NHS England

NHS Standard Contract 2015/16
General Conditions

Draft for consultation

December 2014

NHS Standard Contract 2015/16 General Conditions

Draft for consultation

Version number: 1

First published: December 2014

Updated: NA

Prepared by: NHS Standard Contract Team

This is a draft version of the NHS Standard Contract 2015/16 which has been published for consultation. Red text indicates where a significant change has been made from the 2014/15 Contract. The separate consultation document, available at http://www.england.nhs.uk/nhs-standard-contract/, highlights the main changes proposed and asks for feedback on these. We have also included a number of consultation notes on more technical issues within the draft Contract itself (also in red text), and we would welcome feedback on these also.

Draft

Gateway approval reference number: 02410

Document Classification: Official

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 1B (*Commissioner Documents*) and/or Schedule 2G (*Other Local Agreements, Policies and Procedures*) and/or Schedule 5A (*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 GC17 (*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 The Provider must satisfy each Condition Precedent by no later than the Expected Service Commencement Date (or by any earlier Longstop Date specified in the Particulars in respect of that Condition Precedent).

4.2 The Co-ordinating Commissioner must deliver the Commissioner Documents to the Provider by no later than the Expected Service Commencement Date.

4.3 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.

4.4 The Parties must implement any Transition Arrangements set out in Schedule 2H (*Transition Arrangements*).

Draft

4.5 The Provider must notify the Co-ordinating Commissioner of any material change to any Conditions Precedent document it has delivered under GC4.1 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 comply with regulations 18 and 19 of the 2014 Regulations, and without prejudice to that obligation 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 GC5.2.1;

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;

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 SC12 (*Service User, Staff and Public Involvement*) and Schedule 6F (*Surveys*) in relation to Staff Surveys.

Pre-employment Checks

5.10 Subject to GC5.11, 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.

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.

TUPE

5.11 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:

5.11.1 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;

5.11.2 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

5.11.3 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.

5.12 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 GC5.13.

5.13 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 (that consent not to be unreasonably withheld or delayed), in relation to any persons engaged in the provision of the Services or the relevant Service:

5.13.1 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);

5.13.2 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);

5.13.3 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;

5.13.4 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

5.13.5 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.

5.14 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:

5.14.1 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;

5.14.2 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

5.14.3 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.

5.15 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:

5.15.1 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;

5.15.2 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

5.15.3 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.

Employment or Engagement following NHS Redundancy

5.16 If at any time during the term of this Contract the Provider or any Sub-Contractor intends to employ or engage an individual under a contract of employment or a contract for services (unless for a period of 15 days or less in any rolling 90 day period), the Provider must (or must ensure that the Sub-Contractor will):

5.16.1 require that individual to disclose whether, within the period of twelve months ending with the proposed commencement of their employment or engagement with the Provider or Sub-Contractor, they have received a contractual redundancy payment under section 16 of the NHS Terms and Conditions of Service Handbook from an NHS Employer[, as defined in Annex A of the Handbook,] consequent on their redundancy from a post as a Very Senior Manager; and if so

5.16.2 require the individual to identify that NHS Employer;

5.16.3 require that individual to notify the NHS Employer of their conditional offer of employment or engagement with the Provider or Sub-Contractor and to make arrangements with that NHS Employer to pay to the NHS Employer the Redundancy Repayment [(whether or not conditional on an appropriate restoration of [reckonable service])];

5.16.4 not make any unconditional offer of employment or engagement to the individual without first having received confirmation from the NHS Employer that binding arrangements are in place with the individual for payment to the NHS Employer of the Redundancy Repayment; and

5.16.5 include (and throughout the term of that individualôs employment or engagement retain) in that individualôs terms and conditions of employment or engagement (as appropriate) and implement the following provisions:

You have confirmed that you have, within the period of twelve months ending with the commencement of your employment or engagement under this agreement, received a contractual redundancy payment under section 16 of the NHS Terms and Conditions of Service Handbook from an NHS Employer, as defined in Annex A of the Handbook, being [INSERT NAME OF NHS EMPLOYER] consequent on your redundancy from a post as a Very Senior Manager.

*As a condition of your employment or engagement under this agreement: you acknowledge and agree that you are liable under this agreement to repay to that NHS Employer a sum being a proportion of that contractual redundancy payment (**£R**), calculated as follows:*

***£R** = (**S** x (**A** – **B**)) – (**C** + **D**),*

where:

***S** is the amount of a month's pay used to calculate your contractual redundancy payment;*

***A** is the number of years used in the calculation of your contractual redundancy payment;*

***B** is the number of complete calendar months between the date of termination of your employment by the NHS Employer and the date of commencement of your employment or engagement under this agreement;*

***C** is the total statutory redundancy payment that you were entitled to receive on redundancy from that NHS Employer; and*

***D** is the amount of any income tax deducted by that NHS Employer from the contractual redundancy payment,*

But** for the avoidance of doubt you will have no liability to repay any sum if **B** is greater than or equal to **A

*You consent to our deducting from your net monthly pay or remuneration each month a sum equal to no more than [**X% - for agreement with the NHS Employer**] of your net monthly pay or remuneration and to pay each sum deducted to that NHS Employer as an instalment of the repayment of the sum £**R**, until the sum £**R** has been fully repaid.*

In this provision:

***NHS Employer** has the meaning given to it in [Annex A] to the NHS Terms and Conditions of Service Handbook*

***NHS Terms and Conditions of Service Handbook** means the handbook of NHS terms and conditions of service published at: http://www.nhsemployers.org/your-workforce/pay-and-reward/nhs-terms-and-conditions/nhs-terms-and-conditions-of-service-handbook*

***Very Senior Manager** has the meaning set out in paragraph 4 of the Pay Framework for Very Senior Managers in Strategic and Special Health Authorities, Primary Care Trusts and Ambulance Trusts, (and, whether or not falling within that definition, includes any individual employed or engaged in a management position whose remuneration from the organisation in question exceeds £100,000 per annum) and includes individuals engaged under a contract of employment or a contract for services*

5.17 The Provider must not, and must ensure that any Sub-contractor does not, enter into any arrangement with any individual the effect or intention of which is to circumvent the operation or intent of GC5.16.

5.18 If the Provider fails to comply with its obligations under GC5.16 or 5.17 in respect of any relevant individual, the Provider must pay to the relevant NHS Employer the Redundancy Payment or proportion of it which the individual would otherwise have been required to repay.

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;

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 GC8.1, 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,

Draft

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 Performance Notice, irrespective of any other rights the Co-ordinating Commissioner may have under this GC9.

9.2 The provisions of this GC9 do not affect any other rights and obligations the Parties may have under this Contract.

9.3 GC9.16, 9.20, 9.21, 9.23 and 9.24 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 Performance Notice

9.4 If the Co-ordinating Commissioner believes that the Provider has failed or is failing to comply with any obligation on its part under this Contract it may issue a Contract Performance Notice to the Provider.

9.5 If the Provider believes that any Commissioner has failed or is failing to comply with any obligation on its part under this Contract it may issue a Contract Performance Notice to the Co-ordinating Commissioner.

Contract Management Meeting

9.6 Unless the Contract Performance Notice has been withdrawn, the Co-ordinating Commissioner and the Provider must meet to discuss the Contract Performance Notice and any related issues within 10 Operational Days following the date of the Contract Performance Notice.

9.7 At the Contract Management Meeting the Co-ordinating Commissioner and the Provider must agree either:

9.7.1 that the Contract Performance Notice is withdrawn; or

9.7.2 to implement an appropriate Immediate Action Plan or Remedial Action Plan.

If the Co-ordinating Commissioner and the Provider cannot agree on either course of action, they must undertake a Joint Investigation.

Joint Investigation

9.8 If a Joint Investigation is to be undertaken:

9.8.1 the Co-ordinating Commissioner and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 1 month) and the appropriate clinical and/or non-clinical representatives from each relevant Party to participate in the Joint Investigation; and

9.8.2 the Co-ordinating Commissioner and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

9.9 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:

9.9.1 the Contract Performance Notice be withdrawn; or

9.9.2 a Remedial Action Plan be agreed and implemented.

9.10 Either the Co-ordinating Commissioner or the Provider may require a Review Meeting to be held at short notice in accordance with GC8.4 to consider a JI Report.

Remedial Action Plan

9.11 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:

9.11.1 5 Operational Days following the Contract Management Meeting; or

9.11.2 5 Operational Days following the Review Meeting in the case of a Remedial Action Plan recommended under GC9.9.

as appropriate.

9.12 The Remedial Action Plan must set out:

9.12.1 actions required and which Party is responsible for completion of each action to remedy the failure in question and the date by which each action must be completed;

9.12.2 the improvements in outcomes and/or other key indicators required, the date by which each improvement must be achieved and for how long it must be maintained;

9.12.3 subject to the maximum sums identified in GC9.20.1, the consequences for failing to complete any agreed action and achieve and maintain any agreed improvement.

If a Remedial Action Plan is agreed during the final Contract Year, that Remedial Action Plan may specify a date by which an action is to be completed or an improvement is to be achieved or a period for which an improvement is to be maintained falling or extending after the Expiry Date, with a view to that Remedial Action Plan being incorporated in an SDIP under a subsequent contract between one or more of the Commissioners and the Provider for delivery of services the same or substantially the same as the Services.

9.13 The Provider and each relevant Commissioner must implement the actions and achieve and maintain the improvements applicable to it within the timescales set out in, and otherwise in accordance with, the Remedial Action Plan.

9.14 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.

Withholding Payment for Failure to Agree Remedial Action Plan

9.15 If the Co-ordinating Commissioner and the Provider cannot agree a Remedial Action Plan within the relevant period specified in GC9.11, they must immediately and jointly notify the Governing Body of both the Provider and the relevant Commissioners accordingly.

Draft

9.16 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, or itself withhold (on behalf of all Commissioners), up to 2% of the Actual Monthly Value for each further month the Remedial Action Plan is not agreed.

9.17 The Commissioners or the Co-ordinating Commissioner (as appropriate) must pay the Provider any sums withheld under GC9.17 within 10 Operational Days of receiving the Providerôs agreement to the Remedial Action Plan. Unless GC9.22 applies, those sums are to be paid without Interest.

Exception Reports

9.18 If, following implementation of a Remedial Action Plan, the agreed actions have been completed and the agreed improvements achieved and maintained, it must be noted in the next Review that the Remedial Action Plan has been completed.

9.19 If a Party fails to complete an action required of it, or to deliver or maintain the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan and does not remedy that failure within 5 Operational Days following its occurrence, the Provider or the Co-ordinating Commissioner (as the case may be) may issue an Exception Report:

9.19.1 to the relevant Partyôs chief executive and/or Governing Body; and/or

9.19.2 (if it reasonably believes it is appropriate to do so) to any appropriate Regulatory or Supervisory Body,

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

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

9.20 If the Provider fails to complete an action required of it, or to deliver the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan:

9.20.1 the Co-ordinating Commissioner may, when issuing an Exception Report, instruct the Commissioners to withhold, or itself withhold (on behalf of all Commissioners), in respect of each action not completed or improvement not met, up to 2% of the Actual Monthly Value, from the date of issuing the First Exception Report and for each month the Providerôs breach continues, subject to a maximum monthly withholding in relation to each Remedial Action Plan of 10% of the Actual Monthly Value; and

9.20.2 the Commissioners or the Co-ordinating Commissioner (as appropriate) must pay the Provider any sums withheld under GC9.20.1 within 10 Operational Days following the Co-ordinating Commissionerôs confirmation that the breach of the Remedial Action Plan has been rectified. Subject to GC9.22, no Interest will be payable on those sums.

Retention of Sums Withheld for Breach of Remedial Action Plan

9.21 If, 20 Operational Days after an Exception Report has been issued under GC9.20, the Provider remains in breach of a Remedial Action Plan, the Co-ordinating Commissioner may notify the Provider that any sums withheld under GC9.20 are to be retained permanently. If it does so having withheld those sums itself on behalf of all Commissioners, the Co-ordinating Commissioner must distribute the sums withheld between the Commissioners in proportion to their respective shares of the Actual Monthly Value for each month in respect of which those sums were withheld.

Draft

Unjustified Withholding or Retention of Payment

9.22 If the Commissioners withhold, or the Co-ordinating Commissioner withholds on behalf of all Commissioners, sums under GC9.16 or 9.20 or the Commissioners retain sums under GC9.21, 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 Co-ordinating Commissioner or the Commissioners (as appropriate) 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

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

9.23.1 within 6 months following the expiry of the relevant time period set out in GC9.11; or

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

whichever is the earlier, the Co-ordinating Commissioner may notify the Provider that any sums withheld under GC9.16 are to be retained permanently. If it does so having withheld those sums itself on behalf of all Commissioners, the Co-ordinating Commissioner must distribute the sums withheld between the Commissioners in proportion to their respective shares of the Actual Monthly Value for each month in respect of which those sums were withheld.

.

9.24 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 notify the Provider that any sums withheld under GC9.20 are to be retained permanently. If it does so having withheld those sums itself on behalf of all Commissioners, the Co-ordinating Commissioner must distribute the sums withheld between the Commissioners in proportion to their respective shares of the Actual Monthly Value for each month in respect of which those sums were withheld.

GC10 Co-ordinating Commissioner and Representatives

10.1 The Commissioners have appointed the Co-ordinating Commissioner to exercise certain functions in relation to this Contract as set out in Schedule 5D (*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 Commissionerôs 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 Providerôs or any Sub-Contractorôs 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 employersôliability;

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 GC11.3 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 GC11.3 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 GC12.2 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 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 but acting reasonably) 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

Draft

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 5B1 (*Provider's Mandatory Material Sub-Contracts*) and B2 (*Provider's Permitted Material Sub-Contracts*) 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 SC12.6.1 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.

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 GC12; 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 GC12.10 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 GC20 (*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.

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 GC13.

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 GC13.2, the provisions of this Contract may be varied at any time by a 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 6A (*Recorded Variations*).

Draft

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 draft Variation Agreement.

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 draft Variation Agreement 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 draft Variation Agreement 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 draft Variation Agreement by issuing a Recipientôs 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 draft Variation Agreement.

13.9 If necessary, the Parties must meet within 10 Operational Days following the date of the Recipientôs Response (or as otherwise agreed in writing) to discuss the draft Variation Agreement and the Recipientôs 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 GC13.9, the Recipient must serve a written notice on the Proposer confirming either:

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

13.10.2 that it refuses to accept the draft Variation Agreement, 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 GC13.2 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 monthsô written notice following the issue of a notice that that National Variation is refused.

13.14 If, the Parties having followed the procedure in GC13.2 to 13.12, the Provider refuses to accept a Service Variation, the Co-ordinating Commissioner may terminate the Service affected by the proposed Service Variation by giving the Provider not less than 3 monthsô written notice (or 6 monthsô 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 GC13.14 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 draft Variation Agreementl.

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 GC14.2 to 14.21 will not apply when any Party in Dispute seeks an injunction relating to a matter arising out of GC20 *(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 should be represented by the same individual under GC14.2.1 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 GC14.4.1 will follow the mediation process agreed between the NHSTDA and NHS England from time to time:

14.6 Mediations under GC14.4.2 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 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 GC14.11, 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 Expertõs decision be set aside (either all of it or part of it).

14.18 If a Party in Dispute does not abide by the Expertõs 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.

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

GC15 Governance, Transaction Records and Audit

15.1 The Provider must comply with regulation 17 of the 2014 Regulations.

15.2 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 Providerõs 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.

15.3 Subject to Law, an Authorised Person may enter the Providerõs 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.

15.4 Within 10 Operational Days following the Co-ordinating Commissionerõs 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.

15.5 Subject to compliance with the Law and Good Practice the Parties must implement and/or respond to all relevant recommendations:

15.5.1 made in any report by a relevant Regulatory or Supervisory Body;

15.5.2 agreed with the National Audit Office, the Audit Commission or its appointed auditors following any audit;

15.5.3 of any appropriate clinical audit; and

15.5.4 that are otherwise agreed by the Provider and the Co-ordinating Commissioner to be implemented.

15.6 The Parties must maintain complete and accurate Transaction Records.

15.7 The Provider must, at its own expense, in line with applicable Law and Guidance:

15.7.1 implement an ongoing, proportionate programme of clinical audit of the Services in accordance with Good Practice;

15.7.2 implement an ongoing, proportionate audit of the accuracy of its recording and coding of clinical activity relating to the Services; and

15.7.3 provide to the Co-ordinating Commissioner on request the findings of any audits carried out under GC15.7.2 and/or 15.7.3.

15.8 The Co-ordinating Commissioner may at any time appoint an Auditor to audit:

15.8.1 the quality and outcomes of any Service; and/or

15.8.2 the Provider's recording and coding of clinical activity; and/or

15.8.3 the Provider's calculation of reconciliation accounts under SC 36 (*Payment Terms*); and/or

15.8.4 the Provider's recording of performance and calculation of reconciliation accounts in relation to Quality Incentive Scheme Indicators; and/or

15.8.5 the Provider's recording of performance in respect of the Quality Requirements; and/or

15.8.6 the Provider's compliance with Other Local Agreements, Policies and Procedures and/or any Prior Approval Scheme and/or the Service Specifications; and/or

15.8.7 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/or

15.8.8 pass-through costs on high cost drugs, devices and procedures; and/or

15.8.9 the identification of and collection of charges from Service Users who are Overseas Visitors or Migrants,

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 GC20 (*Confidential Information of the Parties*). Except as provided in GC15.11 and 15.12, the cost of any audit carried out under this GC15.7 will be borne by the Commissioners.

Draft

15.9 In respect of any audit carried out under GC15.8, the Co-ordinating Commissioner must share the Auditorôs 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.

15.10 In respect of any audit carried out under GC15.8.1 or 15.8.6, if the Auditorôs final report identifies any deficiencies in the Services, the Provider must take appropriate action to address those deficiencies without delay.

15.11 In respect of any audit carried out under GC15.8.2, 15.8.3, 15.8.4, 15.8.5, 15.8.6, 15.8.8 or 15.8.9 as a result of a Commissioner contesting a payment in accordance with SC36.54 (*Payment Terms – Contested Payments*):

15.11.1 if the Auditorôs final report identifies a net overcharging of any Commissioner by the Provider, and/or that any Commissioner is entitled to the refund of any sums paid, the Provider must immediately issue a credit note and must pay to the overcharged Commissioner the amount of the net overcharge and/or refundable sum and to the Co-ordinating Commissioner the reasonable costs of the Auditor, within 10 Operational Days after receiving written notice of the Auditorôs final report;

15.11.2 if the Auditorôs 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 Auditorôs final report;

15.11.3 if the Auditorôs 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.

15.12 In respect of any audit carried out under GC15.8.2, 15.8.3, 15.8.4, 15.8.5, 15.8.6, 15.8.8 or 15.8.9 other than as a result of a Commissioner contesting a payment in accordance with SC36.54 (*Payment Terms – Contested Payments*), where the Auditorôs final report concludes that there have been material inaccuracies in the Providerôs recording, coding or calculations:

15.12.1 the Parties must agree, and the Provider must implement with immediate effect, an action plan so that these inaccuracies do not recur in future;

15.12.2 (except in the case of fraud or negligence or breach of contract 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

15.12.3 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 Auditorôs final report.

15.13 In respect of any audit carried out under GC15.8.7:

15.13.1 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;

15.13.2 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 must 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 GC16.1, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

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 GC16.1.1; 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 GC16.1.1.

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 GC16.8 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 The Co-ordinating Commissioner and the Provider may terminate this Contract or any Service at any time by mutual agreement.

17.2 The Co-ordinating Commissioner may terminate this Contract or any Service by giving to the Provider written notice of not less than the Commissioner Notice Period, expiring no earlier than the Commissioner Earliest Termination Date.

17.3 The Provider may terminate this Contract or any Service by giving to the Co-ordinating Commissioner written notice of not less than the Provider Notice Period, expiring no earlier than the Provider Earliest Termination Date.

Consultation note

In response to feedback, we have proposed above wording which will offer greater flexibility in setting the notice period for no fault termination of the Contract. We anticipate that this flexibility might be of particular use for very short-term contracts. We would welcome views on whether this flexibility will be welcome and whether there should continue to be a default no-fault notice period of 12 months, where no alternative is agreed.

17.4 The Co-ordinating Commissioner may by not less than 3 monthsô written notice to the Provider terminate this Contract where the Provider has refused to accept a National Variation as provided for in GC13.13 (*Variations*).

17.5 The Co-ordinating Commissioner may by written notice to the Provider terminate the Service affected where the Provider has refused to accept a Service Variation as provided for in GC13.14 (*Variations*).

17.6 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 SC36.8 (*Payment Terms*).

17.7 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.

Draft

17.8 [The Co-ordinating Commissioner may by not less than [ ] monthsô written notice to the Provider terminate this Contract where it becomes apparent that:

17.8.1 this Contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations; or

17.8.2 this contract should not have been awarded for the reasons specified in regulation 73(1)(c) of the Public Contracts Regulations.]

Termination: Commissioner Default

17.9 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:

17.9.1 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 SC36 (*Payment Terms*), if at any time the aggregate undisputed amount due to the Provider from the Co-ordinating Commissioner and/or any Commissioner exceeds:

17.9.1.1 25% of the Expected Annual Contract Value; or

17.9.1.2 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 GC17.8 and requiring payment to be made; or

17.9.2 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 Commissionerôs receipt of the Providerôs written notice identifying the breach; or

17.9.3 if any Commissioner breaches the terms of GC12.10 (*Assignment and Sub-Contracting*); or

17.9.4 any warranty given by any Commissioner under GC25.2 (*Warranties*) is found to be materially untrue or misleading.

Termination: Provider Default

17.10 The Co-ordinating Commissioner may terminate this Contract or any affected Service, with immediate effect, by written notice to the Provider if:

17.10.1 any Condition Precedent is not met by the relevant Longstop Date; or

17.10.2 the Provider ceases to carry on its business or substantially all of its business; or

17.10.3 a Provider Insolvency Event occurs; or

17.10.4 the Provider is in persistent or repetitive breach of the Quality Requirements; or

17.10.5 the Provider is in breach of any regulatory compliance standards issued by any Regulatory or Supervisory Body or has been issued any warning notice under section 29 or 29A of the 2008 Act, or termination is otherwise required by any Regulatory or Supervisory Body; or

17.10.6 two or more Exception Reports are issued to the Provider under GC9.19 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution; or

17.10.7 the Provider does not comply with GC24.2 (*Change in Control*) or GC24.5 (*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

17.10.8 there is:

17.10.8.1 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

17.10.8.2 a breach of GC24.9.1 (*Change in Control*); or

17.10.8.3 a breach of GC24.9.2 (*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 GC24.10 (*Change in Control*); or

17.10.8.4 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 GC24.8.3 (*Change in Control*); or

17.10.9 the Provider:

17.10.9.1 fails to obtain any Consent; or

17.10.9.2 loses any Consent; or

17.10.9.3 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

17.10.10 the Provider fails materially to comply with the requirements of GC23 (*NHS Branding, Marketing and Promotion*); or

17.10.11 the Provider has breached any of its obligations under SC1 (*Compliance with the Law and the NHS Constitution*) in any material respect, 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

17.10.12 the Provider has breached the terms of GC26 (*Prohibited Acts*); or

17.10.13 Monitor's Licence for the Provider or any Material Sub-Contractor is revoked, varied or restricted; or

17.10.14 the Provider breaches the terms of GC12 (*Assignment and Sub-Contracting*); or

17.10.15 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); or

17.10.16 any warranty given by the Provider under GC25.1 (*Warranties*) is found to be materially untrue or misleading; or

17.10.17 [it becomes apparent that the Provider should have been excluded from the procurement process leading to the award of this Contract in accordance with regulation 57 of the Public Contracts Regulations].

Consultation note

We have revised some of the termination triggers in order that they reflect and respond better to the recently revised legislative and regulatory framework.

We intend to include also appropriate rights for termination where required under the proposed regulation 73 of the forthcoming Public Contracts Regulations 2015, consultation on which closed on 17 October 2014. Draft provisions have been included, but these may need to be revisited once the outcome of that consultation is confirmed.

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 GC17.4 or 17.10 (*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 and pending 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 SC36 (*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.

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 GC18.4 and 18.5, 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 GC17 (*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 and pending expiry or termination of this Contract, or termination of any Service, any arrangements set out in Schedule 2I (*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 GC20.3 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;

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 GC20.2;

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 GC9 (*Contract Management*); and

20.3.8 as permitted under or as may be required to give effect to SC24 (*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 GC20.1 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 GC25.1.3 and GC25.2.3 (*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 GC20.

20.7 The Parties acknowledge that damages would not be an adequate remedy for any breach of this GC20 by the Receiving Party, and in addition to any right to damages the Disclosing Party will be entitled to

Draft

the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this GC20.

20.8 This GC20 will survive the expiry or the termination of this Contract for a period of 5 years.

20.9 This GC20 will not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

GC21 Patient Confidentiality, Data Protection, Freedom of Information and Transparency

Information Governance ï General Responsibilities

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 publish an annual information governance assessment using the NHS Information Governance Toolkit and must achieve a minimum level 2 performance against all requirements in the relevant Toolkit.

21.3 The Provider must:

21.3.1 nominate an Information Governance Lead, to be responsible for information governance and for providing the Providerôs 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 Providerôs Governing Body;

21.3.3 ensure that the Co-ordinating Commissioner is kept informed at all times of the identities and contact details of the Information Governance Lead, Caldicott Guardian and the Senior Information Risk Owner; and

21.3.4 ensure that NHS England and HSCIC are kept informed at all times of the identities and contact details of the Information Governance Lead, Caldicott Guardian and the Senior Information Risk Owner via the NHS Information Governance Toolkit.

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 ensure that its NHS Information Governance Toolkit submission is audited in accordance with Information Governance Audit Guidance where applicable. The Provider must inform the Co-ordinating commissioner of the results of each audit and publish the audit report both within the NHS Information Governance Toolkit and on its website.

21.7 The Provider must report and publish any Data Breach and any Information Governance Breach in accordance with IG Guidance for Serious Incidents.

21.8 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 and for the dissemination of nationally-produced patient information materials.

The Provider as a Data Controller

21.9 The Parties acknowledge that:

21.9.1 in relation to Personal Data processed by the Provider for the purpose of delivering the Services the Provider will be sole Data Controller; and

21.9.2 in relation to Personal Data the processing of which is 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.

21.10 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 Partiesô joint obligations under the DPA.

21.11 The Providerôs obligations in relation to Personal Data processed by the Provider in the course of delivering the Services include:

21.11.1 publishing, maintaining and operating policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Practice;

21.11.2 publishing, maintaining and operating policies that describe the personal responsibilities of Staff for handling Personal Data and applying those policies conscientiously;

21.11.3 publishing, maintaining and operating a policy that supports the Providerôs obligations under the NHS Care Records Guarantee;

21.11.4 publishing, maintaining and operating agreed protocols to govern the disclosure of Personal Data;

21.11.5 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.

21.12 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 Userôs objections and complying with other conditions of the relevant approval.

Responsibilities when engaging Sub-Contractors

21.14 Subject always to GC12 (*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 GC21.14.

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:

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 GC21.12; 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.

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 GC21.18 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 Commissionersôabsolute 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 GC24 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,

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 GC13 (*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 GC13 (*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 Providerôs 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 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 GC24.3) 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 Providerôs 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 Providerôs ability to provide the Services in accordance with this Contract; and

24.5.2 continue providing the Services from the Providerôs Premises,

in each case for at least 12 months following the date of that Change in Control Notification. The provisions of this GC24.5 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 GC24.6, 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),

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 GC24.8.3; and

24.8.5 for the avoidance of doubt, the provisions of GC12 (*Assignment and Sub-Contracting*) will apply in relation to the replacement Material Sub-Contractor and, on the granting of the approval referred to in GC12.3 or 12.4 (*Assignment and Sub-Contracting*), the provisions of Schedules 5B1 (*Provider's Mandatory Material Sub-Contractors*) and 5B2 (*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 GC24.9.2, 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 GC24 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 GC20 (*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

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 5A (*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 5A (*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 GC25 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.

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 GC17.9.12 (*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 GC28 must be read in conjunction with SC31 (*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.

Draft

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 GC28.2 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

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 GC5 (*Staff*), other than GC5.2, GC5.3.2 and GC5.16 to 5.18 (*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 GC15.2 (*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 GC5.11 (*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 GC5.14 (*Staff*);

29.1.15 the relevant NHS Employer, if the matter to be enforced or the benefit to be enjoyed arises under GC5.16, GC5.17 or GC5.18 (*Staff*).

29.2 Subject to GC13.2.2 (*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 5A (*Documents Relied On*).

30.3 Nothing in this GC30 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 GC35.1 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 service of notices 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

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 GC14 (*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

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 ñincludingòor ñincludesòwill be interpreted as being without limitation.

10. The following words and phrases have the following meanings:

18 Weeks Information	information as to the Service Userôs 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 NHSôs 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/Performancedataandstatistics/18WeeksReferraltoTreatmentstatistics/DH_089757
1983 Act	the Mental Health Act 1983
1983 Act Code	the ócode of practiceôpublished by the Department of Health under section 118 of the 1983 Act (as amended, extended or replaced from time to time)
1989 Act	the Children Act 1989
2004 Act	the Children Act 2004

2005 Act	the Mental Capacity Act 2005
2006 Act	the National Health Service Act 2006
2008 Act	the Health and Social Care Act 2008
2009 Act	the Health Act 2009
2012 Act	the Health and Social Care Act 2012
2014 Act	the Care Act 2014
2014 Regulations	the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
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 and Finance Report	a report showing actual Activity and the associated costs to Commissioners, in the format agreed and specified in Schedule 6B (*Reporting Requirements*)
Activity Management Meeting	a meeting of the Co-ordinating Commissioner and the Provider held in accordance with SC29.13 (*Activity Management*)
Activity Management Plan	a plan which, without limitation: (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 legal rights to 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 legal rights to choice) may specify the immediate consequences (whether in relation

Draft

	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 2C (*Activity Planning Assumptions*), 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
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 and after any deductions, withholdings or set-off), as reconciled under SC36 (*Payment Terms*). For the purposes of Schedule 4 (*Quality Requirements*) and SC38 (*Commissioning for Quality and Innovation (CQUIN)*) only, the Actual Annual Value will exclude the value of any items on which CQUIN is not payable, as set out in CQUIN Guidance
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 and after any deductions, withholdings or set-off), as reconciled under SC36 (*Payment Terms*), excluding the value of any items on which CQUIN is not payable, as set out in CQUIN Guidance
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 and after any deductions, withholdings or set-off), as reconciled under SC36 (Payment Terms), excluding the value of any items on which CQUIN is not payable, as set out in CQUIN guidance
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

Draft

Apology	a sincere expression of sorrow or regret for the harm that has resulted from a Notifiable Safety Incident [, in accordance with the Being Open Framework http://www.nrls.npsa.nhs.uk/resources/?EntryId45=83726]
Approved Research Study	a clinical research study: (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
Armed Forces Covenant	the armed forces covenant guidance document and the ó*Armed forces covenant: today and tomorrow*ô document outlining actions to be taken, available at: https://www.gov.uk/government/publications/the-armed-forces-covenant
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 GC15.8 (*Governance, Transaction Records and Audit*)
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 3A (*Local Prices*), 3B (*Local Variations*) or 3C (*Local Modifications*) 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
Business Continuity Plan	the Provider's plan for continuity of all of the Services in adverse circumstances, 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 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	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: (i) *Department of Health, Effective care co-ordination in mental health services; modernising the Care Programme Approach 1999* (a policy booklet); (ii) *Reviewing the Care Programme Approach* 2006 (a consultation document) Care Services Improvement Partnership Department of Health; and (iii) *Re-focusing the Care Programme Approach – Policy and Positive Practice Guidance* 2008, being the process used to assess the care needs of Service Users based on the Principles of HC 90(23)
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 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
Chargeable Overseas Visitor	a patient who is liable to pay charges for NHS services under the Overseas Visitor Charging Regulations
Clinical Commissioning Group or **CCG**	a clinical commissioning group as defined in Section 1I 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
Code of Practice on the Prevention and Control of Infections	the *Health and Social Care Act 2008: Code of Practice on the prevention and control of infections* and related guidance, available at https://www.gov.uk/government/publications/the-health-and-social-care-act-2008-code-of-practice-on-the-prevention-and-control-of-infections-and-related-guidance
Commissioner Documents	the documents listed in Schedule 1B (*Commissioner Documents*)
Commissioner Earliest Termination Date	the date referred to as such in the Particulars
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 5C (*IPR*) including Improvements
Commissioner Notice Period	the period specified as such in the Particulars
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