



# **NHS Standard Contract 2017/18 and 2018/19 General Conditions (Shorter Form)**

**Updated January 2018**

# **NHS Standard Contract**

## **2017/18 and 2018/19**

### **General Conditions (Shorter Form)**

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This document is part of the NHS Standard Contract 2017-19 (January 2018). It has now been superseded by the May 2018 edition and, with effect from 25 May 2018, must not be used by commissioners and providers entering into new contracts. With effect from 25 May 2018, new contracts must be on the NHS Standard Contract 2017-19 (May 2018 edition) form. The NHS Standard Contract (May 2018 edition) is available at <https://www.england.nhs.uk/nhs-standard-contract/2017-19-update-may/>.

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## **GC1 Definitions and Interpretation**

- 1.1 This Contract is to be interpreted in accordance with the Definitions and Interpretation, unless the context requires otherwise.
- 1.2 If there is any conflict or inconsistency between the provisions of this Contract, that conflict or inconsistency must be resolved according to the following order of priority:
- 1.2.1 the General Conditions;
  - 1.2.2 the Service Conditions; and
  - 1.2.3 the Particulars,
- unless this Contract expressly states otherwise.

## **GC2 Effective Date and Duration**

- 2.1 This Contract will take effect on the Effective Date.
- 2.2 This Contract expires on the Expiry Date, unless terminated earlier in accordance with GC17 (*Termination*).

## **GC3 Service Commencement**

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

## **GC4 Transition Period**

- 4.1 The Provider must satisfy each Condition Precedent 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 Parties must work together to facilitate the delivery of the Services with effect from the Expected Service Commencement Date.
- 4.3 The Provider must notify the Co-ordinating Commissioner of any material change to any Conditions Precedent document it has delivered under GC4.1 within 5 Operational Days of becoming aware of that change.

## **GC5 Staff**

### **General**

- 5.1 The Provider must apply the Principles of Good Employment Practice (where applicable) and the staff pledges and responsibilities outlined in the NHS Constitution.
- 5.2 The Provider must comply with regulations 18 and 19 of the 2014 Regulations, and without prejudice to that obligation must ensure that there are sufficient appropriately registered, qualified and experienced medical, nursing and other clinical and non-clinical Staff to enable the Services to be provided in all respects and at all times in accordance with this Contract.

- 5.3 The Provider must ensure that all Staff:
- 5.3.1 if applicable, are registered with and where required have completed their revalidations by the appropriate professional regulatory body;
  - 5.3.2 have the appropriate qualifications, experience, skills and competencies to perform the duties required of them and are appropriately supervised (including where appropriate through preceptorship, clinical supervision and rotation arrangements), managerially and professionally;
  - 5.3.3 are covered by the Provider's (and/or by the relevant Sub-Contractor's) Indemnity Arrangements for the provision of the Services;
  - 5.3.4 carry, and where appropriate display, valid and appropriate identification; and
  - 5.3.5 are aware of and respect equality and human rights of colleagues, Service Users, Carers and the public.
- 5.4 The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:
- 5.4.1 proper and sufficient induction, continuous professional and personal development, clinical supervision, training and instruction;
  - 5.4.2 full and detailed appraisal (in terms of performance and on-going education and training) using where applicable the Knowledge and Skills Framework or a similar equivalent framework; and
  - 5.4.3 professional leadership appropriate to the Services,
- each in accordance with Good Practice and the standards of their relevant professional body, if any.
- 5.5 The Provider must cooperate with the LETB and Health Education England in the manner and to the extent they request in planning the provision of, and in providing, education and training for healthcare workers, and must provide them with whatever information they request for such purposes. The Provider must have regard to the HEE Quality Framework.
- 5.6 If any Staff are members of the NHS Pension Scheme the Provider must participate and must ensure that any Sub-Contractors participate in any applicable data collection exercise and must ensure that all data relating to Staff membership of the NHS Pension Scheme is up to date and is provided to the NHS Business Services Authority in accordance with Guidance.
- 5.7 The Provider must:
- 5.7.1 appoint one or more Freedom To Speak Up Guardians to fulfil the role set out in and otherwise comply with the requirements of National Guardian's Office Guidance;
  - 5.7.2 ensure that the Co-ordinating Commissioner is kept informed at all times of the person or persons holding this position;
  - 5.7.3 have in place, promote and operate (and must ensure that all Sub-Contractors have in place, promote and operate) a policy and effective procedures, in accordance with Raising Concerns Policy for the NHS, to ensure that Staff have appropriate means through which they may raise any concerns they may have in relation to the Services; and
  - 5.7.4 ensure that nothing in any contract of employment or contract for services or any other agreement entered into by it or any Sub-Contractor with any member of Staff will prevent or inhibit, or purport to prevent or inhibit, the making of any protected disclosure (as defined in section 43A of the

Employment Rights Act 1996) by that member of Staff nor affect the rights of that member of Staff under that Act in relation to protected disclosures.

### **Pre-employment Checks**

5.8 Subject to GC5.9, before the Provider or any Sub-Contractor engages or employs any person in the provision of the Services, or in any activity related to or connected with, the provision of Services, the Provider must and must ensure that any Sub-Contractor will, at its own cost, comply with:

5.8.1 NHS Employment Check Standards; and

5.8.2 other checks as required by the DBS or which are to be undertaken in accordance with current and future national guidelines and policies.

5.9 The Provider or any Sub-Contractor may engage a person in an Enhanced DBS Position or a Standard DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Co-ordinating Commissioner and subject to any additional requirement of the Co-ordinating Commissioner for that engagement.

### **TUPE**

5.10 The provisions of Schedule 8 (*TUPE*) (if any) will apply.

### **GC6 – GC7 Intentionally Omitted**

### **GC8 Review**

8.1 At the request of either the Co-ordinating Commissioner or the Provider they will as soon as practicable hold a Review Meeting to review and discuss any matters that either considers necessary in relation to this Contract.

### **GC9 Contract Management**

9.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Requirement and the Provider fails to meet the Quality Requirement, the Co-ordinating Commissioner will be entitled to exercise the agreed consequence immediately and without issuing a Contract Performance Notice, irrespective of any other rights the Co-ordinating Commissioner may have under this GC9.

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

### **Contract Performance Notice**

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

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

### **Contract Management Meeting**

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

- 9.6 At the Contract Management Meeting the Co-ordinating Commissioner and the Provider must agree either:
- 9.6.1 that the Contract Performance Notice is withdrawn; or
  - 9.6.2 the actions and improvements required, which Party is responsible for completion of each action or improvement, and the date by which each action or improvement, to remedy the failure in question.

### **Remedial Action**

- 9.7 The Provider and each relevant Commissioner must implement the actions and achieve and maintain the improvements applicable to it within the timescales and otherwise as agreed in accordance with GC9.6.
- 9.8 If either the Provider or any Commissioner fails to complete an action required of it, or to deliver or maintain the improvement required of it within the timescales and otherwise as agreed in accordance with GC9.6 (except as a result of an act or omission or the unreasonableness of any Commissioner or the Provider, as appropriate), then the Co-ordinating Commissioner or the Provider (as appropriate) may, at its discretion, exercise whatever remedies under this Contract it considers appropriate in relation to that failure.
- 9.9 If the Provider has been granted access to the general element of the Sustainability and Transformation Fund, and has, as a condition of access:
- 9.9.1 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 both; and
  - 9.9.2 (where required by those bodies):
    - 9.9.2.1 agreed with those bodies and with the Commissioners specific performance trajectories to be achieved during the Contract Year 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 2G (*Other Local Agreements, Policies and Procedures*)); and/or
    - 9.9.2.2 submitted to those bodies assurance statements setting out commitments on performance against specific Operational Standards and National Quality Requirements to be achieved during the Contract Year 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 2G (*Other Local Agreements, Policies and Procedures*)),

no Commissioner may withhold or retain payment under this GC9 (*Contract Management*) or otherwise in relation to any breach of any threshold which occurs 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 or National Quality Requirement shown in bold italics in Schedule 4A (*Operational Standards and National Quality Requirements*) and/or any failure to comply with specific performance trajectories or assurances as referred to above.

### **GC10 Co-ordinating Commissioner and Representatives**

- 10.1 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.
- 10.2 The Commissioner Representatives and the Provider Representative will be the relevant Party's respective key points of contact for day-to-day communications.

## **GC11 Liability and Indemnity**

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

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

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

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

11.1.2 any Losses of the Provider,

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

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

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

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

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

11.2.2 any Losses of the Commissioner,

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

11.3 The Provider must put in place and maintain in force (and procure that its Sub-Contractors put in place and maintain in force) until its (or their) liability may reasonably be considered to have ceased, at its (or their) own cost (and not that of any employee), appropriate Indemnity Arrangements in respect of:

11.3.1 employers' liability;

11.3.2 clinical negligence, where the provision or non-provision of any part of the Services (or any other services under this Contract) may result in a clinical negligence claim;

11.3.3 public liability; and

11.3.4 professional negligence.

11.4 Within 5 Operational Days following written request from the Co-ordinating Commissioner, the Provider must provide documentary evidence that Indemnity Arrangements required under GC11.3 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

- 11.5 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 GC11.3 in respect of 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. 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.
- 11.6 If the proceeds of any Indemnity Arrangements are insufficient to cover the settlement of any claim relating to this Contract the Provider must make good any deficiency.
- 11.7 Nothing in this Contract will exclude or limit the liability of either Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation.
- 11.8 Except where expressly stated to the contrary, an indemnity under this Contract will not apply and there will be no right to claim damages for breach of this Contract, in tort or on any other basis whatsoever, to the extent that any loss claimed by any Party under that indemnity or on that basis is for Indirect Losses.
- 11.9 Each Party will at all times take all reasonable steps to minimise and mitigate any Losses or other matters for which one Party is entitled to be indemnified by or to bring a claim against the other under this Contract.

## **GC12 Assignment and Sub-contracting**

- 12.1 The Provider must not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or obligations or duties under this Contract without the prior written approval of the Co-ordinating Commissioner. The approval of any sub-contracting arrangement may include approval of the terms of the proposed Sub-Contract.
- 12.2 Sub-contracting any part of this Contract will not relieve the Provider of any of its obligations or duties under this Contract. The Provider will be responsible for the performance of and will be liable to the Commissioners for the acts and/or omissions of all Sub-Contractors as though they were its own.
- 12.3 Any positive obligation or duty on the part of the Provider under this Contract includes an obligation or duty to ensure that all Sub-Contractors comply with that positive obligation or duty. Any negative duty or obligation on the part of the Provider under this Contract includes an obligation or duty to ensure that all Sub-Contractors comply with that negative obligation or duty.
- 12.4 This Contract will be binding on and will be to the benefit of the Provider and each Commissioner and their respective successors and permitted transferees and assigns.

## **GC13 Variations**

- 13.1 This Contract may not be amended or varied except in accordance with this GC13.
- 13.2 The Parties:
- 13.2.1 may agree to vary any of the Variable Elements; and
  - 13.2.2 may not vary any provision of this Contract that is not a Variable Element except in order to implement a National Variation.
- 13.3 Subject to GC13.2, the provisions of this Contract may be varied at any time by a Variation Agreement signed by the Co-ordinating Commissioner on behalf of the Commissioners and by the authorised signatory of the Provider.



- 13.4 The Parties acknowledge that any National Variation may be mandated by NHS England. If the Provider refuses to accept a National Variation, the Co-ordinating Commissioner may terminate this Contract by giving the Provider not less than 3 months' written notice following the issue of a notice that that National Variation is refused.

#### **GC14 Dispute Resolution**

- 14.1 If any dispute arises out of or in connection with this Contract, the Parties in dispute must, within 10 Operational Days of a written request from one Party to the other, meet and attempt in good faith to resolve it. If the dispute is not resolved within 20 Operational Days of that written request, a member of the Governing Body of each relevant Party, with authority to settle the dispute, shall meet and attempt wholly to resolve the dispute.
- 14.2 If the Parties are unable to resolve the dispute within 20 Operational Days of the meeting of Governing Body members under GC14.1, they must, within a further 5 Operational Days of that meeting, submit the dispute to mediation. The mediation will be arranged jointly by NHS Improvement and NHS England (where the Provider is an NHS Trust), or by CEDR (or such other independent body as the Parties may agree in writing before the initiation of the mediation), and the mediation will follow the process specified by the relevant mediating body.
- 14.3 If the Parties are unable to settle the dispute through mediation, the dispute must be referred to expert determination for final resolution. The expert must be appointed by agreement in writing between the Parties. If the Parties cannot agree on an expert within 10 Operational Days, or if the relevant person is unable or unwilling to act, the expert will be appointed by CEDR. The expert must act as an expert and not as an arbitrator, and must act fairly and impartially, and the expert's determination will (in the absence of manifest error, fraud, collusion, bias or material breach of instructions on the part of the expert) be final and binding on the Parties.
- 14.4 The expert will decide the procedure to be followed in the determination and must make the determination within 30 Operational Days of his appointment (or to such other timescale as the Parties agree) and the Parties must assist and provide the documentation that the expert requires for the purpose of the determination.
- 14.5 Each Party will bear its own costs in relation to the expert determination. The expert's fees and properly incurred costs will be borne by the Parties equally or in such other proportions as the expert may direct.
- 14.6 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 14.7 Nothing in this GC14 prevents any Party seeking an injunction relating to any matter arising under GC20 (*Confidential Information of the Parties*).

#### **GC15 Governance, Transaction Records and Audit**

- 15.1 The Provider must comply with regulation 17 of the 2014 Regulations.
- 15.2 The Provider must comply with all reasonable written requests made by any relevant Regulatory or Supervisory Body (or its authorised representatives), a Local Auditor, or any Authorised Person for access to the Provider's Premises and/or the Services Environment and/or the premises of any Sub-Contractor, and/or to Staff, and/or information relating to the provision of the Services:
- 15.2.1 to audit or inspect those premises and/or the provision of the Services; or
- 15.2.2 in connection with the detection and investigation of bribery, fraud, corruption or security incidents.

- 15.3 Subject to compliance with the Law and Good Practice the Parties must implement and/or respond to all relevant recommendations:
- 15.3.1 made in any report by a relevant Regulatory or Supervisory Body; or
  - 15.3.2 agreed with the National Audit Office or a Local Auditor following any audit; or
  - 15.3.3 of any appropriate clinical audit; or
  - 15.3.4 that are otherwise agreed by the Provider and the Co-ordinating Commissioner to be implemented.
- 15.4 The Parties must maintain complete and accurate Transaction Records.
- 15.5 The Provider must, at its own expense, in line with applicable Law and Guidance implement an ongoing, proportionate programme of clinical audit of the Services in accordance with Good Practice and provide to the Co-ordinating Commissioner on request the findings of any such audits.
- 15.6 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. Subject to any applicable Service User consent requirements, the Provider must allow the Auditor reasonable access to (and the right to take copies of) the Transaction Records, books of account and other sources of relevant information, and any Confidential Information so disclosed will be treated in accordance with GC20 (*Confidential Information of the Parties*). The cost of any audit carried out under this GC15.6 will be borne by the Commissioners.

## **GC16 Suspension**

- 16.1 If a Suspension Event occurs the Co-ordinating Commissioner may by written notice to the Provider require the Provider with immediate effect to suspend all or part of the Services.
- 16.2 If and when the Co-ordinating Commissioner is reasonably satisfied that the Provider is able to and will provide the suspended Service to the required standard, it must by written notice require the Provider to restore the provision of the suspended Service.
- 16.3 The Provider will not be entitled to any payment for the suspended Services in respect of the period of suspension.
- 16.4 Unless suspension occurs as a result of an Event of Force Majeure, the Provider will indemnify the Commissioners in respect of any Losses reasonably incurred by them in respect of a suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service from an alternative provider).
- 16.5 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.

## **GC17 Termination**

### **Termination: No Fault**

- 17.1 The Co-ordinating Commissioner and the Provider may terminate this Contract or any Service at any time by mutual agreement.
- 17.2 Either the Co-ordinating Commissioner or the Provider may terminate this Contract by giving to the other written notice of not less than the Notice Period.

- 17.3 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.

**Termination: Commissioner Default**

- 17.4 The Provider may terminate this Contract, in whole or in respect of the relevant Commissioners, with immediate effect, by written notice to the Co-ordinating Commissioner:
- 17.4.1 if at any time the aggregate undisputed amount properly due to the Provider from any Commissioner exceeds the lower of 25% of the Expected Annual Contract Value or £25,000 and full payment is not made within 20 Operational Days of receipt of written notice from the Provider referring to this GC17.4 and requiring payment to be made; or
  - 17.4.2 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 20 Operational Days of the Co-ordinating Commissioner's receipt of the Provider's written notice identifying the breach.

**Termination: Provider Default**

- 17.5 The Co-ordinating Commissioner may terminate this Contract or any affected Service, with immediate effect, by written notice to the Provider if:
- 17.5.1 any Condition Precedent is not met by the relevant Longstop Date; or
  - 17.5.2 the Provider ceases to carry on its business or substantially all of its business; or
  - 17.5.3 a Provider Insolvency Event occurs; or
  - 17.5.4 the Provider is in breach of any material obligation, or has persistently breached any obligation, on its part under this Contract and, if capable of remedy, the Provider fails to remedy the breach or breaches within 20 Operational Days following receipt of notice from the Co-ordinating Commissioner requiring it to do so; or
  - 17.5.5 termination is required by any Regulatory or Supervisory Body; or
  - 17.5.6 the NHS Business Services Authority has notified the Commissioners that the Provider or any Sub-Contractor has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter); or
  - 17.5.7 the Co-ordinating Commissioner reasonably believes that the circumstances set out in regulation 73(1)(b) of the Public Contracts Regulations 2015 apply.

**GC18 Consequence of Expiry or Termination**

- 18.1 Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- 18.2 Before and after termination or expiry of this Contract or of any Service the Provider must 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.

## **GC19 Provisions Surviving Termination**

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

## **GC20 Confidential Information of the Parties**

20.1 Without prejudice to the obligations of the Parties under SC28 (*Information Requirements*) in relation to personal information that is confidential, each Party must, except as permitted by this GC20, keep confidential all information disclosed to it by any other Party in connection with this Contract, and must use all reasonable endeavours to prevent their Staff from making any disclosure to any person of that information.

20.2 GC20.1 will not apply to disclosure of information that:

20.2.1 is in or comes into the public domain other than by breach of this Contract;

20.2.2 the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or

20.2.3 the receiving Party can prove it obtained or was able to obtain from a source other than the disclosing Party without breaching any obligation of confidence.

20.3 A Party may disclose the other Party's Confidential Information:

20.3.1 to comply with applicable Law;

20.3.2 to any appropriate Regulatory or Supervisory Body;

20.3.3 in connection with any dispute resolution or litigation between the Parties;

20.3.4 as permitted under any other express arrangement or other provision of this Contract; and

20.3.5 where the disclosing Party is a Commissioner, to NHS Bodies for the purposes of carrying out their duties.

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

### **Information Governance – General Responsibilities**

21.1 The Parties acknowledge their respective obligations arising under FOIA, DPA, EIR and HRA, and under the common law duty of confidentiality, and must assist each other as necessary to enable each other to comply with these obligations.

21.2 The Provider must complete and publish an annual information governance assessment 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.

21.3 The Provider must:

21.3.1 nominate an Information Governance Lead;

21.3.2 nominate a Caldicott Guardian and Senior Information Risk Owner, each of whom must be a member of the Provider's Governing Body;

- 21.3.3 ensure that the Co-ordinating Commissioner is kept informed at all times of the identities and contact details of the Information Governance Lead, Caldicott Guardian and the Senior Information Risk Owner; and
- 21.3.4 ensure that NHS England and 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).
- 21.4 The Provider must adopt and implement the National Data Guardian's Data Security Standards and must comply with further Guidance issued by the Department of Health, NHS England and/or NHS Digital pursuant to or in connection with Standards. The Provider must be able to demonstrate its compliance with those Standards in accordance with the requirements and timescales set out in such Guidance, including requirements for enabling patient choice.
- 21.5 The Provider must, at least once in each Contract Year, audit its practices against quality statements regarding data sharing set out in NICE Clinical Guideline 138.
- 21.6 The Provider must ensure that its NHS Information Governance Toolkit (or any successor framework) 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 (or any successor framework) and on its website.
- 21.7 The Provider must report and publish any Data Breach and any Information Governance Breach in accordance with IG Guidance for Serious Incidents.
- 21.8 The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, the information specified in paragraph 2(3) of Part II of Schedule 1 DPA ("fair processing information" or "privacy notices") and for the dissemination of nationally-produced patient information materials.
- 21.9 The Parties acknowledge that:
  - 21.9.1 in relation to Personal Data processed by the Provider for the purpose of delivering the Services the Provider will be sole Data Controller; and
  - 21.9.2 in relation to Personal Data, the processing of which is required by a Commissioner for the purposes of quality assurance, performance management and contract management, that Commissioner and the Provider will be joint Data Controllers.
- 21.10 The Provider must ensure that all Personal Data processed by the Provider in the course of delivering the Services is processed in accordance with the relevant Parties' obligations under the DPA.
- 21.11 In relation to Personal Data processed by the Provider in the course of delivering the Services, the Provider must publish, maintain and operate:
  - 21.11.1 policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Practice;
  - 21.11.2 policies that describe the personal responsibilities of Staff for handling Personal Data;
  - 21.11.3 a policy that supports the Provider's obligations under the NHS Care Records Guarantee;
  - 21.11.4 agreed protocols to govern the sharing of Personal Data with partner organisations; and
  - 21.11.5 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.

21.12 Where a Commissioner requires information for the purposes of quality management of care processes, the Provider must consider whether the Commissioner's request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Commissioner, the Provider must:

21.12.1 provide such information in pseudonymised form where possible; and in any event

21.12.2 ensure that there is a lawful basis for the sharing of Personal Data.

21.13 Notwithstanding GC21.12, the Provider must (unless it can lawfully justify non-disclosure) disclose defined or specified confidential patient information to or at the request of the Co-ordinating Commissioner where support has been provided under the Section 251 Regulations, respecting any individual Service User's objections and complying with other conditions of the relevant approval.

### **Responsibilities when engaging Sub-Contractors**

21.14 Subject always to GC12 (*Assignment and Sub-Contracting*), if the Provider is to engage any Sub-Contractor to deliver any part of the Services (other than as a Data Processor) and the Sub-contractor is to access personal or confidential 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 GC21.

21.15 Without prejudice to GC12 (*Assignment and Sub-Contracting*), if the Provider is to require any Sub-Contractor to process Personal Data on its behalf, the Provider must:

21.15.1 require that Sub-Contractor to provide sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;

21.15.2 ensure that the Sub-Contractor is engaged under the terms of a written agreement requiring the Sub-Contractor to:

21.15.2.1 process such personal data only in accordance with the Provider's instructions;

21.15.2.2 comply at all times with obligations equivalent to those imposed on the Provider by virtue of the Seventh Data Protection Principle;

21.15.2.3 allow rights of audit and inspection in respect of relevant data handling systems to the Provider or to the Co-ordinating Commissioner or to any person authorised by the Provider or by the Co-ordinating Commissioner to act on its behalf; and

21.15.2.4 impose on its own Sub-Contractors (in the event the Sub-Contractor further sub-contracts any of its obligations under the Sub-Contract) obligations that are substantially equivalent to the obligations imposed on the Sub-Contractor by this GC21.15.

### **The Provider as a Data Processor**

21.16 Notwithstanding GC21.9, where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of a Commissioner, the Provider must:

21.16.1 process relevant Personal Data only to the extent necessary to perform its obligations under this Contract, and only in accordance with instructions given by the Commissioner;

21.16.2 take appropriate technical and organisational measures against any unauthorised or unlawful processing of that Personal Data, and against the accidental loss or destruction of or damage to

such Personal Data having regard to the state of technological development, the nature of the data to be protected and the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;

- 21.16.3 take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in GC21.11; and
- 21.16.4 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Commissioner.

### **Freedom of Information and Transparency**

- 21.17 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:
  - 21.17.1 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;
  - 21.17.2 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;
  - 21.17.3 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;
  - 21.17.4 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;
  - 21.17.5 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
  - 21.17.6 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.
- 21.18 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.
- 21.19 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.

- 21.20 In preparing a copy of this Contract for publication under GC21.19 the Commissioners may consult with the Provider to inform decision-making regarding any redactions but the final decision in relation to the redaction of information will be at the Commissioners' absolute discretion.
- 21.21 The Provider must assist and cooperate with the Commissioners to enable the Commissioners to publish this Contract.

## **GC22 Intellectual Property**

- 22.1 Except as set out expressly in this Contract no Party will acquire the IPR of any other Party.
- 22.2 The Provider grants the Commissioners a fully paid-up, non-exclusive, 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.
- 22.3 The Commissioners grant the Provider a fully paid-up, non-exclusive licence:
- 22.3.1 to use the Commissioner Deliverables; and
  - 22.3.2 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.
- 22.4 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.

## **GC23 NHS Identity, Marketing and Promotion**

- 23.1 The Provider must comply with NHS Identity Guidelines.
- 23.2 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 reasonably be required to allow the Secretary of State to maintain and enforce his rights in respect of the NHS Identity.
- 23.3 The Provider must indemnify the Secretary of State and the Commissioners for any Losses suffered in relation to 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 a defective product by the Provider or any Staff or Sub-Contractor in the provision of the Services.

## **GC24 Change in Control**

- 24.1 This GC24 applies to any Change in Control in respect of the Provider or any Sub-Contractor, but not to a Change in Control of a company which is a Public Company.
- 24.2 Without prejudice to GC24.3 the Provider must, as soon as possible following a Change in Control, notify the Co-ordinating Commissioner of that Change in Control and must supply to the Co-ordinating Commissioner whatever further information relating to the Change in Control the Co-ordinating Commissioner may reasonably request.



24.3 Notwithstanding any other provision of this Contract:

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

## **GC25 Warranties**

- 25.1 The Provider warrants to each Commissioner that 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.
- 25.2 The Provider warrants to each Commissioner that 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

## **GC26 Prohibited Acts**

- 26.1 The Provider must not commit any Prohibited Act.
- 26.2 If the Provider or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act in relation to this Contract with or without the knowledge of the Co-ordinating Commissioner, the Co-ordinating Commissioner will be entitled:
  - 26.2.1 to exercise its right to terminate under GC17.4 (*Termination*) and to recover from the Provider the amount of any loss resulting from the termination; and
  - 26.2.2 to recover from the Provider the amount or value of any gift, consideration or commission concerned; and
  - 26.2.3 to recover from the Provider any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

## **GC27 Conflicts of Interest and Transparency on Gifts and Hospitality**

- 27.1 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.
- 27.2 The Provider must and must ensure that, in delivering the Services, all Staff comply with Law, with Managing Conflicts of Interest in the NHS and other Guidance, and with Good Practice, in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.

## **GC28 Force Majeure**

- 28.1 If an Event of Force Majeure occurs, the Affected Party must:
- 28.1.1 take all reasonable steps to mitigate the consequences of that event;
  - 28.1.2 resume performance of its obligations as soon as practicable; and
  - 28.1.3 use all reasonable efforts to remedy its failure to perform its obligations under this Contract.
- 28.2 The Affected Party must notify the other Parties immediately when it becomes aware of the Event of Force Majeure, giving detail of the Event of Force Majeure and its likely impact on the delivery of the Services
- 28.3 If it has complied with its obligations under GC28.1 and 28.2, 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.

## **GC29 Third Party Rights**

- 29.1 A person who is not a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Contract, except that, to the extent that it applies in its or their favour, this Contract may be enforced by:
- 29.1.1 a person who is the Provider's employee and is performing the Services for the Provider, if the matter to be enforced or the benefit to be enjoyed arises under GC5 (*Staff*), other than GC5.2 and GC5.3.2 (*Staff*);
  - 29.1.2 the Secretary of State;
  - 29.1.3 a Regulatory or Supervisory Body;
  - 29.1.4 any CCG or Local Authority;
  - 29.1.5 the NHS Business Services Authority;
  - 29.1.6 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 of any Service, if the matter to be enforced or the benefit to be enjoyed arises under Schedule 8 (*TUPE*).
- 29.2 Subject to GC13.2.2 (*Variations*), the rights of the Parties to terminate, rescind or agree any Variation, waiver or settlement under this Contract are not subject to the consent of any person who is not a party to this Contract.

## **GC30 Entire Contract**

- 30.1 This Contract constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Contract, except for any contract entered into between the Commissioners and the Provider to the extent that it relates to the same or similar services and is designed to remain effective until the Service Commencement Date.

## **GC31 Severability**

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

### **GC32 Waiver**

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

### **GC33 Remedies**

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

### **GC34 – GC35 Intentionally Omitted**

### **GC36 Notices**

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

36.2 Notices:

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

36.2.2 by hand will be effective upon delivery; and

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

### **GC37 Costs and Expenses**

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

### **GC38 Counterparts**

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

### **GC39 Governing Law and Jurisdiction**

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

39.2 Subject to the provisions of GC14 (*Dispute Resolution*), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceedings or dispute in connection with this Contract (whether contractual or non-contractual in nature).

## DEFINITIONS AND INTERPRETATION

1. The headings in this Contract will not affect its interpretation.
2. Reference to any statute or statutory provision, to Law, or to Guidance, includes a reference to that statute or statutory provision, Law or Guidance as from time to time updated, amended, extended, supplemented, re-enacted or replaced.
3. Reference to a statutory provision includes any subordinate legislation made from time to time under that provision.
4. References to Conditions 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:

**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

**2006 Act** the National Health Service Act 2006

**2008 Act** the Health and Social Care Act 2008

**2012 Act** the Health and Social Care Act 2012

**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

**Activity** Service User flows and clinical activity under this Contract

**Activity and Finance Report** a report showing actual Activity and the associated costs to Commissioners, in the format agreed and specified in Schedule 6A (*Reporting Requirements*)

**Actual Quarterly Value** 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 CQUIN Indicator but before any deductions, withholdings or set-off), as reconciled under SC36 (*Payment Terms*), excluding the value of any items or Activity on which CQUIN is not payable, as set out in CQUIN guidance

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

**Auditor** an appropriately qualified, independent third party auditor appointed by the Co-ordinating Commissioner in accordance with GC15.6 (*Governance, Transaction Records and Audit*)

**Authorised Person**

- (i) any Commissioner or their authorised representatives;
- (ii) any body or person concerned with the treatment or care of a Service User approved by any Commissioner;
- (iii) (for the purposes permitted by Law) any authorised representative of any Regulatory or Supervisory Body;
- (iv) NHS Protect or any body or person appointed by an Commissioner in connection with the investigation of bribery, fraud, corruption or security incidents

**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

**Block Arrangement** an arrangement described in Schedule 3A (*Local Prices*) under which an overall fixed price is agreed which is not varied as a result of any changes in Activity levels

**Business Continuity Plan** the Provider's plan for continuity of all of the Services in adverse circumstances, which is in accordance with the NHS England Business Continuity Management Framework (Service Resilience) and the principles of PAS 2015 (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 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)

**Carer** a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage

**CEDR** the Centre for Effective Dispute Resolution

**Change in Control**

- (i) any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the ability to control the exercise of 50% or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters), provided that a Change in Control will be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation; or
- (ii) any change in the ability to control an NHS Foundation Trust, NHS Trust or NHS Body by virtue of the entering into of any franchise, management or other agreement or arrangement, under the terms of which the control over the management of the relevant NHS Foundation Trust, NHS Trust or NHS Body is conferred on another person without the Co-ordinating Commissioner's prior written consent

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

**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 Abuse and Sexual Exploitation Guidance

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

**Code of Practice on the Prevention and Control of Infections** the *Health and Social Care Act 2008: Code of Practice on the prevention and control of infections* and related guidance, available at: <https://www.gov.uk/government/publications/the-health-and-social-care-act-2008-code-of-practice-on-the-prevention-and-control-of-infections-and-related-guidance>

**Commissioner** 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 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 Representative** a person identified as such in the Particulars

**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 GC21 (*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

**Consent**

- (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or
- (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

**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 GC9.4 (*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 GC9.5 (*Contract Management*) alleging failure by any Commissioner to comply with any obligation on its part under this Contract, 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

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

**CQUIN** Commissioning for Quality and Innovation

**CQUIN Account** an account prepared by or on behalf of the Provider which identifies the CQUIN Payments to which the Provider is entitled, on the basis of the Provider's performance against the CQUIN Indicators during the relevant Contract Year

**CQUIN Guidance** CQUIN guidance for the relevant Contract Year, as published by NHS England from time to time

**CQUIN Indicator** an indicator or measure of the Provider's performance as set out in CQUIN Table 1

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

**CQUIN Performance Report** a report prepared by the Provider detailing (with supporting clinical and other relevant evidence) the Provider's performance against and progress towards satisfying the CQUIN Indicators in each month to which the report relates, comprising part of the Service Quality Performance Report

**CQUIN Table 1** the table at Schedule 4D (*Commissioning for Quality and Innovation (CQUIN)*) under that heading

**CRS** has the meaning given to it 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>

**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 Processor** has the meaning given to it in the DPA

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

**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

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

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

**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

**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 GC14 (*Dispute Resolution*)

**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

**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://www.sbs.nhs.uk/media/6204/Tradeshift-Supplier-Training-Guide/pdf/New\\_Supplier\\_Training\\_Guide1.pdf](https://www.sbs.nhs.uk/media/6204/Tradeshift-Supplier-Training-Guide/pdf/New_Supplier_Training_Guide1.pdf)

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

**EIR** the Environmental Information Regulations 2004



**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>

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

**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

**Event of Force Majeure** an event or circumstance which is beyond the reasonable control of the Party claiming relief under GC28 (*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

**Expected Annual Contract Value** the sum (if any) set out in Schedule 3F (*Expected Annual Contract Values*) for each Commissioner in respect of each relevant Service for the Contract Year

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

**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/>

**FOIA** the Freedom of Information Act 2000

**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) 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 defined in FFT Guidance

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

**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

**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

**GP** a general medical practitioner or general dental practitioner registered on the performers list prepared, maintained and published in accordance with regulations made under sections 91 and 106 of the 2006 Act

**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.england.nhs.uk/wp-content/uploads/2016/01/transforming-end-of-life-care-acute-hospitals.pdf>

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

**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>

**Healthcare Professional** a person qualified in a healthcare-related profession

**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](https://www.hee.nhs.uk/sites/default/files/documents/HEE_J000584_QualityFramework_FINAL_WEB.pdf)

**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

**HRA** the Human Rights Act 1998

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

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

**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

**Information Standards Notice** an information standards notice published by SCCI

**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/>

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

**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

**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

**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 Modification** a modification to a National Price where provision of a Service by the Provider at the National Price would be uneconomic, as approved or granted by NHS Improvement in accordance with the National Tariff

**Local Price** the price agreed by the Co-ordinating Commissioner and the Provider or determined as payable for a health care service for which no National Price is specified by the National Tariff

**Local Quality Requirements** the requirements set out in Schedule 4C (*Local Quality Requirements*) as may be amended by the Parties in accordance with this Contract or with the recommendations or requirements of NICE

**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.gov.uk/government/publications/making-every-contact-count-mecc-practical-resources>

**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/>

**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

**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 CQUIN** a national CQUIN goal as set out in CQUIN Guidance

**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 Data Guardian's Data Security Standards** the standards recommended by the National Data Guardian and approved by the Department of Health, as set out in Annex D of *Your Data: Better Security, Better Choice, Better Care*, available at <https://www.gov.uk/government/consultations/new-data-security-standards-for-health-and-social-care>

**National Guardian's Office** the office of the National Guardian, which provides advice on the freedom to speak up guardian role and supports the freedom to speak up guardian network: <http://www.cqc.org.uk/national-guardians-office/content/national-guardians-office>

**National Guardian's Office Guidance** the example job description for a freedom to speak up guardian and other guidance published by the National Guardian's Office, available at <http://www.cqc.org.uk/national-guardians-office/content/publications>

**National Guidance on Learning from Deaths** guidance published by the National Quality Board to help standardise and improve the way acute, mental health and community NHS Trusts and Foundation Trusts identify, report, review, investigate and learn from deaths, and engage with bereaved families and carers, available at <https://www.england.nhs.uk/publication/national-guidance-on-learning-from-deaths/>

**National Price** the national price for a health care service specified by the National Tariff, as may be adjusted by applicable national variation specified in the National Tariff under section 116(4)(a) of the 2012 Act

**National Quality Requirements** the quality requirements set out in Schedule 4A (*Operational Standards and National Quality Requirements*)

**National Tariff** the national tariff, as published by NHS Improvement under section 116 of the 2012 Act (including any rules included under section 116(4)(b) of the 2012 Act), as applicable at the time at which the relevant Service is provided

**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

**Nationally Contracted Products Programme** the procurement programme operated by NHS Improvement and NHS Supply Chain which aims to consolidate purchasing power in order to purchase products on a better-value basis for NHS Trusts and Foundation Trusts, as described at <https://improvement.nhs.uk/resources/core-set-nhs-products-be-used-all-nhs-providers/>

**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 as amended by section 138(2)(c) of Schedule 4 to the 2012 Act

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

**NHS 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>

**NHSCFA** the NHS Counter Fraud Authority, the special health authority charged with identifying, investigating and preventing fraud and other economic crime within the NHS and the wider health group

**NHSCFA Standards** the counter-fraud standards and guidance issued from time to time by the NHSCFA, available at <https://cfa.nhs.uk/counter-fraud-standards>

**NHS Classifications Services** the NHS resource responsible for the delivery of national clinical classifications standards and guidance for the NHS clinical coding profession

**NHS Constitution** the constitution for the NHS in England 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 via <https://www.gov.uk/government/publications/supplements-to-the-nhs-constitution-for-england>)

**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 Employment Check Standards** 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 Service User Health Records: <http://www.nhsemployers.org/your-workforce/recruit/employment-checks>

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

**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](http://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

**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.hscic.gov.uk/>

**NHS Number** the national unique patient identifier given to each person registered with the NHS in England and Wales. Further information is available at: <http://systems.digital.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 Security Management Standards** the standards and guidance on security management made available to commissioners and providers at <http://www.nahs.org.uk/>, previously published by NHS Protect (a division of the NHS Business Services Authority abolished with effect from 1 November 2017)

**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 Supply Chain** the organisation run by DHL Supply Chain on behalf of the NHS Business Services Authority, providing a dedicated supply chain to the NHS in England

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

**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)

**Notice Period** the period specified as such in the Particulars

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

#### **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 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

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

**Operational Standards** the operational standards set out in Schedule 4A (*Operational Standards and National Quality Requirements*)

**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](http://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/ukxi/2015/238/contents/made> and <http://www.legislation.gov.uk/ukxi/2017/756/contents/made>

**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

**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>

**Personal Data** has the meaning given to it in the DPA

**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

**Price** the Local Price, as appropriate

**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](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

**Prohibited Act** the Provider:

- (i) 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
- (ii) committing an offence under the Bribery Act 2010

**Provider** the party identified as such in the Particulars



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

- (i) the Provider being, or being deemed for the purposes of any Law to be, unable to pay its debts or insolvent;
- (ii) the Provider admitting its inability to pay its debts as they fall due;
- (iii) the value of the Provider's assets being less than its liabilities taking into account contingent and prospective liabilities;
- (iv) the Provider suspending payments on any of its debts or announces an intention to do so;
- (v) by reason of actual or anticipated financial difficulties, the Provider commencing negotiations with creditors generally with a view to rescheduling any of its indebtedness;
- (vi) a moratorium is declared in respect of any of the Provider's indebtedness;
- (vii) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Provider;
- (viii) a composition, assignment or arrangement with any creditor of any member of the Provider;
- (ix) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Provider or any of its assets;
- (x) a resolution of the Provider or its directors is passed to petition or apply for the Provider's winding-up or administration;
- (xi) the Provider's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court or otherwise); or
- (xii) if the Provider suffers any event analogous to the events set out in (i) to (xi) of this definition in any jurisdiction in which it is incorporated or resident

**Provider Representative** the person identified as such in the Particulars

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

**Public Company** a company which:

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

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

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

**Raising Concerns Policy for the NHS** the model whistleblowing policy for NHS organisations, published by NHS Improvement and NHS England, available at <https://improvement.nhs.uk/resources/freedom-to-speak-up-whistleblowing-policy-for-the-nhs/>

**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

**Regulatory or Supervisory Body** any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Party or Staff must comply or to which it or they must have regard, including CQC, NHS Improvement, NHS England, the Department of Health, NICE, Healthwatch England and Local Healthwatch, Public Health England, the General Pharmaceutical Council and the Healthcare Safety Investigation Branch

**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

**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 GC8.1 (*Review*)

**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](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](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 2K (*Safeguarding Policies and MCA Policies*) and updated from time to time in accordance with SC32 (*Safeguarding and Mental Capacity*)

**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%20%20%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%20%20%20%20%20(3)_0.pdf)

**SCCI** the body with delegated responsibility for appropriate information standards for the health and social care system (or that body's predecessor):

<http://www.hscic.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

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

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

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

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

**Seventh Data Protection Principle** the seventh principle set out in paragraphs 9-12 of Part II of Schedule 1 to the DPA

<http://www.legislation.gov.uk/ukpga/1998/29/schedule/1/part/II/crossheading/the-seventh-principle>

**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

**Staff** all persons (whether clinical or non-clinical) employed or engaged by the Provider or by any Sub-Contractor (including volunteers, agency, locums, casual or seconded personnel) in the provision of the Services or any activity related to, or connected with the provision of the Services, including Consultants

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

**Standard DBS Position** any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236659/DBS\\_guide\\_to\\_eligibility\\_v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236659/DBS_guide_to_eligibility_v2.pdf)

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

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

**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

**Suspension Event** the occurrence of any of the following:

- (i) any Commissioner and/or any Regulatory or Supervisory Body having reasonable grounds to believe that the Provider is or may be in breach of the Law, or in material breach of the Quality Requirements or regulatory compliance Standards issued by a Regulatory or Statutory Body; or
- (ii) any Commissioner and/or any Regulatory or Supervisory Body having reasonable and material concerns as to the continuity, quality or outcomes of any Service, or for the health and safety of any Service User; or
- (iii) the Provider being in breach of any material obligation, or in persistent breach of any obligation, on its part under this Contract; or
- (iv) the Co-ordinating Commissioner, acting reasonably, considering that the circumstances constitute an emergency (which may include an Event of Force Majeure affecting provision of a Service or Services); or
- (v) the Provider failing to complete an action required of it, or to deliver or maintain the improvement required of it within the timescales and otherwise as agreed in accordance with GC9.6 (except as a result of an act or omission or the unreasonableness of any Commissioner); or
- (vi) the Provider or any Sub-Contractor being prevented from providing a Service due to the termination, suspension, restriction or variation of any Consent or NHS Improvement's Licence

**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

**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 (SCCI2075)*

**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 2J (*Transfer of and Discharge from Care Protocols*) and which must include content based on the national template policy, *Supporting Patients' Choices to Avoid Long Hospital Stays* ([www.nhs.uk/NHSEngland/keogh-review/Documents/quick-guides/background-docs/TEMPLATE-POLICY.docx](http://www.nhs.uk/NHSEngland/keogh-review/Documents/quick-guides/background-docs/TEMPLATE-POLICY.docx))

GENERAL CONDITIONS

2017/18 and 2018/19 NHS STANDARD CONTRACT (Shorter Form) (updated January 2018)

**Urgent and Emergency Mental Health Care Pathways** the evidence-based treatment pathways for urgent and emergency mental health care, developed by NHS England, NICE and the National Collaborating Centre for Mental Health and published at <https://www.england.nhs.uk/mental-health/adults/crisis-and-acute-care/>

**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 GC13 (*Variations*)

**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

**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>

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