian and the Senior Information Risk Owner;
- 21.4 The Provider must adopt and implement the recommendations of the Caldicott Information Governance Review and the Response to Caldicott.
- 21.5 The Provider must, at least once in each Contract Year, audit its practices against quality statements regarding data sharing set out in NICE Clinical Guideline 138.
- 21.6 The Provider must achieve a minimum level 2 performance against all requirements in the relevant NHS Information Governance Toolkit.
- 21.7 The Provider must report and publish any Data Breach and any Information Governance Breach in accordance with IG Guidance for Serious Incidents.

The Provider as a Data Controller

- 21.8 The Parties acknowledge that:
 - 21.8.1 in relation to Personal Data processed by the Provider for the purpose of delivering the Services the Provider will be sole Data Controller; and
 - 21.8.2 in relation to Personal Data required by a Commissioner for the purposes of quality assurance, performance management and contract management, that Commissioner and the Provider will be joint Data Controllers.
- 21.9 The Provider must ensure that all Personal Data processed by the Provider in the course of delivering the Services is processed in accordance with the relevant Parties' joint obligations under the DPA.
- 21.10 The Provider's obligations in relation to Personal Data processed by the Provider in the course of delivering the Services include:
 - 21.10.1 publishing, maintaining and operating policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Practice;
 - 21.10.2 publishing, maintaining and operating policies that describe the personal responsibilities of Staff for handling Personal Data and applying those policies conscientiously;

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- 21.10.3 publishing, maintaining and operating a policy that supports the Provider's obligations under the NHS Care Records Guarantee;
- 21.10.4 publishing, maintaining and operating agreed protocols to govern the disclosure of Personal Data;
- 21.10.5 where appropriate having a system in place and a policy in relation to the recording of any telephone calls or other telehealth consultations in relation to the Services, including the retention and disposal of those recordings.
- 21.11 The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, the information specified in paragraph 2(3) of Part II of Schedule 1 DPA.
- 21.12 Where the Commissioner requires information for the purposes of quality management of care processes, the Provider must provide anonymised, pseudonymised or aggregated data, and must not disclose that Personal Data to the relevant Commissioner for those purposes without written consent or some other lawful basis for disclosure.
- 21.13 The Provider must (unless it can lawfully justify non-disclosure) disclose defined or specified confidential patient information to or at the request of the Co-ordinating Commissioner where support has been provided under the s251 Regulations, respecting any individual Service User's objections and complying with other conditions of the relevant approval.

Responsibilities when engaging Sub-Contractors

- 21.14 Subject always to General Condition 12 (*Assignment and Sub-Contracting*) if the Provider is to require any Sub-Contractor to process Personal Data on its behalf, the Provider must:
 - 21.14.1 require that Sub-Contractor to provide sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;
 - 21.14.2 ensure that the Sub-Contractor is engaged under the terms of a written agreement requiring the Sub-Contractor to:
 - 21.14.2.1 process such personal data only in accordance with the Provider's instructions;
 - 21.14.2.2 comply at all times with obligations equivalent to those imposed on the Provider by virtue of the Seventh Data Protection Principle;
 - 21.14.2.3 allow rights of audit and inspection in respect of relevant data handling systems to the Provider or to the Co-ordinating Commissioner or to any person authorised by the Provider or by the Co-ordinating Commissioner to act on its behalf; and
 - 21.14.2.4 impose on its own Sub-Contractors (in the event the Sub-Contractor further sub-contracts any of its obligations under the Sub-Contract) obligations that are substantially equivalent to the obligations imposed on the Sub-Contractor by this General Condition 21.14.

The Provider as a Data Processor

- 21.15 Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of a Commissioner, the Provider must:

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- 21.15.1 process relevant Personal Data only to the extent necessary to perform its obligations under this Contract, and only in accordance with instructions given by the Commissioner
- 21.15.2 take appropriate technical and organisational measures against any unauthorised or unlawful processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the state of technological development, the nature of the data to be protected and the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;
- 21.15.3 take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in General Conditions 21.10; and
- 21.15.4 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Commissioner.

Freedom of Information and Transparency

- 21.16 The Provider acknowledges that the Commissioners are subject to the requirements of the FOIA. The Provider must assist and co-operate with each Commissioner to enable it to comply with its disclosure obligations under the FOIA. The Provider agrees:
 - 21.16.1 that this Contract and any other recorded information held by the Provider on a Commissioner's behalf for the purposes of this Contract are subject to the obligations and commitments of the Commissioner under FOIA;
 - 21.16.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under FOIA is a decision solely for the Commissioner to whom the request is addressed;
 - 21.16.3 that where the Provider receives a request for information under FOIA and the Provider itself is subject to FOIA, it will liaise with the relevant Commissioner as to the contents of any response before a response to a request is issued and will promptly (and in any event within 2 Operational Days) provide a copy of the request and any response to the relevant Commissioner;
 - 21.16.4 that where the Provider receives a request for information under FOIA and the Provider is not itself subject to FOIA, it will not respond to that request (unless directed to do so by the relevant Commissioner to whom the request relates) and will promptly (and in any event within 2 Operational Days) transfer the request to the relevant Commissioner;
 - 21.16.5 that any Commissioner, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
 - 21.16.6 to assist the Commissioners in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by that Commissioner within 5 Operational Days of that request and without charge.

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- 21.17 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not Confidential Information.
- 21.18 Notwithstanding any other term of this Contract, the Provider consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of FOIA.
- 21.19 In preparing a copy of this Contract for publication under General Condition 21.18 the Commissioners may consult with the Provider to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Commissioners' absolute discretion.
- 21.20 The Provider must assist and cooperate with the Commissioners to enable the Commissioners to publish this Contract.

GC22 Intellectual Property

- 22.1 Except as set out expressly in this Contract no Party will acquire the IPR of any other Party.
- 22.2 The Provider grants the Commissioners a fully paid-up non-exclusive licence to use Provider IPR for the purposes of the exercise of their functions and obtaining the full benefit of the Services under this Contract, which will include the dissemination of best practice within the NHS.
- 22.3 The Commissioners grant the Provider a fully paid up non-exclusive licence to use Commissioner IPR under this Contract for the sole purpose of providing the Services.
- 22.4 In the event that the Provider or the Commissioners at any time devise, discover or acquire rights in any Improvement it or they must promptly notify the owner of the IPR to which that Improvement relates giving full details of the Improvement and whatever information and explanations as that Party may reasonably require to be able to use the Improvement effectively and must assign to that Party all rights and title in any such Improvement without charge.
- 22.5 The Provider must disclose all documents and information concerning the development of Best Practice IPR to the Co-ordinating Commissioner at Reviews and must grant the Commissioners a fully paid up; non-exclusive perpetual licence to use Best Practice IPR solely for the purpose of teaching, training and research within their own organisations.

GC23 NHS Branding, Marketing and Promotion

- 23.1 The Provider must comply with the applicable Branding Guidance. In addition, where appropriate to the Services the Provider must comply with the applicable local authority brand guidance and guidelines.

GC24 Change in Control

- 24.1 This General Condition 24 applies to any Provider Change in Control and/or any Material Sub-Contractor Change in Control, but not to a Change in Control of a company which is a Public Company.
- 24.2 The Provider must:
- 24.2.1 as soon as possible on, and in any event within 5 Operational Days following, a Provider Change in Control; and/or
 - 24.2.2 immediately on becoming aware of a Material Sub-Contractor Change in Control,

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notify the Co-ordinating Commissioner of that Change in Control and submit to the Co-ordinating Commissioner a completed Change in Control Notification.

- 24.3 If the Provider indicates in the Change in Control Notification an intention or proposal to make any consequential changes to its operations then, to the extent that those changes require a change to the terms of this Contract in order to be effective, they will only be effective when a Variation is made in accordance with General Condition 13 (*Variations*). The Co-ordinating Commissioner will not and will not be deemed by a failure to respond or comment on the Change in Control Notification to have agreed to or otherwise to have waived its rights under to General Condition 13 (*Variations*) in respect of that intended or proposed change.
- 24.4 The Provider must specify in the Change in Control Notification any intention or proposal to make a consequential change to its operations which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract. If the Provider does not do so it will not be entitled to propose a Service Variation in respect of that for a period of 6 months following the date of that Change in Control Notification, unless the Co-ordinating Commissioner agrees otherwise.
- 24.5 If (and subject always to General Condition 24.3) the Provider does not specify in the Change in Control Notification an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Provider's Premises as a result of or in connection with the Change in Control then, unless the Co-ordinating Commissioner provides its written consent to the relevant action, the Provider must:
- 24.5.1 ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract; and
- 24.5.2 continue providing the Services from the Provider's Premises,
- in each case for at least 12 months following the date of that Change in Control Notification. The provisions of this General Condition 24.5 will not apply to an assignment by way of security or the grant of any other similar rights by the Provider consequent upon a financing or re-financing of the transaction resulting in Change of Control.
- 24.6 The Provider must supply (and must use its reasonable endeavours to procure that the relevant Material Sub-Contractor supplies) to the Co-ordinating Commissioner, whatever further information relating to the Change in Control the Co-ordinating Commissioner may, within 20 Operational Days after receiving the Change in Control Notification, reasonably request.
- 24.7 The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Material Sub-Contractor include a provision obliging the Material Sub-Contractor to inform the Provider in writing on, and in any event within 5 Operational Days following, a Material Sub-Contractor Change in Control in respect of that Material Sub-Contractor.
- 24.8 If:
- 24.8.1 there is a Material Sub-contractor Change in Control; and
- 24.8.2 following consideration of the information provided to the Co-ordinating Commissioner in the Change in Control Notification or under General Condition 24.6, the Co-ordinating Commissioner reasonably concludes that, as a result of that Material Sub-Contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Material Sub-Contractor to provide Services in accordance with this Contract (and, in reaching that conclusion, the Co-ordinating Commissioner may consider any factor, in its absolute discretion, that it considers relevant to the provision of Services),

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then:

24.8.3 the Co-ordinating Commissioner may, by serving a written notice upon the Provider, require the Provider to replace the relevant Material Sub-Contractor within 10 Operational Days (or other period reasonably specified by the Co-ordinating Commissioner taking into account the interests of Service Users and the need for the continuity of Services); and

24.8.4 the Provider must replace the relevant Material Sub-Contractor within the period specified under General Condition 24.8.3; and

24.8.5 for the avoidance of doubt, the provisions of General Condition 12 (*Assignment and Sub-Contracting*) will apply in relation to the replacement Material Sub-Contractor and, on the granting of the approval referred to in General Condition 12.3 or 12.4 (*Assignment and Sub-Contracting*), the provisions of Schedule 5 Part B1 (*Provider's Mandatory Material Sub-Contractors*) and Part B2 (*Provider's Permitted Material Sub-Contractors*) will be amended accordingly.

24.9 Notwithstanding any other provision of this Contract:

24.9.1 a Restricted Person must not hold, and the Provider must not permit a Restricted Person to hold, at any time 5% or more of the total value of any Security in the Provider or in the Provider's Holding Company or any of the Provider's subsidiaries (as defined in the Companies Act 2006); and

24.9.2 a Restricted Person must not hold, and the Provider must not permit (and must procure that a Material Sub-Contractor must not at any time permit) a Restricted Person to hold, at any time 5% or more of the total value of any Security in a Material Sub-Contractor or in any Holding Company or any of the subsidiaries (as defined in the Companies Act 2006) of a Material Sub-Contractor.

24.10 If the Provider breaches General Condition 24.9.2, the Co-ordinating Commissioner may by serving written notice upon the Provider, require the Provider to replace the relevant Material Sub-Contractor within:

24.10.1 5 Operational Days; or

24.10.2 whatever period may be reasonably specified by the Co-ordinating Commissioner (taking into account any factors which the Co-ordinating Commissioner considers relevant in its absolute discretion, including the interests of Service Users and the need for the continuity of Services),

and the Provider must replace the relevant Material Sub-Contractor within the period specified in that notice.

24.11 Nothing in this General Condition 24 will prevent or restrict the Provider from discussing with the Co-ordinating Commissioner a proposed Change in Control before it occurs. In those circumstances, all and any information provided to or received by the Co-ordinating Commissioner in relation to that proposed Change in Control will be Confidential Information for the purposes of General Condition 20 (*Confidential Information of the Parties*).

24.12 Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.

GC25 Warranties

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- 25.1 The Provider warrants to each Commissioner that:
- 25.1.1 it has full power and authority to enter into this Contract and all governmental or official approvals and consents and all necessary Consents have been obtained and are in full force and effect;
 - 25.1.2 its execution of this Contract does not and will not contravene or conflict with its constitution, Monitor's Licence, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
 - 25.1.3 the copies of all documents supplied to the Commissioners or any of their advisers by or on its behalf and listed in Schedule 5 Part A (*Documents Relied On*) from time to time are complete and their contents are true;
 - 25.1.4 it has the right to permit disclosure and use of its Confidential Information for the purpose of this Contract;
 - 25.1.5 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract;
 - 25.1.6 any Material Sub-Contractor will have and maintain all Indemnity Arrangements and Consents and will deliver the subcontracted services in accordance with the Provider's obligations under this Contract; and
 - 25.1.7 all information supplied by it to the Commissioners during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Commissioners which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract.
- 25.2 Each Commissioner warrants to the Provider that:
- 25.2.1 it has full power and authority to enter into this Contract and all necessary approvals and consents have been obtained and are in full force and effect;
 - 25.2.2 its execution of this Contract 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;
 - 25.2.3 the copies of all documents supplied to the Provider or any of its advisers by it or on its behalf and listed in Schedule 5 Part A (*Documents Relied On*) from time to time are complete and their contents are true;
 - 25.2.4 it has the right to permit disclosure and use of its Confidential Information for the purpose of this Contract; and
 - 25.2.5 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract.
- 25.3 The warranties set out in this General Condition 25 are given on the Effective Date and repeated on every day during the term of this Contract Term.

GC26 Prohibited Acts

- 26.1 The Provider must not commit any Prohibited Act.

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- 26.2 If the Provider or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act in relation to this Contract with or without the knowledge of the Co-ordinating Commissioner, the Co-ordinating Commissioner will be entitled:
- 26.2.1 to exercise its right to terminate under General Condition 17.7.11 (*Termination*) and to recover from the Provider the amount of any loss resulting from the termination; and
 - 26.2.2 to recover from the Provider the amount or value of any gift, consideration or commission concerned; and
 - 26.2.3 to recover from the Provider any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

GC27 Conflicts of Interest

- 27.1 If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on another Party's decision (that Party acting reasonably) whether or not to contract or continue to contract substantially on the terms of this Contract, the Party aware of the conflict must immediately declare it to the other. The other Party may then, without affecting any other right it may have under Law, take whatever action under this Contract as it deems necessary.

GC28 Force Majeure

- 28.1 This General Condition 28 must be read in conjunction with Service Condition 31 (*Force Majeure: Service-specific provisions*).
- 28.2 If an Event of Force Majeure occurs, the Affected Party must:
- 28.2.1 take all reasonable steps to mitigate the consequences of that event;
 - 28.2.2 resume performance of its obligations as soon as practicable; and
 - 28.2.3 use all reasonable efforts to remedy its failure to perform its obligations under this Contract.
- 28.3 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 Services.
- 28.4 If it has complied with its obligations under General Conditions 28.2 and 28.3, the Affected Party will be relieved from liability under this Contract if and to the extent that it is not able to perform its obligations under this Contract due to the Event of Force Majeure.
- 28.5 The Commissioners will not be entitled to exercise their rights under the Withholding and Retention of Payment Provisions to the extent that the circumstances giving rise to those rights arise as a result of an Event of Force Majeure.

GC29 Third Party Rights

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- 29.1 A person who is not a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Contract, but to the extent that it applies in its or their favour, it may be enforced by:
- 29.1.1 a person who is the Provider's employee and is performing the Services for the Provider, if the matter to be enforced or the benefit to be enjoyed arises under General Condition 5 (*Staff*), other than General Conditions 5.2 and 5.3.2 (*Staff*);
 - 29.1.2 the Secretary of State;
 - 29.1.3 NHS England;
 - 29.1.4 the NHSTDA;
 - 29.1.5 any CCG or Local Authority;
 - 29.1.6 CQC;
 - 29.1.7 Monitor;
 - 29.1.8 NHS Protect;
 - 29.1.9 the National Audit Office;
 - 29.1.10 the Audit Commission;
 - 29.1.11 the NHS Business Services Authority;
 - 29.1.12 Local Healthwatch, if the matter to be enforced or the benefit to be enjoyed arises under General Condition 15.2 (*Governance, Transaction Records and Audit*);
 - 29.1.13 a previous provider of services equivalent to the Services or any of them before the Service Commencement Date, if the matter to be enforced or the benefit to be enjoyed arises under General Condition 5.13 (*Staff*);
 - 29.1.14 a new provider of services equivalent to the Services or any of them after the expiry or termination of this Contract or of any Service, if the matter to be enforced or the benefit to be enjoyed arises under General Condition 5.16 (*Staff*).
- 29.2 Subject to General Condition 13.2.2 (*Variations*), the rights of the Parties to terminate, rescind or agree any Variation, waiver or settlement under this Contract are not subject to the consent of any person who is not a party to this Contract.

GC30 Entire Contract

- 30.1 This Contract constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Contract, except for any contract entered into between the Commissioners and the Provider to the extent that it relates to the same or similar services and is designed to remain effective until the Service Commencement Date.
- 30.2 Each of the Parties acknowledges and agrees that in entering into this Contract it does not rely on and has no remedy in respect of any statement, representation, warranty or undertaking (if negligently or innocently made) or any person (whether a party to this Contract or not) other than as expressly set out in this Contract as a warranty or in any document agreed by the Parties to be relied on and listed in Schedule 5 Part A (*Documents Relied On*).

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30.3 Nothing in this General Condition 30 will exclude any liability for fraud or any fraudulent misrepresentation.

GC31 Severability

31.1 If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, that provision or part of the provision as applicable will be severed from this Contract. This will not affect the validity and/or enforceability of the remaining part of that provision or of other provisions.

GC32 Waiver

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

GC33 Remedies

33.1 Except as expressly set out in this Contract, no remedy conferred by any provision of this Contract 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 Contract or existing at law or in equity, by statute or otherwise.

GC34 Exclusion of Partnership

34.1 Nothing in this Contract will create a partnership or joint venture or relationship of employer and employee or principal and agent between any Commissioner and the Provider.

GC35 Non-Solicitation

35.1 During the life of this Contract neither the Provider nor any Commissioner is to solicit any medical, clinical or nursing staff engaged or employed by the other without the other's prior written consent.

35.2 Subject to Guidance, it will not be considered to be a breach of General Condition 35.1 if:

35.2.1 an individual becomes an employee of a Party as a result of a response by that individual to an advertisement placed by or on behalf of that Party for the recruitment of clinical or nursing staff or Consultants; and

35.2.2 where it is apparent from the wording of the advertisement, the manner of its publication, or otherwise that the advertisement was equally likely to attract applications from individuals who were not employees of the other Party.

GC36 Notices

36.1 Any notices given under this Contract must be in writing and must be served by hand, post, or e-mail to the address for the relevant Party set out in the Particulars.

36.2 Notices:

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

36.2.2 by hand will be effective upon delivery; and

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36.2.3 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.

GC37 Costs and Expenses

37.1 Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Contract.

GC38 Counterparts

38.1 This Contract 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.

GC39 Governing Law and Jurisdiction

39.1 This Contract will be considered as a Contract made in England and will be subject to the laws of England.

39.2 Subject to the provisions of General Condition 14 (*Dispute Resolution*), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceedings or dispute in connection with this Contract.

DEFINITIONS AND INTERPRETATION

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1. The headings in this Contract 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, re-enacted or replaced.
3. Reference to a statutory provision includes any subordinate legislation made from time to time under that provision.
4. References to Conditions, Sections and Schedules are to the Conditions, Sections and Schedules of this Contract, unless expressly stated otherwise.
5. References to any body, organisation or office include reference to its applicable successor from time to time.
6. Any references to this Contract or any other documents or resources includes reference to this Contract or those other documents or resources as varied, amended, supplemented, extended, restated and/or replaced from time to time and any reference to a website address for a resource includes reference to any replacement website address for that resource.
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. The following words and phrases have the following meanings:

18 Weeks Information	information as to the Service User’s rights under the NHS Constitution to access the relevant Services within maximum waiting times, as further described and explained in the NHS Constitution Handbook and Guidance
18 Weeks Referral-to-Treatment Standard	in relation to Consultant-led Services, the NHS’s commitment from 1 January 2009 that no-one should wait more than 18 weeks from the time they are referred to the start of their treatment unless its clinically appropriate to do so, or they choose to wait longer. Available at: http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publicationsandstatistics/Statistics/Perfomancedataandstatistics/18WeeksReferraltoTreatmentstatistics/DH_089757
1983 Act	the Mental Health Act 1983
1983 Act Code	the ‘code of practice’ published by the Department of Health under section 118 of the 1983 Act (as amended, extended or replaced from time to time)
2006 Act	the National Health Service Act 2006
2008 Act	the Health and Social Care Act 2008

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2009 Act	the Health Act 2009
2012 Act	the Health and Social Care Act 2012
Accountable Emergency Officer	the individual appointed by the Provider as required by section 252A(9) of the 2006 Act
Activity	Service User flows and clinical activity under this Contract
Activity Management Meeting	a meeting of the Co-ordinating Commissioner and the Provider held in accordance with Service Condition 29.13 (<i>Activity Management</i>)
Activity Management Plan	<p>a plan which, without limitation:</p> <ul style="list-style-type: none">(i) specifies any thresholds set out in any Activity Planning Assumptions which have been breached and/or otherwise identifies any unexpected or unusual patterns of Referrals and/or Activity in relation to the relevant Commissioners;(ii) includes the findings of any Joint Activity Review;(iii) includes an analysis of the causes and factors that contribute to the unexpected or unusual patterns of Referrals and/or Activity;(iv) includes specific locally agreed actions and timescales by which those actions must be met and completed by the Provider and/or the relevant Commissioners in order to restore levels of Referrals and/or Activity to within agreed thresholds;(v) (except in respect of unexpected or unusual patterns of Referrals and/or Activity caused wholly or mainly as a result of the exercise by Service Users of their rights under Patient Choice) includes the consequences for the Provider and/or the relevant Commissioners for breaching or failing to implement the Activity Management Plan; and(vi) (except in respect of unexpected or unusual patterns of Referrals and/or Activity caused wholly or mainly as a result of the exercise by Service Users of their rights under Patient Choice) may specify the immediate consequences (whether in relation to payment for Services delivered or to be delivered or otherwise) in relation to the identified unexpected or unusual patterns of Referrals and/or Activity
Activity Planning Assumptions	the ratios and/or obligations to be met and satisfied by the Provider in relation to Service User flows and Activity following initial assessment regarding the Services as identified in Schedule 2 Part C (<i>Activity Planning Assumptions</i>), as amended or updated for each Contract Year
Activity Query Notice	a notice setting out in reasonable detail a query on the part of the Co-ordinating Commissioner or the Provider in relation to levels of Referrals and/or Activity

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Activity Report	a report of Activity in the format agreed and specified in Schedule 6 Part B (<i>Reporting Requirements</i>)
Actual Annual Value	for the relevant Contract Year the aggregate of all payments made to the Provider under this Contract in respect of Services delivered in that Contract Year (excluding payments in relation to any CQUIN Indicator or Local Incentive Scheme), as reconciled under Service Condition 36 (<i>Payment Terms</i>). For the purposes of Schedule 4 (<i>Quality Requirements</i>) and Service Condition 38 (<i>Commissioning for Quality and Innovation (CQUIN)</i>) only, the Actual Annual Value will exclude the value of any high cost drugs, devices and procedures (as listed in the National Tariff) used or expected to be used in connection with the relevant Services, whether or not itemised in Schedule 3 Part F (<i>Expected Annual Contract Values</i>)
Actual Monthly Value	for the relevant month the aggregate of all payments made to the Provider under this Contract in respect of Services delivered in that month (excluding payments in relation to any CQUIN Indicator or Local Incentive Scheme), as reconciled under Service Condition 36 (<i>Payment Terms</i>), excluding the value of any high cost drugs, devices and procedures (as listed in the National Tariff) used or expected to be used in connection with the relevant Services, whether or not itemised in Schedule 3 Part F (<i>Expected Annual Contract Values</i>)
Actual Quarterly Value	for the relevant Quarter the aggregate of all payments made to the Provider under this Contract in respect of Services delivered in that Quarter (excluding payments in relation to any CQUIN Indicator or Local Incentive Scheme), as reconciled under Service Condition 36 (<i>Payment Terms</i>), excluding the value of any high cost drugs, devices and procedures (as listed in the National Tariff) used or expected to be used in connection with the relevant Services, whether or not itemised in Schedule 3 Part F (<i>Expected Annual Contract Values</i>)
Affected Party	a party the performance of whose obligations under this Contract is affected by an Event of Force Majeure
Agenda for Change	a single pay system in operation in the NHS, which applies to all directly employed NHS staff with the exception of doctors, dentists and some very senior managers, the three core elements of which are: (i) job evaluation; (ii) harmonised terms and conditions, and (iii) the Knowledge and Skills Framework
All Healthcare Premises	all locations comprising dedicated healthcare facilities for the delivery of NHS-funded care but excluding any locations in which care is provided outside of dedicated healthcare facilities, such as patients' homes or other irregular surroundings

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All Healthcare Settings	all locations in which NHS-funded care is delivered, including locations which are not dedicated healthcare facilities
Appropriate Apology	a sincere expression of sorrow or regret, given verbally and in writing, for the harm that has resulted from a Patient Safety Incident, in accordance with <i>Being Open Framework</i> http://www.nrls.npsa.nhs.uk/resources/?EntryId45=83726
Approved Research Study	a clinical research study: <ul style="list-style-type: none">(i) which is of clear value to the NHS;(ii) which is subject to high quality peer review (commensurate with the size and complexity of the study);(iii) which is subject to NHS research ethics committee approval where relevant;(iv) which meets all the requirements of any relevant Regulatory or Supervisory Body; and(v) in respect of which research funding is in place compliant with NHS Treatment Costs Guidance
Audit Commission	the independent public body established under the Audit Commission Act 1998 which is responsible for ensuring that public money is spent economically, efficiently and effectively in the areas of local government, housing, health, criminal justice and the fire and rescue services or any other bodies designated as a successor in function
Auditor	an appropriately qualified, independent third party auditor appointed by the Co-ordinating Commissioner in accordance with General Condition 15.7 (<i>Governance, Transaction Records and Audit</i>)
Authorised Person	the Co-ordinating Commissioner and each Commissioner, any body or person concerned with the treatment or care of a Service User approved by the Co-ordinating Commissioner or the relevant Commissioner and (for the purposes permitted by Law) any authorised representative of Local Healthwatch
Best Practice IPR	any IPR developed by the Provider including Improvements in connection with or as a result of the Services that a Commissioner might reasonably be able to use within its organisation for teaching and training of NHS best practice
Block Arrangement	an arrangement so described in Schedule 3 Part A (<i>Local Prices</i>), Part B (<i>Local Variations</i>) or Part C (<i>Local Modifications</i>) under which an overall fixed price is agreed which is not varied as a result of any changes in Activity levels
Branding Guidance	NHS brand policy and guidelines, as revised, updated or re-issued from time to time by NHS England and/or the Department of Health, and which are available at www.nhsidentity.nhs.uk

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Business Continuity Plan	a plan for continuity of all of the Services in adverse circumstances, as agreed between the Co-ordinating Commissioner and the Provider, and as may be amended (and further agreed) from time to time, and which is in accordance with the NHS England Business Continuity Management Framework (Service Resilience) and the principles of PAS 2015 and ISO 22301
Caldicott Guardian	the senior health professional responsible for safeguarding the confidentiality of patient information
Caldicott IG Review	the Information Governance Review (March 2013) also known as Caldicott 2, available at: https://www.gov.uk/government/publications/the-information-governance-review
Caldicott Principles	the principles applying to the handling of patient-identifiable information set out in the report of the Caldicott Committee (1 December 1997)
Care Quality Commission or CQC	the Care Quality Commission established under section 1 of the 2008 Act
Care Programme Approach	<p>the framework introduced to deliver effective mental healthcare for people with severe mental health problems (as amended, revised, re-issued or replaced from time to time by the Department of Health), being the Care Programme Approach referred to in:</p> <ul style="list-style-type: none">(i) <i>Department of Health, Effective care co-ordination in mental health services; modernising the Care Programme Approach 1999</i> (a policy booklet);(ii) <i>Reviewing the Care Programme Approach 2006</i> (a consultation document) Care Services Improvement Partnership Department of Health; and(iii) <i>Re-focusing the Care Programme Approach – Policy and Positive Practice Guidance 2008</i>, <p>being the process used to assess the care needs of Service Users based on the Principles of HC 90(23)</p>
Care Transfer Plan	an appropriately detailed and comprehensive plan relating to the transfer of and/or discharge from care of a Service User, to ensure a consistently high standard of care for that Service User is at all times maintained
Carer	a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage
CEDR	the Centre for Effective Dispute Resolution
Change in Control	(i) any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a

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corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the ability to control the exercise of 50% or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters), provided that a Change in Control will be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation; or

- (ii) any change in the ability to control an NHS Foundation Trust, NHS Trust or NHS Body by virtue of the entering into of any franchise, management or other agreement or arrangement, under the terms of which the control over the management of the relevant NHS Foundation Trust, NHS Trust or NHS Body is conferred on another person without the Co-ordinating Commissioner's prior written consent

Change in Control Notification	a notification in the form of the template to be found via http://www.england.nhs.uk/nhs-standard-contract/ completed as appropriate
Choice Guidance	any Law or Guidance relating to extending the range of choices available to patients (other than in relation to Patient Choice as defined below)
Choose and Book/E-Referral	the national electronic booking service that gives patients a choice of place, date and time for first hospital or clinic appointments
Choose and Book /E-Referral Guidance	the Guidance in relation to Choose and Book/E-Referral available at www.chooseandbook.nhs.uk/staff/overview/guidance
Clinical Commissioning Group or CCG	a clinical commissioning group as defined in Section 11 of 2006 Act
Clinical Networks	groups of commissioners and providers of health or social care concerned with the planning and/or delivery of integrated health or social care across organisational boundaries, whether on a national, regional or local basis
Commissioner Documents	the documents listed in Schedule 1 Part B (<i>Commissioner Documents</i>)
Commissioner IPR	any IPR owned by or licensed to a Commissioner which is relevant and necessary to the performance of the Services by the Provider, including the IPR set out in Schedule 5 Part C (<i>IPR</i>) including Improvements
Commissioner Partnership Agreement	a Partnership Agreement to which a Commissioner is a party which relates to or affects the commissioning of any Service under this Agreement
Commissioner Representative	a person identified as such in the Particulars

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Commissioner Requested Services or CRS	has the meaning given to it in CRS Guidance
Commissioners	the parties identified as such in the Particulars and “Commissioner” means any one of them
Complaints Procedure	a procedure which the Provider or a Commissioner is to follow in the event of a complaint and which complies with the Law, Guidance and Good Practice
Conditions Precedent	the conditions precedent to commencement of service delivery referred to in General Condition 3.1.2 (<i>Service Commencement</i>) and set out in Schedule 1 Part A (<i>Conditions Precedent</i>)
Confidential Information	any information or data in whatever form disclosed, which by its nature is confidential or which the Disclosing Party acting reasonably states in writing to the Receiving Party is to be regarded as confidential, or which the Disclosing Party acting reasonably has marked ‘confidential’ (including, financial information, or marketing or development or workforce plans and information, and information relating to services or products) but which is not Service User Health Records or information relating to a particular Service User, or Personal Data, or information which is disclosed in accordance with General Condition 21 (<i>Data Protection, Freedom of Information and Transparency</i>), in response to an FOIA request, or information which is published as a result of government policy in relation to transparency
Consent	<p>(i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or</p> <p>(ii) any necessary consent or agreement from any third party needed either for the performance of the Provider’s obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract,</p> <p>including any registration with any relevant Regulatory or Supervisory Body</p>
Consultant	a person employed or engaged by the Provider of equivalent standing and skill as a person appointed by an NHS Body in accordance with the Law governing the appointment of consultants
Consultant-led Service	a Service for which a Consultant retains overall clinical responsibility (without necessarily being present at each Service User appointment), and in respect of which Referrals of Service Users are made directly to a named Consultant
Contract Management Meeting	a meeting of the Co-ordinating Commissioner and the Provider held in accordance with General Condition 9.8 (<i>Contract Management</i>)
Contract Month Elective Care 18 Weeks Revenue	the Provider’s total revenue each month derived from the provision of Consultant-led Services to which the 18 Weeks Referral to

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Treatment Standard applies

Contract Query	<p>(i) a query on the part of the Co-ordinating Commissioner in relation to the performance or non-performance by the Provider of any obligation on its part under this Contract; or</p> <p>(ii) a query on the part of the Provider in relation to the performance or non-performance by any Commissioner of any obligation on its part under this Contract,</p> <p>as appropriate</p>
Contract Query Notice	a notice setting out in reasonable detail the nature of a Contract Query
Contract Technical Guidance	technical guidance in relation to the NHS Standard Contract, available at: http://www.england.nhs.uk/wp-content/uploads/2013/12/tech-guid-1415.pdf
Contract Term	the period specified as such in the Particulars (or where applicable that period as extended in accordance with Schedule 1 Part C (<i>Extension of Contract Term</i>))
Contract Year	the period starting on the Service Commencement Date and ending on the following 31 March and each subsequent period of 12 calendar months starting on 1 April, provided that the final Contract Year will be the period starting on the relevant 1 April and ending on the Expiry Date or date of earlier termination
Co-ordinating Commissioner	the party identified as such in the Particulars
COSOP	the Cabinet Office Statement of Practice <i>Staff Transfers in the Public Sector</i> January 2000
CQC Registration	registration of the Provider and/or the Provider's Premises in accordance with the CQC Regulations
CQC Regulations	the Care Quality Commission (Registration) Regulations 2009
CQUIN Guidance	Commissioning for Quality and Innovation (CQUIN) 2014/15 guidance available at: http://www.england.nhs.uk/wp-content/uploads/2013/12/cquin-guid-1415.pdf
CQUIN Indicator	an indicator or measure of the Provider's performance as set out in CQUIN Table 1
CQUIN Payment	a payment to be made to the Provider for having met the goals set out in the CQUIN Scheme as determined in accordance with CQUIN Table 1
CQUIN Payments on Account	the payments to be made on account in respect of the relevant CQUIN Payments as set out in CQUIN Table 2 (or as adjusted from

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time to time in accordance with Service Condition 38.9
(*Commissioning for Quality and Innovation (CQUIN)*)

CQUIN Performance Report	a report prepared by the Provider detailing (with supporting clinical and other relevant evidence) the Provider's performance against and progress towards satisfying the CQUIN Indicators in each month to which the report relates, comprising part of the Service Quality Performance Report
CQUIN Query Notice	a notice prepared by or on behalf of any Commissioner setting out in reasonable detail the reasons for challenging or querying a CQUIN Performance Report
CQUIN Reconciliation Account	<p>an account prepared by or on behalf of the Provider which</p> <ul style="list-style-type: none">(i) identifies the CQUIN Payments to which the Provider is entitled, on the basis of the Provider's performance against the CQUIN Indicators during the relevant Contract Year;(ii) confirms the CQUIN Payments on Account already made to the Provider in respect of the relevant Contract Year;(iii) may correct the conclusions of any previous reconciliation account; and(iv) must identify any reconciliation payments now due from the Provider to any Commissioner, or from any Commissioner to the Provider
CQUIN Scheme	the performance incentive scheme set out in CQUIN Tables 1
CQUIN Table 1, CQUIN Table 2	the tables at Schedule 4 Part E (<i>Commissioning for Quality and Innovation (CQUIN)</i>) under those headings
Critical Care	healthcare or treatment at a higher level or more intensive level than is normally provided in an acute ward (often to support one or more of a patient's organs) and normally forming part of a comprehensive acute care pathway, but which may be required in other circumstances alone or together with Emergency Care
CRS Guidance	the Guidance published by Monitor in relation to Commissioner Requested Services, available at: http://www.monitor.gov.uk/sites/default/files/publications/ToPublishFinalCRSGuidance28March13.pdf
Data Breach	has the meaning given to it in the Information Governance Review 2013
Data Controller	has the meaning given to it in the DPA
Data Processor	has the meaning given to it in the DPA
Data Quality Improvement Plan or DQIP	an agreed plan setting out specific data and information improvements to be achieved by the Provider in accordance with the timescales set out in that plan (which may comprise or include any

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DQIP agreed in relation to a Previous Contract) as appended at
Schedule 6 Part C (*Data Quality Improvement Plan*)

DBS	the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012
Death of a Service User Policy	a policy that complies with Good Practice and the Law, and which details the procedures which the Provider is to follow in the event of the death of a Service User while in the Provider's care
Debt Securities	debentures, debenture or loan stock, bonds and notes, whether secured or unsecured
Definitions and Interpretation	the section of the General Conditions under that heading
Delivery Method	<ul style="list-style-type: none">(i) email using an NHS Net secure account; or(ii) secure fax; or(iii) direct automatic transfer onto the GP practice electronic patient record system through a suitable secure interface, as required or permitted by the relevant Transfer of and Discharge from Care Protocol
Department of Health	the Department of Health in England of HM Government or other relevant body, or such other body superseding or replacing it from time to time and/or the Secretary of State
Direction Letter	a letter issued by the NHS Business Services Authority (on behalf of the Secretary of State pursuant to Section 7(2) of the Superannuation (miscellaneous Provisions) Act 1967) to the Provider or a Sub-Contractor, setting out the terms on which the Provider or Sub-Contractor (as appropriate) is to be granted access to the NHS Pension Scheme in connection with this Contract or the relevant Sub-Contract (as appropriate)
Directly Bookable	in relation to any Service, the Provider's PAS being compliant with and able to communicate with Choose and Book enabling available time slots to show on Choose and Book, thereby enabling a Referrer to book a Service User appointment directly onto the Provider's PAS
Directory of Service	a directory of information that describes the services that organisations offer, provides a window through which providers can display their services and enables referring clinicians to search for appropriate services to which they can refer Service Users
Discharge Summary	a summary of information relevant to the Service User to be produced by the Provider in accordance with the relevant Discharge from Care Protocol
Disclosing Party	the Party disclosing Confidential Information
Dispute	a dispute, conflict or other disagreement between the Parties arising

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out of or in connection with this Contract

Dispute Resolution	the procedure for resolution of disputes set out in General Condition 14 (<i>Dispute Resolution</i>)
DPA	the Data Protection Act 1998
Effective Date	the date referred to as such in the Particulars
Elective Care	pre-arranged, non-emergency care including scheduled operations provided by medical specialists (and unexpected returns to theatre and/or admissions to Critical Care units) in a hospital or other secondary care setting
Emergency Care	healthcare or treatment for which a Service User has an urgent clinical need (assessed in accordance with Good Practice and which is in the Service User's best interests)
Enhanced DBS & Barred List Check	an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate)
Enhanced DBS & Barred List Check (child)	a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list
Enhanced DBS & Barred List Check (adult)	a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult's barred list
Enhanced DBS & Barred List Check (child & adult)	a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's and adult's barred list
Enhanced DBS Check	a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for
Enhanced DBS Position	any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted
E-Procurement Guidance	Department of Health guidance in <i>NHS E-Procurement Strategy</i> available via: http://www.gov.uk/government/collections/nhs-procurement
EPRR Guidance	the emergency preparedness, resilience and response and sustainability guidance published by the Department of Health and NHS England from time to time, including: <ul style="list-style-type: none">(i) NHS England Business Continuity Management Framework (Service Resilience);(ii) NHS England Emergency Planning Framework;

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- (iii) NHS England Command and Control; and
- (iv) NHS Sustainable Development Unit Adaptation Guidance,

as updated from time to time

Equipment	anything except for the Provider's Premises, the Services Environment and the Staff that the Provider may use in the delivery of the Services (including Vehicles)
Essential Services	the Services identified as such listed in Schedule 2 Part D (<i>Essential Services</i>), being those Services for which sufficient capacity does not exist at appropriate alternative providers or potential alternative providers and/or which cannot be provided in a different way and/or where vulnerable groups may have particular problems accessing alternative providers and/or where the Provider ceasing to provide the Service would render other Services unviable
Essential Services Continuity Plan	a plan agreed with the Co-ordinating Commissioner to ensure the continual availability of the Essential Services in the event of an interruption or suspension of the Provider's ability to provide any Essential Services and/or on any termination of this Contract or of any Service, as appended at Schedule 2 Part E (<i>Essential Services Continuity Plan</i>) and updated from time to time
European Economic Area	the European Economic Area (EEA) which consists of the European Union and all the European Free Trade Association (EFTA) countries except Switzerland
Event of Force Majeure	an event or circumstance which is beyond the reasonable control of the Party claiming relief under General Condition 28 (<i>Force Majeure</i>), including war, civil war, armed conflict or terrorism, strikes or lock outs, riot, fire, flood or earthquake, and which directly causes that Party to be unable to comply with all or a material part of its obligations under this Contract in relation to any Service
Excusing Notice	<p>a notice setting out in reasonable detail the Receiving Party's reasons for believing that a Contract Query is unfounded, or that the matters giving rise to the Contract Query are:</p> <ul style="list-style-type: none">(i) due wholly or partly to an act or omission by the Issuing Party (or, if the Issuing Party is the Co-ordinating Commissioner), any Commissioner); or(ii) a direct result of the Receiving Party following the instructions of the Issuing Party (or, if the Issuing Party is the Co-ordinating Commissioner, any Commissioner); or(iii) due to circumstances beyond the Receiving Party's reasonable control but which do not constitute an Event of Force Majeure or a Significant Incident or Emergency
Expected Annual Contract Value	the sum (if any) set out in Schedule 3 Part F (<i>Expected Annual Contract Values</i>) for each Commissioner in respect of each relevant Service for the Contract Year. For the purposes of Schedule 4 Part E (<i>Commissioning for Quality and Innovation (CQUIN)</i>) and Service

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Condition 38 (*Commissioning for Quality and Innovation (CQUIN)*) only, the Expected Annual Contract Value will exclude the values of any high cost drugs, devices and procedures (as listed in the National Tariff) used or expected to be used in connection with the relevant Services, whether or not itemised in Schedule 3 Part F (*Expected Annual Contract Values*)

Expected Service Commencement Date	the date referred to as such in the Particulars
Expert	the person designated to determine the Dispute by virtue of General Condition 14.8 or 14.9 (<i>Dispute Resolution</i>)
Expert Determination Notice	notice in writing showing an intention to refer Dispute for expert determination
Expiry Date	the date referred to as such in the Particulars
Fair Deal for Staff Pensions	the HM Treasury document <i>Fair Deal for Staff Pensions: staff transfer from Central Government</i> October 2013, available at: https://www.gov.uk/government/publications/fair-deal-guidance
FFT Guidance	the NHS Friends and Family Test Implementation Guidance available at http://www.England.nhs.uk/ourwork/pe/fft/
Final Reconciliation Date	the date when the final SUS reconciliation report for the relevant month is available for the Commissioners to view and use to validate reconciliation accounts received from the Provider, as advised by HSCIC from time to time
First Exception Report	a report issued in accordance with General Condition 9.21 (<i>Contract Management</i>) notifying the relevant Party's Governing Body of that Party's breach of a Remedial Action Plan and failure to remedy that breach
First Reconciliation Date	the date when the first SUS reconciliation report on Activity for the relevant month is available for the Commissioners to view to facilitate reconciliation between the Provider and Commissioners, as advised by HSCIC from time to time
FOIA	the Freedom of Information Act 2000
Formulary	a list of medications that are approved by the Provider on the basis of their proven efficacy, safety and cost-effectiveness to be prescribed for Service Users by the Provider's clinical Staff
Friends and Family Test	the Friends and Family Test as defined in FFT Guidance
General Conditions	these General Conditions forming part of the Contract
Good Clinical Practice	using standards, practices, methods and procedures conforming to the Law and reflecting up-to-date published evidence and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider and a person providing

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services the same as or similar to the Services at the time the Services are provided, including (where appropriate) assigning a Consultant to each Service User who will be clinically responsible for that Service User at all times during the Service User's care by the Provider

Good Health and/or Social Care Practice

using standards, practices, methods and procedures conforming to the Law and reflecting up-to-date published evidence and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced provider and a person engaged in the provision of services the same as or similar to the Services at the time the Services are provided

Good Practice

Good Clinical Practice and/or Good Health and/or Social Care Practice, as appropriate

Governing Body

in respect of any Party, the board of directors, governing body, executive team or other body having overall responsibility for the actions of that Party

Government Buying Standards for Food and Catering Services

the Department for Environment, Food and Agricultural Affairs guidance, available at:
<http://sd.defra.gov.uk/advice/public/buying/products/food/>

GP

a general medical practitioner or general dental practitioner registered on the Performers List held by the NHS England

Guidance

any applicable health or social care guidance, guidelines, direction or determination, framework, standard or requirement to which the Commissioners and/or the Provider have a duty to have regard (and whether specifically mentioned in this Contract or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by the Co-ordinating Commissioner and/or any relevant Regulatory or Supervisory Body and which for the avoidance of doubt shall (where relevant) include NHS England's Planning and Assurance Framework

HCAI

health care associated infections, as defined in sections 20(6) and 20(7) of the 2008 Act

HCAI Reduction Plan

the plan for the Contract Year agreed between the Provider and the Commissioner which sets out obligations for the management and reduction of HCAI

Healthcare Professional

a person qualified in a healthcare-related profession

Health Education England

the special health authority established by the Health Education England (Establishment and Constitution) Order 2012

Healthwatch England

the independent consumer champion for health and social care in England

HQIP Guidance

guidance issued by the Healthcare Quality Improvement

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Partnership, available at: <http://www.hqip.org.uk/guidance/>

HM Government	the government of the United Kingdom of Great Britain and Northern Ireland
Holding Company	has the definition given to it in section 1159 of the Companies Act 2006
HSCIC	the Health and Social Care Information Centre http://www.ic.nhs.uk
IG Guidance for Serious Incidents	HSCIC's <i>Checklist Guidance for Information Governance Serious Incidents Requiring Investigation</i> June 2013, available at: https://www.igt.hscic.gov.uk/KnowledgeBaseNew/HSCIC%20IG%20SIRI%20%20Checklist%20Guidance%20V2%200%201st%20June%202013.pdf
Immediate Action Plan	a plan setting out immediate actions to be undertaken by the Provider to protect the safety of Services to Service Users, the public and/or Staff
Improvement	any improvement, enhancement or modification to the Provider IPR which cannot be used independently of the Provider IPR or any improvement, enhancement or modification to the Commissioner IPR which cannot be used independently of the Commissioner IPR
Incident Co-ordination Centre	the incident co-ordination centre which acts as a control room for the managing of Significant Incidents or Emergencies in accordance with the NHS England Emergency Planning Framework
Incidents Requiring Reporting Procedure	the procedure agreed between the Parties and set out in Schedule 6 Part D (<i>Incidents Requiring Reporting Procedure</i>)
Incident Response Plan	means each Party's operational plan for response to and recovery from Significant Incidents or Emergencies as identified in national, local and community risk registers and in accordance with the requirements of the NHS England Emergency Planning Framework and the Civil Contingencies Act 2004
Indemnity Arrangement	either: <ul style="list-style-type: none">(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)
Indicative Activity Plan	a plan identifying the anticipated indicative Activity and specifying the threshold for each Activity (which may be zero) for the following Contract Year, set out in Schedule 2 Part B (<i>Indicative Activity Plan</i>)
Indirect Losses	loss of profits (other than profits directly and solely attributable to provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss

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of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis

Information Breach	any failure on the part of the Provider to comply with its obligations under Service Condition 28 (<i>Information Requirements</i>) and Schedule 6 Part B (<i>Reporting Requirements</i>)
Institutional Investor	an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pension fund, private equity firm, venture capitalist, insurance company or investment trust
Inter-agency Agreement	any agreement between two or more public bodies, whether or not the agreement also involves third and/or independent sector organisations
Integrated Digital Care Records Guidance	the publication <i>Safer Hospitals Safer Wards: achieving an integrated digital care record</i> , available at: http://www.england.nhs.uk/wp-content/uploads/2013/07/safer-hosp-safer-wards.pdf
Interest	interest at the rate of LIBOR plus 2% per annum
Invoice Validation Guidance	the NHS England publication <i>Who Pays? Information Governance Advice for Invoice Validation</i> December 2013, available at: http://www.england.nhs.uk/ourwork/tsd/data-info/ig/in-val/
IPR	inventions, copyright, patents, database right, trademarks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights
ISO 22301	the systems standard defining the requirements for a management systems approach to business continuity management
Issuing Party	the Party which has issued a Contract Query Notice
JI Report	a report detailing the findings and outcomes of a Joint Investigation
Joint Activity Review	a joint review of Activity by the Co-ordinating Commissioner and the Provider held in accordance with Service Condition 29.16 (<i>Managing Activity and Referrals</i>)
Joint Investigation	an investigation by the Issuing Party and the Receiving Party into the matters referred to in a Contract Query Notice
Knowledge and Skills Framework	an element of the career and pay progressions strand of Agenda for Change
Law	<ul style="list-style-type: none">(i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;(ii) any enforceable EU right within the meaning of section 2(1) European Communities Act 1972;(iii) any applicable judgment of a relevant court of law which is a

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binding precedent in England and Wales;

- (iv) Guidance;
- (v) National Standards; and
- (vi) any applicable code,

in each case in force in England and Wales

Legal Guardian	an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs
LHRPs	the local health resilience partnerships which are a strategic forums for organisations in the local health economy which facilitates health sector preparedness and planning for emergencies by the LRF and supports NHS Bodies, Public Health England and local authority representatives in their role to represent health sector emergency planning, resilience and response matters
LIBOR	the London Interbank Offered Rate for 6 months sterling deposits in the London market
Lessons Learned	experience derived from provision of the Services or otherwise, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider's provision of the Services
Local Authority	a county council in England, a district council in England or a London borough council
Local Counter Fraud Specialist	the accredited local counter fraud specialist appointed by the Commissioner or the Provider (as appropriate)
Local Healthwatch	an organisation established under section 222 of the Local Government and Public Involvement in Health Act 2007
Local Incentive Scheme	the locally agreed incentive scheme or schemes set out in Schedule 4 Part F (<i>Local Incentive Scheme</i>) from time to time
Local Modification	a modification to a National Price where provision of a Service by the Provider at the National Price would be uneconomic, as approved or granted by Monitor in accordance with the National Tariff
Local Price	the price agreed by the Co-ordinating Commissioner and the Provider or determined as payable for a health care service for which no National Price is specified by the National Tariff
Local Quality Requirements	the requirements set out in Schedule 4 Part C (<i>Local Quality Requirements</i>) as may be amended by the Parties in accordance with this Contract or with the recommendations or Requirements of NICE

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Local Risk Management System	a software tool used by healthcare organisations to assist them in managing risks to the provision of healthcare by use of features that can include (but are not necessarily limited to) a means of recording information related to risk, safety, governance, and quality (including Patient Safety Incident reports), and integrating, collating and tracking such information and monitoring trends related to such information thereby allowing, oversight of and thematic reporting on issues, activities and progress related to that information
Local Security Management Specialist	the accredited local security management specialist appointed by the Commissioner or the Provider (as appropriate)
Local Variation	a variation to a National Price or the currency for a Service subject to a National Price agreed by the Co-ordinating Commissioner and the Provider in accordance with the National Tariff
Longstop Date	the date referred to as such in the Particulars
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
LRF	the Local Resilience Forum, being the local forum established as a collaborative mechanism for delivery equipped to achieve the mutual aims and outcomes agreed by the member organisations pursuant to the requirements of the Civil Contingencies Act 2004
Mandatory Material Sub-Contract	any Sub-Contract from time to time entered into (whether directly by the Provider or by a Sub-Contractor) with a Mandatory Material Sub-Contractor in accordance with the terms referred to at Schedule 5 Part B1 (<i>Provider's Mandatory Material Sub-Contractors</i>)
Mandatory Material Sub-Contractor	any Sub-Contractor from time to time listed in Schedule 5 Part B1 (<i>Provider's Mandatory Material Sub-Contractors</i>)
Material Sub-Contract	a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract
Material Sub-Contractor	a Mandatory Material Sub-Contractor or a Permitted Material Sub-Contractor
Material Sub-Contractor Change in Control	any Change in Control of a Material Sub-Contractor or any of its Holding Companies
Monitor	the corporate body known as Monitor provided by section 61 of the 2012 Act
Monitor's Licence	a licence granted by Monitor under section 87 of the 2012 Act
Monthly Activity Report	the report which the Provider is required to submit to the Commissioner under Schedule 6 Part B (<i>Reporting Requirements</i>)
MRSA	meticilin-resistant staphylococcus aureus

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National Audit Office	the independent office established under section 3 of the National Audit Act 1983 which conducts financial audits and reports to Parliament on the spending of public money (and any successor body or bodies from time to time)
National Clinical Audit and Patient Outcomes Programme or NCAPOP	a set of centrally commissioned national clinical audits that measure Provider performance against national quality standards or evidence-based best practice, and allows comparisons to be made between provider organisations to improve the quality and outcomes of care. http://www.hqip.org.uk/national-clinical-audits-managed-by-hqip/
National CQUIN National Institute for Health and Clinical Excellence or NICE	a national CQUIN goal as set out in CQUIN Guidance the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health
National Price	the national price for a health care service specified by the National Tariff, as may be adjusted by applicable national variation specified in the National Tariff under section 116(4)(a) of the 2012 Act
National Quality Requirements	the requirements set out in Schedule 4 Part B (<i>National Quality Requirements</i>)
National Reporting and Learning System or NRLS	the central database of Patient Safety Incident reports. All information submitted is analysed to identify hazards, risks and opportunities to continuously improve the safety of patient care
National Requirements Reported Centrally	the requirements set out under that heading in Schedule 6 Part B (<i>Reporting Requirements</i>)
National Requirements Reported Locally	the requirements set out under that heading in Schedule 6 Part B (<i>Reporting Requirements</i>)
National Sanction	the consequence of breach in respect of an Operational Standard as set out in Schedule 4 Part A (<i>Operational Standards</i>) or a National Quality Requirement as set out in Schedule 4 Part B (<i>National Quality Requirements</i>)
National Standards	those standards applicable to the Provider under the Law and/or Guidance as amended from time to time
National Tariff	the national tariff in respect of the relevant Contract Year, as published by Monitor under section 116 of the 2012 Act (including any rules included under section 116(4)(b) of the 2012 Act)
National Variation	a Variation mandated by NHS England to reflect changes to the NHS Standard Contract and notified to the Parties by whatever means NHS England may consider appropriate
NDTMS	the National Drug Treatment Monitoring System https://www.ndtms.net/default.aspx which: (i) collates information provided by those involved in drug

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treatment that is required by the NTA; and

- (ii) monitors the performance of the drug treatment system in England against local and national targets

Negotiation Period	the period of 15 Operational Days following receipt of the first offer to negotiate
Never Event	events or occurrences which should never occur in delivering the Services in All Healthcare Settings or All Healthcare Premises or otherwise (as appropriate) as set out in Schedule 4 Part D (<i>Never Events</i>), as revised, re-issued or replaced by Guidance from time to time
Never Events Guidance	the guidance in relation to Never Events available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213046/never-events-policy-framework-update-to-policy.pdf
Never Event Consequence	the sum determined in accordance with Schedule 4 Part D (<i>Never Events</i>)
NHS	the National Health Service in England
NHS Body	has the meaning given to it in section 275 of the 2006 Act as amended by section 138(2)(c) of Schedule 4 to the 2012 Act
NHS Business Services Authority	the Special Health Authority established under the NHS Business Services Authority (Establishment and Constitution Order) 2005 SI 2005/2414
NHS Carbon Reduction Strategy	the NHS carbon reduction strategy: <i>Saving Carbon, Improving Health</i> , available at: http://www.sdu.nhs.uk/documents/publications/1237308334_qyG_saving_carbon_improving_health_nhs_carbon_reducti.pdf
NHS Care Records Guarantee	the document setting out the rules that govern information held in the NHS Care Records Service, which is reviewed at least annually by the National Information Governance Board for Health and Social Care
NHS Care Records Service	the electronic patient record management service to enable authorised healthcare professionals to access an individual patient's integrated electronic care record at any time from any relevant healthcare premises and whose website is http://www.nhs-care-records.nhs.uk
NHS Choices Website	http://www.nhs.uk/pages/homepage.aspx or the website of the successor to NHS Choices
NHS Classifications Services	the NHS resource responsible for the delivery of national clinical classifications standards and guidance for the NHS clinical coding profession
NHS Constitution	the constitution for the NHS in England set out in Law and/or

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Guidance from time to time which establishes the principles and values of the NHS in England and sets out the rights, pledges and responsibilities for patients, the public and staff

NHS Constitution Handbook	the Handbook To The NHS Constitution as revised, re-issued or replaced from time to time
NHS Data Model and Dictionary	the reference source for information standards to support healthcare activities within the NHS in England
NHS Employment Check Standards	the documents which set out the pre-appointment checks that are required by Law, those that are mandated by any Regulatory Body policy, and those that are required for access to the NHS Care Record Service and include, verification or identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks
NHS England	the National Health Service Commissioning Board established by section 1H of the 2006 Act, also known as NHS England
NHS England Business Continuity Management Framework (Service Resilience)	the guidance <i>NHS England Business Continuity Management Framework (Service Resilience)</i> available at: http://www.England.nhs.uk/wp-content/uploads/2013/01/bus-cont-frame.pdf
NHS England Command and Control Framework	the guidance <i>NHS England Command and Control Framework</i> available at: http://www.England.nhs.uk/wp-content/uploads/2013/01/comm-control-frame.pdf
NHS England Emergency Planning Framework	the guidance <i>NHS England emergency planning framework</i> available at: http://www.England.nhs.uk/wp-content/uploads/2013/03/eprf-framework.pdf
NHS Foundation Trust	an NHS foundation trust as defined in section 30 of the 2006 Act
NHS Information Governance Toolkit	an online system which allows NHS organisations and partners to assess themselves against Department of Health information governance policies and standards https://www.igt.hscic.gov.uk/
NHS Number	the national unique patient identifier given to each person registered with the NHS in England and Wales. Further information is available at: http://www.connectingforhealth.nhs.uk/systemsandservices/nhsnumber
NHS Pension Scheme	the National Health Service Pension Scheme for England and Wales, established under the Superannuation Act 1972, governed by subsequent regulations under that Act including the National Health Service Pension Scheme Regulations 1995 (SI 1995/300) and the National Health Service Pension Scheme Regulations 2008 (SI 2008/653)
NHS Protect	the division of the NHS Business Services Authority which operates under the name of NHS Protect, also known as the Counter Fraud

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and Security Management Service

NHS Protect Guidance	any guidance issued from time to time by NHS Protect under the NHS Business Authority Directions 2006 available at: http://www.nhsbsa.nhs.uk/Protect
NHS Safety Thermometer	a local improvement tool for measuring, monitoring and analysing patient harms and 'harm free' care available at: http://www.hscic.gov.uk/thermometer
NHS Serious Incident Framework	NHS England's serious incident framework, available at: http://www.England.nhs.uk/ourwork/patientsafety/
NHS Standard Contract	the model commissioning contract published by NHS England from time to time pursuant to its powers under regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (<i>Responsibilities and Standing Rules</i>) Regulation 2012
NHS Sustainable Development Unit Adaptation Guidance August 2012	the guidance available at: <a adaptation"="" href="http://www.sdu.nhs.uk/documents/publications/Adaptation_Guidance_Final.pdf#search=">http://www.sdu.nhs.uk/documents/publications/Adaptation_Guidance_Final.pdf#search="adaptation"
NHSTDA	the Special Health Authority known as the National Health Service Trust Development Authority established under the NHS Trust Development Authority (Establishment and Constitution) Order 2012 SI 901/2012
NHS Treatment Costs Guidance	<i>Attributing the costs of health and social care Research & Development (AcoRD)</i> , available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/140054/dh_133883.pdf and HSG (97) 32, available at: http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/publicationsandstatistics/lettersandcirculars/Healthserviceguidelines/DH_4018353
NHS Trust	a body established under section 25 of the 2006 Act
NICE	the National Institute for Health and Clinical Excellence
NICE Technology Appraisals	technology appraisals conducted by NICE in order to make recommendations on the use of drugs and other health technologies within the NHS
Non-elective Care	care which is unplanned and which may include: <ul style="list-style-type: none">(i) Critical Care, whether or not provided with Emergency Care;(ii) Emergency Care; and(iii) Unscheduled Care, whether or not it is also Emergency Care
NTA	the National Treatment Agency

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Operational Day	a day other than a Saturday, Sunday or bank holiday in England
Operational Standards	the standards set out in Schedule 4 Part A (<i>Operational Standards</i>)
Organisation Data Service or ODS	the NHS organisation that is responsible for: <ul style="list-style-type: none">(i) the publication of all organisation and practitioner codes;(ii) the development of national policy and standards relating to organisation and practitioner codes; and(iii) the development of national reference organisation data
Original Commissioner Partnership Agreements	the Commissioner Partnership Agreements to which a Commissioner is a party as at the date of this Agreement as listed in Schedule 5 Part E (<i>Partnership Agreements</i>)
Original Provider Partnership Agreements	the Provider Partnership Agreements to which the Provider is a party as at the date of this Agreement as listed in Schedule 5 Part E (<i>Partnership Agreements</i>)
Other Local Agreements, Policies and Procedures	the agreements, policies and procedures details of which are set out in Schedule 2 Part G (<i>Other Local Agreements, Policies and Procedures</i>) or otherwise agreed between the Parties from time to time
Package of Care	any assessment, treatment, support, accommodation or other elements of care to be provided under the Service and relating to a referral or an emergency presentation
Particulars	the Particulars to the Contract
Parties	the Commissioners (or such of them as the context requires) and the Provider and “Party” means any one of them
Parties in Dispute	the Co-ordinating Commissioner and/or other Commissioners directly concerned in the Dispute, as one Party in Dispute, and the Provider, as the other
Partnership Agreement	an arrangement between a Local Authority and an NHS Body made under section 75 of the 2006 Act for the provision of combined health or social services and/or under section 10 of the Children Act 2004 to promote co-operation with a view to improving the well-being of children
PAS	a patient administration system
PAS 2015	the specification published by the British Standards Institution on 21 October 2010 setting out recommendations for improving and maintaining resilience for NHS-funded organisations
Pathway	an evidence-based plan of goals and key elements of care for a Service User that facilitates the communication, co-ordination of roles and sequencing of the activities of a multi-disciplinary care

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team, Service Users, Carers and Legal Guardians, the aim of which is to enhance quality of care by improving Service User outcomes, promoting Service User safety, increasing Service User satisfaction and optimising the use of resources

Patient Choice	the duty of commissioners to give service users choice in respect of referrals as set out in regulation 39 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012
Patient Choice Guidance	any Law and Guidance issued or determinations relating to Patient Choice
Patient Pocket Money	monies that the Provider and the Co-ordinating Commissioner agree from time to time may be paid by the Provider to a Service User to purchase sundry items and services
Patient-Reported Outcomes Measures or PROMS	measures to gather provision of self-reports by service users through completion of questionnaires or through interviews http://www.hscic.gov.uk/proms
Patient Safety Incident	any unintended or unexpected incident that occurs in respect of a Service User, during and as a result of the provision of the Services, that could have led, or did lead to, harm to that Service User
Performers List	the list of medical practitioners and the list of dental practitioners prepared, maintained and published in accordance with regulations made under sections 91 and 106 of the 2006 Act
Permitted Material Sub-Contract	any Sub-Contract from time to time entered into (whether directly by the Provider or by a Sub-Contractor) with a Permitted Material Sub-Contractor in accordance with the terms referred to at Schedule 5 Part B2 (<i>Provider's Permitted Material Sub-Contractors</i>)
Permitted Material Sub-Contractor	any Sub-Contractor from time to time listed in Schedule 5 Part B2 (<i>Provider's Permitted Material Sub-Contractors</i>)
Personalised Care Plan	<p>a plan discussed and agreed between the Provider and a Service User and/or their Carer or Legal Guardian (as appropriate) to deliver Services appropriate to the Service User's needs, which:</p> <ul style="list-style-type: none">(i) reflects the Service User's goals;(ii) helps the Service User to manage their physical and mental health;(iii) pays proper attention to the Service User's culture, ethnicity, gender, age and sexuality; and(iv) takes account of the needs of any children and Carers <p>Care planning guidance is available at: http://www.england.nhs.uk/wp-content/uploads/2013/09/trans-part-hc-guid1.pdf</p>

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Personal Data	has the meaning set out in the DPA
Place of Safety	has the meaning given to it in section 135 of the 1983 Act
Post Reconciliation Inclusion Date	the date by which the Provider must submit to SUS all of the final activity data on which it believes payment for the month in question should be based, as advised by HSCIC from time to time
Prescribed Connection	a prescribed connection as determined by the Medical Profession (Responsible Officers) Regulations 2010 (SI 2841/2010) as amended by the Medical Profession (Responsible Officers) Regulations 2013 (SI 391/2013)
Prevent	the policy forming part of HM Government's counter-terrorism strategy, available at: http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/prevent-strategy-review?view=Binary
Prevent Guidance and Toolkit	the <i>Building Partnerships, Staying Safe</i> guidance and toolkit for healthcare organisations and healthcare workers, available at: http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131934.pdf and http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131912.pdf
Previous Contract	a contract between one or more of the Commissioners and the Provider for the delivery of services the same or substantially the same as the Services, the term of which immediately precedes the Contract Term
Prevent Lead	the officer of the Provider responsible for implementation and dissemination of Prevent, identified as such in the Particulars
Price	a National Price, a Local Variation, a Local Modification or a Local Price, as appropriate
Principles of Good Employment Practice	the guidance note issued by the Cabinet Office in December 2010 titled <i>Supplier Information Note: Withdrawal of Two-Tier Code</i> available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62091/two-tier-code.pdf including Annex A of that guidance note setting out a set of voluntary principles of good employment practice
Prior Approval	the approval by the Responsible Commissioner of care or treatment, including diagnostics, to an individual Service User or a group of Service Users prior to referral or following initial assessment
Prior Approval Scheme	a scheme under which the Commissioners give Prior Approval for treatments and services prior to referral or following initial assessment that may form part of the Services required by the Service User following referral. For the avoidance of doubt any Prior Approval Scheme will apply in respect of all Commissioners and all relevant Service Users

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Professional Letter	the letter issued by the Chief Nursing Officer and Deputy NHS Chief Executive, PL/CNO/2010/3, available at: http://webarchive.nationalarchives.gov.uk/20130107105354/http://dh.gov.uk/en/publicationsandstatistics/lettersandcirculars/professionalle tters/chiefnursingofficerletters/dh_121848
Prohibited Acts	the Provider: <ul style="list-style-type: none">(i) offering, giving, or agreeing to give the Commissioners (or an of their officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the Provider, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Provider; and(ii) in connection with this Contract, paying or agreeing to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Co-ordinating Commissioner; or(iii) committing an offence under the Bribery Act 2010
Proposer	a Party making a Variation Proposal
Provider Change in Control	means any Change in Control of the Provider or any of its Holding Companies
Provider Default Event	the occurrence of any of the events listed in General Condition 17.7 (<i>Termination: Provider Default</i>)
Provider Insolvency Event	the occurrence of any of the following events in respect of the Provider: <ul style="list-style-type: none">(i) the Provider being, or being deemed for the purposes of any law to be, unable to pay its debts or insolvent;(ii) the Provider admitting its inability to pay its debts as they fall due;(iii) the value of the Provider's assets being less than its liabilities taking into account contingent and prospective liabilities);(iv) the Provider suspending payments on any of its debts or announces an intention to do so;(v) by reason of actual or anticipated financial difficulties, the Provider commencing negotiations with creditors generally with a view to rescheduling any of its indebtedness;(vi) a moratorium is declared in respect of any of the Provider's indebtedness;

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- (vii) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Provider;
- (viii) a composition, assignment or arrangement with any creditor of any member of the Provider;
- (ix) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Provider or any of its assets;
- (x) a resolution of the Provider or its directors is passed to petition or apply for the Provider's winding-up or administration;
- (xi) the Provider's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court or otherwise); or
- (xii) if the Provider suffers any event analogous to the events set out in (i) to (xi) of this definition in any jurisdiction in which it is incorporated or resident

Provider IPR

any IPR owned by or licensed to the Provider (other than by any Commissioner) that will be used by the Provider in the delivery of the Services, as set out in Schedule 5 Part C (*IPR*), including Improvements

Provider Partnership Agreement

a Partnership Agreement to which the Provider is a party which relates to or affects the provision of any Service under this Agreement

Provider Plans

- (v) the Business Continuity Plan;
- (vi) the Essential Services Continuity Plan;
- (vii) any DQIP;
- (viii) the Incident Response Plan;
- (ix) any plan or plans submitted under Service Condition 13 (*Equality of Access, Equality and Non-Discrimination*);
- (x) the HCAI Reduction Plan;
- (xi) any SDIP; and
- (xii) any Remedial Action Plan,

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as appropriate

Provider Representative	the person identified as such in the Particulars
Provider's Premises	premises controlled or used by the Provider for any purposes connected with the provision of the Services which may be set out or identified in a Service Specification
Public Company	a company which: <ul style="list-style-type: none">(i) has shares that can be purchased by the public; and(ii) has an authorised share capital of at least £50,000 with each of the company's shares being paid up at least as to one quarter of the nominal value of the share and the whole of any premium on it; and(iii) has securities listed on a stock exchange in any jurisdiction
Public Health England	an executive agency of the Department of Health established under the 2012 Act
Quality Accounts	has the meaning set out in section 8 of the 2009 Act
Quality Incentive Scheme Indicator	an indicator or measure of the Provider's performance in relation a CQUIN Scheme or a Local Incentive Scheme
Quality Requirements	the Operational Standards, the National Quality Requirements, the Local Quality Requirements and the Never Events
Quarter	each 3 month period commencing on the Services Commencement Date and "Quarterly" will be construed accordingly
Receiving Party	the Party which has received a Contract Query Notice
Recipient	a Party receiving a Variation Proposal
Recipient's Response	the response to a Variation Proposal submitted by a Recipient in accordance with the requirements set out in General Condition 13.8 (<i>Variations</i>)
Referral	the referral of any Service User to the Provider which includes referral initiated by or on behalf of any Commissioner, the Provider or any Staff, or the Service User
Referrer	<ul style="list-style-type: none">(i) the authorised Healthcare Professional who is responsible for the referral of a Service User to the Provider;(ii) any organisation, legal person or other entity which is permitted or appropriately authorised in accordance with the Law to refer the Service User for assessment and/or treatment by the Provider; and(iii) any individual Service User who presents directly to the Provider for assessment and/or treatment

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Regional Prevent Co-ordinator	the person responsible for operational co-ordination of Prevent within the geographical area covered by this Contract
Regulatory or Supervisory Body	any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Party must comply or to which it must or should have regard, including: <ul style="list-style-type: none">(i) CQC;(ii) Monitor;(iii) NHSTDA;(iv) NHS England;(v) the Department of Health;(vi) NICE; and(vii) HealthWatch England
Relevant Person	a Service User affected by a Patient Safety Incident or suspected Patient Safety Incident or, where appropriate, someone lawfully acting on that Service User's behalf
Remedial Action Plan	a plan to rectify a breach of or performance failure under this Contract (or, where appropriate, a Previous Contract), including any breach of the Indicative Activity Plan, specifying milestones for performance to be rectified and timescales within which those milestones must be achieved
Reportable Patient Safety Incident	a Patient Safety Incident which involves moderate harm or severe harm (both as defined in <i>Seven Steps to Patient Safety: a full reference guide</i>) or death of the Service User. See: http://www.nrls.npsa.nhs.uk/resources/collections/seven-steps-to-patient-safety/?entryid45=59787
Response to Caldicott	the Department of Health publication <i>Information: To share or not to share? A Government response to the Caldicott Review</i> September 2013, available at: https://www.gov.uk/government/publications/caldicott-information-governance-review-department-of-health-response
Responsible Commissioner	the Service User's responsible Commissioner as determined in accordance with the Law and applicable Guidance (including 'Who Pays? Guidance')
Restricted Person	<ul style="list-style-type: none">(i) any person, other than an Institutional Investor, who has a material interest in the production of tobacco products or alcoholic beverages; or(ii) any person who the Co-ordinating Commissioner otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider or in a Material Sub-

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Contractor

Review Meeting	a meeting to be held in accordance with General Condition 8.1 (<i>Review</i>) at the intervals set out in the Particulars or as otherwise requested in accordance with General Condition 8.4 (<i>Review</i>)
Review Record	a written record of a Review Meeting as described in General Condition 8.2 (<i>Review and Annual Review</i>)
Root Cause Analysis	a systematic process whereby the factors that contributed to an incident are identified. As an investigation technique for Patient Safety Incidents, it looks beyond the individuals concerned and seeks to understand the underlying causes and environmental context in which an incident happened
Safeguarding Lead	the officer of the Provider responsible for implementation and dissemination of Safeguarding Policies, identified as such in the Particulars
Safeguarding Policies	the Provider's written policies for safeguarding children and adults, as appended in Schedule 2 Part L (<i>Safeguarding Policies</i>) and updated from time to time in accordance with Service Condition 32 (<i>Safeguarding</i>)
Second Exception Report	a report issued in accordance with General Condition 9.22 (<i>Contract Management</i>) notifying the recipients of a breach of a Remedial Action Plan and the continuing failure to remedy that breach
Secretary of State	the Secretary of State for Health and/or the Department of Health
Security	Shares, Debt Securities, unit trust schemes (as defined in the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing debt securities, warrants or options to subscribe or purchase securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company
Senior Information Risk Owner	the Provider's nominated person, being an executive or senior manager on the Governing Body of the Provider, whose role it is to take ownership of the organisation's information risk policy, act as champion for information risk on the Governing Body of the Provider and provide written advice to the accounting officer on the content of the organisation's statement of internal control in regard to information risk
Serious Incident	a serious incident requiring investigation, being an incident that occurred in relation to the Services resulting in one of the following: (i) unexpected or avoidable death of one or more Service Users, Staff, visitors or members of the public; (ii) serious harm to one or more Service Users, Staff, visitors or members of the public or where the outcome requires life-saving intervention, major surgical/medical intervention, permanent harm or will shorten life expectancy or result in

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prolonged pain or psychological harm (this includes incidents graded under the National Patient Safety Agency definition of severe harm);

- (iii) a scenario that prevents or threatens to prevent the Provider's or any Sub-Contractor's ability to continue to deliver the Services, for example, actual or potential loss of personal/organisational information, damage to property, reputation or the environment, IT failure or incidents in population programmes like screening and immunisation where harm potentially may extend to a large population;
- (iv) allegations of abuse;
- (v) adverse media coverage or public concern

Service Commencement Date

the date the Services actually commence which will be either the Expected Service Commencement Date or a later date being the day after the date on which all Conditions Precedent are satisfied, as applicable

Service Conditions

the Service Conditions forming part of the Contract

Service Development and Improvement Plan or SDIP

an agreed plan setting out improvements to be made by the Provider to the Services and/or Services Environment (which may comprise or include any Remedial Action Plan agreed in relation to a Previous Contract), as appended at Schedule 6 Part E (*Service Development and Improvement Plan*)

Service Quality Performance Report

the report required by Schedule 6 Part B (*Reporting Requirements*)

Service Specifications

each of the service specifications defined by the Commissioners and set out in Schedule 2 Part A (*Services Specifications*)

Service User

a patient or service user of a Commissioner or any other patient, client or customer who is referred or presents to the Provider or otherwise receives Services under this Contract

Service User Health Record

a record which consists of information and correspondence relating to the particular physical or mental health or condition of a Service User (whether in electronic form or otherwise), including any such record generated by a previous provider of services to the Service User which is required to be retained by the Provider for medico-legal purposes

Service Variation

a Variation requested by a Party which relates to a Service and reflects:

- (i) the assessment by Commissioners of Pathway needs, the availability of alternative providers and demand for any Service; and/or
- (ii) the joint assessment of the Provider and Commissioners of the quality and clinical viability of the relevant Service and the

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Services Environment; and/or

(iii) the likely impact of any transformational need and/or reconfiguration of a care pathway that might affect the Service

Services	the services (and any part or parts of those services) described in each of, or, as the context admits, all of the Service Specifications, and/or as otherwise provided or to be provided by the Provider under and in accordance with this Contract
Services Environment	the rooms, theatres, wards, treatment bays, clinics or other physical location, space, area, accommodation or other place as may be used or controlled by the Provider from time to time in which the Services are provided, excluding Service Users' private residences, Local Authority premises, schools and premises controlled by the Responsible Commissioner
Seventh Data Protection Principle	the seventh principle set out in paragraphs 9-12 of Part II of Schedule 1 to the DPA http://www.legislation.gov.uk/ukpga/1998/29/schedule/1/part/II/cross-heading/the-seventh-principle
Shared Care Protocols	shared care arrangements that are agreed at a regional or local level to enable the combination of primary and secondary care for the benefit of Service Users. They will, for example, support the seamless transfer of treatment from the tertiary to the secondary care sector and/or general practice
Shared Decision-Making	the process of discussing options and the risks and benefits of various actions and courses of care or treatment based on the needs, goals and personal circumstances of the Service User, with a Service User and/or their Carer or Legal Guardian (as appropriate). A range of tools are available to support this, including Patient Decision Aids. See: http://www.england.nhs.uk/ourwork/pe/sdm/tools-sdm/pda
Shares	has the meaning given in section 540 of the Companies Act 2006, including preference shares
Significant Incident or Emergency	an event or occurrence which: (i) constitutes an emergency for the purposes of the Civil Contingencies Act 2004; and/or (ii) constitutes an emergency under local and community risk registers; and/or (iii) is designated as a significant or emergency incident under the Incident Response Plan
Sleeping Accommodation	includes any areas where Service Users are admitted and cared for on beds or trolleys, even where Service Users do not stay overnight, all admissions and assessment units (including clinical decision units) and day surgery and endoscopy units. It does not include areas where patients have not been admitted, such as accident and emergency cubicles

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Sleeping Accommodation Breach	an unjustified episode of mixed Sleeping Accommodation as set out in Appendix A of the Professional Letter
Small Provider	a provider whose aggregate annual income for the relevant Contract Year in respect of services provided to any NHS commissioners commissioned under any contract based on the NHS Standard Contract is not expected to exceed £200,000
Staff	all persons (whether clinical or non-clinical) employed or engaged by the Provider or by any Sub-Contractor (including volunteers, agency, locums, casual or seconded personnel) in the provision of the Services or any activity related to, or connected with the provision of the Services, including Consultants
Staffing Guidance	any Guidance applicable to the Services in relation to Staff numbers or skill-mix, including the National Quality Board publication <i>How to ensure the right people, with the right skills are in the right place at the right time: A guide to nursing, midwifery and care staffing capacity and capability</i> , available at: http://www.england.nhs.uk/wp-content/uploads/2013/11/nqb-how-to-guid.pdf
Staff Surveys	means, where the Provider is an NHS Foundation Trust or an NHS Trust, the national NHS staff surveys and, where the Provider is not an NHS Foundation Trust or NHS Trust, Staff experience surveys as agreed between the Parties under (<i>Surveys</i>) Schedule 6 Part F
Standard DBS Check	a disclosure of information which contains details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions
Standard DBS Position	any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236659/DBS_guide_to_eligibility_v2.pdf
Sub-Contract	any sub-contract entered into by the Provider or by any Sub-Contractor of any level for the purpose of the performance of any obligation on the part of the Provider under this Contract
Sub-Contractor	any sub-contractor, whether of the Provider itself or at any further level of sub-contracting, under any Sub-Contract
Succession Plan	a plan for the transition of any affected Service on the expiry or termination of this Contract or of that Service (as appropriate), to include: (i) details of the affected Service; (ii) details of Service Users and/or user groups affected; (iii) the date on which the successor provider will take responsibility for providing the affected Service

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Summary Care Records Service	the system providing those treating Service Users in any emergency or out-of-hours with fast access to key clinical information, as described at: http://www.systems.hscic.gov.uk/scr
SUS	the Secondary Uses Services
SUS Guidance	guidance in relation to the use of SUS which can be found at: www.ic.nhs.uk/susguidance
Surveys	Service User surveys, Carer surveys, Staff Surveys and any other surveys reasonably required by the Commissioners in relation to the Services
Suspension Event	<p>the occurrence of any of the following:</p> <ul style="list-style-type: none">(i) any Commissioner and/or any Regulatory or Supervisory Body having reasonable grounds to believe that the Provider is or may be in breach of the Law, or in material breach of the Quality Requirements or regulatory compliance Standards issued by a Regulatory or Statutory Body; or(ii) any Commissioner and/or any Regulatory or Supervisory Body having reasonable and material concerns as to the continuity, quality or outcomes of any Service, or for the health and safety of any Service User; or(iii) the Provider receiving a Contract Query Notice in respect of a Service within 12 months after having agreed to implement a Remedial Action Plan in respect of the same issue with that Service; or(iv) the Co-ordinating Commissioner, acting reasonably, considering that the circumstances constitute an emergency (which may include an Event of Force Majeure affecting provision of a Service or Services); or(v) a Second Exception Report being issued under General Condition 9.22 (<i>Contract Management</i>) and the Provider's Governing Body failing to procure the rectification of the relevant breach of the Remedial Action Plan within the timescales indicated in that Second Exception Report; or(vi) the Provider or any Sub-Contractor being prevented from providing a Service due to the termination, suspension, restriction or variation of any Consent or Monitor's Licence
Suspension Notice	a notice to suspend a Service or Services given under General Condition 16.1.1 (<i>Suspension</i>)
Template Variation Agreement	the form of Variation Agreement available via: http://www.England.nhs.uk/wp-content/uploads/2013/06/vari-agree.docx
Transaction Records	the accounts and transaction records of all payments, receipts and financial and other information relevant to the provision of the

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Services maintained in accordance with General Condition 15.5
(*Governance Transaction Records and Audit*)

Transfer and Discharge Guidance	the guidance <i>Ready to Go? Planning the Discharge and Transfer of Patients from Hospital and Intermediate Care</i> 2010 http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113950 and <i>Refocusing the Care Programme Approach: policy and positive practice guidance</i> 2008 http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_083647
Transfer of and Discharge from Care Protocols	the protocols (to include all locally-agreed requirements in respect of information to be provided to the Service User and/or Referrer relating to updates on progress through the care episode, transfer and discharge) set out at Schedule 2 Part K (<i>Transfer and Discharge from Care Protocols</i>)
Transfer of Care	the transfer of primary responsibility for a Service User's care from the Provider to another unit, hospital, responsible clinician or service provider within the Pathway
Transition Arrangements	the transition arrangements agreed between the Parties set out in Schedule 2 Part H (<i>Transition Arrangements</i>)
Transparency Guidance	the guidance in relation to the publication of tender documentation and the publication of contracts, available via: https://www.gov.uk/government/collections/nhs-procurement
Trust Special Administrator	a trust special administrator appointed by Monitor under section 65D of the 2006 Act
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 and EC Council Directive 77/187 (as amended)
Unscheduled Care	healthcare or treatment provided to a Service User without prior schedule or referral
Utilisation	the Provider's capacity and use of resources in relation to both anticipated and accepted numbers of Referrals
Utilisation Improvement Plan	a plan agreed between the Co-ordinating Commissioner and the Provider setting out actions designed to improve Utilisation
Utilisation Meeting	a meeting of the Co-ordinating Commissioner and the Provider held in accordance with Service Condition 29.15 (<i>Managing Activity and Referrals</i>)
Variable Elements	(i) Particulars: Service Commencement and Contract Term – local insertions and selections only (ii) Particulars: Services – local insertions only

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- (iii) Particulars: Payment – local insertions and selections only
- (iv) Particulars: Quality – local insertions and selections only
- (v) Particulars: Governance – local insertions and selections only
- (vi) Particulars: Regulatory – local selections only
- (vii) Particulars: Contract Management – local insertions and selections only
- (viii) Particulars : Pensions - local insertion (template wording: refer to Contract Technical Guidance)
- (ix) Schedule 1 Part A (*Conditions Precedent*) – local insertions only
- (x) Schedule 1 Part B (*Commissioner Documents*) – local insertions only
- (xi) Schedule 2 Part A (*Service Specifications*) – local insertions only
- (xii) Schedule 2 Part B (*Indicative Activity Plan*) – application/local insertions only
- (xiii) Schedule 2 Part C (*Activity Planning Assumptions*) – application/local insertions only
- (xiv) Schedule 2 Part D (*Essential Services*) – application/local insertions only
- (xv) Schedule 2 Part E (*Essential Services Continuity Plan*) – application/local insertions only
- (xvi) Schedule 2 Part F (*Clinical Networks*) – application/local insertions only
- (xvii) Schedule 2 Part G (*Other Local Agreements, Policies and Procedures*) – application/local insertions only
- (xviii) Schedule 2 Part H (*Transition Arrangements*) – application/local insertions only
- (xix) Schedule 2 Part I (*Exit Arrangements*) – application/local insertions only
- (xx) Schedule 2 Part J (*Social Care Provisions*) – application/local insertions only
- (xxi) Schedule 2 Part K (*Transfer of and Discharge from Care Protocols*) – local insertions only

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- (xxii) Schedule 2 Part L (*Safeguarding Policies*) – local insertions only
- (xxiii) Schedule 3 Part A (*Local Prices*) – application/local insertions only
- (xxiv) Schedule 3 Part B (*Local Variations*) application/local insertions only
- (xxv) Schedule 3 Part C (*Local Modifications*) – application/local insertions only
- (xxvi) Schedule 3 Part D (*Marginal Rate Efficiency Rule: Agreed Baseline Value*) – application/location insertions only
- (xxvii) Schedule 3 Part E (*Emergency Readmissions Within 30 Days: Agreed Threshold*) – application/local insertion only
- (xxviii) Schedule 3 Part F (*Expected Annual Contract Values*) – application/local insertions only
- (xxix) Schedule 3 Part G (*Notices to Aggregate/Disaggregate Payments*) – application/local insertions only
- (xxx) Schedule 3 Part H (*Timing and Amounts of Payments in First and/or Final Contract Year*) – application/local insertions only
- (xxxi) Schedule 4 Part A (*Operational Standards*) – application (selected Service categories); Thresholds/Consequence of Breach/Monthly or Annual application of consequence, where indicated in the NHS Standard Contract as being for local determination, only
- (xxxii) Schedule 4 Part B (*National Quality Requirements*) – application (selected service categories); CB A16 (CDiff) Threshold; Duty of Candour – Method of Measurement only
- (xxxiii) Schedule 4 Part C (*Local Quality Requirements*) – local insertions only
- (xxxiv) Schedule 4 Part D (*Never Events*) – application (selected Service categories)
- (xxxv) Schedule 4 Part E (*Commissioning for Quality and Innovation (CQUIN)*) – local insertions only
- (xxxvi) Schedule 4 Part F (*Local Incentive Scheme*) – application/local insertions only

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- (xxxvii) Schedule 4 Part G (*Clostridium difficile*) – application/selection of appropriate adjustment table only
- (xxxviii) Schedule 4 Part H (Sanction Variations) – local insertions only
- (xxxix) Schedule 4 Part I (CQUIN Variations) – local insertions only
- (xl) Schedule 5 Part A (*Documents Relied On*) – application/local insertions only
- (xli) Schedule 5 Part B1 (*Provider’s Mandatory Material Sub-Contractors*) – application/local insertions only
- (xlii) Schedule 5 Part B2 (*Provider’s Permitted Material Sub-Contractors*) – application/local insertions only
- (xlili) Schedule 5 Part C (*IPR*) – application/local insertions only
- (xliv) Schedule 5 Part D (*Commissioner Roles and Responsibilities*) – local insertions only
- (xliv) Schedule 5 Part E (*Partnership Agreements*) – application/local insertions only
- (xlvi) Schedule 6 Part A (*Recorded Variations*) - local additions only
- (xlvii) Schedule 6 Part B (*Reporting Requirements*) – application (selected Service categories); open fields; Local Requirements Reported Locally only
- (xlviii) Schedule 6 Part C (*Data Quality Improvement Plan*) – application/local insertions only
- (xlix) Schedule 6 Part D (*Incidents Requiring Reporting Procedure*) – local insertions only
- (l) Schedule 6 Part E (*Service Development and Improvement Plan*) – application/local insertions only
- (li) Schedule 6 Part F (*Surveys*) – local insertions only
- (lii) Schedule 7 (Pensions) – local insertions only (template wording: refer to Technical Guidance)
- (liii) Service Conditions – application (selected Service categories; Provider type) only

Variation

an addition, deletion or amendment to the provisions of this Contract agreed to be made by the Parties in accordance with General

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Condition 13 (*Variations*) which may be a Service Variation, a National Variation, or any other variation

Variation Proposal	a written proposal for a Variation which complies with the requirements of General Condition 13.7 (<i>Variations</i>). A template is available at: http://www.England.nhs.uk/wp-content/uploads/2013/06/vari-prop.docx
VAT	value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994
Vehicle	any transport vehicle or aircraft, whether emergency or otherwise, to be used by the Provider in providing the Services
Who Pays? Guidance	<i>Who Pays? Determining the responsibility for payments to providers</i> , available at: http://www.England.nhs.uk/wp-content/uploads/2013/08/who-pays-aug13.pdf
Withholding and Retention of Payment Provisions	the provisions in this Contract relating to withholding and/or retention of payment as set out in Service Conditions 28.12 and 28.15 (<i>Information Requirements</i>)
WRAP	the methodology approved by the Home Office to raise awareness of Prevent to frontline workers involved in the delivery of healthcare which is also known as the <i>Health Workshop to Raise Awareness of Prevent</i>

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