



NHS Standard Contract (Accountable Care Models) [(fully integrated)] [(partially integrated)] 2017/18 and 2018/19 General Conditions

Underlined text = new provisions drafted specifically for ACO care models and forms.

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NHS Standard Contract (Multi-specialty Community Services) 2017/18 and 2018/19 General Conditions

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Applies to fully integrated model only

Applies to partially integrated model only

NOT FOR USE FOR COMMISSIONING OF SERVICES EXCEPT WITH THE CONSENT OF NHS ENGLAND OBTAINED VIA THE INTEGRATED SUPPORT AND ASSURANCE PROCESS (ISAP)

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Comment [DS1]: Note: the contract may need further development to accommodate social care and/or public health services. We intend to engage further with Local Authority colleagues over the coming months to ensure that it is fully fit-for-purpose for such services and LA involvement as a commissioner

Comment [DS2]: This is the part of the Contract which sets out the nationally-mandated processes for managing the relationship between the Commissioners and the Provider. These comprise:

- Processes and requirements mirroring those in the generic NHS Standard Contract, but in some cases adapted to be more fit for purpose in an ACO context.
- Processes and requirements specific to Primary Medical Services, derived from or incorporating by reference the anticipated Directions relating to r ACO (including MCP/PACS) contracts and contractors. These mirror those in GMS/PMS/APMS contracts where appropriate.
- Processes and requirements specific to, and defining, the ACO service model. These requirements are indicated by underlining in this draft. In a number of areas these processes

Comment [DS3]: ie the Provider is to provide core Primary Medical Services for the entire geographical area which is the subject matter of the contract

Comment [DS4]: ie the Provider is to provide core Primary Medical Services for some of that geographical area. (The majority of primary care medical services requirements nevertheless apply, on the assumption that the Provider be responsible for GP OOH services).

If the Provider is to provide core Primary Medical Services for some of the contract area, the text highlighted in blue and green will need to apply, but it will be

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 the General Conditions or the Service Conditions expressly state otherwise.
- 1.3 If there is any conflict or inconsistency between the provisions of the Service Conditions and/or [the Commissioners' Service Requirements and/or the Provider's Service Proposals] [the Service Specifications], that conflict or inconsistency must be resolved according to that order of priority.
- 1.4 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*), Schedule 2J (*Other Local Agreements, Policies and Procedures*) or Schedule 6A (*Documents Relied On*), the provisions of this Contract will prevail.

Comment [DS5]: See note at Schedule 2C2

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 GC23 (*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 before 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 before the Expected Service Commencement Date.
- 4.3 The Parties must implement any Transition Arrangements set out in Schedule 2K (*Transition Arrangements*).

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GC5 CCG Membership

- 5.1 The Provider must be a member of each CCG which is a Commissioner for the purposes of this Contract. The Provider must appoint at least one individual, who is a Health Care Professional, to act on the Provider's behalf in the dealings between the Provider and each CCG to which it belongs.

Comment [DS6]: Note: the requirement for a fully-integrated Provider to be a member of the CCG (as a "provider of primary medical services" for the purposes of section 14A(1) of the NHS Act 2006) reflects current law. We will work with DH to consider the wider implications of the ACO models for GP representation on CCGs, and how we can ensure the continued involvement of GPs in Clinical Commissioning Groups decision making and governance. This GC5 will to be developed further as necessary in light of those considerations.

GC6 Co-ordinating Commissioner and Representatives

- 6.1 In relation to this Contract 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.
- 6.2 The Commissioner Representatives and the Provider Representative will be the relevant Party's respective key points of contact for day-to-day communications.

GC7 Review

- 7.1 At the intervals set out in the Particulars, the Co-ordinating Commissioner and the Provider must hold Review Meetings to review and discuss any matters that either considers necessary in relation to this Contract.
- 7.2 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.
- 7.3 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.
- 7.4 Notwithstanding GC7.1, if either the Co-ordinating Commissioner or the Provider:
- 7.4.1 reasonably considers that a circumstance constitutes an emergency or otherwise requires immediate resolution; or
 - 7.4.2 considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,

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

GC8 Contract Management

- 8.1 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 GC8.

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- 8.2 The provisions of this GC8 do not affect any other rights and obligations the Parties may have under this Contract.
- 8.3 GC8.16, 8.20, 8.21, 8.22 and 8.24 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

- 8.4 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.
- 8.5 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

- 8.6 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.
- 8.7 At the Contract Management Meeting the Co-ordinating Commissioner and the Provider must agree either:
- 8.7.1 that the Contract Performance Notice is withdrawn; or
 - 8.7.2 to implement an appropriate Immediate Action Plan and/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

- 8.8 If a Joint Investigation is to be undertaken:
- 8.8.1 the Co-ordinating Commissioner and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 2 months) and the appropriate clinical and/or non-clinical representatives from each relevant Party to participate in the Joint Investigation; and
 - 8.8.2 the Co-ordinating Commissioner and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.
- 8.9 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:
- 8.9.1 the Contract Performance Notice be withdrawn; or
 - 8.9.2 a Remedial Action Plan be agreed and implemented.
- 8.10 Either the Co-ordinating Commissioner or the Provider may require a Review Meeting to be held at short notice in accordance with GC7.4 to consider a JI Report.

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Remedial Action Plan

8.11 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:

- 8.11.1 5 Operational Days following the Contract Management Meeting; or
- 8.11.2 5 Operational Days following the Review Meeting in the case of a Remedial Action Plan recommended under GC8.9.

as appropriate.

8.12 The Remedial Action Plan must set out:

- 8.12.1 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;
- 8.12.2 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;
- 8.12.3 in respect of actions and improvements required of the Provider, the officer of the Provider responsible for ensuring the completion of those actions and the achievement and maintenance of those improvements;
- 8.12.4 any agreed reasonable and proportionate financial sanctions or other consequences for any Party for failing to complete any agreed action and/or to achieve and maintain any agreed improvement (any financial sanctions applying to the Provider not to exceed in aggregate 10% of the Actual Monthly Value in any month in respect of any Remedial Action Plan).

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.

8.13 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.

8.14 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

8.15 If:

- 8.15.1 either the Co-ordinating Commissioner or the Provider fails to attend a Contract Management Meeting within 20 Operational Days following the date of the Contract Performance Notice to which it relates; or

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8.15.2 the Co-ordinating Commissioner and the Provider have not agreed a Remedial Action Plan within the relevant period specified in GC8.11,

then, unless the Contract Performance Notice has been withdrawn, they must immediately and jointly notify the Governing Body of both the Provider and each Commissioner accordingly.

- 8.16 If, 10 Operational Days after notifying the Governing Bodies, the Co-ordinating Commissioner and the Provider still cannot agree a Remedial Action Plan due to any unreasonableness or failure to engage on the part of the Provider, the Co-ordinating Commissioner may recommend the Commissioners to withhold, or itself withhold (on behalf of all Commissioners), a reasonable and proportionate sum of up to 2% of the Actual Monthly Payment for each further month a Remedial Action Plan is not agreed.
- 8.17 The Commissioners or the Co-ordinating Commissioner (as appropriate) must pay the Provider any sums withheld under GC8.16 within 10 Operational Days of receiving the Provider's agreement to a Remedial Action Plan. Unless GC8.23 applies, those sums are to be paid without Interest.

Implementation and Breach of Remedial Action Plan

- 8.18 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.
- 8.19 If either the Provider or any Commissioner 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, then the Co-ordinating Commissioner or the Provider (as appropriate) may, at its discretion, apply any financial or other sanction agreed in relation to that failure.

Exception Report

- 8.20 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:

8.20.1 to the relevant Party's chief executive and/or Governing Body; and/or

8.20.2 (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

- 8.21 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:
- 8.21.1 (if the Remedial Action Plan does not itself provide for a withholding or other financial sanction in relation to that failure) 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, a reasonable and proportionate sum of up to 2% of the Actual Monthly Payment, from the date of issuing the Exception Report and for each month the Provider's breach continues and/or the required improvement has not been achieved and maintained, subject to a maximum

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monthly withholding in relation to each Remedial Action Plan of 10% of the Actual Monthly Payment; and

- 8.21.2 the Commissioners or the Co-ordinating Commissioner (as appropriate) must pay the Provider any sums withheld under GC8.19 or GC8.21.1 within 10 Operational Days following the Co-ordinating Commissioner's confirmation that the breach of the Remedial Action Plan has been rectified and/or the required improvement has been achieved and maintained. Subject to GC8.23, no Interest will be payable on those sums.

Retention of Sums Withheld for Breach of Remedial Action Plan

- 8.22 If, 20 Operational Days after an Exception Report has been issued under GC8.20, the Provider remains in breach of a Remedial Action Plan, the Co-ordinating Commissioner may notify the Provider that any sums withheld under GC8.19 or GC8.21.1 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 Payment for each month in respect of which those sums were withheld.

Unjustified Withholding or Retention of Payment

- 8.23 If the Commissioners withhold, or the Co-ordinating Commissioner withholds on behalf of all Commissioners, sums under GC8.16, GC8.19 or GC8.21.1 or the Commissioners retain sums under GC8.22, 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

- 8.24 If the Provider does not agree a Remedial Action Plan:

8.24.1 within 6 months following the expiry of the relevant time period set out in GC8.11; or

8.24.2 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 GC8.16 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 Payment for each month in respect of which those sums were withheld.

- 8.25 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 GC8.19 or GC8.21.1 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 Payment for each month in respect of which those sums were withheld.

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GC9 Information Requirements

- 9.1 The Parties acknowledge that the submission of complete and accurate data in accordance with this GC9 is necessary to support the commissioning of all health and social care services in England.
- 9.2 The Provider must:
- 9.2.1 provide the information specified in this GC9 and in Schedule 7A (*Reporting Requirements*):
 - 9.2.1.1 with the frequency, in the format, by the method and within the time period set out or referred to in Schedule 7A (*Reporting Requirements*); and
 - 9.2.1.2 as detailed in relevant Guidance; and
 - 9.2.1.3 if there is no applicable time period identified, in a timely manner;
 - 9.2.2 in respect of all Primary Medical Services comply with the requirements of directions 41 and 43 of the Directions, and in respect of Out of Hours Services comply with the requirements of direction 14(2) of the Directions;
 - 9.2.3 where and to the extent applicable, conform to all NHS information standards notices, data provision notices and information and data standards approved or published by the Secretary of State, NHS England or by NHS Digital on their behalf, as appropriate;
 - 9.2.4 implement any other datasets and information requirements agreed from time to time between it and the Co-ordinating Commissioner;
 - 9.2.5 comply with Data Guidance, and with the Law, in relation to protection of Confidential Patient Information;
 - 9.2.6 subject to and in accordance with Law and Guidance and any relevant standards issued by the Secretary of State, NHS England or NHS Digital, use the Service User's verified NHS Number as the consistent identifier of each record on all patient datasets; and
 - 9.2.7 comply with the Law and Guidance on the use and disclosure of Confidential Patient Information for other than direct care purposes.
- 9.3 The Co-ordinating Commissioner may request from the Provider any information in addition to that to be provided under GC9 which any Commissioner reasonably and lawfully requires in relation to this Contract. The Provider must supply that information in a timely manner.
- 9.4 The Co-ordinating Commissioner must act reasonably in requesting the Provider to provide any information under this Contract, having regard to the burden which that request places on the Provider, and may not, without good reason, require the Provider:
- 9.4.1 to supply any information to any Commissioner locally where that information is required to be submitted centrally under GC9.2; or
 - 9.4.2 where information is required to be submitted in a particular format under GC9.2, to supply that information in a different or additional format (but this will not prevent the Co-ordinating Commissioner from requesting disaggregation of data previously submitted in aggregated form); or

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9.4.3 to supply any information to any Commissioner locally for which that Commissioner cannot demonstrate purpose and value in connection with the discharge of that Commissioner's statutory duties and functions.

9.5 The Provider and each Commissioner must ensure that any information provided to any other Party in relation to this Contract is accurate and complete.

Aggregation and disaggregation of information

9.6 Information to be provided by the Provider under this GC9 and Schedule 7A (*Reporting Requirements*) and which is necessary for the purposes of GC11 (*Payment Terms*) must be provided:

9.6.1 to the Co-ordinating Commissioner in aggregate form; and/or

9.6.2 directly to each Commissioner in disaggregated form relating to its own use of the Services, as the Co-ordinating Commissioner may direct.

SUS

9.7 The Provider must submit commissioning data sets to SUS in accordance with SUS Guidance, where applicable. Where SUS is applicable, if:

9.7.1 there is a failure of SUS; or

9.7.2 there is an interruption in the availability of SUS to the Provider or to any Commissioner,

the Provider must comply with Guidance issued by NHS England and/or NHS Digital in relation to the submission of the national datasets collected in accordance with this GC9 pending resumption of service, and must submit those national datasets to SUS as soon as reasonably practicable after resumption of service.

Information Breaches

9.8 If the Co-ordinating Commissioner becomes aware of an Information Breach it must notify the Provider accordingly. The notice must specify:

9.8.1 the nature of the Information Breach; and

9.8.2 the sums (if any) which the Co-ordinating Commissioner intends to instruct the Commissioners to withhold, or itself withhold (on behalf of all Commissioners), under GC9.9 if the Information Breach is not rectified within 5 Operational Days following service of that notice.

9.9 If the Information Breach is not rectified within 5 Operational Days of the date of the notice served in accordance with GC9.8.2 (unless due to any act or omission of any Commissioner), the Co-ordinating Commissioner may (subject to GC9.11) instruct the Commissioners to withhold, or itself withhold (on behalf of all Commissioners), a reasonable and proportionate sum of up to 1% of the Actual Monthly Payment in respect of the current month and then for each and every month until the Provider has rectified the relevant Information Breach to the reasonable satisfaction of the Co-ordinating Commissioner.

9.10 The Commissioners or the Co-ordinating Commissioner (as appropriate) must continue to withhold any sums withheld under GC9.9 unless and until the Provider rectifies the relevant Information Breach to the reasonable satisfaction of the Co-ordinating Commissioner. The Commissioners or the Co-ordinating

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Commissioner (as appropriate) must then pay the withheld sums to the Provider within 10 Operational Days. Subject to GC9.11 no Interest will be payable by the Co-ordinating Commissioner to the Provider on any sum withheld under GC9.9.

- 9.11 If the Provider produces evidence satisfactory to the Co-ordinating Commissioner that any sums withheld under GC9.9 were withheld without justification, the Commissioners or the Co-ordinating Commissioner (as appropriate) must pay to the Provider any sums wrongly withheld or retained and Interest on those sums for the period for which those sums were withheld or retained. If the Co-ordinating Commissioner disputes the Provider's evidence the Provider may refer the matter to Dispute Resolution.
- 9.12 Any sums withheld under GC9.9 may be retained permanently if the Provider fails to rectify the relevant Information Breach to the reasonable satisfaction of the Co-ordinating Commissioner by the earliest of:
- 9.12.1 the date 3 months after the date of the notice served in accordance with GC9.8;
 - 9.12.2 the termination of this Contract; and
 - 9.12.3 the Expiry Date.

If any sums withheld by the Co-ordinating Commissioner on behalf of all Commissioners are to be retained permanently, the Co-ordinating Commissioner must distribute the sums withheld between the Commissioners in proportion to their respective shares of the Actual Monthly Payment for each month in respect of which those sums were withheld.

- 9.13 The aggregate of sums withheld in any month in respect of Information Breaches is not to exceed 5% of the Actual Monthly Payment.

Data Quality Improvement Plan

- 9.14 The Co-ordinating Commissioner and the Provider may at any time agree a Data Quality Improvement Plan (which must be appended to this Contract at Schedule 7B (*Data Quality Improvement Plans*)). Any Data Quality Improvement Plan must set out milestones to be met and may set out reasonable and proportionate financial sanctions for failing to meet those milestones. If the Provider fails to meet a milestone by the agreed date, the Co-ordinating Commissioner may exercise the relevant agreed consequence.
- 9.15 If a Data Quality Improvement Plan with financial sanctions is agreed in relation to any Information Breach, the Commissioners (or the Co-ordinating Commissioner on their behalf, as appropriate) may not withhold sums under GC9.9 in respect of the same Information Breach. This will not affect the rights of the Commissioners (or the Co-ordinating Commissioner on their behalf, as appropriate) under GC9.9 in respect of any period before the agreement of a DQIP in relation to that Information Breach.
- 9.16 If an Information Breach relates to the National Requirements Reported Centrally the Parties must not by means of a Data Quality Improvement Plan agree the waiver or delay or foregoing of any withholding or retention under GC9.9 to which the Commissioners (or the Co-ordinating Commissioner on their behalf, as appropriate) would otherwise be entitled.

Comment [DS7]: We have included "light touch" activity monitoring provisions, on the basis that commissioners will retain an interest in activity levels notwithstanding that payment will be primarily on the basis of the WPAP. It may be that specific monitoring provisions will be required in relation to some payment streams which will, of necessity, remain activity-based (eg those in relation to vaccination programmes).

GC10 Monitoring Activity

- 10.1 The Commissioners must use all reasonable endeavours to procure that that all Referrers adhere to Referral processes and clinical thresholds set out or referred to in this Contract and/or as otherwise agreed between the Parties.

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- 10.2 **The Provider must comply with and use all reasonable endeavours to manage Activity in accordance with Referral processes and clinical thresholds set out or referred to in this Contract and/or as otherwise agreed between the Parties.**
- 10.3 The Parties may at any time agree
- 10.3.1 an Indicative Activity Plan; and
 - 10.3.2 Activity Planning Assumptions,
- in respect of one or more Contract Years.
- 10.4 The Provider must submit an Activity Report to the Co-ordinating Commissioner in accordance with Schedule 7A (*Reporting Requirements*).
- 10.5 The Co-ordinating Commissioner and the Provider will monitor actual Activity reported in each Activity Report in respect of each Commissioner against any agreed Indicative Activity Plan, any agreed Activity Planning Assumptions, any previous Activity Reports and generally.
- 10.6 Each Party must notify the other(s) as soon as reasonably practicable after becoming aware of any unexpected or unusual patterns of Referrals and/or Activity specifying the nature of the unexpected pattern and their initial opinion as to its likely cause.
- 10.7 The Parties must meet to discuss any notice given under GC10.6 as soon as reasonably practicable and must seek to agree any actions required of any Party in response to the circumstances identified.

GC11 Payment Terms

Whole Population Annual Payment

- 11.1 Subject to any express provision of this Contract to the contrary, the Commissioners will in respect of each Contract Year pay to the Provider, as full consideration for all Services that the Provider delivers and performance of all other obligations on the part of the Provider under this Contract:

- 11.1.1 the Whole Population Annual Payment; and
- 11.1.2 the Activity-Based Payments.

- 11.1A The WPAP and the Activity-Based Payments constitute in whole or part a Local Variation agreed in accordance with the rules set out in the National Tariff. That Local Variation and any subsequent Local Variation reflecting any agreed adjustment to the WPAP and/or Activity-Based Payments must be recorded in Schedule 4E (*Local Variations*), submitted to NHS Improvement in accordance with the National Tariff and published in accordance with section 116(3) of the 2012 Act.

Adjustment of the Whole Population Annual Payment

- 11.2 The WPAP will be adjusted with effect from each WPAP Review Date in accordance with Schedule 4B (*Adjustment of the Whole Population Annual Payment*).
- 11.3 Any adjustment to the WPAP must be determined and agreed in accordance with the rules set out in the National Tariff (where applicable) and having regard to the Integrated Budget Handbook . The Parties must use all reasonable endeavours to agree any adjustment to the WPAP and any Variation

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Comment [D58]: That is, the proportion of the total budget allocated to the Provider remaining after top-slicing to provide for earnable Improvement Payment Scheme payments,

necessitated by any adjustment to the WPAP, acting in good faith and in the interests of Service Users and the Population.

- 11.4 If the Co-ordinating Commissioner and the Provider fail to agree the adjusted WPAP and any Variation necessitated by that adjustment by the date [3 months] before the relevant WPAP Review Date, or there is a dispute as to the application of the adjustment mechanism set out in Schedule 4B (*Adjustment of the Whole Population Annual Payment*), either may refer the matter to Dispute Resolution for escalated negotiation and then (failing agreement) mediation.

Comment [DSg]: Note: mediation only, not binding expert determination – the CCG cannot be forced to accept a WPAP it cannot afford

- 11.5 If the adjusted WPAP has not been agreed in accordance with GC11.3 and 11.4 before the relevant WPAP Review Date then the WPAP with effect from that WPAP Review Date will be that which applied immediately before the relevant WPAP Review Date. This will not affect the right to terminate this Contract as a result of non-agreement of an adjustment to the WPAP and/or any Variation necessitated by any adjustment to the WPAP under GC11.6.

- 11.6 If on or following completion of the mediation process:

11.6.1 the Co-ordinating Commissioner and the Provider still cannot agree the adjusted WPAP and/or any Variation necessitated by any adjustment to the WPAP; and

11.6.2 the Co-ordinating Commissioner determines that the Commissioners cannot continue to pay the WPAP with effect from the relevant WPAP Review Date at the rate which applied immediately before the relevant Review Date for more than [12 months] following that WPAP Review Date.

either the Co-ordinating Commissioner or the Provider may terminate this Contract in accordance with GC23.4 (*Consequence of Expiry or Termination*).

- 11.7 Each agreed adjustment to the WPAP must be recorded in Schedule 4A (*Whole Population Annual Payment*), submitted by the Co-ordinating Commissioner to Monitor where required in accordance with the National Tariff, and published in accordance with section 116(3) of the 2012 Act.

Aggregation and Disaggregation of Payments

- 11.8 The Co-ordinating Commissioner may make or receive all (but not only some) of the payments due under GC11 in aggregate amounts for itself and on behalf of each of the Commissioners provided that it gives the Provider 20 Operational Days' written notice of its intention to do so. These aggregated payments will not prejudice any immunity from liability of the Co-ordinating Commissioner, or any rights of the Provider to recover any overdue payment from the relevant Commissioners individually. However, they will discharge the separate liability or entitlement of the Commissioners in respect of their separate Services. To avoid doubt, notices to aggregate and reinstate separate payments may be repeated or withdrawn from time to time. Where notice has been given to aggregate payments, references in GC11 to "a Commissioner", "the Commissioner" or "each Commissioner" are where appropriate to be read as referring to the Co-ordinating Commissioner.

Payment on account of the WPAP

- 11.9 Each Commissioner must make payments on account of the WPAP to the Provider in accordance with GC11.10.

- 11.10 The Provider must supply to each Commissioner a monthly invoice before the first day of each month setting out the amount to be paid in respect of the WPAP by that Commissioner for that month, as set out in Schedule 4A (*Whole Population Annual Payment*), adjusted in accordance with the reconciliation account referred to in GC11.12. Subject to receipt of the invoice, on the fifteenth day of each month (or

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other day agreed by the Provider and the Co-ordinating Commissioner in writing) after the Service Commencement Date each Commissioner must pay such amount to the Provider. In relation to the invoice submitted in respect of the final month of the Contract Term (or the final month pending earlier termination, as the case may be) the Commissioners will be entitled to withhold payments on account until the 15th day of the month following expiry or termination, as security for performance of the Provider's obligations under this Contract up to and including the date of expiry or termination.

Payment in respect of Services Subject to Activity-Based Payments and Other Payment Streams

- 11.11 [The Provider must issue a monthly invoice within 20 Operational Days after the end of each month to each Commissioner in respect of all Services subject to Activity-Based Payments provided for that Commissioner in that month. Subject to GC11.30, the Commissioner must settle the invoice within 10 Operational Days of its receipt.]

Comment [DS10]: It will be necessary to provide for certain necessarily activity-based payments – eg in relation to vaccination programmes - and other payments which will form potential (conditional) income streams outside the WPAP. The processes for and timing of payments are likely to need to be specified locally. GC11.11 should be considered provisional only.

Reconciliation

- 11.12 In order to confirm the actual sum payable, the Provider must provide a separate reconciliation account for each Commissioner for each month, showing the amount referred to in GC11.10 and any deduction from and/or additions to that amount made in accordance with this Contract. That reconciliation account must be based on the information submitted by the Provider to the Co-ordinating Commissioner under GC9 (*Information Requirements*) and sent by the Provider to the relevant Commissioner within 20 Operational Days after the end of the month to which it relates.
- 11.13 Each Commissioner and Provider must either agree the reconciliation account produced in accordance with GC11.12 or wholly or partially contest the reconciliation account in accordance with GC11.28. No Commissioner may unreasonably withhold or delay its agreement to a reconciliation account.
- 11.14 Each Commissioner's agreement of a reconciliation account or agreement of a final reconciliation account as the case may be (or where agreed in part in relation to that part) will trigger a reconciliation payment by the relevant Commissioner to the Provider or by the Provider to the relevant Commissioner, as appropriate. The Provider must supply to the Commissioner an invoice or credit note (as appropriate) within 5 Operational Days of that agreement and payment must be made within 10 Operational Days following the receipt of the invoice or issue of the credit note.

Operational Standards, National Quality Requirements and Local Quality and Outcome Requirements

- 11.15 If the Provider breaches any of the thresholds in respect of the Operational Standards, the National Quality Requirements or the Local Quality Requirements the Provider must repay to the relevant Commissioner or the relevant Commissioner must deduct from payments due to the Provider (as appropriate), the relevant sums as determined in accordance with Schedule 5A (*Operational Standards*) and/or Schedule 5B (*National Quality Requirements*) and/or Schedule 5C (*Local Quality and Outcome Requirements*). The sums repaid or deducted under this GC11.15 in respect of any Quarter will not in any event exceed 2.5% of the Actual Quarterly Payment.

Sustainability and Transformation Fund

Comment [DS11]: Note: in practice these provisions will be applicable to providers which are NHS FTs or Trusts only

- 11.16 If the Provider has been granted access to the general element of the Sustainability and Transformation Fund, and has, as a condition of access:

- 11.16.1 agreed with the national teams of NHS Improvement and NHS England an overall financial control total and other associated conditions for either the Contract Year 1 April 2017 to 31 March 2018 or the Contract Year 1 April 2018 to 31 March 2019 or; and
- 11.16.2 (where required by those bodies):

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- 11.16.2.1 agreed with those bodies and with the Commissioners specific performance trajectories to be achieved during either the Contract Year 1 April 2017 to 31 March 2018 or the Contract Year 1 April 2018 to 31 March 2019 or both (as set out in an SDIP contained or referred to in Schedule 7D (*Service Development and Improvement Plans*)); and/or
- 11.16.2.2 submitted to those bodies assurance statements setting out commitments on performance against specific Operational Standards and National Quality Requirements to be achieved during either the Contract Year 1 April 2017 to 31 March 2018 or the contract Year 1 April 2018 to 31 March 2019 or both which have been accepted by those bodies (as set out in an SDIP contained or referred to in Schedule 7D (*Service Development and Improvement Plans*)),
- 11.16.3 no repayment will be required to be made, nor any deduction made, in relation to any breach of any threshold which occurs during that Contract Year in respect of any Operational Standard shown in bold italics in Schedule 5A (*Operational Standards*) or any National Quality Requirement shown in bold italics in Schedule 5B (*National Quality Requirements*); and
- 11.16.4 no Commissioner may withhold or retain payment under GC8 (*Contract Management*) or otherwise in respect of any failure to agree a RAP, or to comply with any RAP, in relation to any breach of any threshold which occurs during any Contract Year or Contract Years for which such financial control totals and specific performance trajectories have been agreed and/or such assurance statements have been submitted and accepted in respect of any Operational Standard shown in bold italics in Schedule 5A (*Operational Standards*) or any National Quality Requirement shown in bold italics in Schedule 5B (*National Quality Requirements*), and/or any failure to comply with specific performance trajectories or assurances as referred to above.

Never Events

- 11.17 If a Never Event occurs, the relevant Commissioner may deduct from payments due to the Provider, if and as permitted by the Never Events Policy Framework, a sum equal to the costs to that Commissioner of the procedure or episode (or, where these cannot be accurately established, £2,000) plus any additional charges incurred by that Commissioner (whether under this Contract or otherwise) for any corrective procedure or necessary care in consequence of the Never Event.

Statutory and Other Charges

- 11.18 Where applicable, the Provider must administer all statutory benefits to which the Service User is entitled and within a maximum of 20 Operational Days following receipt of an appropriate invoice the relevant Commissioner must reimburse the Provider any statutory benefits correctly administered.
- 11.19 The Provider must administer and collect all statutory charges which the Service User is liable to pay and which may lawfully be made in relation to the provision of the Services, and must account to whoever the Co-ordinating Commissioner reasonably directs in respect of those charges.
- 11.20 The WPAP is not intended to cover the cost of any Services delivered to any Chargeable Overseas Visitor in respect of which that Chargeable Overseas Visitor or any other person is liable to pay charges under the Overseas Visitor Charging Regulations. The Parties acknowledge the requirements and intent of the Overseas Visitor Charging Regulations and Overseas Visitor Charging Guidance, and accordingly:
- 11.20.1 the Provider must comply with all applicable Law and Guidance (including the Overseas Visitor Charging Regulations, the Overseas Visitor Charging Guidance and the Who Pays?

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- Guidance) in relation to the identification of and collection of charges from Chargeable Overseas Visitors, including the reporting of unpaid NHS debts in respect of Services provided to non-EEA national Chargeable Visitors to the Department of Health;
- 11.20.2 if the Provider has failed to take all reasonable steps to:
- 11.20.2.1 identify a Chargeable Overseas Visitor; or
- 11.20.2.2 recover charges from the Chargeable Overseas Visitor or other person liable to pay charges in respect of that Chargeable Overseas Visitor under the Overseas Visitor Charging Regulations,
- no Commissioner will be liable to make any payment to the Provider in respect of any Services delivered to that Chargeable Overseas Visitor and where such a payment has been made the Provider must refund it to the relevant Commissioner;
- 11.20.3 (subject to GC11.20.2) each Commissioner must pay the Provider, in accordance with all applicable Law and Guidance (including the Overseas Visitor Charging Regulations, Overseas Visitor Charging Guidance and Who Pays? Guidance), the appropriate contribution on account for all Services delivered by the Provider in accordance with this Contract to any Chargeable Overseas Visitor in respect of whom that Commissioner is the Responsible Commissioner;
- 11.20.4 the Provider must refund to the relevant Commissioner any such contribution on account if and to the extent that charges are collected from a Chargeable Overseas Visitor or other person liable to pay charges in respect of that Chargeable Overseas Visitor, in accordance with all applicable Law and Guidance (including Overseas Visitor Charging Regulations, Overseas Visitor Charging Guidance and the Who Pays? Guidance);
- 11.20.5 the Provider must make full use of existing mechanisms designed to increase the rates of recovery of the cost of Services provided to overseas visitors insured by another EEA state, including the EEA reporting portal for EHIC and S2 activity; and
- 11.20.6 each Commissioner must pay the Provider, in accordance with all applicable Law and Guidance (including Overseas Visitor Charging Regulations, Overseas Visitor Charging Guidance and the Who Pays? Guidance), the appropriate sum for all Services delivered by the Provider to any overseas visitor in respect of whom that Commissioner is the Responsible Commissioner and which have been reported through the EEA reporting portal.

Fees and Charges

- 11.21 In its performance of this Contract the Provider must not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User except in accordance with this Contract, the Law and/or Guidance.
- 11.22 The Provider must not, either itself or through any other person, demand or accept from any Service User a fee or other remuneration, for its own or another's benefit for:
- 11.22.1 the provision of any Primary Medical Services whether under this Contract or otherwise; or
- 11.22.2 a prescription or Repeatable Prescription for any drug, medicine or Appliance in connection with those Primary Medical Services,
- except in the circumstances set out in Schedule 2 to the Directions.

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Comment [DS12]: We acknowledge that further provisions may be required where appropriate to deal with charging arrangements for social care.

Comment [DS13]: This and other provisions referring to or reflecting the anticipated Directions relating to ACO contractors and contracts are indicative only. Wording and cross-references may be amended to reflect the final Directions in due course.

- 11.23 Where a person applies to the Provider for the provision of Primary Medical Services and claims to be entitled to be treated by the Provider without paying a fee or other remuneration and the Provider has reasonable doubts about that person's claim, the Provider must give any necessary treatment in the form of Primary Medical Services and may demand and accept a reasonable fee accordingly in accordance with sub-paragraph (e) of Schedule 2 to the Directions.
- 11.24 Where a person from whom the Provider received a fee under sub-paragraph (e) of Schedule 2 to the Directions applies to NHS England or to the relevant Commissioner for a refund within 14 days of payment of the fee (or within such longer period not exceeding a month as NHS England may allow if it is satisfied that the failure to apply within 14 days was reasonable) and NHS England is satisfied that the person was entitled to receive treatment from the Provider in the form of Primary Medical Services without paying a fee or other remuneration when the treatment was given, NHS England or the relevant Commissioner may recover the amount of the fee from the Provider, by set off or otherwise, and must pay that amount to the person who paid the fee.
- 11.25 In the provision of Primary Medical Services, the Provider must:
- 11.25.1 provide information to the Service Users regarding other services it provides (other than the Primary Medical Services provided under this Contract) only where appropriate and must ensure that such information is fair and accurate; and
 - 11.25.2 where the other services are available to the Service User as NHS services, inform the Service User:
 - 11.25.2.1 that the services are so available;
 - 11.25.2.2 of any charge that apply to those services and, if no such charge applies, that the services are free; and
 - 11.25.2.3 how to access those services.

Patient Pocket Money

- 11.26 The Provider must administer and pay all Patient Pocket Money to which a Service User is entitled to that Service User in accordance with Good Practice and the local arrangements that are in place and the relevant Commissioner must reimburse the Provider within 20 Operational Days following receipt of an appropriate invoice any Patient Pocket Money correctly administered and paid to the Service User.

VAT

- 11.27 Payment is exclusive of any applicable VAT for which the Commissioners will be additionally liable to pay the Provider upon receipt of a valid tax invoice at the prevailing rate in force from time to time.

Contested Payments

- 11.28 If a Party contests all or any part of any payment calculated in accordance with this GC11:
- 11.28.1 the contesting Party must, within 5 Operational Days of the receipt of the reconciliation account in accordance with GC11.12, notify the other Party or Parties, setting out in reasonable detail the reasons for contesting that account or invoice (as applicable), and in particular identifying which elements are contested and which are not contested; and

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- 11.28.2 any uncontested amount must be paid in accordance with this Contract by the Party from whom it is due; and
- 11.28.3 if the matter has not been resolved within 20 Operational Days of the date of notification under GC11.28.1, the contesting Party must refer the matter to Dispute Resolution,

and following the resolution of any Dispute referred to Dispute Resolution in accordance with this GC11.28, insofar as any amount shall be agreed or determined to be payable the Provider must immediately issue an invoice or credit note (as appropriate) for such amount. Any sum due must be paid immediately together with interest calculated in accordance with GC11.29. For the purposes of GC11.29 the date the amount was due will be the date it would have been due had the amount not been disputed.

Interest on Late Payments

- 11.29 Subject to any express provision of this Contract to the contrary (including without limitation the Withholding and Retention of Payment Provisions), each Party will be entitled, in addition to any other right or remedy, to receive interest at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998 on any payment not made from the day after the date on which payment was due up to and including the date of payment.

Set Off

- 11.30 Whenever any sum is due from one Party to another as a consequence of reconciliation under this GC11 or Dispute Resolution or otherwise, the Party due to be paid that sum may deduct it from any amount that it is due to pay the other, provided that it has given 5 Operational Days' notice of its intention to do so.

Invoice Validation

- 11.31 The Parties must comply with Law and Guidance (including Who Pays? Guidance and Invoice Validation Guidance) in respect of the use of data in the preparation and validation of invoices.

Submission of Invoices

- 11.32 The Provider must use all reasonable endeavours to submit all invoices via the e-Invoicing Platform in accordance with e-Invoicing Guidance or via an alternative PEPOL-compliant e-invoicing system.

GC12 Improvement Payment Scheme

- 12.1 The Parties must implement an Improvement Payment Scheme in accordance with the Incentive Framework for ACOs for each Contract Year or the appropriate part of it.
- 12.2 If the Provider has satisfied an Improvement Payment Scheme Indicator, an improvement Payment Scheme Payment calculated in accordance with Improvement Payment Scheme Guidance will be payable by the Commissioners to the Provider in accordance with Improvement Payment Scheme Table 1.

Payment on Account

- 12.3 Before the start of each Contract Year the Co-ordinating Commissioner and the Provider may agree a schedule of payments to be made by the Commissioners during the relevant Contract Year on account in expectation of the Provider satisfying the Improvement Payment Scheme Indicators. That schedule of payments must be recorded in Improvement Payment Scheme Table 2.

Comment [DS14]: This is the pay for performance Improvement Payment Scheme to replace CQUIN and, for the fully-integrated model, QOF. See notes at Schedule 5D.

The payment mechanism set out here reflects that currently in place for CQUIN schemes, and may be revisited as the Improvement Payment Scheme is further developed.

Note that it is expected to be a requirement, set out in guidance, that the provider must return data on its performance against the HCIF at prescribed intervals, so that this can be published nationally.

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- 12.4 Each Commissioner must, on receipt of the appropriate invoice, pay to the Provider its Improvement Payment Scheme Payments on Account in accordance with Improvement Payment Scheme Table 2.

Improvement Payment Scheme Performance Report

- 12.5 The Provider must submit to the Co-ordinating Commissioner an Improvement Payment Scheme Performance Report at the frequency and otherwise in accordance with the National Requirements Reported Locally.
- 12.6 The Co-ordinating Commissioner must review and discuss with each Commissioner the contents of each Improvement Payment Scheme Performance Report.
- 12.7 If any Commissioner wishes to challenge the content of any Improvement Payment Scheme Performance Report (including the clinical or other supporting evidence included in it) the Co-ordinating Commissioner must serve an Improvement Payment Scheme Query Notice on the Provider within 10 Operational Days of receipt of the Improvement Payment Scheme Performance Report.
- 12.8 In response to any Improvement Payment Scheme Query Notice the Provider must, within 10 Operational Days of receipt, either:
- 12.8.1 submit a revised Improvement Payment Scheme Performance Report (including, where appropriate, further supporting evidence); or
 - 12.8.2 refer the matter to Dispute Resolution.
- 12.9 If the Provider submits a revised Improvement Payment Scheme Performance Report in accordance with GC12.8 the Co-ordinating Commissioner must, within 10 Operational Days of receipt, either:
- 12.9.1 accept the revised Improvement Payment Scheme Performance Report; or
 - 12.9.2 refer the matter to Dispute Resolution.
- 12.10 The Improvement Payment Scheme Payments on Account may be adjusted from time to time as may be set out in Improvement Payment Scheme Table 2, on the basis of accepted Improvement Payment Scheme Performance Reports.

Reconciliation

- 12.11 Within 20 Operational Days following the later of:
- 12.11.1 the end of the Contract Year; and
 - 12.11.2 the agreement or resolution of all Improvement Payment Scheme Performance Reports in respect of that Contract Year,
- the Provider must submit an Improvement Payment Scheme Reconciliation Account to the Co-ordinating Commissioner.
- 12.12 If payment is made in accordance with GC12.14 before the final reconciliation account for the relevant Contract Year is agreed under GC11 (*Payment Terms*), and the Actual Annual Payment for the relevant Contract Year is not the same as the value against which the Improvement Payment Scheme Payment was calculated, the Provider must within 10 Operational Days following the agreement of the final reconciliation account under GC11 (*Payment Terms*), send the Co-ordinating Commissioner a

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reconciliation statement reconciling the Improvement Payment Scheme Payment against what it would have been had it been calculated against the Actual Annual Payment.

- 12.13 Within 5 Operational Days of receipt of either the Improvement Payment Scheme Reconciliation Account under GC12.11 or the reconciliation statement under GC12.12 (as the case may be), the Co-ordinating Commissioner must either agree it or wholly or partially contest it in accordance with GC12.15. The Co-ordinating Commissioner's agreement of either the Improvement Payment Scheme Reconciliation Account under GC12.11 or the reconciliation statement under GC12.12 must not be unreasonably withheld or delayed.
- 12.14 The Co-ordinating Commissioner's agreement of the Improvement Payment Scheme Reconciliation Account under GC12.11 or a reconciliation statement under GC12.12 (or where agreed in part in relation to that part) will trigger a reconciliation payment by each relevant Commissioner to the Provider or by the Provider to each relevant Commissioner (as appropriate). The Provider must supply to each Commissioner an invoice or credit note (as appropriate) within 5 Operational Days of the agreement and payment must be made within 10 Operational Days following receipt of the invoice or issue of the credit note.
- 12.15 If the Co-ordinating Commissioner contests either the Improvement Payment Scheme Reconciliation Account or the reconciliation statement:
- 12.15.1 the Co-ordinating Commissioner must within 5 Operational Days notify the Provider accordingly, setting out in reasonable detail the reasons for contesting the account, and in particular identifying which elements are contested and which are not contested;
 - 12.15.2 any uncontested amount identified in either the Improvement Payment Scheme Reconciliation Account under GC12.11 or the reconciliation statement under GC12.12 must be paid in accordance with GC12.13 by the Party from whom it is due; and
 - 12.15.3 if the matter has not been resolved within 20 Operational Days following the date of notification under GC12.15.1, either the Provider or the Co-ordinating Commissioner may refer the matter to Dispute Resolution,

and within 20 Operational Days following the resolution of any Dispute referred to Dispute Resolution in accordance with this GC12.15, if any amount is agreed or determined to be payable the Provider must immediately issue an invoice or credit note (as appropriate) for that amount. The Party from whom any amount is agreed or determined to be payable must immediately pay the amount due to together with Interest calculated in accordance with GC11.29. For the purposes of GC11.29, the date the amount was due will be the date it would have been due had the amount not been disputed.

GC13 Gain/Loss-Share Arrangement

- 13.1 The Parties have agreed and will operate the Gain/Loss Share Arrangement in a manner consistent with guidance set out in the WPB Handbook.

Comment [DS15]: We anticipate that Gain/Loss Share Arrangements will be a feature of all MCP models, but not necessarily a feature of all other ACO models - but that will rather depend on which services are in or out of scope, and the extent of dependencies between them, in each case,

GC14 Liability and Indemnity

- 14.1 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
- 14.1.1 any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever in respect of:

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

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

14.1.2 any Losses of the Provider,

that result from or arise out of the Commissioner's negligence or breach of contract in connection with the performance of this Contract except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Provider, any Sub-Contractor, their Staff or agents.

14.2 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:

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

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

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

14.2.2 any Losses of the Commissioner,

that result from or arise out of the Provider's or any Sub-Contractor's negligence or breach of contract in connection with the performance of this Contract or the provision of the Services (including its use of Equipment or other materials or products, and the actions or omissions of Staff or any Sub-Contractor in the provision of the Services), except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Commissioner, its employees or agents.

14.3 The Provider must put in place and maintain in force (and 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:

14.3.1 employers' liability;

14.3.2 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;

14.3.3 public liability; and

14.3.4 professional negligence.

Insofar as the CNST Regulations and the CNST Membership Rules allow and in respect of all liabilities which may be covered by CNST in accordance with the CNST Regulations and the CNST Membership Rules for the Provider (or for its Sub-Contractor, as appropriate), appropriate Indemnity Arrangements must comprise membership of CNST for at least the duration of this Contract (or the relevant Sub-Contract) and (if membership ceases at any time on or following expiry or termination of this Contract (or the relevant Sub-Contract)) Run Off Benefit.

14.4 Within 5 Operational Days following written request from the Co-ordinating Commissioner, the Provider must provide documentary evidence that Indemnity Arrangements required under GC14.3 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

Comment [DS16]: The requirement to arrange cover via CNST where available is provisional, and is subject to further discussions with DH and the NHSLA.

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- 14.5 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.
- 14.6 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 GC14.3 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.
- 14.7 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.
- 14.8 No later than 3 months prior to the expiry of this Contract, or within 10 Operational Days following the date of service of notice to terminate or of agreement to terminate this Contract (as appropriate), the Provider must provide to the Co-ordinating Commissioner satisfactory evidence in writing of its (and its Sub-Contractors') arrangements to satisfy the requirements of GC14.7. If the Provider fails to do so the Commissioners may themselves procure appropriate Indemnity Arrangements in respect of such ongoing liabilities and the Provider must indemnify and keep the Commissioners indemnified against the costs incurred by them in doing so.
- 14.9 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.
- 14.10 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.
- 14.11 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.
- 14.12 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.

GC15 Assignment and Sub-contracting

Obligations relating to the Provider

- 15.1 Subject to the following provisions of this GC15, the Provider must not assign, novate, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or obligations or duties under this Contract without:
- 15.1.1 the prior written approval of the Co-ordinating Commissioner and (if and to the extent that those rights, obligations or duties relate to Primary Medical Services) NHS England;

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15.1.2 (in the case of any proposed sub-contracting) having satisfied itself and the Co-ordinating Commissioner that the proposed Sub-Contractor has in force in relation to it appropriate Indemnity Arrangements.

15.1A Without prejudice to the other provisions of this GC15, the Provider must not sub-contract any of its rights or duties under this Contract in relation to the provision of Primary Medical Services except in accordance with the requirements of directions 12(2) – (4), 12(6) – (8) and 51 of the Directions.

15.2 The Co-ordinating Commissioner may require, as a condition of the approval of any assignment or novation, the assignee or novatee to provide a guarantee from its parent or other party acceptable to the Co-ordinating Commissioner, in the form of the Template Guarantee.

15.3 The approval of any sub-contracting arrangement may:

15.3.1 include approval of the terms of the proposed Sub-Contract; and

15.3.2 require, as a condition of that approval, the proposed Sub-Contract to be in the form of the Template Sub-Contract; and

15.3.3 require, as a condition of that approval, that the proposed Sub-Contractor enters into a Sub-Contractor Direct Agreement with one or more of the Commissioners.

15.4 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.

15.5 The Provider must enter into each Mandatory Material Sub-Contract with the relevant Mandatory Material Sub-Contractor.

15.6 The Provider may enter into a Permitted Material Sub-Contract with the relevant Permitted Material Sub-Contractor.

15.7 The Provider must not:

15.7.1 terminate a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract; or

15.7.2 make any material changes to the terms of a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract; or

15.7.3 replace a Mandatory Material Sub-Contractor under a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract under a Permitted Material Sub-Contract (and must ensure that a replacement does not otherwise occur); or

15.7.4 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 6B1 (*Provider's Mandatory Material Sub-Contractors*) and 6B2 (*Provider's Permitted Material Sub-Contractors*) must be updated as appropriate to reflect any designation made, or termination, change or replacement approved, by the Co-ordinating Commissioner.

15.8 If the Provider enters into a Sub-Contract it must:

Underlined text = new provisions drafted specifically for ACO care models and forms.

Other text = provisions carried forward or adapted from existing NHS Standard Contract or anticipated Directions relating to ACO contracts and contractors. In the latter case drafting and cross-referencing is provisional pending publication of the final Directions.

Comment [DS17]: A Direct Agreement with each key sub-contractor would allow the commissioners to step in to become the direct payer and contracting counterparty of the sub-contractor – and therefore ensure the continuity of the services they provide – if the Provider defaults. Such agreements will therefore be a key part of the security package / selection criteria.

- 15.8.1 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;
 - 15.8.2 not vary any such provision referred to in GC15.8.1 above;
 - 15.8.3 ensure that the Sub-Contractor does not assign, novate, delegate, transfer or otherwise dispose of any of its rights or obligations or duties under the Sub-Contract without the approval of the Co-ordinating Commissioner and (if and to the extent that those rights or obligations or duties relate to Primary Medical Services) NHS England; and
 - 15.8.4 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) and is prohibited from further sub-contracting (and does not further sub-contract) its obligations under the Sub-Contract to the extent that they relate to Primary Medical Services.
- 15.9 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.
- 15.10 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 and enable the Provider to 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 and enable the Provider to comply with that negative obligation or duty.
- 15.11 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:
- 15.11.1 the Provider has obtained the prior written approval of the Co-ordinating Commissioner in accordance with this GC15; and
 - 15.11.2 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

- 15.12 The Commissioners may not transfer or assign all or any of their rights or obligations under this Contract except:
- 15.12.1 to NHS England, or
 - 15.12.2 to a CCG; or
 - 15.12.3 to a Local Authority pursuant to a Partnership Agreement or to arrangements pursuant to regulations made under the Cities and Local Government Devolution Act 2016 or to an order under section 105A of the Local Democracy, Economic Development and Construction Act 2009; or
 - 15.12.4 otherwise with the prior written approval of the Provider.

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- 15.13 The Commissioners may delegate or sub-contract or (subject to GC15.12 above) otherwise dispose of all or any of their rights or obligations under this Contract without the approval of the Provider.
- 15.14 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.
- 15.15 Notwithstanding GC27 (*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.

Replacement of and Requirement to Appoint Sub-Contractors

15.16 If:

15.16.1 any Suspension Event occurs, or if the Co-ordinating Commissioner is entitled to terminate this Contract in accordance with GC23 (*Termination*), wholly or partly as a result of any act or omission on the part of a Sub-Contractor; or

15.16.2 the Provider has sub-contracted any of its rights or obligations or duties under this Contract in breach of this GC15, or is otherwise in breach of this GC15 in relation to any Sub-Contract or 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 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). The Provider must remove or replace the relevant Sub-Contractor (as required) within the period specified in that notice. The appointment of any replacement Sub-Contractor will be subject to the provisions of GC15.1 - 15.11.

- 15.17 If any Suspension Event occurs, or if the Co-ordinating Commissioner is entitled to terminate this Contract in accordance with GC23 (*Termination*), 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 appoint one or more Sub-Contractors to provide any affected Service, in place of or in addition to the Provider, within 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). The Provider must appoint one or more Sub-Contractors (as required) within the period specified in that notice. The appointment of any such Sub-Contractor will be subject to the provisions of GC15.1 - 15.11.

Tender Documentation, Publication of Contracts and E-Procurement

- 15.18 The Provider must comply with Transparency Guidance if and when applicable.
- 15.19 The Provider must comply with e-Procurement Guidance if and when applicable.

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Other text = provisions carried forward or adapted from existing NHS Standard Contract or anticipated Directions relating to ACO contracts and contractors. In the latter case drafting and cross-referencing is provisional pending publication of the final Directions.

General Provisions

15.20 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.

GC16 Variations

16.1 This Contract may not be amended or varied except in accordance with this GC16.

16.2 The Parties:

16.2.1 have agreed that the Scheduled Variations may be effected at the option of the Co-ordinating Commissioner in accordance with Schedule 8 (Scheduled Variations); and

16.2.2 may otherwise agree to vary any of the Variable Elements; and

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

16.3 Subject to GC16.2, 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.

16.4 If a Party wishes to propose a Variation, the Co-ordinating Commissioner must serve on the Provider, and the Provider must serve on the Co-ordinating Commissioner, (as appropriate) a draft Variation Agreement.

16.5 The Parties acknowledge and agree that:

16.5.1 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; and

16.5.2 the Co-ordinating Commissioner may vary this Contract without the Provider's consent where it:

16.5.2.1 is reasonably satisfied that it is necessary to vary this Contract so as to comply with the 2006 Act, any regulations made pursuant to that Act, or any direction given by the Secretary of State pursuant to that Act; and

16.5.2.2 notifies the Provider in writing of the wording of the proposed variation and the date upon which that variation is to take effect,

and, where it is reasonably practicable to do so, the date that the proposed variation is to take effect will be not less than 14 days after the date on which the notice under GC16.5.2.2 is served on the Provider.

16.6 The Parties acknowledge and agree that the Co-ordinating Commissioner may require a Variation to the Commissioners' Service Requirements and/or the Provider's Service Proposals where:

16.6.1 there is found to be any conflict or inconsistency between the provisions of the Service Conditions, the Commissioners' Service Requirements and/or the Provider's Service Proposals;

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Comment [DS18]: That is, intended changes to contract scope/scale/services identified in advance in the commissioners' Prior Information Notice or Contract Notice, in accordance with regulation 72 of the Public Contract Regulations 2015.

But note that, where possible, risks of challenge are likely to be better mitigated by providing for a clearly timetabled phasing in of services.

16.6.2 the Provider is persistently or materially failing to meet:

16.6.2.1 any Operational Standard or National Quality Requirement;

16.6.2.2 any Local Quality and Outcome Requirement; or

16.6.2.3 any other material obligation on its part under this Contract.

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

16.8 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.

16.9 The Recipient must respond to a draft Variation Agreement in writing within 10 Operational Days following receipt, setting out whether:

16.9.1 it accepts the Variation; and/or

16.9.2 it has any concerns with the contents of the draft Variation Agreement.

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

16.11 As soon as reasonably practicable and in any event within 10 Operational Days following the meeting which takes place pursuant to GC16.10, the Recipient must serve a written notice on the Proposer confirming either:

16.11.1 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

16.11.2 that it refuses to accept the draft Variation Agreement, and setting out its reasonable grounds for that refusal.

16.12 If, the Parties having followed the procedure in GC16.2 to 16.11:

16.12.1 the Provider refuses to accept a National Variation, the Co-ordinating Commissioner may terminate this Contract in accordance with GC23.7.21;

16.12.2 the Provider refuses to accept a Variation required by the Co-ordinating Commissioner in accordance with GC16.6, the Co-ordinating Commissioner may exercise its rights under GC22 (*Suspension*) and/or GC15.15 and 15.16 (*Replacement of and Requirement to appoint Sub-Contractors*) or otherwise as it considers appropriate.

16.13 If the Parties fail to agree a proposed Variation which is not a National Variation the Proposer must withdraw the draft Variation Agreement.

GC17 Dispute Resolution

17.1 The provisions of GC17.2 to 17.23 will not apply when any Party in Dispute seeks an injunction relating to a matter arising out of GC27 (*Confidential Information of the Parties*).

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Escalated Negotiation

- 17.2 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:
- 17.2.1 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
 - 17.2.2 for the last 5 Operational Days, by their chief executive, director, or member of its Governing Body who has authority to settle the Dispute.
- 17.3 Where practicable, no Party in Dispute should be represented by the same individual under GC17.2.1 and 17.2.2.

Mediation

- 17.4 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:
- 17.4.1 to mediation arranged jointly by NHS Improvement and NHS England, where the Commissioners are CCGs and/or NHS England only and the Provider is an NHS Trust; or
 - 17.4.2 to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in the Particulars, in all other cases.
- 17.5 Mediations under GC17.4.1 will follow the mediation process agreed between NHS Improvement and NHS England from time to time:
- 17.6 Mediations under GC17.4.2 will follow the mediation process of CEDR or other independent body or organisation named in the Particulars.

Expert Determination

- 17.7 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.
- 17.8 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.
- 17.9 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.
- 17.10 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,

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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.

- 17.11 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.
- 17.12 The Expert must produce a written decision with reasons within 30 Operational Days of receipt of the statement of case referred to in GC17.11, or any longer period as is agreed by the Parties in Dispute after the Dispute has been referred.
- 17.13 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 17.14 The Parties in Dispute must comply with any request or direction of the Expert in relation to the expert determination.
- 17.15 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.
- 17.16 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.
- 17.17 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:
- 17.17.1 the Expert reconsider his decision (either all of it or part of it); or
- 17.17.2 the Expert's decision be set aside (either all of it or part of it).
- 17.18 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.
- 17.19 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.
- 17.20 The Expert is appointed to determine the Dispute or Disputes between the Parties in Dispute and the Expert's decision may not be relied upon by third parties, to whom the Expert will have no duty of care.
- 17.21 If a Party in Dispute does not abide by the Expert's decision or the decision of the Secretary of State (as appropriate) the other Parties in Dispute may apply to Court to enforce it.

GC18 Financial Transparency and Audit; Transparency of Earnings

Provider's Financial Business Plan

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Comment [DS19]: Financial transparency is necessary in order to ensure that commissioners have comfort as to the manner in which the WPAP is being and is proposed to be used.

- 18.1 The Provider's Financial Business Plan will not be amended or revised except in accordance with GC18.2 to 18.4..
- 18.2 Two months before the start of each Contract Year the Provider must provide the Co-ordinating Commissioner with an updated version of the Provider's Financial Business Plan for review. The Provider must give due regard to any comments or observations made by the Co-ordinating Commissioner in respect of the Provider's Financial Business Plan.
- 18.3 Any revised Provider's Financial Business Plan must be audited, at the cost of the Provider, by an independent firm of accountants acceptable to the Co-ordinating Commissioner.
- 18.4 Any revised Provider's Financial Business Plan will not become effective until those accountants have confirmed to the Co-ordinating Commissioner that in their opinion the Provider's Financial Business Plan (as revised) is accurate and is based on reasonable and prudent assumptions.
- 18.5 The Provider's Financial Business Plan (revised and audited annually in accordance with GC18.2 to 18.4) must be used as the basis for assessing and agreeing the financial and other consequences of:
- 18.5.1 any Variation; and
- 18.5.2 any adjustment of the WPAP in accordance with Schedule 4B (*Adjustment of the Whole Population Annual Payment*).

Open Book Accounting

- 18.6 The Provider must act in an open and transparent manner in relation to revenues, costs and expenses received, incurred or anticipated in connection with this Contract, the delivery of the Services and the performance of all other obligations under or contemplated by this Contract. The Provider must share all such information in an open book manner, affording the Commissioners full visibility of all such revenues, costs and expenses, of all Distributions, and of the financial status of the Provider from time to time. In particular the Provider must (and must ensure that its Holding Companies [and Subsidiaries] and each Material Sub-Contractor will) at all times:
- 18.6.1 maintain a full record of the revenues, costs and expenses received, incurred or anticipated in connection with delivering the Services and performing all other obligations on its or their part under this Contract, the Material Sub-Contracts and the other Key Documents;
- 18.6.2 keep books of account in accordance with best accountancy practices, make them available for inspection by the Co-ordinating Commissioner (and its advisers and other authorised representatives) upon reasonable notice, and provide copies of those books of account to the Co-ordinating Commissioner as and when requested from time to time;
- 18.6.3 provide such facilities as the Co-ordinating Commissioner may reasonably require for its authorised representatives to visit any place where the records are held to examine the records maintained under this GC18.6.
- 18.7 If the Provider is in default or breach of either of the financial covenants contained in GC19.1 and 19.2 (*Financial Covenants*), the Co-ordinating Commissioner may, in addition to any other rights it may have under this Contract, to make whatever investigations and obtain whatever legal, accountancy and/or valuation reports as it deems appropriate at the cost of the Provider. The Provider must provide all assistance required in connection with those investigations and reports.

Accounting Information

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18.8 Throughout the Contract Term the Provider must supply to the Co-ordinating Commissioner:

18.8.1 as soon as they are available, but in any event within 90 days after the end of each of its financial years:

18.8.1.1 its audited consolidated financial statements for that financial year; and

18.8.1.2 the audited financial statements of each Material Sub-Contractor for that financial year; and

18.8.2 as soon as they are available, but in any event within 21 days after the end of each quarter of each of its financial years:

18.8.2.1 its consolidated financial statements for that financial quarter; and

18.8.2.2 the financial statements of each Material Sub-Contractor for that financial quarter; and

18.8.3 as soon as they are available, but in any event within 14 days after the end of each month of each of its financial years monthly management accounts for the Provider.

Transparency of Earnings

18.9 The Provider must publish on its website (and must make available in hard copy form on request) in respect of the Provider, the Provider's Holding Company and other shareholders or members, and each Material Sub-Contractor and that Material Sub-Contractor's Holding Company and other shareholders or members, within 1 month following the end of each financial year of the relevant organisation in respect of that financial year:

18.9.1 the GP Mean Net Earnings Information;

18.9.2 the DH Group Accounting Manual Information;

18.9.3 (without prejudice to the requirements of GC 18.9.1 and 18.9.2):

18.9.3.1 the gross remuneration (including bonuses, pension contributions, payments in kind, and any ex gratia payments) of each member of Staff, where such remuneration exceeds £142,500;

18.9.3.2 the gross remuneration (including bonuses, pension contributions, payments in kind, and any ex gratia payments) of each individual employed or engaged by any Holding Company or other shareholder or member of the Provider and each Material Sub-Contractor, where such remuneration exceeds £142,500;

18.9.3.3 the amount of any Distribution made by the Provider, by each Material Sub-Contractor and by their respective Holding Companies and other shareholders or members.

Comment [DS20]: As part of the general requirements for financial transparency, we consider it appropriate for there to be transparency of earnings for all highly-paid staff, extending the requirements currently applicable in respect of GPs.

GC19 Undertakings in Relation to Financial Matters and Assets

Financial Covenants

19.1 The Provider must ensure that on each Test Date its Minimum Net Worth is not less than the sum specified in the Particulars.

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Comment [DS21]: These are to provide assurance to the commissioners as to the ongoing financial strength and viability of the provider

- 19.2 The Provider must ensure that on each Test Date the ratio of its Current Liabilities to its Current Assets does not exceed the ratio specified in the Particulars.

Restriction on the disposal of assets

Comment [DS22]: This mirrors the asset lock provisions which are a condition to Monitor's licence

- 19.3 The Provider must establish, maintain and keep up to date, in manner that reasonably would be regarded as both adequate and professional, an Asset Register.

- 19.4 The Co-ordinating Commissioner may at any time give notice in writing to the Provider that it must not dispose of, or relinquish control over, any Relevant Asset except:

19.4.1 with the consent in writing of the Co-ordinating Commissioner, and

19.4.2 in accordance with GC19.5 – 19.8,

and the Provider must comply with and such notice.

- 19.5 The Provider must provide the Co-ordinating Commissioner with such information as the Co-ordinating Commissioner may request relating to any proposal by the Provider to dispose of, or Relinquish Control over, any Relevant Asset.

- 19.6 Where consent by the Co-ordinating Commissioner for the purpose of GC19.4.1 is subject to conditions, the Provider must comply (and must ensure that each Sub-Contractor complies) with those conditions.

- 19.7 GC19.4 will not prevent the Provider from disposing of, or Relinquishing Control over, any Relevant Asset where:

19.7.1 the Co-ordinating Commissioner has issued a general consent for the purposes of this Condition (whether or not subject to conditions) in relation to:

19.7.1.1 transactions of a specified description; or

19.7.1.2 the disposal of or relinquishment of control over relevant assets of a specified description, and

the transaction or the relevant assets are of a description to which the consent applies and the disposal, or relinquishment of control, is in accordance with any conditions to which the consent is subject; or

19.7.2 the Provider or a Sub-contractor is required by the Care Quality Commission or NHS Improvement to dispose of a relevant asset.

- 19.8 The Provider must have regard to such guidance as may be issued from time to time by NHS Improvement regarding:

19.8.1 the manner in which asset registers should be established, maintained and updated; and

19.8.2 property, including buildings, interests in land, intellectual property rights and equipment, without which a provider's ability to provide services should be regarded as materially prejudiced.

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Security Interests

- 19.9 The Provider must not create or allow to subsist any Security Interest over any of the Relevant Assets without the prior written approval of the Co-ordinating Commissioner.

Financial Indebtedness

- 19.10 The Provider must not incur or allow to be outstanding any Financial Indebtedness without the prior written approval of the Co-ordinating Commissioner.

Lending and guarantees

- 19.11 The Provider must not, except in the normal course of business, be the creditor in respect of any loan or any form of credit to any person.
- 19.12 The Provider must not give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which the Provider assumes any liability of any other person.

Other interests

- 19.13 The Provider must not carry on any business other than as contemplated by and for the purposes of this Contract.
- 19.14 The Provider must not, without the prior written consent of the Co-ordinating Commissioner, have any Subsidiary.

Acquisitions and Investments

- 19.15 The Provider must not make any material acquisition or investment other than as set out in the Provider's Financial Business Plan without prior written consent of the Co-ordinating Commissioner.

Agreements

- 19.16 The Provider must not enter into any agreement which is not on arm's length terms for market value without the prior written consent of the Co-ordinating Commissioner.

Key Documents

- 19.17 The Provider must:
- 19.17.1 exercise its rights and comply with its obligations under each Key Document; and
 - 19.17.2 ensure (so far as this is within its control) that others exercise their rights and comply with their obligations under each Key Document.
- in a manner consistent with the Provider's obligations under this Contract and in a proper and timely manner.
- 19.18 The Provider must not agree to any termination, amendment, supplement, waiver or release in respect of any Key Document without the prior written consent of the Co-ordinating Commissioner. As a condition to the consent to any termination of a Key Document the Co-

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Comment [DS23]: This and subsequent provisions of GC19 are designed to provide further assurance to commissioners as to the ongoing viability of the provider and as to how the WPAP is to be used

Comment [DS24]: We believe that there are strong arguments from both commissioner and provider perspectives for an ACO provider to be a single purpose entity - ie that its sole business should be the one contemplated by the ACO contract with its commissioners – but we acknowledge that this would prevent an existing NHS trust or FT from holding the contract in its own right. For this reason we anticipate the derogations process forming part of ISAP permitting a departure from this strict requirement where there are compelling reasons for doing so, PROVIDED THAT the parties are able to demonstrate that the Provider will be able to ringfence the budget and contain risk to a degree satisfactory to NHS England and NHSI (in which case further consequential derogations may also be permitted).

ordinating Commissioner may require the Provider to enter into a replacement agreement with a party and on terms acceptable to the Co-ordinating Commissioner.

19.19 The Provider must promptly:

19.19.1 notify the Co-ordinating Commissioner of any proposed termination, amendment, supplement, waiver or release in respect of any Key Document; and (if approved by the Co-ordinating Commissioner)

19.19.2 supply to the Co-ordinating Commissioner copies of any such termination, amendment, supplement, waiver or release made or given.

19.20 The Provider must promptly notify the Co-ordinating Commissioner of any dispute in relation to a Key Document.

19.21 The Provider must ensure that each Key Document provides, to the satisfaction of the Co-ordinating Commissioner, that:

19.21.1 the Provider's rights under that Key Document may be assigned to all or any of the Commissioners or their or its nominee; and

19.21.2 the Provider's obligations under that Key Document may be assumed by all or any of the Commissioners or their or its nominee.

without any requirement for consent from any other person.

Bank Accounts

19.22 The Provider must only have such bank accounts as have been approved by the Co-ordinating Commissioner. The Provider must ensure that all payments received under this Contract [and the Gain/Loss Share Agreement] are paid into a bank account approved by the Co-ordinating Commissioner and that sums are withdrawn from that account only as and when required to meet the obligations of the Provider under this Contract and the Key Documents, and as otherwise provided for in the Provider's Financial Business Plan.

Taxes

19.23 The Provider must pay all taxes due and payable by it prior to the accrual of any fine or penalty for late payment.

GC20 Provider Distributions and Dealings With Shares or Membership Interests

Permitted Distributions

20.1 The Provider may not make any Distribution, or allow any Distribution to be made, in respect of any Contract Year, unless all of the following conditions are met:

20.1.1 the Distribution Conditions are met immediately before the making of the Distribution and, where appropriate, will be met immediately after the making of the Distribution;

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20.1.2 at least 20 Operational Days before making the Distribution the Provider has provided the Co-ordinating Commissioner with full details of:

20.1.2.1 the proposed Distribution and when it is intended to be made;

20.1.2.2 evidence that the Distribution Conditions will be met immediately before the making of the Distribution and, where appropriate, will be met immediately after the making of the Distribution;

20.1.2.3 the Distributable Profits,

and any other information reasonably requested by the Co-ordinating Commissioner; and

20.1.3 the Co-ordinating Commissioner has given its approval in writing to the Distribution being made (that approval not to be unreasonably withheld or delayed).

General Restrictions on Dealings with Shares

20.2 The Provider may not issue any further shares or create any other membership interests or amend any rights attaching to its issued shares or existing membership interests.

20.3 Except as expressly permitted under this GC20 the Provider must not:

20.3.1 declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital) or any of its membership interests;

20.3.2 repay or distribute any dividend or share premium reserve or any member capital;

20.3.3 pay any management, advisory or other fee to or to the order of any of its shareholder or any of its members; or

20.3.4 redeem, repurchase, defease, retire or repay any of its share capital or members' capital or resolve to do so.

GC21 Inspection and Quality Audit

21.1 The Provider must comply with regulation 17 of the 2014 Regulations, section 225 of the 2007 Act and section 62 of the 2008 Act.

21.2 The Provider must comply with all reasonable written requests made by any relevant Regulatory or Supervisory Body (or its authorised representatives), a Local Auditor or any Authorised Person for entry to the Provider's Premises and/or the Services Environment and/or the premises of any Sub-Contractor for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services.

21.3 Subject to Law, an Authorised Person may enter the Provider's Premises and/or the Services Environment and/or the premises of any Sub-Contractor without notice for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services. During those visits, subject to Law and Good Practice (also taking into consideration the nature of the Services and the effect of the visit on Services Users), the Provider must restrict access and will give all reasonable assistance and provide all reasonable facilities.

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- 21.4 Within 10 Operational Days following the Co-ordinating Commissioner's reasonable request, the Provider must send the Co-ordinating Commissioner the results of any audit, evaluation, inspection, investigation or research in relation to the Services, the Services Environment or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- 21.5 Subject to compliance with the Law and Good Practice the Parties must implement and/or respond to all relevant recommendations:
- 21.5.1 made in any report by a relevant Regulatory or Supervisory Body; or
 - 21.5.2 agreed with the National Audit Office or a Local Auditor following any audit; or
 - 21.5.3 of any appropriate clinical audit; or
 - 21.5.4 that are otherwise agreed by the Provider and the Co-ordinating Commissioner to be implemented.
- 21.6 The Parties must maintain complete and accurate Transaction Records.
- 21.7 The Provider must, at its own expense, in line with applicable Law and Guidance
- 21.7.1 implement an ongoing, proportionate programme of clinical audit of the Services in accordance with Good Practice and ;
 - 21.7.2 provide to the Co-ordinating Commissioner on request the findings of any such audits.
- 21.8 The Co-ordinating Commissioner may at any time appoint an Auditor to conduct an objective and impartial audit of any aspect of the Services, the Provider's invoices and/or the performance of any of the Provider's obligations under this Contract.
- 21.9 Subject to compliance with Data Protection Laws, 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 GC27 (*Confidential Information of the Parties*). Except as provided in GC21.11, the cost of any audit carried out under GC21.8 will be borne by the Commissioners. The Provider must take whatever reasonable steps the Co-ordinating Commissioner may stipulate to ensure that such information can be accessed by the Auditor without breaching Data Protection Laws.
- 21.10 In respect of any audit carried out under GC21.8, the Co-ordinating Commissioner must share the Auditor's draft report with the Provider, to allow discussion of the findings and the correction of any inaccuracies or misinterpretations before the production by the Auditor of a final report.
- 21.11 In respect of any audit carried out under GC21.8, if the Auditor's final report identifies any deficiencies in the Services, the Provider must take appropriate action to address those deficiencies without delay.

GC22 Suspension

- 22.1 If a Suspension Event occurs the Co-ordinating Commissioner:
- 22.1.1 may by written notice to the Provider suspend the provision of:

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- 22.1.1.1 any affected Service;
- 22.1.1.2 any affected Service from any specified part of the Services Environment and/or other setting or location;
- 22.1.1.3 any affected Service by any specified member of Staff or clinical team;
- 22.1.1.4 any affected Service by the Provider itself or by any specified Sub-Contractor; and/or
- 22.1.1.5 any affected Service to any specified Service User or group of Service Users, 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
- 22.1.2 must promptly notify any appropriate Regulatory or Supervisory Body of that suspension; and
- 22.1.3 may (whether or not it requires the Provider to suspend provision of any affected Service):
 - 22.1.3.1 exercise its rights under GC15.15 and/or 15.16 (*Replacement of and Requirement to appoint Sub-contractors*); and/or
 - 22.1.3.2 require the Provider to agree and implement a Remedial Action Plan, and the provisions of GC8.11 to 8.25 (*Contract Management*) will then apply; and/or
 - 22.1.3.3 require the Provider to notify it in advance of, and allow any Authorised Person to attend, any meeting of the Provider's Governing Body at which the Suspension Event and/or any Remedial Action Plan in respect of it are to be discussed.
- 22.2 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.
- 22.3 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

- 22.4 The Provider will indemnify the Commissioners in respect of (and the Commissioners may recover by deducting from payments of the WPAP) any Losses reasonably incurred by them in respect of a suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service from an alternative provider).
- 22.5 The Parties must use all reasonable endeavours to minimise any inconvenience to Service Users as a result of the suspension of the Service.
- 22.6 While any Service is suspended the Provider must:
 - 22.6.1 not provide the suspended Service to any Service User;

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22.6.2 at its own cost co-operate fully with the Co-ordinating Commissioners and any interim or successor provider of that 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:

22.6.2.1 promptly providing all reasonable assistance and all information necessary to effect an orderly assumption of that Service by any interim or successor provider; and

22.6.2.2 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 that Service;

22.6.2.3 ensure there is no interruption in the availability of CRS or Essential Services including, where appropriate, implementing any Essential Services Continuity Plan.

22.7 As part of its compliance with GC22.6 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.

GC23 Termination

Termination: No Fault

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

23.2 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 on a Break Date.

23.3 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 on a Break Date.

23.4 Either the Co-ordinating Commissioner or the Provider may by not less than [12 months'] written notice to the other terminate this Contract in the circumstances referred to in GC11.6.

23.5 The Co-ordinating Commissioner may by not less than 3 months' written notice to the Provider terminate this Contract if it reasonably believes that any of the circumstances set out in regulation 73(1)(a) or 73(1)(c) of the Public Contract Regulations 2015 applies

Comment [DS25]: IE the failure to agree, following mediation, an adjustment to the WPAP and/or a Variation consequent on it

Termination: Commissioner Default

23.6 The Provider may terminate this Contract with immediate effect, by written notice to the Co-ordinating Commissioner:

23.6.1 if at any time the aggregate undisputed amount due to the Provider from the Co-ordinating Commissioner and/or any Commissioner exceeds 25% of the WPAP, and full payment is not made within 20 Operational Days of receipt of written notice from the Provider referring to this GC23.6.1 and requiring payment to be made; or

23.6.2 if any Commissioner is in persistent material breach of any of its obligations under this Contract so as to have a material and adverse effect on the ability of the Provider to provide the Services, and the Commissioner fails to remedy that breach within 40 Operational Days of

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the Co-ordinating Commissioner's receipt of the Provider's written notice identifying the breach; or

23.6.3 if any Commissioner breaches the terms of GC15.12 (*Assignment and Sub-Contracting*); or

23.6.4 any warranty given by any Commissioner under GC34.2 (*Warranties*) is found to be materially untrue or misleading.

Termination: Provider Default

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

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

23.7.2 the Provider or any Guarantor ceases to carry on its business or substantially all of its business; or

23.7.3 a Provider Insolvency Event occurs in respect of the Provider or any Guarantor; or

23.7.4 any Guarantor fails to comply with its obligations under its Guarantee following service of a notice to do so in accordance with that Guarantee; or

23.7.5 any circumstance or event occurs which causes or may cause any Guarantee to be repudiated or cease to be in full force and effect or cease to constitute the valid, binding and enforceable obligations of the relevant Guarantor; or

23.7.6 the Provider has breached any of its obligations under this Contract in any material respect or persistently, 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

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

23.7.8 the Provider is in material 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

23.7.9 two or more Exception Reports are issued to the Provider under GC8.20 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution; or

23.7.10 the Provider has breached the terms of GC33 (*Change in Control*); or

23.7.12 the Provider:

23.7.12.1 fails to obtain any Consent; or

23.7.12.2 loses any Consent; or

23.7.12.4 has any Consent varied or restricted,

23.7.12.5 and that is reasonably considered by the Co-ordinating Commissioner to have a material adverse effect on the provision of the Services; or

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- 23.7.13 the Provider has breached the terms of GC35 (*Prohibited Acts*); or
- 23.7.14 the Provider has breached the terms of GC18 (*Financial Transparency and Audit; Transparency of Earnings*); or
- 23.7.15 the Provider has breached the terms of GC19 (*Undertakings in Respect of Assets and Financial Interests*); or
- 23.7.16 the Provider has breached the terms of GC20 (*Provider Distributions and Dealings in Shares or Membership Interests*); or
- 23.7.17 the Provider has breached the terms of GC36 (*Conflicts of Interest and Transparency on Gifts and Hospitality*); or
- 23.7.18 Monitor's Licence for the Provider or any Material Sub-Contractor is revoked, varied or restricted; or
- 23.7.19 the Provider has breached the terms of GC15 (*Assignment and Sub-Contracting*); or
- 23.7.20 the Provider has failed to comply with any notice served by the Co-ordinating Commissioner under GC15.15 or 15.16 (*Replacement of and Requirement to Appoint Sub-Contractors*); or
- 23.7.21 the Provider has refused to accept a National Variation as provided for in GC16.12.1 (*Variations*); or
- 23.7.22 the Provider has refused to accept a Variation required by the Co-ordinating Commissioner in accordance with GC16.6 (*Variations*); or
- 23.7.23 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
- 23.7.24 any warranty given by the Provider under GC34.1 (*Warranties*) is found to be materially untrue or misleading; or
- 23.7.25 the Co-ordinating Commissioner reasonably believes that the circumstances set out in regulation 73(1)(b) of the Public Contracts Regulations 2015 apply.

GC24 Consequence of Expiry or Termination

- 24.1 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.
- 24.2 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:
- 24.2.1 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

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- 24.2.2 at the reasonable cost and reasonable request of the Co-ordinating Commissioner:
- 24.2.2.1 promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of the terminated Services by a successor provider;
 - 24.2.2.2 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
 - 24.2.2.3 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.
- 24.3 On and pending expiry or termination of this Contract, or termination of any Service, the Parties must:
- 24.3.1 implement and comply with their respective obligations under the Exit Arrangements; and
 - 24.3.2 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.
- 24.4 On expiry or termination of this Contract or termination of any Service:
- 24.4.1 the Commissioners must ensure that no further Service Users who require any expired or terminated Service are referred to the Provider;
 - 24.4.2 subject to any appropriate arrangements made under GC24.2 and 24.3, 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.
- 24.5 If termination of this Contract or of any Service takes place with immediate effect in accordance with GC23 (*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:
- 24.5.1 any affected Service is commissioned without delay from an alternative provider; and
 - 24.5.2 there is no interruption in the availability to the relevant Commissioners of any CRS or Essential Services.
- 24.6 Where this Contract is terminated in its entirety following service of notice by the Co-ordinating Commissioner under GC23.7 (*Termination*), and the Losses incurred by the Commissioners as a result of that termination (including for the avoidance of doubt Losses incurred in commissioning the Services from an alternative provider for the remainder of the Contract Term) exceed the aggregate of the sums which would have been payable to the Provider under this Contract in respect of the remainder of the Contract Term, the Commissioners will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Commissioners in respect of that termination or otherwise), the amount of that excess.
- 24.7 Where any Service is terminated following service of notice by the Co-ordinating Commissioner under GC23.7 (*Termination*) (in addition to any other sums payable by the Provider to the Commissioners in

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respect of that termination or otherwise), the WPAP, the Improvement Payment Scheme and the Gain/Loss Share Arrangement will be adjusted to reflect the termination of that Service (including for the avoidance of doubt Losses incurred in commissioning the Services from an alternative provider for the remainder of the Contract Term).

GC25 Provisions Surviving Termination

- 25.1 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.

GC26 Employment or Engagement following NHS Redundancy

- 26.1 If at any time during the term of this Contract the Provider or any Sub-Contractor intends to employ or engage an individual (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):

- 26.1.1 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 from an NHS Employer consequent on their redundancy from a post as a Very Senior Manager; and if so
- 26.1.2 require the individual to identify that NHS Employer;
- 26.1.3 require that individual to notify the NHS Employer of their conditional offer of employment or engagement with the Provider or Sub-Contractor;
- 26.1.4 require that individual either (a) 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), or (b) to agree to the inclusion in their terms and conditions of employment or engagement with the Provider or Sub-Contractor the provisions set out in GC26.1.6 below;
- 26.1.5 not make any unconditional offer of employment or engagement to the individual without first having received either (a) confirmation from the NHS Employer that binding arrangements are in place with the individual for payment to the NHS Employer of the Redundancy Repayment, or (b) confirmation from the individual of their agreement to the inclusion in their terms and conditions of employment or engagement with the Provider or Sub-Contractor of the provisions set out in GC26.1.6; and
- 26.1.6 unless it has received confirmation from the NHS Employer in accordance with GC26.1.5(a), include (and throughout the term of that individual's employment or engagement retain) in that individual's terms and conditions of employment or engagement (as appropriate) 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.

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

$$\text{£R} = (S \times (A - B)) - (C + D),$$

where:

S is the lesser of (a) the amount of a month's pay used to calculate your contractual redundancy payment, or (b) the amount of any maximum monthly sum for the purposes of that calculation applicable at the date of the redundancy, as determined by Agenda for Change;

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 individual and the NHS Employer] of your net monthly pay or remuneration and that we will 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:

Agenda for Change means the 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

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 means, whether or not the relevant NHS Employer operates the Pay Framework for Very Senior Managers in Strategic and Special Health Authorities, Primary Care Trusts and Ambulance Trusts, an individual as described in paragraph 4 of that framework, whether that individual is engaged under a contract of employment or a contract for services.

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- 26.2 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 GC26.1.
- 26.3 If the Provider fails to comply with its obligations under GC26.1 or 26.2 in respect of any relevant individual, the Provider must pay to the relevant NHS Employer the Redundancy Repayment or the proportion of it which the individual would otherwise have been required to repay.

GC27 Confidential Information of the Parties

- 27.1 Except as this Contract otherwise provides Confidential Information is owned by the disclosing Party and the receiving Party has no right to use it.
- 27.2 Subject to GC27.3 and 27.4, the receiving Party agrees:
- 27.2.1 to use the disclosing Party's Confidential Information only in connection with the receiving Party's performance under this Contract;
 - 27.2.2 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
 - 27.2.3 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.
- 27.3 The receiving Party may disclose the disclosing Party's Confidential Information:
- 27.3.1 in connection with any Dispute Resolution;
 - 27.3.2 in connection with any litigation between the Parties;
 - 27.3.3 to comply with the Law;
 - 27.3.4 to any appropriate Regulatory or Supervisory Body;
 - 27.3.5 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 GC27.2;
 - 27.3.6 to NHS Bodies for the purposes of carrying out their duties;
 - 27.3.7 as permitted under or as may be required to give effect to GC8 (*Contract Management*);
 - 27.3.8 as permitted under or as may be required to give effect to GC31 (*NHS Counter-Fraud and Security Management*); and
 - 27.3.9 as permitted under any other express arrangement or other provision of this Contract.
- 27.4 The obligations in GC27.1 and 27.2 will not apply to any Confidential Information which:
- 27.4.1 is in or comes into the public domain other than by breach of this Contract;
 - 27.4.2 the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or

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- 27.4.3 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.
- 27.5 Subject to GC34 (*Warranties*), the disclosing Party does not warrant the accuracy or completeness of the Confidential Information.
- 27.6 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 GC27.
- 27.7 The Parties acknowledge that damages would not be an adequate remedy for any breach of this GC27 by the receiving Party, and in addition to any right to damages the disclosing Party will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this GC27.
- 27.8 This GC27 will survive the expiry or the termination of this Contract for a period of 5 years.
- 27.9 This GC27 will not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

GC28 Patient Confidentiality, Data Protection, Freedom of Information and Transparency

Information Governance – General Responsibilities

- 28.1 The Parties must comply with the Data Protection Laws, the FOIA and the EIR and must assist each other as necessary to enable each other to comply with these obligations.
- 28.2 The Provider must complete and publish an annual information governance assessment and must demonstrate satisfactory compliance as defined in the NHS Information Governance Toolkit (or any successor framework) as applicable to the Services and the Provider's organisational type.
- 28.3 The Provider must:
- 28.3.1 nominate an Information Governance Lead;
 - 28.3.2 nominate a Caldicott Guardian and Senior Information Risk Owner, each of whom must be a member of the Provider's Governing Body;
 - 28.3.3 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
 - 28.3.4 ensure that NHS England and NHS Digital 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 (or any successor framework).
- 28.4 The Provider must adopt and implement the recommendations made by the National Data Guardian and must comply with any Data Guidance issued pursuant to or in connection with those recommendations. The Provider must be able to demonstrate its compliance with those recommendations in accordance with the requirements and timescales set out in such Data Guidance, including its adherence to data security standards and requirements for enabling patient choice.

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- 28.5 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.
- 28.6 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.
- 28.7 The Provider must report and publish any Data Breach and any Information Governance Breach in accordance with IG Guidance for Serious Incidents.
- 28.8 Without prejudice to the generality of GC28.1 and subject to GC28.10 and GC28.11, the Provider must:
- 28.8.1 process Confidential Patient Information and any information derived from Confidential Patient Information only in connection with its performance under this Contract; and
 - 28.8.2 not disclose Confidential Patient Information or any information derived from Confidential Patient Information except:
 - 28.8.2.1 as specifically required by this Contract and any relevant Sub-Contract and where the disclosure is made to:
 - 28.8.2.1.1a Commissioner;
 - 28.8.2.1.2a Sub-Contractor;
 - 28.8.2.1.3 an organisation or individual in order to comply with SC16 (*Service User Health Records*); or
 - 28.8.2.1.4a member of Staff; or
 - 28.8.2.2 otherwise with the prior written approval from the Co-ordinating Commissioner.
- 28.9 For the avoidance of doubt GC28.8 applies even if it is not possible to link the information to particular individuals.
- 28.10 The Provider may disclose Confidential Patient Information or information derived from Confidential Patient Information:
- 28.10.1 to comply with the Law; or
 - 28.10.2 to any appropriate Regulatory or Supervisory Body.
- 28.11 The obligations in GC28.8 will not apply to any Confidential Patient Information or information derived from Confidential Patient Information which:
- 28.11.1 is in or comes into the public domain other than by breach of this Contract;
 - 28.11.2 the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or
 - 28.11.3 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.

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Data Protection

- 28.12 Without prejudice to the generality of GC28.1 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 ("fair processing information" or "privacy notices") and for the dissemination of nationally-produced patient information materials.
- 28.13 Whether or not a Party or Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with the DPA and the ICO Guidance on Data Controllers and Data Processors and any further Data Guidance from a Regulatory or Supervisory Body. Where the Parties consider that a Party or Sub-Contractor is acting as a Data Processor this will be set out in Schedule 7H (Data Processors). The Parties acknowledge that a Party or Sub-Contractor may act as both a Data Controller and a Data Processor.
- 28.14 The Provider must ensure that all Personal Data processed by or on behalf of the Provider in the course of delivering the Services is processed in accordance with the relevant Parties' obligations under the Data Protection Laws.
- 28.15 In relation to Personal Data processed by the Provider in the course of delivering the Services, the Provider must publish, maintain and operate:
- 28.15.1 policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Practice;
 - 28.15.2 policies that describe the personal responsibilities of Staff for handling Personal Data;
 - 28.15.3 a policy that supports the Provider's obligations under the NHS Care Records Guarantee;
 - 28.15.4 agreed protocols to govern the sharing of Personal Data with partner organisations; and
 - 28.15.5 where appropriate, a system 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,
- and apply those policies and protocols conscientiously.
- 28.16 The Provider must:
- 28.16.1 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 GC28.15; and
 - 28.16.2 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Commissioner.
- 28.17 Where a Commissioner requires information under GC9 (*Information Requirements*) the Provider must consider whether the request can be met by providing anonymised or aggregated data which does not contain Personal Data or Confidential Patient Information. Where Personal Data or Confidential Patient Information must be shared in order to meet the requirements of the Commissioner, the Provider must:
- 28.17.1 provide such information in pseudonymised form where possible; and in any event
 - 28.17.2 ensure that the sharing complies with Data Protection Laws.

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- 28.18 Notwithstanding GC28.17, the Provider must disclose Personal Data or Confidential Patient Information to or at the request of the Co-ordinating Commissioner where this is authorised under the Section 251 Regulations unless the Provider can establish that to do so would be a breach of the Data Protection Laws to the satisfaction of the Co-ordinating Commissioner.

The Provider as a Data Processor

- 28.19 Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of a Commissioner the provisions of Schedule 71 (*Provider Data Processing Agreement*) will apply.

Responsibilities when engaging Sub-Contractors

- 28.20 Subject always to GC15 (*Assignment and Sub-Contracting*) but without prejudice to GC28.21.2, if the Provider is to engage any Sub-Contractor to deliver any part of the Services and the Sub-Contractor is to access Confidential Patient Information or interact with Service Users, the Provider must impose on its Sub-Contractor obligations that are no less onerous than the obligations imposed on the Provider by this GC28.
- 28.21 In addition to GC28.20 and subject always to GC15 (*Assignment and Sub-Contracting*), if the Provider is to require any Sub-Contractor to act as a Data Processor, the Provider must:
- 28.21.1 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;
 - 28.21.2 as far as practicable include in the terms of the sub-contract terms equivalent to those set out in Schedule 71 (*Provider Data Processing Agreement*) and in any event ensure that the Sub-Contractor is engaged under the terms of a written agreement requiring the Sub-Contractor to:
 - 28.21.2.1 process Personal Data only in accordance with the Provider's instructions;
 - 28.21.2.2 comply at all times with obligations equivalent to those imposed on the Provider by virtue of the Seventh Data Protection Principle;
 - 28.21.2.3 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;
 - 28.21.2.4 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 GC28.21;
 - 28.21.2.5 carry out appropriate due diligence and ensure this is documented before the Sub-Contractor processes any Personal Data in order to demonstrate compliance with paragraph 11 of Part II of Schedule 1 of the DPA; and
 - 28.21.2.6 ensure that the Provider is able to obtain information from the Sub-Contractor to facilitate the delivery of this Contract.

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Freedom of Information and Transparency

- 28.22 The Provider acknowledges that the Commissioners are subject to the requirements of FOIA and EIR. The Provider must assist and co-operate with each Commissioner to enable it to comply with its disclosure obligations under FOIA and EIR. The Provider agrees:
- 28.22.1 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 and EIR;
 - 28.22.2 that the decision on whether any exemption under FOIA or exception under EIR applies to any information is a decision solely for the Commissioner to whom a request for information is addressed;
 - 28.22.3 that where the Provider receives a request for information relating to the Services provided under this Contract and the Provider itself is subject to FOIA or EIR, 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;
 - 28.22.4 that where the Provider receives a request for information and the Provider is not itself subject to FOIA or as applicable EIR, 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;
 - 28.22.5 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 EIR, 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
 - 28.22.6 to assist the Commissioners in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA or EIR) 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.
- 28.23 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, or for which an exception applies under EIR, the content of this Contract is not Confidential Information.
- 28.24 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 or for which an exception applies under EIR.
- 28.25 In preparing a copy of this Contract for publication under GC28.24 the Commissioners may consult with the Provider to inform decision-making regarding any redactions but the final decision in relation to the redaction of information will be at the Commissioners' absolute discretion.
- 28.26 The Provider must assist and cooperate with the Commissioners to enable the Commissioners to publish this Contract.

Data Requirements

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- 28.27 To enable the Commissioners to deliver their statutory functions and the Co-ordinating Commissioner to manage this Contract it is acknowledged that in addition to the information required under GC9 (*Information Requirements*) and Schedule 7A (*Reporting Requirements*) the Provider must supply the information described in Schedule 7G (*Data Requirements*) to the Co-ordinating Commissioner.
- 28.28 To enable the Provider to comply with its obligations under this Contract it is acknowledged that the Co-ordinating Commissioner must supply the following information and the information set out in Schedule 7G (*Data Requirements*) to the Provider.
- 28.29 The Parties must provide the information specified in Schedule 7G (*Data Requirements*):
- 28.29.1 with the frequency, in the format, by the method and within the time period referred to in Schedule 7G (*Data Requirements*);
- 28.29.2 as detailed in relevant Data Guidance; and
- 28.29.3 if there is no applicable time period identified, in a timely manner.

GC29 Intellectual Property

- 29.1 Except as set out expressly in this Contract no Party will acquire the IPR of any other Party.
- 29.2 The Provider grants the Commissioners a fully paid-up, non-exclusive, perpetual licence to use the Provider Deliverables for the purposes of the exercise of their statutory and contractual functions and obtaining the full benefit of the Services under this Contract.
- 29.3 The Commissioners grant the Provider a fully paid-up, non-exclusive licence:
- 29.3.1 to use the Commissioner Deliverables; and
- 29.3.2 to use the NHS Identity,
- in each case for the sole purpose of providing the Services. The Provider may not grant any sub-licence of the NHS Identity without the express permission of NHS England's NHS Identity team.
- 29.4 The Provider must co-operate with the Commissioners to enable the Commissioners to understand and adopt Best Practice (including the dissemination of Best Practice to other commissioners or providers of NHS services), and must supply such materials and information in relation to Best Practice as the Commissioners may reasonably request, and (to the extent that any IPR attaches to Best Practice), grants the Commissioners a fully paid-up, non-exclusive, perpetual licence for the Commissioners to use Best Practice IPR for the commissioning of NHS services and to share any Best Practice IPR with other commissioners of NHS services (and other providers of NHS services) to enable those parties to adopt such Best Practice.

GC30 NHS Identity, Marketing and Promotion

- 30.1 The Provider must comply with NHS Identity Guidelines.
- 30.2 Goodwill in the Services, to the extent branded as NHS services, will belong separately to both the Secretary of State and the Provider. The Provider may enforce its rights in its own branding even if it includes the NHS Identity. The Provider must provide whatever assistance the Secretary of State may

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reasonably require to allow the Secretary of State to maintain and enforce his rights in respect of the NHS Identity.

- 30.3 The Provider must indemnify the Secretary of State and the Commissioners for any Losses suffered in relation of any claim made against the Secretary of State or any Commissioner by virtue of section 2 of the Consumer Protection Act 1987 in respect of the use of any defective product by the Provider or any Staff or Sub-Contractor in the provision of the Services.

GC31 NHS Counter-Fraud and Security Management

- 31.1 The Provider must put in place and maintain appropriate arrangements to address security management and counter-fraud issues, having regard to NHS Protect Standards.
- 31.2 The Provider (if it holds Monitor's Licence or is an NHS Trust) must take the necessary action to meet NHS Protect Standards.
- 31.3 If requested by the Co-ordinating Commissioner or NHS Protect, the Provider must allow a person duly authorised to act on behalf of NHS Protect or on behalf of any Commissioner to review, in line with the appropriate standards, security management and counter-fraud arrangements put in place by the Provider.
- 31.4 The Provider must implement any reasonable modifications to its security management and counter-fraud arrangements required by a person referred to in GC31.3 in order to meet the appropriate standards within whatever time periods as that person may reasonably require.
- 31.5 The Provider must, on becoming aware of:
- 31.5.1 any suspected or actual bribery, corruption or fraud involving a Service User or public funds, promptly report the matter to the Local Counter Fraud Specialist of the relevant NHS Body and to NHS Protect;
 - 31.5.2 any suspected or actual security incident or security breach involving staff who deliver NHS funded services or involving NHS resources,
- promptly report the matter to the Local Security Management Specialist of the relevant NHS Body and to NHS Protect.
- 31.6 On the request of the Department of Health, NHS England, NHS Protect or the Co-ordinating Commissioner, the Provider must allow NHS Protect or any Local Counter Fraud Specialist or any Local Security Management Specialist appointed by a Commissioner, as soon as it is reasonably practicable and in any event not later than 5 Operational Days following the date of the request, access to:
- 31.6.1 all property, premises, information (including records and data) owned or controlled by the Provider; and
 - 31.6.2 all Staff who may have information to provide,
- relevant to the detection and investigation of cases of bribery, fraud or corruption, or security incidents or security breaches directly or indirectly in connection with this Contract.

GC32 NHS Accounting

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- 32.1 If the Provider is designated as a public sector entity within the Department of Health's accounting boundary it will be required to provide year-end accounting and parliamentary estimate information to the Department of Health and/or NHS Improvement and comply with standard NHS provider year-end accounting processes.

GC33 Change in Control

- 33.1 This GC33 applies to any:
- 33.1.1 Provider Change in Ownership; and/or
 - 33.1.2 Material Sub-Contractor Change in Ownership; and/or
 - 33.1.3 Provider Change in Control; and/or
 - 33.1.4 Material Sub-Contractor Change in Control,
- but not to a Change in Ownership of a company which is a Public Company.
- 33.2 No Provider Change in Control or Material Sub-Contractor Change in Control will be permitted without the prior written approval of the Co-ordinating Commissioner.
- 33.3 The Provider must supply (and must procure that the relevant Material Sub-Contractor supplies) to the Co-ordinating Commissioner, whatever information relating to a proposed Change in Control the Co-ordinating Commissioner may reasonably request.
- 33.4 The Provider must:
- 33.4.1 as soon as possible on, and in any event within 5 Operational Days following, a Provider Change in Ownership; and/or
 - 33.4.2 immediately on becoming aware of a Material Sub-Contractor Change in Ownership, notify the Co-ordinating Commissioner of that Change in Ownership.
- 33.5 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 Ownership the Co-ordinating Commissioner may, reasonably request.
- 33.6 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 Ownership in respect of that Material Sub-Contractor.
- 33.7 Notwithstanding any other provision of this Contract:
- 33.7.1 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

Comment [DS26]: Although based on the generic NHS Standard Contract change in control provisions, GC33 gives the commissioners greater control, reflecting the systemic importance of the ACO role, and therefore the role of the individuals and organisations owning and directing it.

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33.7.2 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.

33.8 If the Provider breaches GC33.7.2, the Co-ordinating Commissioner may by serving written notice upon the Provider, require the Provider to replace the relevant Material Sub-Contractor within:

33.8.1 5 Operational Days; or

33.8.2 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.

33.9 If there is a Change in Ownership which results in a Guarantor to this Contract being replaced or a Guarantee being rescinded, repudiated or ceasing to have effect, no such Change in Ownership will be permitted without the prior written approval of the Co-ordinating Commissioner. The Co-ordinating Commissioner may require the Provider to replace the relevant Guarantor within such period as reasonably specified by the Co-ordinating Commissioner.

33.10 Nothing in this GC33 will prevent or restrict the Provider from discussing with the Co-ordinating Commissioner a proposed Change in Ownership 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 Ownership will be Confidential Information for the purposes of GC27 (*Confidential Information of the Parties*).

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

33.12 Without prejudice the above provisions the Provider must not enter into any amalgamation, demerger, merger or corporate reconstruction.

GC34 Warranties

34.1 The Provider warrants to each Commissioner that:

34.1.1 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;

34.1.2 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;

34.1.3 the copies of all documents supplied to the Commissioners or any of their advisers by or on its behalf and listed in Schedule 6A (*Documents Relied On*) from time to time are complete and their contents are true;

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- 34.1.4 it has the right to permit disclosure and use of its Confidential Information for the purpose of this Contract;
 - 34.1.5 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;
 - 34.1.6 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;
 - 34.1.7 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; and
 - 34.1.8 it has notified the Co-ordinating Commissioner in writing of any Occasions of Tax Non-compliance or any litigation in which it is involved in connection with any Occasions of Tax Non-compliance.
- 34.2 Each Commissioner warrants to the Provider that:
- 34.2.1 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;
 - 34.2.2 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;
 - 34.2.3 the copies of all documents supplied to the Provider or any of its advisers by it or on its behalf and listed in Schedule 6A (*Documents Relied On*) from time to time are complete and their contents are true;
 - 34.2.4 it has the right to permit disclosure and use of its Confidential Information for the purpose of this Contract; and
 - 34.2.5 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.
- 34.3 The warranties set out in this GC34 are given on the Effective Date and repeated on every day during the Contract Term.
- 34.4 Each Party must notify the others within 5 Operational Days following the occurrence of any event or circumstance which would or might render any warranty on its part untrue or misleading, providing full details as appropriate.

GC35 Prohibited Acts

- 35.1 The Provider must not commit any Prohibited Act.
- 35.2 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:

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- 35.2.1 to exercise its right to terminate under GC23 (*Termination*) and to recover from the Provider the amount of any loss resulting from the termination; and
- 35.2.2 to recover from the Provider the amount or value of any gift, consideration or commission concerned; and
- 35.2.3 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.

GC36 Conflicts of Interest and Transparency on Gifts and Hospitality

- 36.1 If a Party becomes aware of any actual, potential or perceived conflict of interest which is likely to affect 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.
- 36.2 The Provider must, and must ensure that, in delivering the Services, all Staff comply with Law (including direction 53 of the Directions), with Managing Conflicts of Interest in the NHS and other Guidance and Good Practice in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.
- 36.3 In making a decision to refer a Service User for any other Service or any other service under the 2006 Act, or to prescribe a drug, medicine or appliance to a Service User, the Provider must (and must ensure that all Staff) make that decision without regard to its or their own financial interests.
- 36.4 The Provider must not (and must ensure that Staff do not) inform any Service User that any prescription for any drug, medicine or appliance must be dispensed only by the Provider or a Sub-Contractor or by any person with whom the Provider or a Sub-Contractor is associated.

GC37 Force Majeure

- 37.1 If an Event of Force Majeure occurs, the Affected Party must:
 - 37.1.1 take all reasonable steps to mitigate the consequences of that event;
 - 37.1.2 resume performance of its obligations as soon as practicable; and
 - 37.1.3 use all reasonable efforts to remedy its failure to perform its obligations under this Contract.
- 37.2 The Affected Party must serve an initial written notice on the other Parties immediately when it becomes aware of the Event of Force Majeure. This initial notice must give sufficient detail to identify the Event of Force Majeure and its likely impact. The Affected Party must then serve a more detailed written notice within a further 5 Operational Days. This more detailed notice must contain all relevant information as is available, including the effect of the Event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome the event and resume full delivery of Services.
- 37.3 If it has complied with its obligations under GC37.1 and 37.2, 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.

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- 37.4 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.

GC38 Third Party Rights

- 38.1 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, except that, to the extent that it applies in its or their favour, this Contract may be enforced by:
- 38.1.1 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 SC9 (*Staff*), other than and SC9.4, 8.5.3 and GC26.3 (*Employment or Engagement following NHS Redundancy*);
 - 38.1.2 the Secretary of State;
 - 38.1.3 a Regulatory or Supervisory Body
 - 38.1.4 any CCG or Local Authority;
 - 38.1.5 the NHS Business Services Authority;
 - 38.1.6 a previous provider of services equivalent to the Services or any of them before the Service Commencement Date, or a new provider of services equivalent to the Services or any of them after the expiry or termination of this Contract or any Service, if the matter to be enforced or the benefit to be enjoyed arises under Schedule 9B (*TUPE*);
 - 38.1.7 the relevant NHS Employer, if the matter to be enforced or the benefit to be enjoyed arises under GC26 (*Employment or Engagement following NHS Redundancy*).
- 38.2 Subject to GC16.2.3 (*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.

GC39 Entire Contract

- 39.1 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.
- 39.2 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 6A (*Documents Relied On*).
- 39.3 Nothing in this GC39 will exclude any liability for fraud or any fraudulent misrepresentation.

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GC40 Severability

- 40.1 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.

GC41 Waiver

- 41.1 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.

GC42 Remedies

- 42.1 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.

GC43 Exclusion of Partnership

- 43.1 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.

GC44 Notices

- 44.1 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.
- 44.2 Notices:
- 44.2.1 by post will be effective upon the earlier of actual receipt, or 5 Operational Days after mailing;
 - 44.2.2 by hand will be effective upon delivery; and
 - 44.2.3 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.

GC45 Costs and Expenses

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

GC46 Counterparts

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- 46.1 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.

GC47 Governing Law and Jurisdiction

- 47.1 This Contract will be considered as a Contract made in England and will be subject to the laws of England.
- 47.2 Subject to the provisions of GC17 (*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 (whether contractual or non-contractual in nature).

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DEFINITIONS AND INTERPRETATION

1. The headings in this Contract will not affect its interpretation.
2. Reference to any statute or statutory provision, to Law, to Guidance, or to Data Guidance, includes a reference to that statute or statutory provision, Law or Guidance or Data Guidance as from time to time updated, amended, extended, supplemented, re-enacted or replaced in whole or in part.
3. Reference to a statutory provision includes any subordinate legislation made from time to time under that provision.
4. References to Conditions and Schedules are to the Conditions and Schedules of this Contract, unless expressly stated otherwise.
5. References to any body, organisation or office include reference to its applicable successor from time to time.
6. Any references to this Contract or any other documents or resources includes reference to this Contract or those other documents or resources as varied, amended, supplemented, extended, restated and/or replaced from time to time and any reference to a website address for a resource includes reference to any replacement website address for that resource.
7. Use of the singular includes the plural and vice versa.
8. Use of the masculine includes the feminine and vice versa.
9. Use of the term "including" or "includes" will be interpreted as being without limitation.
10. The following words and phrases have the following meanings:

18 Weeks Information information as to the Service User's rights under the NHS Constitution to access the relevant Services within maximum waiting times, as further described and explained in the NHS Constitution Handbook and Guidance

18 Weeks Referral-to-Treatment Standard in relation to Consultant-led Services, the NHS's commitment that no-one should wait more than 18 weeks from the time they are referred to the start of their treatment unless it is clinically appropriate to do so, or they choose to wait longer, as set out in the Rules Suite published by the Department of Health (<https://www.gov.uk/government/publications/right-to-start-consultant-led-treatment-within-18-weeks>) and in the recording and reporting guidance published by NHS England (<https://www.england.nhs.uk/statistics/statistical-work-areas/rtt-waiting-times/rtt-guidance/>)

1983 Act the Mental Health Act 1983

1983 Act Code the 'code of practice' published by the Department of Health under section 118 of the 1983 Act

2005 Act the Mental Capacity Act 2005

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2006 Act the National Health Service Act 2006

2007 Act the Local Government and Public Involvement in Health Act 2007

2008 Act the Health and Social Care Act 2008

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

Accessible Information Standard guidance aimed at ensuring that disabled people have access to information that they can understand and any communication support they might need, as set out at: <http://www.england.nhs.uk/ourwork/patients/accessibleinfo-2/>

Accountable Emergency Officer the individual appointed by the Provider as required by section 252A(9) of the 2006 Act

Activation the knowledge, skill and confidence a person has in managing their own health and care

Activity Service User flows and clinical activity under this Contract

Activity-Based Payment a payment in relation to, and conditional on, the delivery of, specific Activity, as described in Schedule 4C (*Activity-Based Payments*)

Activity Report a report showing actual Activity, in the format agreed and specified in Schedule 7A (*Reporting Requirements*)

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 2F (*Activity Planning Assumptions*), as amended or updated for each Contract Year

Actual Annual Payment for the relevant Contract Year the aggregate of all payments made to the Provider under this Contract in that Contract Year (excluding VAT and payments in relation to any Improvement Payment Scheme Indicator and after any deductions, withholdings or set-off), as reconciled under GC11 (*Payment Terms*), excluding the value of any items or Activity on which Improvement Payment Scheme Payments are not payable, as set out in the WPB Handbook

Actual Monthly Payment for the relevant month the aggregate of all payments made to the Provider under this Contract in respect of all Services delivered in that month (excluding VAT and payments in relation to any Improvement Payment Scheme Indicator and after any deductions, withholdings or set-off), as reconciled under GC11 (*Payment Terms*), excluding the value of any items or Activity on which Improvement Payment Scheme Payments are not payable, as set out in the WPB Handbook

Actual Quarterly Payment for the relevant Quarter the aggregate of all payments made to the Provider under this Contract in respect of all Services delivered in that Quarter (excluding VAT and payments in relation to any Improvement Payment Scheme Indicator and after any deductions, withholdings or set-off), as reconciled under GC11 (*Payment Terms*), excluding the

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value of any items or Activity on which Improvement Payment Scheme Payments are not payable, as set out in the WPB Handbook

Affected Party a party the performance of whose obligations under this Contract is affected by an Event of Force Majeure

Agenda for Change the 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

Appliance an appliance which is included in a list for the time being approved by the Secretary of State for the purposes of section 126 of the 2006 Act

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 'Armed forces covenant: today and tomorrow' document outlining actions to be taken, available at: <https://www.gov.uk/government/publications/the-armed-forces-covenant>

Asset Register a register which lists every Relevant Asset used by the Provider or any Sub-Contractor for the provision of the Services

Associate Practice a GP practice details of which are set out in Schedule 3C (Associate Practices)

Auditor an appropriately qualified, independent third party auditor appointed by the Co-ordinating Commissioner in accordance with GC21.8 (*Inspection and Quality Audit*)

Authorised Person the Co-ordinating Commissioner and each Commissioner or their authorised representatives, 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 any Regulatory or Supervisory Body

Best Practice any methodologies, pathway designs and processes relating to the Services developed by the Provider or any Sub-Contractor (whether singly or jointly with any Commissioner or other provider) for the purposes of delivering the Services and which are capable of wider use in the delivery of healthcare services for the purposes of the NHS, but not including inventions that are capable of patent protection and for which patent protection is being sought or has been obtained, registered designs, or copyright in software

Break Date each date referred to as such in the Particulars

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Business Continuity Plan the Provider's plan for continuity of all of the Services in adverse circumstances, in accordance with the NHS England Business Continuity Management Framework (Service Resilience) and the principles of PAS 2015 (British Standards Institution 21 October 2010) and ISO 22301)

Caldicott Guardian the senior health professional responsible for safeguarding the confidentiality of patient information

Caldicott Information Governance Review the Information Governance Review (March 2013) also known as Caldicott 2, available at: <https://www.gov.uk/government/publications/the-information-governance-review>

Caldicott Principles the principles applying to the handling of patient-identifiable information set out in the report of the Caldicott Committee (1 December 1997)

Care Home

- (i) a care home situated within the Contract Area; or
- (ii) a care home situated outside the Contract Area at which any Registered Service User is permanently or temporarily resident

Care Home Resident

- (i) a Registered Service User permanently or temporarily resident in a Care Home; or
- (ii) any individual who is not a Registered Service User and is not registered with any other provider of primary medical services but is permanently or temporarily resident in a Care Home within the Contract Area

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 Co-ordinator a member of the Provider's Staff whose role is to co-ordinate the organisation and communication of an individual Service User's package of treatment and care

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

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Change in Control any person or group of persons acting in concert gains control of the Provider or a Material Sub-Contractor (whether directly or indirectly). For the purposes of this definition "control" means:

- (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 or the membership interests of a partnership or limited liability partnership 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 entity on all, or substantially all, matters, or the ability to appoint or remove a majority of directors or other equivalent officers of that entity or otherwise have the power to give directions with regard to the operating and financial policies of the entity with which the directors or other equivalent officers are obliged to comply, 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 Ownership

- (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 or the membership interests of a partnership or limited liability partnership;
- (ii) any change in membership of a partnership or limited liability partnership; or
- (iii) the entering into of any franchise, management or other agreement or arrangement, under the terms of which any material degree of control over the management of the Provider or a Material Sub-Contractor is conferred on any person; and/or
- (iv) any change in the Governing Body of the Provider and/or a Material Sub-Contractor

Chargeable Overseas Visitor a patient who is liable to pay charges for NHS services under the Overseas Visitor Charging Regulations

Child a person or people under the age of 16 years

Child Sexual Abuse and Exploitation Guidance the *Child Sexual Exploitation: Health Working Group Report* and the Department of Health's response to its recommendations, available at: <https://www.gov.uk/government/publications/health-working-group-report-on-child-sexual-exploitation> and all Guidance issued pursuant to those recommendations

Child Sexual Abuse and Exploitation Lead the officer of the Provider responsible for implementation and dissemination of Child Sexual Exploitation Guidance

Child Protection Information Sharing Project the 'Child Protection - Information Sharing' project, being a project to improve the way that health and social care services work together across England to protect vulnerable children: <http://systems.NHSDigital.gov.uk/cpis>

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Clinic Letter a summary of information relevant to the Service User to be produced by the Provider following outpatient clinic attendance, which, with effect from 1 October 2018, must be a structured message capable of carrying both human readable narrative and coded (SNOMED CT) information, using or consistent with the Academy of Medical Colleges endorsed clinical headings once published

Clinical Commissioning Group or **CCG** a clinical commissioning group as defined in Section 11 of 2006 Act

Clinical Networks groups of commissioners and providers of health or social care concerned with the planning and/or delivery of integrated health or social care across organisational boundaries, whether on a national, regional or local basis

CNST the Clinical Negligence Scheme for Trusts

CNST Membership Rules the *Clinical Negligence Scheme for Trusts Membership Rules, April 2001 (revised 1 May 2014)*

CNST Regulations the National Health Service (Clinical Negligence Scheme) Regulations 1996 (S.I 1996 No. 251), as amended by the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 1997 (S.I 1997 No 527), the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 2000 (SI 2000 No. 2341) the National Health Service (Clinical Negligence Scheme) Amendment Regulations 2013 (SI 2013 No. 497) and the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 2014 (SI 2014 No. 933)

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>

Commissioned Provider a provider holding a current NHS Standard Contract awarded by a CCG or NHS England in respect of the relevant service

Commissioner a party identified as such in the Particulars

Commissioner Assignment Methodology Guidance detailed technical guidance published by NHS England to enable Providers to allocate the correct commissioner code within specified commissioning data sets for the healthcare activities they provide, available at: <https://www.england.nhs.uk/ourwork/tsd/data-services/>

Commissioner Documents the documents listed in Schedule 1B (*Commissioner Documents*)

Commissioner Deliverables all documents, products and materials developed by the Commissioner in relation to the Services in any form and submitted by any Commissioner to the Provider under this Contract, including data, reports, policies, plans and specifications

Commissioner Notice Period the period specified as such in the Particulars

Commissioner Representative a person identified as such in the Particulars

Commissioners' Service Requirements the requirements set out in Schedule 2C1 (*Commissioners' Service Requirements*)

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Complaints Regulations the Local Authority Social Services and National Health Services Complaints (England) Regulations 2009

Conditions Precedent the pre-conditions to commencement of service delivery set out in Schedule 1A (*Conditions Precedent*)

Confidential Information any information or data in whatever form disclosed, which by its nature is confidential or which the disclosing Party acting reasonably states in writing to the receiving Party is to be regarded as confidential, or which the disclosing Party acting reasonably has marked 'confidential' (including, financial information, or marketing or development or workforce plans and information, and information relating to services or products) but which is not Service User Health Records or information relating to a particular Service User, or Personal Data, or information which is disclosed in accordance with GC28 (*Patient Confidentiality, Data Protection, Freedom of Information and Transparency*), in response to an FOIA request, or information which is published as a result of government policy in relation to transparency

Confidential Patient Information confidential information obtained in connection with the delivery of this Contract where the identity of an individual is ascertainable from that information, or from that information and other information which is in the possession of, or is likely to come into the possession of, the person processing that information, and that information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual

Consent

- (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law; and/or
- (ii) any necessary consent or agreement from any third party,

needed either for the performance of the Provider's obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract, including any registration with any relevant Regulatory or Supervisory Body

Consultant a person employed or engaged by the Provider of equivalent standing and skill as a person appointed by an NHS Body in accordance with the Law governing the appointment of consultants

Consultant-led Service a Service for which a Consultant retains overall clinical responsibility (without necessarily being present at each Service User appointment), and in respect of which Referrals of Service Users are made directly to a named Consultant

Contract Area the geographical area described in Schedule 2B (*Contract Area*)

Contract Management Meeting a meeting of the Co-ordinating Commissioner and the Provider held in accordance with GC9.6 (*Contract Management*)

Contract Performance Notice

- (i) a notice given by the Co-ordinating Commissioner to the Provider under GC8.4 (*Contract Management*), alleging failure by the Provider to comply with any obligation on its part under this Contract; or
- (ii) a notice given by the Provider to the Co-ordinating Commissioner under GC8.5 (*Contract Management*) alleging failure by any Commissioner to comply with any obligation on its part under this Contract,

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as appropriate

Contract Technical Guidance technical guidance in relation to the NHS Standard Contract, available at: <https://www.england.nhs.uk/nhs-standard-contract/17-18/>

Contract Term the period specified as such in the Particulars (or where applicable that period [as extended in accordance with Schedule 1C (*Extension of Contract Term*)])

Contract Year the period starting on the Service Commencement Date and ending on the following 31 March and each subsequent period of 12 calendar months starting on 1 April, provided that the final Contract Year will be the period starting on the relevant 1 April and ending on the Expiry Date or date of earlier termination

Co-ordinating Commissioner the party identified as such in the Particulars

COSOP the Cabinet Office Statement of Practice *Staff Transfers in the Public Sector* January 2000

Core Hours the period beginning at 8am and ending at 6.30pm on any day from Monday to Friday except Good Friday, Christmas Day or bank holidays

CQC the Care Quality Commission established under section 1 of the 2008 Act

CQC Regulations the Care Quality Commission (Registration) Regulations 2009

CRS commissioner requested services, as defined in CRS Guidance

CRS Guidance the Guidance published by NHS Improvement in relation to commissioner requested services, available at: <https://www.gov.uk/government/publications/guidance-for-commissioners-ensuring-the-continuity-of-healthcare-services>

Current Assets the total value, at any time, of the assets that are treated as current assets under GAAP

Current Liabilities the total value, at any time, of the liabilities that are treated as current liabilities under GAAP

Data Breach has the meaning given to it in the Caldicott Information Governance Review

Data Controller has the meaning given to it in the DPA

Data Guidance any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with the Data Protection Laws (whether specifically mentioned in this Contract or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by the Co-ordinating Commissioner and/or any relevant Regulatory or Supervisory Body. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, the Department of Health, NHS England, the Health Research Authority, Public Health England and the Information Commissioner

Data Processing Services the data processing services described in the Annex to Schedule 71

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Data Processor has the meaning given to it in the DPA

Data Protection Laws all applicable data protection and privacy legislation, laws, regulations and Data Guidance including the Data Protection Act 1998, the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the Information Commissioner from time to time

Data Quality Improvement Plan or **DQIP** an agreed plan setting out specific data and information improvements to be achieved by the Provider in accordance with the timescales set out in that plan (which may comprise or include any DQIP agreed in relation to a Previous Contract) as appended at Schedule 6B (*Data Quality Improvement Plan*)

DBS the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012

Death of a Service User Policy a policy that complies with Good Practice and the Law, and which details the procedures which the Provider is to follow in the event of the death of a Service User while in the Provider's care

Debt Securities debentures, debenture or loan stock, bonds and notes, whether secured or unsecured

Definitions and Interpretation the section of the General Conditions under that heading

Delivery Method

- (i) direct automatic transfer onto the GP practice electronic patient record system through a suitable secure interface; or
- (ii) (until 30 September 2018) secure email using an NHS Net secure account or equivalent

as required or permitted by the relevant Transfer of and Discharge from Care Protocol

Department of Health the Department of Health in England of HM Government or other relevant body, or such other body superseding or replacing it from time to time and/or the Secretary of State

Development Plan for Integrated Personal Commissioning as the programme for the development of personal health budgets and/or personal budgets for social care and/or integrated personal budgets set out or referred to in Schedule 4F (*Development Plan for Integrated Personal Commissioning*)

DH Group Accounting Manual Information the information specified in paragraphs 2.30 to 2.54 of the Department of Health Group Accounting Manual <https://www.gov.uk/government/publications/department-of-health-group-accounting-manual-2016-to-2017> (whether or not the organisation in question is a body to which that document or and requirement of it is stated to apply)

Direction Letter a letter issued by the NHS Business Services Authority (on behalf of the Secretary of State pursuant to Section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967) to the Provider or a Sub-Contractor, setting out the terms on which the Provider or Sub-Contractor (as appropriate) is to be granted access to the NHS Pension Scheme in connection with this Contract or the relevant Sub-Contract (as appropriate)

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Directions [the Primary Medical Services [(Multi-specialty Community Provider and Primary and Acute Care Systems Contracts)] Directions 2017]

Comment [DS27]: The title of the anticipated Directions is still to be confirmed

Directly Bookable in relation to any Service, the Provider's patient administration system being compliant with and able to communicate with the NHS e-Referral Service enabling available appointment slots to show on the NHS e-Referral Service, thereby enabling a Referrer or Service User to book a Service User appointment directly onto the Provider's patient administration system

Directory of Service a directory of information that describes the services that organisations offer, provides a window through which providers can display their services and enables referring clinicians to search for clinically appropriate services to which they can refer service users

Discharge Summary a summary of information relevant to the Service User to be produced by the Provider in accordance with the relevant Transfer of and Discharge from Care Protocol which:

- (i) for discharges from inpatient or day case Services, must be a structured message capable of carrying both human readable narrative and coded (SNOMED CT) information, using or consistent with the Academy of Medical Colleges endorsed clinical headings (<https://www.rcplondon.ac.uk/resources/standards-clinical-structure-and-content-patient-records>); and
- (ii) for discharges from A&E Services must, from 1 October 2018, be a structured message capable of carrying both human readable narrative and coded (SNOMED CT) information, using or consistent with the Academy of Medical Colleges endorsed clinical headings once published

Disposal any of the following:

- (i) a transfer, whether legal or equitable, of the whole or any part of an asset (whether or not for value) to a person other than the Provider or a Sub-Contractor; or
- (ii) a grant, whether legal or equitable, of a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or
- (iii) the grant, whether legal or equitable, of any mortgage, charge, or other form of security over that asset; or
- (iv) if the asset is an interest in land, any transaction or event that is capable under any enactment or rule of law of affecting the title to a registered interest in that land, on the assumption that the title is registered,

and references to "dispose" are to be read accordingly

Dispute a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Contract

Dispute Resolution the procedure for resolution of disputes set out in GC17 (*Dispute Resolution*)

Distributable Profits in respect of the relevant Contract Year the level of profit for that Contract Year calculated using GAAP, as set out in the audited annual financial statements of the Provider

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Distribution any and all of the following, whether in respect of the Provider or any Holding Company or Subsidiary of the Provider:

- (i) any dividend or other distribution (in cash or in kind) in respect of the share capital or memberships interests;
- (ii) any capitalisation of profits, bonus issue, reduction of capital, redemption or purchase of shares or other reorganisation or variation in the share capital or membership interests which has or may have the effect of benefiting the holders of such share capital or membership interest;
- (iii) any payment of interest, principal or other amounts in respect of any Subordinated Debt, including any premium or breakage cost arising on prepayment;
- (iv) the release of any actual or contingent liability of a connected person by discharge, set-off, counterclaim or otherwise save in the ordinary course of the operation of the terms of any Key Document;
- (v) any assumption by the Provider of any obligations of a connected person which is not on arm's length terms;
- (vi) any payment to a Sub-Contractor or other party to a Key Document not in accordance with the permitted terms of its agreement;
- (vii) any payments including bonuses to Staff and/or other employees, officers, partners or other individuals which are not on arm's length terms and/or in accordance with their terms of employment or engagement; or
- (viii) any payment, loan or transfer of assets to a connected person which is not on arm's length terms for full value under an agreement permitted by this Contract

Distribution Conditions

- (i) the audited annual financial statements for the relevant Contract Year have been produced showing the Distributable Profits;
- (ii) there is cash in the form of distributable reserves available to make the proposed Distribution;
- (iii) the financial covenant tests in GC19.1 and 19.2 are met;
- (iv) all Operational Standards and National Quality Requirements have been met in respect of the relevant Contract Year;
- (v) all Local Quality and Outcome Requirements have been met in respect of the relevant Contract Year;
- (vi) the terms of any Immediate Action Plan or Remedial Action Plan reasonably required by the Co-ordinating Commissioner have been agreed, and the requirements of any such Immediate Action Plan or Remedial Action Plan have been met in full;
- (vii) there is no subsisting Suspension Event or Provider Termination Event;
- (viii) there are no sums due and unpaid to any Commissioner from the Provider under the terms of the Contract

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- (ix) there are no amounts due and unpaid under any Sub-Contracts or other Key Documents;
- (x) all contributions and other payments due in respect of Indemnity Arrangements have been made;
- (xi) all contributions and other payments due in respect of the NHS Pension Scheme have been made; and
- (xii) sufficient funds are available and will be retained to pay all taxes when due

DOTAS the Disclosure of Tax Avoidance Schemes rules, requiring a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation pursuant to Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992

DPA the Data Protection Act 1998

EDS2 the *Equality Delivery System for the NHS – EDS2*, being a tool designed to help NHS organisations, in discussion with local stakeholders, to review and improve their equality performance for people with characteristics protected by the Equality Act 2010, and to support them in meeting their duties under section 1 of the Equality Act 2010, available at: <http://www.england.nhs.uk/wp-content/uploads/2013/11/eds-nov131.pdf>

Education, Health and Care Needs Assessment a joint assessment by the relevant professionals of the healthcare and social care needs of a child or young person, required under the Special Educational Needs and Disability Regulations 2014

Effective Date the date referred to as such in the Particulars

e-Invoicing Guidance guidance relating to the application and use of the NHS Shared Business Services e-Invoicing Platform, available at: <https://networkgrowth.s3.amazonaws.com/Tradeshift%20Supplier%20Training%20Guide.pdf>

e-Invoicing Platform the NHS Shared Business Services e-invoicing platform provided by Tradeshift

EIR the Environmental Information Regulations 2004

Elective Care pre-arranged, non-emergency care including scheduled operations provided by medical specialists (and unexpected returns to theatre and/or admissions to Critical Care units) in a hospital or other secondary care setting

Elective Referral a referral by a general medical practitioner, general dental practitioner or optometrist to a health service provider for treatment that is not identified as being immediately required at the time of referral

Emergency Care healthcare or treatment for which a Service User has an urgent clinical need (assessed in accordance with Good Practice and which is in the Service User's best interests)

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Enhanced DBS & Barred List Check a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list, adults' barred list and children's and adults' barred list

Enhanced DBS Check a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for

Enhanced DBS Position any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Check or an Enhanced DBS & Barred List Check (as appropriate) is permitted

EPACCS IT System Requirements guidance on the implementation of Electronic Palliative Care Co-ordination Systems available at: <http://systems.digital.nhs.uk/qipp/library/epaccsreq.pdf>

e-Procurement Guidance Department of Health guidance in *NHS E-Procurement Strategy* available via: <http://www.gov.uk/government/collections/nhs-procurement>

EPRR Guidance the emergency preparedness, resilience and response guidance published by the Department of Health and NHS England from time to time, including:

- (i) *NHS England Emergency Preparedness, Resilience and Response Framework*;
- (ii) *NHS England Core Standards for Emergency Preparedness, Resilience and Response (EPRR)*; and
- (iii) *NHS England Business Continuity Management Framework (Service Resilience)*,

all available via: <http://www.england.nhs.uk/ourwork/epr/>

Equipment any medical or non-medical equipment that the Provider may use in the delivery of the Services (including Vehicles)

e-Referral Guidance the guidance in relation to e-referral available at: www.chooseandbook.nhs.uk/staff/overview/guidance

Essential Services the Services identified as such listed in Schedule 2D (*Essential Services*), being those Services for which sufficient capacity does not exist at appropriate alternative providers or potential alternative providers and/or which cannot be provided in a different way and/or where vulnerable groups may have particular problems accessing alternative providers and/or where the Provider ceasing to provide the Service would render other Services unviable

Essential Services Continuity Plan a plan agreed with the Co-ordinating Commissioner to ensure the continual availability of the Essential Services in the event of an interruption or suspension of the Provider's ability to provide any Essential Services and/or on any termination of this Contract or of any Service, as appended at Schedule 2E (*Essential Services Continuity Plan*) and updated from time to time

European Economic Area or **EEA** the European Economic Area which consists of the European Union and all the European Free Trade Association (EFTA) countries except Switzerland

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Event of Force Majeure an event or circumstance which is beyond the reasonable control of the Party claiming relief under GC37 (*Force Majeure*), including war, civil war, armed conflict or terrorism, strikes or lock outs, riot, fire, flood or earthquake, and which directly causes that Party to be unable to comply with all or a material part of its obligations under this Contract in relation to any Service

Excepted Services those Services listed in Schedule 2C3 (*Excepted Services*)

Exception Report a report issued in accordance with GC8.20 (*Contract Management*) notifying the relevant Party's Governing Body of that Party's breach of a Remedial Action Plan and failure to remedy that breach

Exit Arrangements the arrangements set out in Schedule 11 (*Exit Arrangements*)

Expected Service Commencement Date the date referred to as such in the Particulars

Expert the person designated to determine a Dispute in accordance with GC17.8 or 17.9 (*Dispute Resolution*)

Expert Determination Notice notice in writing showing an intention to refer a Dispute for expert determination

Expiry Date the last day of the Contract Term

FFT Guidance the NHS Friends and Family Test Implementation Guidance available at: <http://www.England.nhs.uk/ourwork/pe/fft/>

Financial Indebtedness any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint and any guarantee or indemnity of any of those obligations

Fit Note Guidance the guidance relating to the issue of fit notes, available at: <https://www.gov.uk/government/collections/fit-note>

FOIA the Freedom of Information Act 2000

Food Standards Guidance the following publications:

- (i) For patient catering: *10 key characteristics of good nutritional and hydration care (NHS England)* <https://www.england.nhs.uk/commissioning/nut-hyd/10-key-characteristics/>; *Nutrition and Hydration Digest (British Dietetic Association)* <http://www.bda.uk.com/publications/professional/NutritionHydrationDigest.pdf>; *Malnutrition Universal Screening Tool or equivalent (British Association of Parenteral and Enteral Nutrition)* http://www.bapen.org.uk/pdfs/must/must_full.pdf;
- (ii) For all catering: Government Buying Standards
- (iii) For staff and visitor catering - *Healthier and more sustainable catering guidance – nutrition principles (Public Health England)* <https://www.gov.uk/government/publications/healthier-and-more-sustainable-catering-a-toolkit-for-serving-food-to-adults>

More detail can be found at: <https://www.gov.uk/government/publications/establishing-food-standards-for-nhs-hospitals>

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Formulary a list of medications that are approved by the Provider on the basis of their proven efficacy, safety and cost-effectiveness to be prescribed for Service Users by the Provider's clinical Staff

Freedom To Speak Up Guardian the individual appointed by the Provider in accordance with the Department of Health publication [Learning Not Blaming](https://www.gov.uk/government/publications/learning-not-blaming-response-to-3-reports-on-patient-safety) available at: <https://www.gov.uk/government/publications/learning-not-blaming-response-to-3-reports-on-patient-safety> and identified as such in the Particulars

Friends and Family Test the Friends and Family Test as described in direction 48 of the Directions and FFT Guidance

Fundamental Standards of Care the requirements set out in regulations 9 to 19 of the 2014 Regulations

GAAP generally accepted accounting principles in the United Kingdom

Gain/Loss-Share Arrangement the arrangement for sharing of financial risk in relation to the Commissioners' expenditure on acute healthcare services and/or other services set out or referred to in Schedule 4D (*Gain/Risk-Share Arrangement*)

General Anti-abuse Rule the legislation in Part 5 of the Finance Act 2013

General Condition or **GC** any of these General Conditions forming part of the Contract

General Practice Services the Primary Medical Services and other services provided by the Associate Practices to the Population under arrangements made between NHS England and/or one or more CCGs and the Associate Practices

GMS Regulations the National Health Service (General Medical Services Contracts) Regulations 2015 **Good Practice** using standards, practices, methods and procedures conforming to the Law and reflecting up-to-date published evidence and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider and a person providing services the same as or similar to the Services at the time the Services are provided, including (where appropriate) assigning a Consultant to each Service User who will be clinically responsible for that Service User at all times during the Service User's care by the Provider

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

Government Buying Standards *Government Buying Standards for Food and Catering Services (Department of Environment, Food and Rural Affairs)*
<https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-food-and-catering-services>

Government Prevent Strategy the policy forming part of HM Government's counter-terrorism strategy, available at:
<http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/prevent-strategy-review?view=Binary>

GP a general medical practitioner

GP Mean Net Earnings Information the information specified in direction 11 of the Directions

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Guarantor a party which is for the time being a guarantor of the obligations of the Provider under this Contract

Guarantee [a guarantee being one of the Key Documents]

Guidance any applicable health or social care guidance, guidelines, direction or determination, framework, code of practice, standard or requirement to which the Commissioners and/or the Provider have a duty to have regard (and whether specifically mentioned in this Contract or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by the Co-ordinating Commissioner and/or any relevant Regulatory or Supervisory Body

Guidance on Care of Dying People *One chance to get it right: Improving people's experience of care in the last few days and hours of life*, published by the Leadership Alliance for the Care of Dying People, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323188/One_chance_to_get_it_right.pdf

Halifax Abuse Principle the principle explained in the CJEU Case C-255/02 Halifax and others

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

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

Health and Social Care Network the [national programme](#) to manage the exit from existing N3 network arrangements (through which providers access national services such as the NHS e-Referral Service and the NHS Care Records Service) and to provide successor network services capable of supporting the health and social care system

Healthcare Professional a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002

Healthcare Safety Investigation Branch the body established to provide support and guidance on investigations, and to carry out its own investigations, into patient safety incidents: <https://www.gov.uk/government/groups/independent-patient-safety-investigation-service-ipsis-expert-advisory-group>

Health Education England the non-departmental public body supporting delivery of excellent healthcare and health improvement in England by ensuring that the workforce has the right numbers, skills, values and behaviours, in the right time and in the right place

Health Service Ombudsman the Parliamentary and Health Service Ombudsman, the independent body the role of which is to investigate complaints that individuals have been treated unfairly or have received poor service from government departments and other public organisations and the NHS: <http://www.ombudsman.org.uk/>

Healthwatch England the independent consumer champion for health and social care in England

HEE Quality Framework the Health Education England Quality Framework, available at: https://www.hee.nhs.uk/sites/default/files/documents/HEE_J000584_QualityFramework_FINAL_WEB.pdf

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HM Government the government of the United Kingdom of Great Britain and Northern Ireland

Holding Company has the definition given to it in section 1159 of the Companies Act 2006

Hospital Food Standards Report the Hospital Food Standards Panel's report on standards for food and drink in NHS hospitals:

<https://www.gov.uk/government/publications/establishing-food-standards-for-nhs-hospitals>

HQIP Guidance guidance issued by the Healthcare Quality Improvement Partnership, available at: <http://www.hqip.org.uk/>

HRA the Human Rights Act 1998

ICO Guidance on Data Controllers and Data Processors Information Commissioner's Office guidance *Data controllers and data processors: what the difference is and what the governance implications are*

IG Guidance for Serious Incidents NHS Digital's *Checklist Guidance for Information Governance Serious Incidents Requiring Investigation* June 2013, available at:

<https://www.igt.hscic.gov.uk/KnowledgeBaseNew/HSCIC%20IG%20SIRI%20%20Checklist%20Guidance%20V2%200%201st%20June%202013.pdf>

Immediate Action Plan a plan setting out immediate actions to be undertaken by the Provider to protect the safety of Services to Service Users, the public and/or Staff

Improvement Payment Scheme [the financial Improvement Payment scheme for ACOs, replacing CQUIN and (for fully-integrated ACOs) QOF, set out in Schedule 5D]

Improvement Payment Scheme Indicator an indicator or measure of the Provider's performance, as set out in Improvement Payment Scheme Table 1

Improvement Payment Scheme Payment a payment to be made to the provider for having met the goals set out in the Improvement Payment Scheme as determined in accordance with Improvement Payment Scheme Table 1

Improvement Payment Scheme Payments on Account the payments to be made on account in respect of the relevant Improvement Payment Scheme Payments as set out in Improvement Payment Scheme Table 2 (and as adjusted from time to time in accordance with SC12.10 (*Improvement Payment Scheme*))

Improvement Payment Scheme Performance Report a report prepared by the Provider detailing (with supporting clinical and other relevant evidence) the Provider's performance against and progress towards satisfying the Improvement Payment Scheme Indicators in the period to which the report relates

Improvement Payment Scheme Query Notice a notice prepared by or on behalf of any Commissioner setting out in reasonable detail the reasons for challenging or querying an Improvement Payment Scheme Performance Report

Improvement Payment Scheme Reconciliation Account an account prepared by or on behalf of the Provider which:

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- (i) identifies the Improvement Payment Scheme Payments to which the Provider is entitled, on the basis of the Provider's performance against the Improvement Payment Scheme Indicators during the relevant Contract Year;
- (ii) confirms the Improvement Payment Scheme Payments on Account already made to the Provider in respect of the relevant Contract Year;
- (iii) may correct the conclusions of any previous reconciliation account; and
- (iv) must identify any reconciliation payments now due from the Provider to any Commissioner, or from any Commissioner to the Provider

Improvement Payment Scheme Table 1, Improvement Payment Scheme Table 2 the tables at Schedule 5D under those headings

Incentive Framework for ACOs the framework for assessing the performance of an accountable care organisation and its contribution to the local health economy

Incident or Emergency an event or occurrence which:

- (i) constitutes an emergency for the purposes of the Civil Contingencies Act 2004; and/or
- (ii) is defined as an incident in the NHS England Emergency Preparedness, Resilience and Response Framework; and/or
- (iii) constitutes an emergency under local and community risk registers; and/or
- (iv) is designated as an incident under the Incident Response Plan

Incident Response Plan means each Party's operational plan for response to and recovery from Incidents or Emergencies as identified in national, local and community risk registers and in accordance with the requirements of the NHS England Emergency Preparedness, Resilience and Response Framework and the Civil Contingencies Act 2004

Indemnity Arrangements either:

- (i) a policy of insurance;
- (ii) another arrangement made for the purposes of indemnifying a person or organisation; or
- (iii) a combination of (i) and (ii)

for the purpose of indemnifying the Provider

Indicative Activity Plan a plan identifying the anticipated indicative Activity and specifying the threshold for each Activity (which may be zero) for one or more Contract Years, set out in Schedule 2E (*Indicative Activity Plan*)

Indirect Losses loss of profits (other than profits directly and solely attributable to provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis

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Information Breach any material failure on the part of the Provider to comply with its obligations under SC16 (*Service User Health Records*), GC9 (*Information Requirements*) and Schedule 7A (*Reporting Requirements*)

Information Commissioner the independent authority established to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals: ico.org.uk

Information Governance Alliance Guidance guidance on management and retention of records available at: <http://systems.digital.nhs.uk/infogov/iga/rmcop16718.pdf>

Information Governance Audit Guidance guidance issued by the Department of Health and/or NHS England available at: <http://www.gov.uk/government/publications/a-question-of-balance-independent-assurance-of-information-governance-returns>

Information Governance Breach an information governance serious incident requiring investigation, as defined in IG Guidance for Serious Incidents

Information Governance Lead the individual responsible for information governance and for providing the Provider's Governing Body with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence

Insolvency Event the occurrence of any of the following events in respect of the Provider or any Guarantor:

- (i) the relevant entity being, or being deemed for the purposes of any Law to be, unable to pay its debts or insolvent;
- (ii) the relevant entity admitting its inability to pay its debts as they fall due;
- (iii) the value of the relevant entity's assets being less than its liabilities taking into account contingent and prospective liabilities);
- (iv) the relevant entity suspending payments on any of its debts or announces an intention to do so;
- (v) by reason of actual or anticipated financial difficulties, the relevant entity commencing negotiations with creditors generally with a view to rescheduling any of its indebtedness;
- (vi) a moratorium is declared in respect of any of the relevant entity's indebtedness;
- (vii) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the relevant entity;
- (viii) a composition, assignment or arrangement with any creditor of any member of the relevant entity;
- (ix) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the relevant entity or any of its assets;

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- (x) a resolution of the relevant entity or its directors is passed to petition or apply for the Relevant entity's winding-up or administration;
- (xi) the relevant entity's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court or otherwise); or
- (xii) if the relevant entity suffers any event analogous to the events set out in (i) to (xi) of this definition in any jurisdiction in which it is incorporated or resident

Integrated Budget Handbook the handbook for commissioners (*Whole population models of provision: Establishing integrated budgets*), published by NHS England and NHS Improvement, describing (inter alia) how whole population budgets and WPAPs are to be determined, and how WPAPs are to be adjusted

Integrated Provider a provider of health and/or social care services listed in Schedule 3D (*Integrated Providers*)

Integrated Service a health and/or social care service provided to the Population by an Integrated Provider

Integration Activities the activities and responsibilities set out in Schedule 3A (*Integration Activities*)

Integration Goals the goals set out in Schedule 3B (*Integration Goals*)

Inter-agency Agreement any agreement between two or more public bodies, whether or not the agreement also involves third and/or independent sector organisations

Invoice Validation Guidance the NHS England publication *Who Pays? Information Governance Advice for Invoice Validation* December 2013, available at: <http://www.england.nhs.uk/ourwork/tsd/data-info/ig/in-val/>

IPR inventions, copyright, patents, database right, trademarks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights

ISB0160 the standard defined in *Clinical Risk Management: its Application in the Deployment and Use of Health IT Systems*, available at: <http://systems.digital.nhs.uk/clinsafety/dscn>

ISO 22301 the systems standard defining the requirements for a management systems approach to business continuity management

IT Development Programme the programme for the development and improvement of the information technology systems used in the delivery of the Services and the performance of the Provider's obligations under or connection with this Contract set out or referred to in Schedule 10 (*Services Environment Development Programme and IT Development Programme*)

JI Report a report detailing the findings and outcomes of a Joint Investigation

Joint Investigation an investigation into the matters referred to in a Contract Performance Notice in accordance with GC8.8

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Key Clinical Data Fields structured clinical information relating to significant aspects of a Service User's health, care or treatment, held by the Provider within Service User Health Records and identified in Guidance published by NHS Digital and/or NHS England from time to time as information to be made available, as appropriate, through open interfaces to other providers of health and social care

Key Documents the documents listed in Schedule 1D (*Key Documents*) and any document designated by the Co-ordinating Commissioner as a Key Document from time to time

Knowledge and Skills Framework an element of the career and pay progressions strand of Agenda for Change

Law

- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (ii) any enforceable EU right within the meaning of section 2(1) European Communities Act 1972;
- (iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- (iv) Guidance; and
- (v) any applicable code,

in each case in force in England and Wales

LD Guidance the model of care set out in the Department of Health publication *Transforming care: a national response to Winterbourne View hospital* (December 2012), and guidance issued by NHS England from time to time in relation to or pursuant to it available via: <http://www.england.nhs.uk/ourwork/qual-clin-lead/ld/transform-care/>

Legal Guardian an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs

Lessons Learned experience derived from provision of the Services or otherwise, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider's provision of the Services

LETB the local education and training board for each area in which the Provider provides the Services and any local education and training board which represents the Provider by virtue of arrangements made by Health Education England under paragraph 2(4)(c) of Schedule 6 to the Care Act 2014

List of Registered Service Users (i) in relation to the Provider, the list maintained in respect of the Provider by NHS England; and (ii) in relation to an Associate Practice, the list maintained in respect of that practice by NHS England

Local Auditor a local auditor appointed by a relevant authority in accordance with the Local Audit and Accountancy Act 2014

Local Authority a county council in England, a district council in England or a London borough council

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Local Counter Fraud Specialist the accredited local counter fraud specialist appointed by the Commissioner or the Provider (as appropriate)

Local Healthwatch an organisation established under section 222 of the Local Government and Public Involvement in Health Act 2007

Local Government Ombudsman the body the role of which is to investigate complaints about Local Authorities, other organisations providing local public services, and adult social care providers: <http://www.ilgo.org.uk/>

Local Quality and Outcome Requirements the requirements set out in Schedule 5C (*Local Quality and Outcome Requirements*) as may be amended by the Parties in accordance with this Contract or with the recommendations or requirements of NICE

Local Security Management Specialist the accredited local security management specialist appointed by the Commissioner or the Provider (as appropriate)

Local Variation a variation to a national price or the currency for a Service subject to a national price agreed by the Co-ordinating Commissioner and the Provider in accordance with the National Tariff

Longstop Date each date referred to as such in the Particulars

Losses all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses

Making Every Contact Count Guidance the guidance and tools issued by NHS England, Public Health England and Health Education England, available via:
<https://www.england.nhs.uk/ourwork/futurenhs/deliver-forward-view/sop/red-prem-mort/php/>

Managing Conflicts of Interest in the NHS the NHS publication by that name available at <https://www.england.nhs.uk/about/board-meetings/committees/coi/>

Mandatory Material Sub-Contract a Material Sub-Contract without which the Provider would be unable to deliver, or seriously hampered in delivering, the Services in accordance with this Contract, as designated by the Co-ordinating Commissioner and listed at Schedule 6B1 (*Provider's Mandatory Material Sub-Contracts*) from time to time

Mandatory Material Sub-Contractor a Sub-Contractor under any Mandatory Material Sub-Contract

Material Sub-Contract a Sub-Contract for the delivery of any clinical or clinical support service which comprises (irrespective of financial value) all of any Service, or a significant and necessary element of any Service, or a significant and necessary contribution towards the delivery of any Service, being a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract

Material Sub-Contractor a Sub-Contractor under any Material Sub-Contract, being a Mandatory Material Sub-Contractor or a Permitted Material Sub-Contractor

Material Sub-Contractor Change in Control any Change in Control of a Material Sub-Contractor or any of its Holding Companies

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Material Sub-Contractor Change in Ownership any Change in Ownership in respect of a Material Sub-Contractor or any of its Holding Companies

MCA Policies the Provider's written policies for compliance with the 2005 Act and the Deprivation of Liberty Safeguards, as appended in Schedule 2K (*Safeguarding Policies and Mental Capacity Act Policies*) and updated from time to time in accordance with SC32 (*Safeguarding, Mental Capacity and Prevent*)

Mental Capacity and Deprivation of Liberty Lead the officer of the Provider responsible for advice, support, training and audit to ensure compliance with the 2005 Act, the Deprivation of Liberty Safeguards (where appropriate) and associated codes of practice, identified as such in the Particulars

Mental Health Crisis Care Concordat a national agreement between services and agencies involved in the care and support of people in crisis, setting out how organisations will work together better to make sure that people get the help they need when they are having a mental health crisis: <http://www.crisiscareconcordat.org.uk/>

Minimum Net Worth the total value, at any time, of the assets of the Provider (less intangible assets) minus the liabilities of the Provider in each case under GAAP

Monitor the corporate body known as Monitor provided by section 61 of the 2012 Act

Monitor's Licence a licence granted by Monitor under section 87 of the 2012 Act

National Audit Office the independent office established under section 3 of the National Audit Act 1983 which conducts financial audits and reports to Parliament on the spending of public money (and any successor body or bodies from time to time)

National Clinical Audit and Patient Outcomes Programme a set of centrally commissioned national clinical audits that measure Provider performance against national quality standards or evidence-based best practice, and allows comparisons to be made between provider organisations to improve the quality and outcomes of care. <http://www.hqip.org.uk/national-clinical-audits-managed-by-hqip/>

National Data Guardian the body which advises and challenges the health and care system to help ensure that citizens' confidential information is safeguarded securely and used properly: <https://www.gov.uk/government/organisations/national-data-guardian>, and its predecessor body the Independent Information Governance Oversight Panel

National Quality Requirements the requirements set out in Schedule 4B (*National Quality Requirements*)

National Requirements Reported Centrally the requirements set out under that heading in Schedule 6A (*Reporting Requirements*)

National Requirements Reported Locally the requirements set out under that heading in Schedule 6A (*Reporting Requirements*)

National Tariff the national tariff, as published by Monitor under section 116 of the 2012 Act (including any rules included under section 116(4)(b) of the 2012 Act), as applicable from time to time

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National Telephony Service the technology procured by NHS England which links a caller dialing 111 to the telephone number of either the Provider or another 111 provider

National Variation a Variation mandated by NHS England to reflect changes to the NHS Standard Contract and notified to the Parties by whatever means NHS England may consider appropriate

National Workforce Disability Equality Standard the workforce disability equality standard for the NHS, being a set of eleven metrics designed to assist NHS organisations to meet their duties under the Equality Act 2010 in respect of the protected characteristic of disability, as defined by section 6 of that Act, by improving the experience, treatment, positive value and career progression of disabled staff, closing any inequality gaps and ensuring that the leadership and workforce of NHS organisations better reflects the communities they serve, including through a strengths-based approach to disability so disabled staff, patients and the whole workforce look to 'disability as an asset' in improving health and well-being in the NHS. Further information is available at: <https://www.england.nhs.uk/about/gov/equality-hub/wdes/>

National Workforce Race Equality Standard the workforce race equality standard for the NHS, being a set of eight metrics designed to assist NHS organisations to meet their duties under the Equality Act 2010 in respect of the protected characteristic of race, as defined by section 9 of that Act, by improving the experience, treatment and career progression of black and minority ethnic staff, closing any inequality gaps and ensuring that the leadership of NHS organisations better reflects the communities they serve. Further information is available at: <http://www.england.nhs.uk/ourwork/gov/equality-hub/equality-standard/> and: <http://www.england.nhs.uk/ourwork/gov/equality-hub/equality-standard/race-equality-standard-fags/>

Negotiation Period the period of 15 Operational Days following receipt of the first offer to negotiate

Never Event an event or occurrence in relation to a Service User as so defined in the Never Events Policy Framework from time to time

Never Events Policy Framework the *Never Events Policy Framework*, available at: <http://www.england.nhs.uk/ourwork/patientsafety/>

NHS the National Health Service in England

NHS Body has the meaning given to it in section 275 of the 2006 Act

NHS Business Services Authority the Special Health Authority established under the NHS Business Services Authority (Establishment and Constitution Order) 2005 SI 2005/2414

NHS Care Records Guarantee the publication setting out the rules that govern how patient information is used in the NHS and what control the patient can have over this, available here: <http://systems.digital.nhs.uk/rasmartcards/strategy/nhscrg>

NHS Chaplaincy Guidelines *NHS England – NHS Chaplaincy Guidelines 2015: Promoting Excellence in Pastoral, Spiritual & Religious Care*, available at: <https://www.england.nhs.uk/wp-content/uploads/2015/03/nhs-chaplaincy-guidelines-2015.pdf>

NHS Choice Framework the framework providing information about patients' rights to choice in the NHS:

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417057/Choice_Framework_2015-16.pdf

NHS Choices Website <http://www.nhs.uk/pages/homepage.aspx> or the website of the successor to NHS Choices

NHS Clinical Classifications Services the NHS resource responsible for the delivery of national clinical classifications standards and guidance for the NHS clinical coding profession: <http://systems.digital.nhs.uk/data/clinicalcoding>

NHS Constitution the constitution for the NHS in England which establishes the principles and values of the NHS in England and sets out the rights, pledges and responsibilities for patients, the public and staff (and including the *Handbook To The NHS Constitution*, available at <https://www.gov.uk/government/publications/supplements-to-the-nhs-constitution-for-england>)

NHS Contract has the meaning assigned to it in section 9 of the 2006 Act

NHS Data Model and Dictionary the reference source for information standards to support healthcare activities within the NHS in England

NHS Digital the Health and Social Care Information Centre <https://digital.nhs.uk/>

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

NHS Employment Check Standards the documents which set out the pre-appointment checks that are required by Law, those that are mandated by any Regulatory Body policy, and those that are required for access to the NHS Care Record Service and include, verification or identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks

NHS England the National Health Service Commissioning Board established by section 1H of the 2006 Act, also known as NHS England

NHS England Prevent Training and Competencies Framework the framework available at: <http://www.england.nhs.uk/wp-content/uploads/2015/02/train-competnc-frmwrk.pdf>

NHS e-Referral Guidance - Guidance in relation to best practice use of the NHS e-Referral Service, available at: [eRS Best-Practice-Guidelines](#)

NHS e-Referral Service the national electronic booking service that gives patients a choice of place, date and time for first hospital or clinic appointments

NHS Foundation Trust a body as defined in section 30 of the 2006 Act

NHS Identity the name and logo of the NHS and any other names, logos and graphical presentations as held by the Secretary of State required to be used in connection with the provision of the Services

NHS Identity Guidelines NHS Identity policy and guidelines, available at www.nhsidentity.nhs.uk, and any other Guidance issued from time to time in relation to the NHS Identity

NHS Improvement the combined organisation comprising Monitor and NHSTDA

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NHS Information Governance Toolkit an online system which allows NHS organisations and partners to assess themselves against Department of Health Information governance policies and standards: <https://nww.igt.nhs.uk/>

NHS Number the national unique patient identifier given to each person registered with the NHS in England and Wales. Further information is available at: <http://systems.NHS.uk/nhsnumber>

NHS Pension Scheme the National Health Service Pension Scheme for England and Wales, established under the Superannuation Act 1972, governed by subsequent regulations under that Act including the National Health Service Pension Scheme Regulations 1995 (SI 1995/300) and the National Health Service Pension Scheme Regulations 2008 (SI 2008/653)

NHS Protect the division of the NHS Business Services Authority which operates under the name of NHS Protect, also known as the Counter Fraud and Security Management Service

NHS Protect Standards the standards and guidance issued from time to time by NHS Protect under the NHS Business Authority Directions 2006 available at: <http://www.nhsbsa.nhs.uk/4882.aspx>

NHS Safety Thermometer one of a suite of joint prevalence survey tools for local point of care use and particularly for measuring, monitoring and analysing patient harms for the purposes of improving patient safety, available from time to time at: <http://www.safetythermometer.nhs.uk/>

NHS Serious Incident Framework NHS England's serious incident framework, available at: <http://www.England.nhs.uk/ourwork/patientsafety/>

NHS Standard Contract the model commissioning contract or contracts published by NHS England from time to time pursuant to its powers under regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (*Responsibilities and Standing Rules*) Regulations 2012

NHS Sustainable Development Guidance the guidance in relation to sustainable development and adaptation to climate change published by the Sustainable Development Unit, available at: <http://www.sduhealth.org.uk/delivery/plan.aspx>

NHSTDA the Special Health Authority known as the National Health Service Trust Development Authority established under the NHS Trust Development Authority (Establishment and Constitution) Order 2012 SI 901/2012

NHS Terms and Conditions of Service Handbook the handbook of NHS terms and conditions of service, available at: <http://www.nhsemployers.org/your-workforce/pay-and-reward/nhs-terms-and-conditions/nhs-terms-and-conditions-of-service-handbook>

NHS Treatment Costs Guidance *Attributing the costs of health and social care Research & Development* (AcoRD), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/140054/dh_133883.pdf and HSG (97) 32, available at: http://www.nihr.ac.uk/documents/policy-and-standards/Health-Service-Guidance-Patient-Care-Costs-97_32.pdf

NHS Trust a body established under section 25 of the 2006 Act

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NICE the National Institute for Health and Care Excellence, the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health

NICE Technology Appraisals technology appraisals conducted by NICE in order to make recommendations on the use of drugs and other health technologies within the NHS

Nominated Individual

- (i) where the Provider is an individual, that individual; and
- (ii) where the Provider is not an individual, an individual who is employed (within the meaning of the 2014 Regulations) as a director, manager or the company secretary of the Provider,

(and who will, where appropriate, be the nominated individual notified to CQC in accordance with regulation 6 of the 2014 Regulations)

Non-elective Care care which is unplanned and which may include:

- (i) Critical Care, whether or not provided with Emergency Care;
- (ii) Emergency Care; and
- (iii) healthcare or treatment provided to a Service User without prior schedule or referral, whether or not it is also Emergency Care

Notifiable Safety Incident has the definition given to it in the 2014 Regulations

Nursing and Midwifery Register the register maintained by the Nursing and Midwifery Council under the Nursing and Midwifery Order 2001

Occasion of Tax Non-compliance

- (i) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 being found on or after 1 April 2013 to be incorrect as a result of either a Relevant Tax Authority successfully challenging the Provider under the General Anti-abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to either, or the failure of an avoidance scheme in which the Provider was involved and which was or should have been notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
- (ii) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 giving rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion

ODS the NHS organisation data service that is responsible for:

- (i) the publication of all organisation and practitioner codes;
- (ii) the development of national policy and standards relating to organisation and practitioner codes; and
- (iii) the development of national reference organisation data

Open API Policy the guidance available at:

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<https://www.england.nhs.uk/digitaltechnology/info-revolution/interoperability/open-api/>

Operational Day a day other than a Saturday, Sunday or bank holiday in England

Operational Standards the standards set out in Schedule 4A (*Operational Standards*)

Other Local Agreements, Policies and Procedures the agreements, policies and procedures details of which are set out in Schedule 2j (*Other Local Agreements, Policies and Procedures*) or otherwise agreed between the Parties from time to time

Out of Hours Period

- i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
- ii) the period between 6.30pm on Friday and 8am on the following Monday; and
- iii) Good Friday, Christmas Day and bank holidays

Out of Hours Services services required to be provided in all or part of the Out of Hours Period which would be Primary Medical Essential Services if provided by a Provider to its Registered Service Users in Core Hours

Overseas Visitor Charging Guidance any guidance issued from time to time by the Secretary of State or by NHS England on the making and recovery of charges under the Overseas Visitor Charging Regulations, including that available via:

www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

and

<https://www.england.nhs.uk/wp-content/uploads/2015/05/guidance-chargeable-overseas-visitor.pdf>

Overseas Visitor Charging Regulations the regulations made by the Secretary of State under section 175 of the National Health Service Act 2006, available via: <http://www.legislation.gov.uk/uksi/2015/238/contents/made>

Parent includes, in relation to any Child, any adult who, in the opinion of the Provider, is for the time being discharging in respect of that Child the obligations normally attaching to a parent in respect of a Child

Particulars the Particulars to this Contract

Parties the Commissioners (or such of them as the context requires) and the Provider and "Party" means any one of them

Parties in Dispute the Co-ordinating Commissioner and/or other Commissioners directly concerned in the Dispute, as one Party in Dispute, and the Provider, as the other

Partnership Agreement an arrangement between a Local Authority and an NHS Body made under section 75 of the 2006 Act for the provision of combined health or social services and/or under section 10 of the Children Act 2004 to promote co-operation with a view to improving the well-being of children

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Patient Pocket Money monies that the Provider and the Co-ordinating Commissioner agree from time to time may be paid by the Provider to a Service User to purchase sundry items and services

Patient Safety Incident any unintended or unexpected incident that occurs in respect of a Service User, during and as a result of the provision of the Services, that could have led, or did lead to, harm to that Service User

PEPPOL Pan-European Public Procurement Online. See:
<https://www.gov.uk/government/publications/nhs-e-procurement-strategy>
and
<http://www.peppol.eu/>

Performer a performer of medical services under this contract to whom the provisions of Part 3 of the Directions apply

Permitted Material Sub-Contract a Material Sub-Contract without which the Provider would nevertheless be able to deliver, without being seriously hampered, the Services in accordance with this Contract (whether by means of its own performance and/or that of another Sub-Contractor), as designated by the Co-ordinating Commissioner and listed at Schedule 6B2 (*Provider's Permitted Material Sub-Contracts*) from time to time

Permitted Material Sub-Contractor any Sub-Contractor under any Permitted Material Sub-Contract

Personalised Care Plan a plan developed by the Provider, in association with other relevant providers of health and social care and in partnership with a Service User and/or their Carer or Legal Guardian (as appropriate) to deliver Services appropriate to the Service User's needs, which:

- (i) reflects the Service User's goals;
- (ii) helps the Service User to manage their physical and mental health and wellbeing, including access to support for self-management;
- (iii) pays proper attention to the Service User's preferences, culture, ethnicity, gender, age and sexuality; and
- (iv) takes account of the needs of any children and Carers

NHS England, in partnership with The Coalition for Collaborative Care, has published a handbook which provides information on care and support, which is available at:
<http://www.england.nhs.uk/resources/resources-for-ccgs/out-frwrk/dom-2/ltc-care/>

Personal Data has the meaning given to it in the DPA

Physiotherapist a Health Care Professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health and Social Work Professions Order 2001 relating to physiotherapists and:

- (i) employed or engaged by the Department for Work and Pensions; or
- (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions

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Place of Safety a safe place where a mental health assessment can be carried out; this may be a hospital, care home, or any other suitable place where the occupier is willing to receive the person while the assessment is completed. Police stations should only be used in exceptional circumstances

Population the population described in Schedule 2A (*Population*)

Post Event Message a message summarising the Provider's contact with a Service User

Prescriber has the meaning given to it in the Directions

Prevent Guidance and Toolkit the *Building Partnerships, Staying Safe* guidance and toolkit for healthcare organisations and healthcare workers, available at:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131934.pdf

and

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131912.pdf

Previous Contract a contract between one or more of the Commissioners and the Provider for the delivery of services the same or substantially the same as the Services, the term of which immediately precedes the Contract Term

Prevent Lead the officer of the Provider responsible for implementation and dissemination of the Government Prevent Strategy, identified as such in the Particulars

Primary Care Referred Service a Service which accepts Referrals from GPs and/or other primary care Referrers (as set out in NHS e-Referral Service guidance)

Primary Medical Services the Primary Medical Essential Services and/or the Out of Hours Services to be delivered by the Provider under this Contract

Primary Medical Essential Services the services required to be provided in accordance with regulation 17 of the GMS Regulations

Principles of Good Employment Practice the guidance note issued by the Cabinet Office in December 2010 titled *Supplier Information Note: Withdrawal of Two-Tier Code* available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62091/two-tier-code.pdf including Annex A of that guidance note setting out a set of voluntary principles of good employment practice

Processor Data is any data processed by the Provider in connection with the Data Processing Services

Prohibited Act the Provider:

- (i) offering, giving, or agreeing to give the Commissioners (or any of their officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the Provider, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Provider; and

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- (ii) in connection with this Contract, paying or agreeing to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Co-ordinating Commissioner; or
- (iii) committing an offence under the Bribery Act 2010

Proposer a Party making a Variation Proposal

Provider the party identified as such in the Particulars

Provider Change in Control means any Change in Control of the Provider or any of its Holding Companies

Provider Change in Ownership any Change in Ownership in respect of the Provider or any of its Holding Companies

Provider Default Event an event or circumstance listed in GC23.8 (*Termination: Provider Default*)

Provider Deliverables: all documents, products and materials developed by the Provider or its agents, subcontractors, consultants and employees in relation to the Services in any form and required to be submitted to any Commissioner under this Contract, including data, reports, policies, plans and specifications

Provider Notice Period the period specified as such in the Particulars

Provider Representative the person identified as such in the Particulars

Provider's Financial Business Plan the Provider's financial business plan, independently audited, and demonstrating the financial robustness of the Provider and the deliverability of the Services and other obligations of the Provider under and related to this Contract and the Key Documents throughout the Contract Term, and containing the Key Financial Data, set out in Schedule 7F (*Provider's Financial Business Plan*) as may be revised from time to time in accordance with GC18.2 to 18.4 (*Provider's Financial Business Plan*)

Provider's Premises premises controlled or used by the Provider for any purposes connected with the provision of the Services which may be set out or identified in a Service Specification

Provider's Service Proposals the proposals set out in Schedule 2C2 (*Provider's Service Proposals*)

Public Company a company which:

- (i) has shares that can be purchased by the public; and
- (ii) has an authorised share capital of at least £50,000 with each of the company's shares being paid up at least as to one quarter of the nominal value of the share and the whole of any premium on it; and
- (iii) has securities listed on a stock exchange in any jurisdiction

Public Health England an executive agency of the Department of Health established under the 2012 Act

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Quality Accounts has the meaning set out in section 8 of the Health Act 2009

Quality Requirements the Operational Standards, the National Quality Requirements, the Local Quality Requirements and the Never Events

Quarter each 3 month period commencing on the Services Commencement Date and “Quarterly” will be construed accordingly

Recipient a Party receiving a draft Variation Agreement

Redundancy Repayment the sum £R, calculated as follows:

$$£R = (S \times (A - B)) - (C + D),$$

where:

S is the lesser of (a) the amount of a month's pay used to calculate your contractual redundancy payment, or (b) the amount of any maximum monthly sum for the purposes of that calculation applicable at the date of the redundancy, as determined by Agenda for Change

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

B is the number of complete calendar months between the date of termination of the individual's employment by the NHS Employer and the date of commencement of their employment or engagement with the Provider or Sub-Contractor;

C is the total statutory redundancy payment that the individual was were entitled to receive on redundancy from the 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 the individual will have no liability to repay any sum if **B** is greater than or equal to **A**

Referral the referral of any Service User to the Provider by a Referrer or (for a Service for which a Service User may present or self-refer for assessment and/or treatment in accordance with this Contract and/or Guidance) presentation or self-referral by a Service User

Referrer

- (i) the authorised Healthcare Professional who is responsible for the referral of a Service User to the Provider; and
- (ii) any organisation, legal person or other entity which is permitted or appropriately authorised in accordance with the Law to refer the Service User for assessment and/or treatment by the Provider

Registered Service User a person:

- i) who is recorded by NHS England as being on [the Provider's] [an Associate Practice's] List of Service Users, or

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- ii) whom [the Provider] [an Associate Practice] has accepted for inclusion on its List of Service Users, whether or not notification of that acceptance has been received by NHS England

Regulatory or Supervisory Body any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Party and/or Staff must comply or to which it or they must have regard, including:

- (i) CQC;
- (ii) NHS Improvement;
- (iii) NHSTDA;
- (iv) NHS England;
- (v) the Department of Health;
- (vi) NICE;
- (vii) Healthwatch England and Local Healthwatch;
- (viii) Public Health England;
- (ix) the General Pharmaceutical Council;
- (x) the General Medical Council;
- (xi) the Healthcare Safety Investigation Branch;
- (xii) NHS Digital;
- (xiii) the Information Commissioner; and
- (xiv) the National Data Guardian

Relevant Asset any item of property, including buildings, interests in land, equipment (including rights, licenses and consents relating to its use), without which the Provider's ability to meet its obligations to provide the Services would reasonably be regarded as materially prejudiced

Relevant Person has the meaning given to it in the 2014 Regulations

Relevant Tax Authority HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the supplier is established

Relinquishment of Control includes entering into any agreement or arrangement under which control of the asset is not, or ceases to be, under the sole management of the Provider or a Sub-Contractor, and "relinquish" and related expressions are to be read accordingly

Remedial Action Plan or **RAP** a plan to rectify a breach of or performance failure under this Contract (or, where appropriate, a Previous Contract), specifying actions and improvements required, dates by which they must be achieved and consequences for failure to do so, as further described in GC8.12 (*Contract Management*)

Repeatable Prescription has the meaning given to it in regulation 3 of the PMS Regulations

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Responsible Commissioner the Service User's responsible commissioner as determined in accordance with the Law and applicable Guidance (including Who Pays? Guidance)

Restricted Person

- (i) any person, other than an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pension fund, private equity firm, venture capitalist, insurance company or investment trust, who has a material interest in the production of tobacco products or alcoholic beverages; or
- (ii) any person who the Co-ordinating Commissioner otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider or in a Material Sub-Contractor

Review Meeting a meeting to be held in accordance with GC7.1 (*Review*) at the intervals set out in the Particulars or as otherwise requested in accordance with GC7.4 (*Review*)

Review Record a written record of a Review Meeting as described in GC7.2 (*Review*)

Root Cause Analysis a systematic process whereby the factors that contributed to an incident are identified. As an investigation technique for Patient Safety Incidents, it looks beyond the individuals concerned and seeks to understand the underlying causes and environmental context in which an incident happened

Royal College of Psychiatrists Standards standards on the application of section 136 of the Mental Health Act 1983 (England and Wales), published by the Royal College of Psychiatrists (<http://www.rcpsych.ac.uk/usefulresources/publications/collegereports/cr/cr159.aspx>)

Run Off Benefit has the meaning given to it in the CNST Membership Rules

Safeguarding Lead the officer of the Provider responsible for implementation and dissemination of Safeguarding Policies, identified as such in the Particulars

Safeguarding Guidance *Working Together to Safeguard Children - A guide to inter-agency working to safeguard and promote the welfare of children – statutory guidance*
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281368/Working_together_to_safeguard_children.pdf
Care and Support Statutory Guidance issued under the Care Act
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315993/Care-Act-Guidance.pdf

Safeguarding Policies the Provider's written policies for safeguarding children, young people and adults, as appended in Schedule 2M (*Safeguarding Policies and MCA Policies*) and updated from time to time in accordance with SC24 (*Safeguarding, Mental Capacity and Prevent*)

Safeguarding Training Guidance Guidance in relation to safeguarding published by the Department for Education, including *Safeguarding children and young people: roles and competencies for health care staff*, available at:
[http://www.rcpch.ac.uk/sites/default/files/page/Safeguarding%20Children%20-%20Roles%20and%20Competences%20for%20Healthcare%20Staff%20%2002%200%20%20%20\(3\)_0.pdf](http://www.rcpch.ac.uk/sites/default/files/page/Safeguarding%20Children%20-%20Roles%20and%20Competences%20for%20Healthcare%20Staff%20%2002%200%20%20%20(3)_0.pdf).

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SCCI the Standardisation Committee for Care Information, the body with delegated responsibility for appropriate information standards for the health and social care system (or that body's predecessor): <http://www.NHS.Digital.gov.uk/isce>

Secretary of State the Secretary of State for Health and/or the Department of Health

Section 251 Regulations the Health Service (Control of Patient Information) Regulations 2002, made pursuant to section 251 of the 2006 Act

Security Shares, Debt Securities, unit trust schemes (as defined in the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing Debt Securities, warrants or options to subscribe or purchase securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company

Security Interest any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect including, any such agreements or arrangements which, in the reasonable opinion of the Co-ordinating Commissioner, amount to quasi-security

Senior Information Risk Owner the Provider's nominated person, being an executive or senior manager on the Governing Body of the Provider, whose role it is to take ownership of the organisation's information risk policy, act as champion for information risk on the Governing Body of the Provider and provide written advice to the accounting officer on the content of the organisation's statement of internal control in regard to information risk

Serious Incident has the meaning given to it in the NHS Serious Incident Framework

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

Service Condition or **SC** any Service Condition forming part of this Contract

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

Service Quality Performance Report the report required by Schedule 6A (*Reporting Requirements*)

Service Specifications the aggregate of the Commissioners' Service Requirements and the Provider's Service Proposals, set out in Schedule 2C (*Service Specifications*)

Service User a patient or service user for whom a Commissioner has statutory responsibility and who receives Services under this Contract

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

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Services the services (and any part or parts of those services) described in each of, or, as the context admits, all of the Service Specifications, and/or as otherwise provided or to be provided by the Provider under and in accordance with this Contract

Services Environment the rooms, theatres, wards, treatment bays, clinics or other physical location, space, area, accommodation or other place as may be used or controlled by the Provider from time to time in which the Services are provided, excluding Service Users' private residences, Local Authority premises, schools and premises controlled by the Responsible Commissioner

Services Environment Development Programme the programme for the development and improvement of the Services Environment set out or referred to in Schedule 10 (*Services Environment Development Programme and IT Development Programme*)

Seven Day Service Hospital Priority Clinical Standards standards 2, 5, 6 and 8 of the standards for seven day services, available via: <http://www.nhs.uk/improvement-programmes/acute-care/seven-day-services.aspx>

Seven Day Service Self-Assessment the self-assessment tool (7DSAT):
<http://www.7daysat.nhs.uk/>

Seventh Data Protection Principle the seventh principle set out in paragraphs 9-12 of Part II of Schedule 1 to the DPA
<http://www.legislation.gov.uk/ukpga/1998/29/schedule/1/part/II/crossheading/the-seventh-principle>

Shared Care Protocols shared care arrangements that are agreed at a regional or local level to enable the combination of primary and secondary care for the benefit of Service Users. They will, for example, support the seamless transfer of treatment from the tertiary to the secondary care sector and/or general practice

Shared Decision-Making the process of discussing options and the risks and benefits of various actions and courses of care or treatment based on the needs, goals and personal circumstances of the Service User, with a Service User and/or their Carer or Legal Guardian (as appropriate).

Shares has the meaning given in section 540 of the Companies Act 2006, including preference shares

Specialised Services the prescribed specialised services commissioned by NHS England as specified in the identification rules available at :
<http://www.england.nhs.uk/wp-content/uploads/2012/11/pss-ir.pdf>

Staff all persons (whether clinical or non-clinical) employed or engaged by the Provider or by any Sub-Contractor (including volunteers, agency, locums, casual or seconded personnel) in the provision of the Services or any activity related to or connected with the provision of the Services and/or the performance of any obligation of the Provider under this Contract or of a Sub-Contractor under any Sub-Contract

Staffing Guidance any Guidance applicable to the Services in relation to Staff numbers or skill-mix, including the National Quality Board publication *How to ensure the right people, with the right skills are in the right place at the right time: A guide to nursing, midwifery and care staffing capacity and capability*, available at: <http://www.england.nhs.uk/wp-content/uploads/2013/11/nqb-how-to-guid.pdf>

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Staff Survey Guidance guidance on the implementation of the NHS staff surveys and their applicability to different providers, available at:
<http://www.nhsstaffsurveys.com/Page/1056/Home/NHS-Staff-Survey-2016/>

Staff Transition and Development Programme the programme for the transfer, development and transition of Staff set out or referred to in Schedule 7A (*Staff Transition and Development Programme*)

Standard DBS Check a disclosure of information which contains details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions

Standard DBS Position any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236659/DBS_guideline_to_eligibility_v2.pdf

Sub-Contract any sub-contract entered into by the Provider or by any Sub-Contractor of any level for the purpose of the performance of any obligation on the part of the Provider under this Contract

Sub-Contractor any sub-contractor, whether of the Provider itself or at any further level of sub-contracting, under any Sub-Contract

Sub-Contractor Direct Agreement an agreement between the Commissioners (1), the Provider (2) and an immediate Sub-Contractor of the Provider in the form at Schedule 6B3 (*Sub-Contractor Direct Agreement*)

Subordinated Debt any funding in respect of which the repayment of capital and interest is designated by the Co-ordinating Commissioner as to be treated as Distributions

Subsidiary has the definition given to it in section 1159 of the Companies Act 2006

Succession Plan a plan for the transition of any affected Service on the expiry or termination of this Contract or of that Service (as appropriate), to include:

- (i) details of the affected Service;
- (ii) details of Service Users and/or user groups affected;
- (iii) the date on which the successor provider will take responsibility for providing the affected Service

Summary Care Record the system approved by the relevant Commissioner for the automated uploading, storing and displaying of Service User data relating to medications, allergies, adverse reactions and, where agreed with the Provider and subject to the Service User's consent, any other data taken from the Service User's electronic record

Summary Care Records Service the national system providing those treating Service Users in any emergency or out-of-hours with fast access to key clinical information, as described at:
<http://www.systems.NHS.Digital.gov.uk/scr>

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Surveys the Friends and Family Test, Service User surveys, Carer surveys, Staff Surveys and any other surveys reasonably required by the Commissioners in relation to the Services

SUS the Secondary Uses Services

SUS Guidance guidance in relation to the use of SUS (available at: <http://www.hscic.gov.uk/susguidance>), including ISB 0092 Amd 16/2010 which mandates the use of CDS v6.2 (available at: <http://content.digital.nhs.uk/isce/publication/isb0092?tabid=2>)

Suspension Event the occurrence of any of the following:

- (i) any Provider Default Event;
- (ii) any Commissioner having reasonable grounds to believe that, unless pre-emptive action is taken, a Provider Default Event is likely to occur;
- (iii) any Commissioner and/or any Regulatory or Supervisory Body having reasonable grounds to believe that the Provider is or may be in breach of the Law, or in material breach of the Quality Requirements or of regulatory compliance standards issued by a Regulatory or Statutory Body; or
- (iv) any Commissioner and/or any Regulatory or Supervisory Body having reasonable and material concerns as to the continuity, quality or outcomes of any Service, or for the health and safety of any Service User; or
- (v) the expiry or termination of any Mandatory Material Sub-Contract;
- (vi) the Provider receiving a Contract Performance Notice in respect of a Service within 12 months after having agreed to implement a Remedial Action Plan in respect of the same issue with that Service; or
- (vii) the Co-ordinating Commissioner, acting reasonably, considering that the circumstances constitute an emergency (which may include an Event of Force Majeure affecting provision of a Service or Services); or
- (viii) an Exception Report being issued under GC8.20 (*Contract Management*) and the Provider's Governing Body failing to procure the rectification of the relevant breach of the Remedial Action Plan within the timescales indicated in that Exception Report; or
- (ix) the Provider or any Sub-Contractor being prevented from providing a Service due to the termination, suspension, restriction or variation of any Consent or Monitor's Licence

Comment [DS28]: Note additional suspension event

Sustainability and Transformation Fund the arrangement described in *Delivering the Forward View: NHS planning guidance 2016/17 – 2020/21* (<https://www.england.nhs.uk/ourwork/futurenhs/deliver-forward-view/>) through which NHS Trusts and Foundation Trusts can access non-recurrent funding

System of Clinical and Service Governance a framework through which the Provider endeavours continuously to improve the quality of its Services and safeguard high standards of care by creating an environment in which clinical and service excellence can flourish

Template Guarantee the template guarantee set out in Schedule 11 (*Guarantee*)

Template Sub-Contract the template sub-contract available at: []

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Test Date the last day of each Quarter of each Contract Year

Transaction Records the accounts and transaction records of all payments, receipts and financial and other information relevant to the provision of the Services

Transfer and Discharge Guidance and Standards

- (i) *Transition between inpatient hospital settings and community or care home settings for adults with social care needs* (NICE guideline NG27) (<https://www.nice.org.uk/guidance/ng27>)
- (ii) *Transition between inpatient mental health settings and community or care home settings* (NICE guideline NG53) (<https://www.nice.org.uk/guidance/ng53>)
- (iii) Care and support statutory guidance (<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>)
- (iv) *the Assessment, Discharge and Withdrawal Notices between Hospitals and Social Services Information Standard (SCC12075)*

Transfer of and Discharge from Care Protocols the protocols (to include all locally-agreed requirements in respect of information to be provided to the Service User and/or Referrer relating to updates on progress through the care episode, transfer and discharge) set out at Schedule 2M (*Transfer of and Discharge from Care Protocols*) and which must include content based on the national template policy, *Supporting Patients' Choices to Avoid Long Hospitals Stays* (www.nhs.uk/NHSEngland/keogh-review/Documents/quick-guides/background-docs/TEMPLATE-POLICY.docx)

Transfer of Care the transfer of primary responsibility for a Service User's care from the Provider to another unit, hospital, responsible clinician or service provider within the pathway

Transition Arrangements the transition arrangements agreed between the Parties (and, where appropriate, with any previous provider of the Services) for transition of provision of the Services to the Provider, set out in Schedule 2K (*Transition Arrangements*)

Transparency Guidance the guidance in relation to the publication of tender documentation and the publication of contracts, available via:
<https://www.gov.uk/government/collections/nhs-procurement>

TUPE the Transfer of Undertakings (Protection of Employment) Regulations 2006 and EC Council Directive 77/187

UK Standard Methods for Investigation a comprehensive referenced collection of recommended algorithms and procedures for clinical microbiology:
<https://www.gov.uk/government/collections/standards-for-microbiology-investigations-smi>

Urgent Care Data Sharing Agreement an agreement providing for the sharing of certain clinical data between commissioners and providers of urgent and emergency care services in accordance with *Data Sharing Requirements to support Development of Urgent and Emergency Care Dashboards – Guidance for Data Providers* available at <https://www.england.nhs.uk/nhs-standard-contract/17-18/>

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Variable Elements

- (i) Particulars: – local insertions and selections only: [refer to Contract Technical Guidance]
- (ii) Service Conditions – application only: [refer to Contract Technical Guidance]

Variation a variation to the provisions of this Contract agreed to be made by the Parties in accordance with GC16 (*Variations*) which may be a Service Variation, a National Variation, or any other variation

Variation Agreement an agreement in writing in the form available at:

<https://www.england.nhs.uk/nhs-standard-contract/17-18/>

VAT value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994

Vehicle any transport vehicle or aircraft, whether emergency or otherwise, to be used by the Provider in providing the Services

Very Senior Manager whether or not the relevant NHS Employer operates the *Pay Framework for Very Senior Managers in Strategic and Special Health Authorities, Primary Care Trusts and Ambulance Trusts*, an individual as described in paragraph 4 of that framework, whether that individual is engaged under a contract of employment or a contract for services

Whole Population Annual Payment or **WPAP** the sum in respect of the relevant Contract Year set out or determined in accordance with Schedule 4A (*Whole Population Annual Payment*)

Who Pays? Guidance *Who Pays? Determining the responsibility for payments to providers*, available at: <https://www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf>

Withholding and Retention of Payment Provisions the provisions in this Contract relating to withholding and/or retention of payment as set out in GC9.8 to 9.12 (*Information Requirements*)

WPAP Review Date each date identified as such in Schedule 4B (*Adjustment of Whole Population Annual Payment*)

WRAP the methodology approved by the Home Office to raise awareness of the Government Prevent Strategy to frontline workers involved in the delivery of healthcare which is also known as the *Health Workshop to Raise Awareness of Prevent*

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