



**NHS Standard Contract 2017/18
and 2018/19
General Conditions (Full Length)**

March 2018 edition
Draft for consultation

NHS Standard Contract

2017/18 and 2018/19

General Conditions (Full length)

March 2018 edition *Draft for consultation*

Please note:

- Some proposed changes to the Contract are only applicable to new contracts let to commence from 25 May 2018, and are not applicable to ongoing contracts updated by way of the National Variation, and these are shown in yellow highlight in the draft Contract (please refer to s3.1 of the [NHS Standard Contract 2017/18 and 2018/19 \(Full Length\) Consultation on proposed National Variation](#) for more information). Changes which are applicable to both new contracts and to ongoing contracts are shown as 'tracked changes' and are not highlighted.

Publications Gateway Reference: 07758

Document Classification: Official

GC1 Definitions and Interpretation

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

GC2 Effective Date and Duration

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

GC3 Service Commencement

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

GC4 Transition Period

- 4.1 The Provider must satisfy each Condition Precedent before the Expected Service Commencement Date (or by any earlier Longstop Date specified in the Particulars in respect of that Condition Precedent).
- 4.2 The Co-ordinating Commissioner must deliver the Commissioner Documents to the Provider before the Expected Service Commencement Date.
- 4.3 The Parties must work together to facilitate the delivery of the Services with effect from the Expected Service Commencement Date.
- 4.4 The Parties must implement any Transition Arrangements set out in Schedule 2H (*Transition Arrangements*).
- 4.5 The Provider must notify the Co-ordinating Commissioner of any material change to any Conditions Precedent document it has delivered under GC4.1 within 5 Operational Days of becoming aware of that change.

GC5 Staff

General

- 5.1 The Provider must apply the Principles of Good Employment Practice (where applicable) and the staff pledges and responsibilities outlined in the NHS Constitution.
- 5.2 The Provider must comply with regulations 18 and 19 of the 2014 Regulations, and without prejudice to that obligation must:
 - 5.2.1 ensure that there are sufficient appropriately registered, qualified and experienced medical, nursing and other clinical and non-clinical Staff to enable the Services to be provided in all respects and at all times in accordance with this Contract;
 - 5.2.2 in determining planned Staff numbers and skill mix for Services, have regard to applicable Staffing Guidance;
 - 5.2.3 continually evaluate in respect of each Service individually and the Services as a whole:
 - 5.2.3.1 actual numbers and skill mix of clinical Staff on duty against planned numbers and skill mix of clinical Staff on a shift-by-shift basis; and
 - 5.2.3.2 the impact of variations in actual numbers and skill mix of clinical Staff on duty on Service User experience and outcomes, by reference to clinical audit data, NHS Safety Thermometer, data on complaints, Patient Safety Incidents and Never Events and the results of Service User and Staff involvement (including Surveys);
 - 5.2.4 undertake a detailed review of staffing requirements every 6 months to ensure that the Provider remains able to meet the requirements set out in GC5.2.1;
 - 5.2.5 report to the Co-ordinating Commissioner immediately any material concern in relation to the safety of Service Users and/or the quality or outcomes of any Service arising from those reviews and evaluations;
 - 5.2.6 report to the Co-ordinating Commissioner on the outcome of those reviews and evaluations at least once every 6 months, and in any event as soon as practicable and by no later than 20 Operational Days following receipt of written request;
 - 5.2.7 implement Lessons Learned from those reviews and evaluations, and demonstrate at Review Meetings the extent to which improvements to each affected Service have been made as a result; and
 - 5.2.8 make the outcome of those reviews and evaluations and Lessons Learned available to the public by disclosure at public board meetings, publication on the Provider's website or by other means, in each case as approved by the Co-ordinating Commissioner, and in each case at least once every 6 months.
- 5.3 The Provider must ensure that all Staff:
 - 5.3.1 if applicable, are registered with and where required have completed their revalidations by the appropriate professional regulatory body;
 - 5.3.2 have the appropriate qualifications, experience, skills and competencies to perform the duties required of them and are appropriately supervised (including where appropriate through preceptorship, clinical supervision and 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, and, in relation to clinical supervision for midwives, A-EQUIP Guidance.
- 5.5 At the request of the Co-ordinating Commissioner, the Provider must provide details of its analysis of Staff training needs and a summary of Staff training provided and appraisals undertaken.
- 5.6 The Provider must cooperate with 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.
- 5.7 If any Staff are members of the NHS Pension Scheme the Provider must participate and must ensure that any Sub-Contractors participate in any applicable data collection exercise and must ensure that all data relating to Staff membership of the NHS Pension Scheme is up to date and is provided to the NHS Business Services Authority in accordance with Guidance.
- 5.8 The Provider must:
- 5.8.1 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;
 - 5.8.2 ensure that the Co-ordinating Commissioner is kept informed at all times of the person or persons holding this position;
 - 5.8.3 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
 - 5.8.4 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

- 5.9 Subject to GC5.10, 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:

5.9.1 NHS Employment Check Standards; and

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

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

TUPE

- 5.11 The Provider must comply and must ensure that any Sub-Contractor will comply with their respective obligations under TUPE and COSOP in relation to any persons who transfer to the employment of the Provider or that Sub-Contractor by operation of TUPE and/or COSOP as a result of this Contract or any Sub-Contract, and that the Provider or the relevant Sub-Contractor (as appropriate) will ensure a smooth transfer of those persons to its employment. The Provider must indemnify and keep indemnified the Commissioners and any previous provider of services equivalent to the Services or any of them before the Service Commencement Date against any Losses in respect of:

5.11.1 any failure by the Provider and/or any Sub-Contractor to comply with its obligations under TUPE and/or COSOP in connection with any relevant transfer under TUPE and/or COSOP;

5.11.2 any claim by any person that any proposed or actual substantial change by the Provider and/or any Sub-Contractor to that person's working conditions or any proposed measures on the part of the Provider and/or any Sub-Contractor are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the Provider and/or Sub-Contractor; and/or

5.11.3 any claim by any person in relation to any breach of contract arising from any proposed measures on the part of the Provider and/or any Sub-Contractor, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the Provider and/or Sub-Contractor.

- 5.12 If the Co-ordinating Commissioner notifies the Provider that any Commissioner intends to tender or retender any Services, the Provider must within 20 Operational Days following written request (unless otherwise agreed in writing) provide the Co-ordinating Commissioner with anonymised details (as set out in Regulation 11(2) of TUPE) of Staff engaged in the provision of the relevant Services who may be subject to TUPE. The Provider must indemnify and keep indemnified the relevant Commissioner and, at the Co-ordinating Commissioner's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this GC5.12.

- 5.13 During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not and must procure that its Sub-Contractors do not, without the prior written consent of the Co-ordinating Commissioner (that consent not to be unreasonably withheld or delayed), in relation to any persons engaged in the provision of the Services or the relevant Service:

- 5.13.1 terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);
 - 5.13.2 increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any Sub-Contractor by more than 5% (except in the ordinary course of business);
 - 5.13.3 propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
 - 5.13.4 replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
 - 5.13.5 assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.
- 5.14 On termination or expiry of this Contract or of any Service for any reason, the Provider must indemnify and keep indemnified the relevant Commissioners and any new provider who provides any services equivalent to the Services or any of them after that expiry or termination against any Losses in respect of:
- 5.14.1 the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any Sub-Contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any Sub-Contractor;
 - 5.14.2 claims brought by any other person employed or engaged by the Provider and/or any Sub-Contractor who is found to or is alleged to transfer to any Commissioner or new provider under TUPE and/or COSOP; and/or
 - 5.14.3 any failure by the Provider and/or any Sub-Contractor to comply with its obligations under TUPE and/or COSOP in connection with any transfer to any Commissioner or new provider.

Employment or Engagement following NHS Redundancy

- 5.15 If at any time during the term of this Contract the Provider or any Sub-Contractor intends to employ or engage an individual (unless for a period of 15 days or less in any rolling 90 day period), the Provider must (or must ensure that the Sub-Contractor will):
- 5.15.1 require that individual to disclose whether, within the period of twelve months ending with the proposed commencement of their employment or engagement with the Provider or Sub-Contractor, they have received a contractual redundancy payment from an NHS Employer consequent on their redundancy from a post as a Very Senior Manager; and if so
 - 5.15.2 require the individual to identify that NHS Employer;
 - 5.15.3 require that individual to notify the NHS Employer of their conditional offer of employment or engagement with the Provider or Sub-Contractor;
 - 5.15.4 require that individual either (a) to make arrangements with that NHS Employer to pay to the NHS Employer the Redundancy Repayment (whether or not conditional on an appropriate restoration of reckonable service), or (b) to agree to the inclusion in their terms and conditions of employment or engagement with the Provider or Sub-Contractor the provisions set out in GC5.15.6 below;

- 5.15.5 not make any unconditional offer of employment or engagement to the individual without first having received either (a) confirmation from the NHS Employer that binding arrangements are in place with the individual for payment to the NHS Employer of the Redundancy Repayment, or (b) confirmation from the individual of their agreement to the inclusion in their terms and conditions of employment or engagement with the Provider or Sub-Contractor of the provisions set out in GC5.15.6; and
- 5.15.6 unless it has received confirmation from the NHS Employer in accordance with GC5.15.5(a), include (and throughout the term of that individual's employment or engagement retain) in that individual's terms and conditions of employment or engagement (as appropriate) the following provisions:

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

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

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

where:

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

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

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

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

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

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

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

In this provision:

Agenda for Change means the single pay system in operation in the NHS, which applies to all directly employed NHS staff with the exception of doctors, dentists and some very senior managers

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

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

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

- 5.16 The Provider must not, and must ensure that any Sub-contractor does not, enter into any arrangement with any individual the effect or intention of which is to circumvent the operation or intent of GC5.15.
- 5.17 If the Provider fails to comply with its obligations under GC5.15 or 5.16 in respect of any relevant individual, the Provider must pay to the relevant NHS Employer the Redundancy Repayment or the proportion of it which the individual would otherwise have been required to repay.

GC6 Intentionally Omitted

GC7 Intentionally Omitted

GC8 Review

- 8.1 At the intervals set out in the Particulars, the Co-ordinating Commissioner and the Provider must hold Review Meetings to review and discuss as necessary or appropriate:
- 8.1.1 all Service Quality Performance Reports issued since the Service Commencement Date or the last Review Meeting (as appropriate);
 - 8.1.2 performance of the Parties under this Contract;
 - 8.1.3 performance of the Provider under any DQIP, SDIP, Remedial Action Plan or other Provider plan in place under or in connection with this Contract;
 - 8.1.4 levels of Activity, Referrals and Utilisation under this Contract;
 - 8.1.5 any Variation (including any National Variation) proposed in relation to this Contract;
 - 8.1.6 the Prices; and
 - 8.1.7 any other matters that either considers necessary in relation to this Contract.
- 8.2 Following each Review Meeting the Co-ordinating Commissioner must prepare and both the Co-ordinating Commissioner and the Provider must sign a Review Record recording (without limitation) all the matters raised during the Review, actions taken, agreements reached, Disputes referred to Dispute Resolution, and any Variations agreed.

- 8.3 If any Dispute which has arisen during the Review is not shown in the Review Record or is not referred to Dispute Resolution within 10 Operational Days after signature of that Review Record it will be deemed withdrawn.
- 8.4 Notwithstanding GC8.1, if either the Co-ordinating Commissioner or the Provider:
- 8.4.1 reasonably considers that a circumstance constitutes an emergency or otherwise requires immediate resolution; or
 - 8.4.2 considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,

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

GC9 Contract Management

- 9.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Requirement and the Provider fails to meet the Quality Requirement, the Co-ordinating Commissioner will be entitled to exercise the agreed consequence immediately and without issuing a Contract Performance Notice, irrespective of any other rights the Co-ordinating Commissioner may have under this GC9.
- 9.2 The provisions of this GC9 do not affect any other rights and obligations the Parties may have under this Contract.
- 9.3 GC9.16, 9.20, 9.21, 9.22 and 9.24 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Co-ordinating Commissioner or the relevant Commissioner.

Contract Performance Notice

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

Contract Management Meeting

- 9.6 Unless the Contract Performance Notice has been withdrawn, the Co-ordinating Commissioner and the Provider must meet to discuss the Contract Performance Notice and any related issues within 10 Operational Days following the date of the Contract Performance Notice.
- 9.7 At the Contract Management Meeting the Co-ordinating Commissioner and the Provider must agree either:
- 9.7.1 that the Contract Performance Notice is withdrawn; or
 - 9.7.2 to implement an appropriate Immediate Action Plan and/or Remedial Action Plan.

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

Joint Investigation

- 9.8 If a Joint Investigation is to be undertaken:
- 9.8.1 the Co-ordinating Commissioner and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 2 months) and the appropriate clinical and/or non-clinical representatives from each relevant Party to participate in the Joint Investigation; and
 - 9.8.2 the Co-ordinating Commissioner and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.
- 9.9 On completion of a Joint Investigation, the Co-ordinating Commissioner and the Provider must produce and agree a JI Report. The JI Report must include a recommendation to be considered at the next Review Meeting that either:
- 9.9.1 the Contract Performance Notice be withdrawn; or
 - 9.9.2 a Remedial Action Plan be agreed and implemented.
- 9.10 Either the Co-ordinating Commissioner or the Provider may require a Review Meeting to be held at short notice in accordance with GC8.4 to consider a JI Report.

Remedial Action Plan

- 9.11 If a Remedial Action Plan is to be implemented, the Co-ordinating Commissioner and the Provider must agree the contents of the Remedial Action Plan within:
- 9.11.1 5 Operational Days following the Contract Management Meeting; or
 - 9.11.2 5 Operational Days following the Review Meeting in the case of a Remedial Action Plan recommended under GC9.9.
- as appropriate.
- 9.12 The Remedial Action Plan must set out:
- 9.12.1 actions required and which Party is responsible for completion of each action to remedy the failure in question and the date by which each action must be completed;
 - 9.12.2 the improvements in outcomes and/or other key indicators required, the date by which each improvement must be achieved and for how long it must be maintained;
 - 9.12.3 any agreed reasonable and proportionate financial sanctions or other consequences for any Party for failing to complete any agreed action and/or to achieve and maintain any agreed improvement (any financial sanctions applying to the Provider not to exceed in aggregate 10% of the Actual Monthly Value in any month in respect of any Remedial Action Plan).

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

- 9.13 The Provider and each relevant Commissioner must implement the actions and achieve and maintain the improvements applicable to it within the timescales set out in, and otherwise in accordance with, the Remedial Action Plan.
- 9.14 The Co-ordinating Commissioner and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Co-ordinating Commissioner and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.

Withholding Payment for Failure to Agree Remedial Action Plan

- 9.15 If:
- 9.15.1 either Co-ordinating Commissioner or the Provider fails to attend a Contract Management Meeting within 20 Operational Days following the date of the Contract Performance Notice to which it relates; or
 - 9.15.2 the Co-ordinating Commissioner and the Provider have not agreed a Remedial Action Plan within the relevant period specified in GC9.11,

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

- 9.16 If, 10 Operational Days after notifying the Governing Bodies, the Co-ordinating Commissioner and the Provider still cannot agree a Remedial Action Plan due to any unreasonableness or failure to engage on the part of the Provider, the Co-ordinating Commissioner may recommend the Commissioners to withhold, or itself withhold (on behalf of all Commissioners), up to 2% of the Actual Monthly Value for each further month a Remedial Action Plan is not agreed.
- 9.17 The Commissioners or the Co-ordinating Commissioner (as appropriate) must pay the Provider any sums withheld under GC9.16 within 10 Operational Days of receiving the Provider's agreement to a Remedial Action Plan. Unless GC9.23 applies, those sums are to be paid without Interest.

Implementation and Breach of Remedial Action Plan

- 9.18 If, following implementation of a Remedial Action Plan, the agreed actions have been completed and the agreed improvements achieved and maintained, it must be noted in the next Review that the Remedial Action Plan has been completed.
- 9.19 If either the Provider or any Commissioner fails to complete an action required of it, or to deliver or maintain the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan, then the Co-ordinating Commissioner or the Provider (as appropriate) may, at its discretion, apply any financial or other sanction agreed in relation to that failure.

Exception Report

- 9.20 If a Party fails to complete an action required of it, or to deliver or maintain the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan and does not remedy that failure within 5 Operational Days following its occurrence, the Provider or the Co-ordinating Commissioner (as the case may be) may issue an Exception Report:
- 9.20.1 to the relevant Party's chief executive and/or Governing Body; and/or
 - 9.20.2 (if it reasonably believes it is appropriate to do so) to any appropriate Regulatory or Supervisory Body,

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

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

- 9.21 If the Provider fails to complete an action required of it, or to deliver the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan:
- 9.21.1 (if the Remedial Action Plan does not itself provide for a withholding or other financial sanction in relation to that failure) the Co-ordinating Commissioner may, when issuing an Exception Report, instruct the Commissioners to withhold, or itself withhold (on behalf of all Commissioners), in respect of each action not completed or improvement not met, a reasonable and proportionate sum of up to 2% of the Actual Monthly Value, from the date of issuing the Exception Report and for each month the Provider's breach continues and/or the required improvement has not been achieved and maintained, subject to a maximum monthly withholding in relation to each Remedial Action Plan of 10% of the Actual Monthly Value; and
- 9.21.2 the Commissioners or the Co-ordinating Commissioner (as appropriate) must pay the Provider any sums withheld under GC9.19 or GC9.21.1 within 10 Operational Days following the Co-ordinating Commissioner's confirmation that the breach of the Remedial Action Plan has been rectified and/or the required improvement has been achieved and maintained. Subject to GC9.23, no Interest will be payable on those sums.

Retention of Sums Withheld for Breach of Remedial Action Plan

- 9.22 If, 20 Operational Days after an Exception Report has been issued under GC9.20, the Provider remains in breach of a Remedial Action Plan, the Co-ordinating Commissioner may notify the Provider that any sums withheld under GC9.19 or GC9.21.1 are to be retained permanently. If it does so having withheld those sums itself on behalf of all Commissioners, the Co-ordinating Commissioner must distribute the sums withheld between the Commissioners in proportion to their respective shares of the Actual Monthly Value for each month in respect of which those sums were withheld.

Unjustified Withholding or Retention of Payment

- 9.23 If the Commissioners withhold, or the Co-ordinating Commissioner withholds on behalf of all Commissioners, sums under GC9.16, GC9.19 or GC9.21.1 or the Commissioners retain sums under GC9.22, and within 20 Operational Days of the date of that withholding or retention the Provider produces evidence satisfactory to the Co-ordinating Commissioner that the relevant sums were withheld or retained unjustifiably, the Co-ordinating Commissioner or the Commissioners (as appropriate) must pay those sums to the Provider within 10 Operational Days following the date of the Co-ordinating Commissioner's acceptance of that evidence, together with Interest for the period for which the sums were withheld or retained. If the Co-ordinating Commissioner does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

Retention of Sums Withheld on Expiry or Termination of this Contract

- 9.24 If the Provider does not agree a Remedial Action Plan:
- 9.24.1 within 6 months following the expiry of the relevant time period set out in GC9.11; or
- 9.24.2 before the Expiry Date or earlier termination of this Contract,
- whichever is the earlier, the Co-ordinating Commissioner may notify the Provider that any sums withheld under GC9.16 are to be retained permanently. If it does so having withheld those sums itself on behalf of all Commissioners, the Co-ordinating Commissioner must distribute the sums withheld

between the Commissioners in proportion to their respective shares of the Actual Monthly Value for each month in respect of which those sums were withheld.

- 9.25 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Co-ordinating Commissioner may notify the Provider that any sums withheld under GC9.19 or GC9.21.1 are to be retained permanently. If it does so having withheld those sums itself on behalf of all Commissioners, the Co-ordinating Commissioner must distribute the sums withheld between the Commissioners in proportion to their respective shares of the Actual Monthly Value for each month in respect of which those sums were withheld.

Provider Sustainability and Transformation Fund

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

9.26.1 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

9.26.2 (where required by those bodies):

9.26.2.1 agreed with those bodies and with the Commissioners specific performance trajectories to be achieved during ~~either the Contract Year 1 April 2017 to 31 March 2018 or the Contract Year 1 April 2018 to 31 March 2019 or both~~ (as set out in an SDIP contained or referred to in Schedule 6D (*Service Development and Improvement Plans*)); and/or

9.26.2.2 submitted to those bodies assurance statements setting out commitments on performance against specific Operational Standards and National Quality Requirements to be achieved during ~~either the Contract Year 1 April 2017 to 31 March 2018 or the Contract Year 1 April 2018 to 31 March 2019 or both~~ which have been accepted by those bodies (as set out in an SDIP contained or referred to in Schedule 6D (*Service Development and Improvement Plans*)),

no Commissioner may withhold or retain payment under this GC9 (*Contract Management*) or otherwise in respect of any failure to agree a RAP, or to comply with any RAP, in relation to any breach of any threshold which occurs during ~~anythat Contract Year or Contract Years~~ for which such financial control totals and specific performance trajectories have been agreed and/or such assurance statements have been submitted and accepted in respect of any Operational Standard shown in bold italics in Schedule 4A (*Operational Standards*) or any National Quality Requirement shown in bold italics in Schedule 4B (*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 The Commissioners have appointed the Co-ordinating Commissioner to exercise certain functions in relation to this Contract as set out in Schedule 5C (*Commissioner Roles and Responsibilities*).
- 10.2 In relation to those functions and this Contract generally the Co-ordinating Commissioner will act for itself and as agent for the Commissioners (who are separate principals) but sums payable to the Provider are to be severally attributed to the relevant Commissioner as appropriate.
- 10.3 The Commissioner Representatives and the Provider Representative will be the relevant Party's respective key points of contact for day-to-day communications.

GC11 Liability and Indemnity

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

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

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

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

11.1.2 any Losses of the Provider,

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

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

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

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

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

11.2.2 any Losses of the Commissioner,

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

[Drafting Note: See the amendments to 'Indirect Losses' in the definitions. This now expressly excludes cost connected with breaches of Data Protection Legislation in order to avoid the situation whereby any clean-up operation following a breach would not be covered.]

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) 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; and

11.3.5 breach of Data Protection Legislation.

[Drafting note: Breach of Data Protection Legislation has been added due to the increased risks of incurring liability under the GDPR.]

- 11.4 Within 5 Operational Days following written request from the Co-ordinating Commissioner, the Provider must provide documentary evidence that Indemnity Arrangements required under GC11.3 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 11.5 If the proceeds of any Indemnity Arrangements are insufficient to cover the settlement of any claim relating to this Contract the Provider must make good any deficiency.
- 11.6 The Provider must not take any action or fail to take any reasonable action nor (in so far as it is reasonable and within its power) allow others to take action or fail to take any reasonable action, as a result of which any Indemnity Arrangements put in place in accordance with GC11.3 may be rendered wholly or partly void, voidable, unenforceable, or be suspended or impaired, or which may otherwise render any sum paid out under those Indemnity Arrangements wholly or partly repayable.

- ~~11.7~~ On and following expiry or termination of this Contract, the Provider must (and must use its reasonable endeavours to procure that each of its Sub-Contractors must) procure that any ongoing liability it has or may have

~~11.7.1~~ in negligence; **or**

11.7.2 under Data Protection Legislation.

to any Service User or Commissioner arising out of a Service User's care and treatment under this Contract will continue to be the subject of appropriate Indemnity Arrangements for 21 years following termination or expiry of this Contract or (if earlier) until that liability may reasonably be considered to have ceased.

[Drafting Note: An outgoing provider may retain access to historic patient records so this cover should extend to breaches of data protection law, as well as negligence.]

- ~~11.7~~ 11.8 No later than 3 months prior to the expiry of this Contract, or within 10 Operational Days following the date of service of notice to terminate or of agreement to terminate this Contract (as appropriate), the Provider must provide to the Co-ordinating Commissioner satisfactory evidence in writing of its (and its Sub-Contractors') arrangements to satisfy the requirements of GC11.7. If the Provider fails to do so the Commissioners may themselves procure appropriate Indemnity Arrangements in respect of such ongoing liabilities and the Provider must indemnify and keep the Commissioners indemnified against the costs incurred by them in doing so.

- ~~11.8~~ 11.9 Unless the Co-ordinating Commissioner and the Provider otherwise agree in writing, the Provider will not require, and must ensure that no other person will require, any Service User to sign any document whatsoever containing any waiver of the Provider's liability (other than a waiver in reasonable terms relating to personal property) to that Service User in relation to the Services, unless required by medical research procedures approved by the local research ethics committee and the Service User has given consent in accordance with the Provider's Service User consent policy.

- ~~11.9~~ 11.10 Nothing in this Contract will exclude or limit the liability of either Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation.

- ~~11.10~~ 11.11 Except where expressly stated to the contrary, an indemnity under this Contract will not apply and there will be no right to claim damages for breach of this Contract, in tort or on any other basis whatsoever, to the extent that any loss claimed by any Party under that indemnity or on that basis is for Indirect Losses.

[Drafting Note: See the amendments to 'Indirect Losses' in the definitions. This now expressly excludes costs incurred in remedying breaches of Data Protection Legislation in order to avoid the situation whereby any clean-up operation following a breach would not be covered.]

11.12 Each Party will at all times take all reasonable steps to minimise and mitigate any Losses or other matters for which one Party is entitled to be indemnified by or to bring a claim against the other under this Contract.

GC12 Assignment and Sub-contracting

Obligations relating to the Provider

- 12.1 Subject to GC12.2 to 12.5 the Provider must not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or obligations or duties under this Contract without the prior written approval of the Co-ordinating Commissioner. The approval of any sub-contracting arrangement may include approval of the terms of the proposed Sub-Contract.
- 12.2 The Co-ordinating Commissioner may (at its discretion but acting reasonably) designate any sub-contracting arrangement approved by it as a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract.
- 12.3 The Provider must enter into each Mandatory Material Sub-Contract with the relevant Mandatory Material Sub-Contractor.
- 12.4 The Provider may enter into a Permitted Material Sub-Contract with the relevant Permitted Material Sub-Contractor.
- 12.5 The Provider must not:
- 12.5.1 terminate a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract; or
 - 12.5.2 make any material changes to the terms of a Mandatory Material Sub-Contract or a Permitted Material Sub-Contract; or
 - 12.5.3 replace a Mandatory Material Sub-Contractor under a Mandatory Material Sub-Contract or a Permitted Material Sub-Contractor under a Permitted Material Sub-Contract (and must ensure that a replacement does not otherwise occur); or
 - 12.5.4 enter into a new Mandatory Material Sub-Contract or a new Permitted Material Sub-Contract with an existing Mandatory Material Sub-Contractor or an existing Permitted Material Sub-Contractor,
- without the prior written approval of the Co-ordinating Commissioner. Schedule 5B1 (*Provider's Mandatory Material Sub-Contractors*) and 5B2 (*Provider's Permitted Material Sub-Contractors*) must be updated as appropriate to reflect any designation made, or termination, change or replacement approved, by the Co-ordinating Commissioner.
- 12.6 If the Provider enters into a Sub-Contract it must:
- 12.6.1 ensure that a provision is included in that Sub-Contract which requires payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice;
 - 12.6.2 not vary any such provision referred to in GC12.6.1 above;

- 12.6.3 ensure that the Sub-Contractor does not further sub-contract its obligations under the Sub-contract without the approval of the Co-ordinating Commissioner (such approval not to be unreasonably withheld or delayed).
- 12.7 Sub-contracting any part of this Contract will not relieve the Provider of any of its obligations or duties under this Contract. The Provider will be responsible for the performance of and will be liable to the Commissioners for the acts and/or omissions of all Sub-Contractors as though they were its own.
- 12.8 Any positive obligation or duty on the part of the Provider under this Contract includes an obligation or duty to ensure that all Sub-Contractors comply with that positive obligation or duty. Any negative duty or obligation on the part of the Provider under this Contract includes an obligation or duty to ensure that all Sub-Contractors comply with that negative obligation or duty.
- 12.9 The Provider will remain responsible for the performance and will be liable to the Commissioners for the acts and omissions of any third party to which the Provider assigns or transfers any obligation or duty under this Contract, unless and until:
- 12.9.1 the Provider has obtained the prior written approval of the Co-ordinating Commissioner in accordance with this GC12; and
- 12.9.2 the terms of that assignment, transfer or disposal have been accepted by the third party so that the third party is liable to the Commissioners for its acts and omissions.

Obligations relating to the Commissioner

- 12.10 The Commissioners may not transfer or assign all or any of their rights or obligations under this Contract except:
- 12.10.1 to NHS England, or
- 12.10.2 to a CCG; or
- 12.10.3 to a Local Authority pursuant to a Partnership Agreement or to arrangements pursuant to regulations made under the Cities and Local Government Devolution Act 2016 or to an order under section 105A of the Local Democracy, Economic Development and Construction Act 2009; or
- 12.10.4 otherwise with the prior written approval of the Provider.
- 12.11 The Commissioners may delegate or sub-contract or (subject to GC12.10 above) otherwise dispose of all or any of their rights or obligations under this Contract without the approval of the Provider.
- 12.12 Sub-contracting any part of the Contract will not relieve the Commissioners of any of their obligations or duties under this Contract. Commissioners will be responsible for the performance of and will be liable to the Provider for the acts and/or omissions of their sub-contractors as though they were their own.

Replacement of Sub-Contractors

- 12.13 If any Suspension Event occurs, or if the Co-ordinating Commissioner is entitled to terminate this Contract in accordance with GC17.10, wholly or partly as a result of any act or omission on the part of a Sub-Contractor, the Co-ordinating Commissioner may (without prejudice to any other rights the Co-ordinating Commissioner may have in relation to that event) by serving written notice upon the Provider, require the Provider to remove or replace the relevant Sub-Contractor within:
- 12.13.1 5 Operational Days; or

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

and the Provider must remove or replace the relevant Sub-Contractor (as required) within the period specified in that notice.

12.14 Notwithstanding GC20 (*Confidential Information of the Parties*), a Commissioner which assigns, transfers, delegates or sub-contracts all or any of its rights or obligations under this Contract to any person may disclose to such person any information in its possession that relates to this Contract or its subject matter, the negotiations relating to it, or the Provider, provided always that this is in accordance with Data Protection Legislation and Data Guidance.

[Drafting Note: Inserted to reflect the need to comply with data protection laws regarding data transfers, including conditions for processing (articles 6 and 9), transparency requirements (articles 13-14) and (international transfers (article 44-50).]

Tender Documentation, Publication of Contracts and E-Procurement

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

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

General Provisions

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

GC13 Variations

13.1 This Contract may not be amended or varied except in accordance with this GC13.

13.2 The Parties:

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

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

13.3 Subject to GC13.2, the provisions of this Contract may be varied at any time by a Variation Agreement signed by the Co-ordinating Commissioner on behalf of the Commissioners and by the authorised signatory of the Provider.

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

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

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

- 13.7 Any draft Variation Agreement must set out the Variation proposed and the date on which the Proposer (or, in the case of a National Variation, NHS England) requires it to take effect.
- 13.8 The Recipient must respond to a draft Variation Agreement in writing within 10 Operational Days following receipt, setting out whether:
- 13.8.1 it accepts the Variation; and/or
- 13.8.2 it has any concerns with the contents of the draft Variation Agreement.
- 13.9 If necessary, the Parties must meet within 10 Operational Days following the date of the Recipient's response (or as otherwise agreed in writing) to discuss the draft Variation Agreement and the Recipient's response and must use reasonable endeavours to agree the Variation.
- 13.10 As soon as reasonably practicable and in any event within 10 Operational Days following the meeting which takes place pursuant to GC13.9, the Recipient must serve a written notice on the Proposer confirming either:
- 13.10.1 that it accepts the draft Variation Agreement (and whether or not that acceptance is subject to any amendments to the draft Variation Agreement agreed between the Parties in writing); or
- 13.10.2 that it refuses to accept the draft Variation Agreement, and setting out its reasonable grounds for that refusal.
- 13.11 If a proposed Variation would or might have the effect of changing the Expected Annual Contract Value and/or any Price, the Co-ordinating Commissioner and the Provider must seek to agree that change in accordance with the National Tariff.
- 13.12 If a proposed Variation would or might have a cost implication for any Commissioner, including additional activity, new treatments, drugs or technologies:
- 13.12.1 (in respect of any Variation proposed by the Provider) the Provider must provide a full and detailed cost and benefit analysis of the proposed Variation; and
- 13.12.2 subject to Law and Guidance, the Co-ordinating Commissioner will have absolute discretion to refuse or withdraw the proposed Variation; and
- 13.12.3 the Commissioners will have no liability to the Provider for any costs arising from the proposed Variation if the Provider implements it other than in accordance with this Contract.
- 13.13 If, the Parties having followed the procedure in GC13.2 to 13.12, the Provider refuses to accept a National Variation, the Co-ordinating Commissioner may terminate this Contract by giving the Provider not less than 3 months' written notice following the issue of a notice that that National Variation is refused.
- 13.14 If, the Parties having followed the procedure in GC13.2 to 13.12, the Provider refuses to accept a Service Variation, the Co-ordinating Commissioner may terminate the Service affected by the proposed Service Variation by giving the Provider not less than 3 months' written notice (or 6 months' written notice where such termination is likely to have a material adverse effect on Staff) following the issue of a notice that the proposed Service Variation is refused or not accepted.
- 13.15 The right of the Co-ordinating Commissioner to terminate a Service under GC13.14 will not apply if:
- 13.15.1 the proposed Service Variation is substantially a proposal that a Service should be performed for a different price to that agreed under this Contract and without material change to the delivery of that Service justifying that proposed change in price; or

13.15.2 the proposal does not meet the requirements of a Service Variation.

13.16 If the Parties fail to agree a proposed Variation which is neither a National Variation nor a Service Variation the Proposer must withdraw the draft Variation Agreement.

GC14 Dispute Resolution

14.1 The provisions of GC14.2 to 14.21 will not apply when any Party in Dispute seeks an injunction relating to a matter arising out of GC20 (*Confidential Information of the Parties*).

Escalated Negotiation

14.2 If any Dispute arises, the Parties in Dispute must first attempt to settle it by any of them making a written offer to negotiate to the others. During the Negotiation Period each of the Parties in Dispute must negotiate and be represented:

14.2.1 for the first 10 Operational Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter and has authority to settle the Dispute; and

14.2.2 for the last 5 Operational Days, by their chief executive, director, or member of its Governing Body who has authority to settle the Dispute.

14.3 Where practicable, no Party in Dispute should be represented by the same individual under GC14.2.1 and 14.2.2.

Mediation

14.4 If the Parties in Dispute are unable to settle the Dispute by negotiation, they must, within 5 Operational Days after the end of the Negotiation Period, submit the Dispute:

14.4.1 to mediation arranged jointly by NHS Improvement and NHS England, where the Commissioners are CCGs and/or NHS England and the Provider is an NHS Trust; or

14.4.2 to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in the Particulars, in all other cases.

14.5 Mediations under GC14.4.1 will follow the mediation process agreed between NHS Improvement and NHS England from time to time.

14.6 Mediations under GC14.4.2 will follow the mediation process of CEDR or other independent body or organisation named in the Particulars.

Expert Determination

14.7 If the Parties in Dispute are unable to settle the Dispute through mediation, the Dispute must be referred to expert determination, by one Party in Dispute giving written notice to that effect to the other Parties in Dispute following closure of the failed mediation. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.

14.8 If the Parties in Dispute have agreed upon the identity of an expert and the expert has confirmed in writing their readiness and willingness to embark upon the expert determination, then that person will be appointed as the Expert.

- 14.9 Where the Parties in Dispute have not agreed upon an expert, or where that person has not confirmed their willingness to act, then any Party in Dispute may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Parties in Dispute. The other Parties in Dispute may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.
- 14.10 The Party in Dispute serving the Expert Determination Notice must send to the Expert and to the other Parties in Dispute within 5 Operational Days of the appointment of the Expert a statement of its case, including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.
- 14.11 The Parties in Dispute not serving the Expert Determination Notice must reply to the Expert and to the other Parties in Dispute within 5 Operational Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.
- 14.12 The Expert must produce a written decision with reasons within 30 Operational Days of receipt of the statement of case referred to in GC14.11, or any longer period as is agreed by the Parties in Dispute after the Dispute has been referred.
- 14.13 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 14.14 The Parties in Dispute must comply with any request or direction of the Expert in relation to the expert determination.
- 14.15 The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties in Dispute and the Expert agree are within the scope of the expert determination.
- 14.16 The Parties in Dispute must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- 14.17 The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, manifest error or material breach of instructions on the part of the Expert, in which case a Party will be permitted to apply to Court for an Order that:
- 14.17.1 the Expert reconsider his decision (either all of it or part of it); or
- 14.17.2 the Expert's decision be set aside (either all of it or part of it).
- 14.18 If a Party in Dispute does not abide by the Expert's decision the other Parties in Dispute may apply to Court to enforce it.
- 14.19 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 14.20 The Expert is not liable for anything done or omitted in the discharge or purported discharge of their functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.
- 14.21 The Expert is appointed to determine the Dispute or Disputes between the Parties in Dispute and the Expert's decision may not be relied upon by third parties, to whom the Expert will have no duty of care.

GC15 Governance, Transaction Records and Audit

- 15.1 The Provider must comply with regulation 17 of the 2014 Regulations.
- 15.2 The Provider must comply with all reasonable written requests made by any relevant Regulatory or Supervisory Body (or its authorised representatives), a Local Auditor or any Authorised Person for entry to the Provider's Premises and/or the Services Environment and/or the premises of any Sub-Contractor for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services.
- 15.3 Subject to Law, an Authorised Person may enter the Provider's Premises and/or the Services Environment and/or the premises of any Sub-Contractor without notice for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services. During those visits, subject to Law and Good Practice (also taking into consideration the nature of the Services and the effect of the visit on Services Users), the Provider must not restrict access and will give all reasonable assistance and provide all reasonable facilities.
- 15.4 Within 10 Operational Days following the Co-ordinating Commissioner's reasonable request, the Provider must send the Co-ordinating Commissioner the results of any audit, evaluation, inspection, investigation or research in relation to the Services, the Services Environment or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- 15.5 Subject to compliance with the Law and Good Practice the Parties must implement and/or respond to all relevant recommendations:
- 15.5.1 made in any report by a relevant Regulatory or Supervisory Body; or
 - 15.5.2 agreed with the National Audit Office or a Local Auditor following any audit; or
 - 15.5.3 of any appropriate clinical audit; or
 - 15.5.4 that are otherwise agreed by the Provider and the Co-ordinating Commissioner to be implemented.
- 15.6 The Parties must maintain complete and accurate Transaction Records.
- 15.7 The Provider must, at its own expense, in line with applicable Law and Guidance:
- 15.7.1 implement an ongoing, proportionate programme of clinical audit of the Services in accordance with Good Practice;
 - 15.7.2 implement an ongoing, proportionate audit of the accuracy of its recording and coding of clinical activity relating to the Services; and
 - 15.7.3 provide to the Co-ordinating Commissioner on request the findings of any audits carried out under GC15.7.1 and/or 15.7.2.
- 15.8 The Co-ordinating Commissioner may at any time appoint an Auditor to conduct an objective and impartial audit of:
- 15.8.1 the quality and outcomes of any Service; and/or
 - 15.8.2 the Provider's recording and coding of clinical activity; and/or

- 15.8.3 the Provider's calculation of reconciliation accounts under SC36 (*Payment Terms*); and/or
- 15.8.4 the Provider's recording of performance and calculation of reconciliation accounts in relation to Quality Incentive Scheme Indicators; and/or
- 15.8.5 the Provider's recording of performance in respect of the Quality Requirements; and/or
- 15.8.6 the Provider's compliance with Other Local Agreements, Policies and Procedures and/or any Prior Approval Scheme and/or the Service Specifications; and/or
- 15.8.7 the basis of any Local Prices, taking into account the actual costs incurred by the Provider in providing the Services to which those Local Prices apply; and/or
- 15.8.8 pass-through costs on high cost drugs, devices and procedures; and/or
- 15.8.9 the identification of Chargeable Overseas Visitors and collection of charges from them or other persons liable to pay charges in respect of them under the Overseas Visitor Charging Regulations,

and subject to any applicable Service User consent requirements, the Provider must allow the Auditor reasonable access to (and the right to take copies of) the Transaction Records, books of account and other sources of relevant information, and any Confidential Information so disclosed will be treated in accordance with GC20 (*Confidential Information of the Parties*). Except as provided in GC15.11 and 15.12, the cost of any audit carried out under this GC15.8 will be borne by the Commissioners.

- 15.9 In respect of any audit carried out under GC15.8, the Co-ordinating Commissioner must share the Auditor's draft report with the Provider, to allow discussion of the findings and the correction of any inaccuracies or misinterpretations before the production by the Auditor of a final report.
- 15.10 In respect of any audit carried out under GC15.8.1 or 15.8.6, if the Auditor's final report identifies any deficiencies in the Services, the Provider must take appropriate action to address those deficiencies without delay.
- 15.11 In respect of any audit carried out under GC15.8.2, 15.8.3, 15.8.4, 15.8.5, 15.8.6, 15.8.8 or 15.8.9 as a result of a Commissioner contesting a payment in accordance with SC36.45 (*Payment Terms – Contested Payments*):
 - 15.11.1 if the Auditor's final report identifies a net overcharging of any Commissioner by the Provider, and/or that any Commissioner is entitled to the refund of any sums paid, the Provider must immediately issue a credit note and must pay to the overcharged Commissioner the amount of the net overcharge and/or refundable sum and to the Co-ordinating Commissioner the reasonable costs of the Auditor, within 10 Operational Days after receiving written notice of the Auditor's final report;
 - 15.11.2 if the Auditor's final report identifies that, as a result of actual clinical practice on the part of the Provider which is not in accordance with Other Local Agreements, Policies and Procedures, or with any Prior Approval Scheme, or with the Service Specifications, any charges by the Provider to any Commissioner are higher than would otherwise have been the case, the Provider must immediately issue a credit note and must pay to that Commissioner the amount of the excess charges and to the Co-ordinating Commissioner the reasonable costs of the Auditor, within 10 Operational Days after receiving written notice of the Auditor's final report;
 - 15.11.3 if the Auditor's final report identifies a net undercharging of any Commissioner by the Provider for completed Activity, the Provider must immediately provide an invoice and the undercharged Commissioner must pay to the Provider the amount of the net undercharge, within 10 Operational Days after receiving the invoice from the Provider.

- 15.12 In respect of any audit carried out under GC15.8.2, 15.8.3, 15.8.4, 15.8.5, 15.8.6, 15.8.8 or 15.8.9 other than as a result of a Commissioner contesting a payment in accordance with SC36.45 (*Payment Terms – Contested Payments*), where the Auditor's final report concludes that there have been material inaccuracies in the Provider's recording, coding or calculations:
- 15.12.1 the Parties must agree, and the Provider must implement with immediate effect, an action plan so that these inaccuracies do not recur in future;
 - 15.12.2 (except in the case of fraud or negligence or breach of contract on the part of the Provider, in respect of which the Co-ordinating Commissioner may take whatever action under this Contract or otherwise as it sees fit) there will be no retrospective adjustment to payments already made between the Parties; and
 - 15.12.3 the Provider must pay to the Co-ordinating Commissioner the reasonable costs of the Auditor within 10 Operational Days after receiving written notice of the Auditor's final report.
- 15.13 In respect of any audit carried out under GC15.8.7:
- 15.13.1 the Provider must provide the Auditor with particulars of its costs (including the costs of Sub-Contractors and suppliers) and permit those costs to be verified by inspection of accounts and other documents and records;
 - 15.13.2 that audit will not lead to any adjustment to any Local Price for the relevant Contract Year, but the Parties may have regard to the Auditor's final report in agreeing Local Prices for future Contract Years.

GC16 Suspension

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

Consequence of Suspension

- 16.4 During the suspension of any Service under GC16.1, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:
- 16.4.1 all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with GC16.1.1; and/or

- 16.4.2 all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with the notice served under GC16.1.1.
- 16.5 Unless suspension occurs as a result of an Event of Force Majeure, the Provider will indemnify the Commissioners in respect of any Losses reasonably incurred by them in respect of a suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service from an alternative provider).
- 16.6 The Parties must use all reasonable endeavours to minimise any inconvenience to Service Users as a result of the suspension of the Service.
- 16.7 While any Service is suspended the Commissioners must use reasonable efforts to ensure that no further Service Users are referred to the Provider for that Service.
- 16.8 While any Service is suspended the Provider must:
- 16.8.1 not accept any further Referrals of Service Users for that Service;
 - 16.8.2 at its own cost co-operate fully with the Co-ordinating Commissioners and any interim or successor provider of that Service in order to ensure continuity and smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Commissioners or members of the public including:
 - 16.8.2.1 promptly providing all reasonable assistance and all information necessary to effect an orderly assumption of that Service by any interim or successor provider; and
 - 16.8.2.2 delivering to the Co-ordinating Commissioner all materials, papers, documents and operating manuals owned by the Commissioners and used by the Provider in the provision of that Service;
 - 16.8.3 ensure there is no interruption in the availability of CRS or Essential Services including, where appropriate, implementing any Essential Services Continuity Plan.
- 16.9 As part of its compliance with GC16.8 the Provider may be required by the Co-ordinating Commissioner to agree a transition plan with the Co-ordinating Commissioner and any interim or successor provider.

GC17 Termination

Termination: No Fault

- 17.1 The Co-ordinating Commissioner and the Provider may terminate this Contract or any Service at any time by mutual agreement.
- 17.2 The Co-ordinating Commissioner may terminate this Contract or any Service by giving to the Provider written notice of not less than the Commissioner Notice Period, expiring no earlier than the Commissioner Earliest Termination Date.
- 17.3 The Provider may terminate this Contract or any Service by giving to the Co-ordinating Commissioner written notice of not less than the Provider Notice Period, expiring no earlier than the Provider Earliest Termination Date.
- 17.4 The Co-ordinating Commissioner may by not less than 3 months' written notice to the Provider terminate this Contract where the Provider has refused to accept a National Variation as provided for in GC13.13 (*Variations*).

- 17.5 The Co-ordinating Commissioner may by written notice to the Provider terminate the Service affected where the Provider has refused to accept a Service Variation as provided for in GC13.14 (*Variations*).
- 17.6 Either the Co-ordinating Commissioner or the Provider may by written notice to the other terminate the Service affected where the Co-ordinating Commissioner and the Provider cannot agree the Local Price for that Service for the following Contract Year as provided for in SC36.8 (*Payment Terms*).
- 17.7 Either the Co-ordinating Commissioner or the Provider may terminate this Contract or any affected Service by written notice, with immediate effect, if and to the extent that the Commissioners or the Provider suffer an Event of Force Majeure and that Event of Force Majeure persists for more than 20 Operational Days without the Parties agreeing alternative arrangements.
- 17.8 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

- 17.9 The Provider may terminate this Contract, in whole or in respect of the relevant Commissioners, with immediate effect, by written notice to the Co-ordinating Commissioner:
- 17.9.1 if at any time the aggregate undisputed amount due to the Provider from the Co-ordinating Commissioner and/or any Commissioner exceeds:
 - 17.9.1.1 25% of the Expected Annual Contract Value; or
 - 17.9.1.2 if there is no applicable Expected Annual Contract Value or the Expected Annual Contract Value is zero, the equivalent of 3 times the average monthly income to the Provider under this Contract,and full payment is not made within 20 Operational Days of receipt of written notice from the Provider referring to this GC17.9 and requiring payment to be made; or
 - 17.9.2 if any Commissioner is in persistent material breach of any of its obligations under this Contract so as to have a material and adverse effect on the ability of the Provider to provide the Services, and the Commissioner fails to remedy that breach within 40 Operational Days of the Co-ordinating Commissioner's receipt of the Provider's written notice identifying the breach; or
 - 17.9.3 if any Commissioner breaches the terms of GC12.10 (*Assignment and Sub-Contracting*); or
 - 17.9.4 any warranty given by any Commissioner under GC25.2 (*Warranties*) is found to be materially untrue or misleading.

Termination: Provider Default

- 17.10 The Co-ordinating Commissioner may terminate this Contract or any affected Service, with immediate effect, by written notice to the Provider if:
- 17.10.1 any Condition Precedent is not met by the relevant Longstop Date; or
 - 17.10.2 the Provider ceases to carry on its business or substantially all of its business; or
 - 17.10.3 a Provider Insolvency Event occurs; or
 - 17.10.4 the Provider is in persistent or repetitive breach of the Quality Requirements; or

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

17.10.6 the Provider commits a Personal Data Breach which under Data Protection Legislation must be notified to the Information Commission Officer or to a Service User; or

[Drafting note: The GDPR does not require this term to be included in contracts. However, we have taken the view that it is an appropriate addition to the standard contract for the future. It makes clear that a serious breach of data protection legislation that has a significant impact on individuals can be grounds for termination. Views on this insertion are welcome.]

~~17.10.6~~17.10.7 two or more Exception Reports are issued to the Provider under GC9.20 (Contract Management) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution; or

~~17.10.7~~17.10.8 the Provider does not comply with GC24.2 (Change in Control) or GC24.5 (Change in Control) and fails to remedy that breach within 20 Operational Days following receipt of a notice from the Co-ordinating Commissioner identifying the breach; or

~~17.10.8~~17.10.9 there is:

~~17.10.8.1~~17.10.9.1 a Provider Change in Control and, within 30 Operational Days after having received the Change in Control Notification, the Co-ordinating Commissioner reasonably determines that, as a result of that Provider Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider to provide the Services in accordance with this Contract; or

~~17.10.8.2~~17.10.9.2 a breach of GC24.9.1 (Change in Control); or

~~17.10.8.3~~17.10.9.3 a breach of GC24.9.2 (Change in Control) and the Provider has not replaced the Material Sub-Contractor within the relevant period specified in the notice served upon the Provider under GC24.10 (Change in Control); or

~~17.10.8.4~~17.10.9.4 a Material Sub-Contractor Change in Control and the Provider has not replaced the Material Sub-Contractor within the relevant period specified in the notice served on the Provider under GC24.8.3 (Change in Control); or

~~17.10.9~~17.10.10 the Provider:

~~17.10.9.1~~17.10.10.1 fails to obtain any Consent; or

~~17.10.9.2~~17.10.10.2 loses any Consent; or

~~17.10.9.3~~17.10.10.3 has any Consent varied or restricted,

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

~~17.10.10~~17.10.11 the Provider fails materially to comply with the requirements of GC23 (NHS Identity, Marketing and Promotion); or

~~17.10.11~~17.10.12 the Provider has breached any of its obligations under SC1 (Compliance with the Law and the NHS Constitution) in any material respect, and the Provider has not remedied

that breach within 40 Operational Days following receipt of notice from the Co-ordinating Commissioner identifying the breach; or

- | ~~17.10.12~~17.10.13 the Provider has breached the terms of GC26 (*Prohibited Acts*); or
- | ~~17.10.13~~17.10.14 Monitor's Licence for the Provider or any Material Sub-Contractor is revoked, varied or restricted; or
- | ~~17.10.14~~17.10.15 the Provider breaches the terms of GC12 (*Assignment and Sub-Contracting*); or
- | ~~17.10.15~~17.10.16 the NHS Business Services Authority has notified the Commissioners that the Provider or any Sub-Contractor has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter); or
- | ~~17.10.16~~17.10.17 any warranty given by the Provider under GC25.1 (*Warranties*) is found to be materially untrue or misleading; or
- | ~~17.10.17~~17.10.18 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 If, as a result of termination of this Contract or of any Service following service of notice by the Co-ordinating Commissioner under GC17.4 or 17.10 (*Termination*), any Commissioner procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then that Commissioner, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Co-ordinating Commissioner in respect of that termination) the excess cost and all reasonable related administration costs it incurs (in each case) in respect of the period of 6 months following termination.
- 18.3 On or pending expiry or termination of this Contract or termination of any Service the Co-ordinating Commissioner, the Provider, and if appropriate any successor provider, will agree a Succession Plan.
- 18.4 For a reasonable period before and after termination of this Contract or of any Service, and where reasonable and appropriate before and after the expiry of this Contract, the Provider must:
 - 18.4.1 co-operate fully with the Co-ordinating Commissioner and any successor provider of the terminated Services in order to ensure continuity and a smooth transfer of the expired or terminated Services, and to avoid any inconvenience or any risk to the health and safety of Service Users or employees of any Commissioner or members of the public; and
 - 18.4.2 at the reasonable cost and reasonable request of the Co-ordinating Commissioner:
 - 18.4.2.1 promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of the terminated Services by a successor provider;
 - 18.4.2.2 deliver to the Co-ordinating Commissioner all materials, papers, documents, and operating manuals owned by the Commissioners and used by the Provider in the provision of any terminated Services; and

- 18.4.2.3 use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the Provider and any third party which relate to or are associated with the terminated Services.

18.5 On and pending expiry or termination of this Contract, or termination of any Service, the Parties must:

18.5.1 implement and comply with their respective obligations under the Succession Plan; and

18.5.2 use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users or prospective service users as a result of the expiry or termination of this Contract or any Service.

18.6 Each Commissioner must pay the Provider pro rata in accordance with SC36 (*Payment Terms*) for any Services properly delivered by the Provider following expiry or termination of this Contract, or termination of any Service, until the Provider ceases to provide those Services.

18.7 On expiry or termination of this Contract or termination of any Service:

18.7.1 the Commissioners must ensure that no further Service Users who require any expired or terminated Service are referred to the Provider;

18.7.2 the Provider must stop accepting any Referrals that require any expired or terminated Service; and

18.7.3 subject to any appropriate arrangements made under GC18.4 and 18.5, the Provider must immediately cease its treatment of Service Users requiring the expired or terminated Service, and/or arrange for their transfer or discharge as soon as is practicable in accordance with Good Practice and the Succession Plan.

18.8 If termination of this Contract or of any Service takes place with immediate effect in accordance with GC17 (*Termination*), and the Provider is unable or not permitted to continue to provide any affected Service under any Succession Plan, or implement arrangements for the transition to a successor provider, the Provider must co-operate fully with the Co-ordinating Commissioner and any relevant Commissioners to ensure that:

18.8.1 any affected Service is commissioned without delay from an alternative provider; and

18.8.2 there is no interruption in the availability to the relevant Commissioners of any CRS or Essential Services.

18.9 On and pending expiry or termination of this Contract, or termination of any Service, any arrangements set out in Schedule 21 (*Exit Arrangements*) will apply.

GC19 Provisions Surviving Termination

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

GC20 Confidential Information of the Parties

20.1 Except as this Contract otherwise provides Confidential Information is owned by the disclosing Party and the receiving Party has no right to use it.

- 20.2 Subject to GC20.3 and 20.4, the receiving Party agrees:
- 20.2.1 to use the disclosing Party's Confidential Information only in connection with the receiving Party's performance under this Contract;
 - 20.2.2 not to disclose the disclosing Party's Confidential Information to any third party or to use it to the detriment of the disclosing Party; and
 - 20.2.3 to maintain the confidentiality of the disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the disclosing Party.
- 20.3 The receiving Party may disclose the disclosing Party's Confidential Information:
- 20.3.1 in connection with any Dispute Resolution;
 - 20.3.2 in connection with any litigation between the Parties;
 - 20.3.3 to comply with the Law;
 - 20.3.4 to any appropriate Regulatory or Supervisory Body;
 - 20.3.5 to its staff, who in respect of that Confidential Information will be under a duty no less onerous than the receiving Party's duty under GC20.2;
 - 20.3.6 to NHS Bodies for the purposes of carrying out their duties;
 - 20.3.7 as permitted under or as may be required to give effect to GC9 (*Contract Management*);
 - 20.3.8 as permitted under or as may be required to give effect to SC24 (*NHS Counter-Fraud and Security Management*); and
 - 20.3.9 as permitted under any other express arrangement or other provision of this Contract.
- 20.4 The obligations in GC20.1 and 20.2 will not apply to any Confidential Information which:
- 20.4.1 is in or comes into the public domain other than by breach of this Contract;
 - 20.4.2 the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or
 - 20.4.3 the receiving Party can prove it obtained or was able to obtain from a source other than the disclosing Party without breaching any obligation of confidence.
- 20.5 Subject to GC25.1.3 and GC25.2.3 (*Warranties*), the disclosing Party does not warrant the accuracy or completeness of the Confidential Information.
- 20.6 The receiving Party must indemnify the disclosing Party and keep the disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the disclosing Party as a result of any breach of this GC20.
- 20.7 The Parties acknowledge that damages would not be an adequate remedy for any breach of this GC20 by the receiving Party, and in addition to any right to damages the disclosing Party will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this GC20.
- 20.8 This GC20 will survive the expiry or the termination of this Contract for a period of 5 years.

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

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

Information Governance – General Responsibilities

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

[Drafting Note: The reference to the new defined term Data Protection Legislation ensures that this clause captures compliance with the GDPR and the anticipated new data protection act. The reference to the new defined term Data Guidance ensures that this clause captures compliance with guidance issued by relevant bodies.]

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 organisation 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 nominate a Data Protection Officer;

~~21.3.3~~ 21.3.4 ensure that the Co-ordinating Commissioner is kept informed at all times of the identities and contact details of the Information Governance Lead, Data Protection Officer, Caldicott Guardian and the Senior Information Risk Owner; and

~~21.3.4~~ 21.3.5 ensure that NHS England and NHS Digital are kept informed at all times of the identities and contact details of the Information Governance Lead, Data Protection Officer, Caldicott Guardian and the Senior Information Risk Owner via the NHS Information Governance Toolkit (or any successor framework).

[Drafting Note: Under the GDPR data controllers are required to appoint a data protection officer (DPO) in some circumstances. This includes where a data controller's core activities involve processing personal data about health on a large scale (see Article 37). It is therefore very likely that Providers will have to appoint a DPO. This clause is included to remove any doubt. Guidance on DPOs has been issued by the Information Governance Alliance (IGA) [click here](#) and the Article 29 Working Party [click here](#). (The Working Party is a committee of the UK ICO and her equivalents across the EU.) Care needs to be taken regarding possible conflicts that the DPO might have with their other (non-DPO) duties.]

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 the 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~~ 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. If the Provider is required under Data Protection Legislation to notify the Information Commissioner or a Data Subject of a Personal Data Breach then as soon as reasonably practical and in any event on or before the first such notification is made the Provider must inform the Co-ordinating Commissioner of the Personal Data Breach.
- [Drafting Note: Under the GDPR there is a new requirement to inform the Information Commissioner of data security breaches in some circumstances (article 33). In some cases individuals will also need to be informed (article 34). We have taken the view that in these circumstances the Co-ordinating Commissioner should be told of the notification, as they are likely to need to respond to queries.]
- Data Protection**
- 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~~ Privacy Notices, and to disseminate nationally-produced patient information materials. Any failure by the Provider to inform Service Users as required by Data Protection Legislation or Data Guidance about the uses of Personal Data that may take place under this Contract cannot be relied on by the Provider as evidence that such use is unlawful and therefore not contractually required.
- ~~21.9 The Parties acknowledge that:~~
- ~~29.9.1 in relation to Personal Data processed by the Provider for the purpose of delivering the Services the Provider will be sole Data Controller; and~~
- ~~29.9.2 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.~~
- [Drafting Note: This clause has been updated to (i) reflect the updated legislation and (ii) make clear that a provider cannot maintain that data sharing is unlawful because the provider has not informed the data subjects about it as set out in articles 12, 13 and 14.]
- ~~21.9 Whether or not a Party or Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and the ICO Guidance on Data Controllers and Data Processors and any further Data Guidance from a Regulatory or Supervisory Body. The Parties acknowledge that a Party or Sub-Contractor may act as both a Data Controller and a Data Processor. The Parties have indicated in the Particulars whether they consider the Provider to be a Data Processor.~~
- 21.10 The Provider must ensure that all Personal Data processed by or on behalf of the Provider in the course of delivering the Services is processed in accordance with the relevant Parties' obligations under the DPA, Data Protection Legislation and Data Guidance.

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 legal basis for the sharing of Personal Data.

[Drafting Note: In the GDPR reference is made to the "legal basis" for processing personal data rather than the "lawful basis" see e.g. article 13(1)(c).]

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 as a Data Processor on its behalf, the Provider must:

[Drafting note: This amendment has been made to make clear that these requirements apply to data processors (the GDPR requires that the clauses listed below are included in data processing agreements – see article 28).]

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 as far as practicable include in the terms of the sub-contract terms equivalent to those set out in Schedule 6F (Provider Data Processor Agreement) and in any event ensure that the

Sub-Contractor is engaged under the terms of a binding written agreement requiring the Sub-Contractor to:

- ~~21.15.2.1 process such personal data only in accordance with the Provider's instructions;~~
- ~~21.15.2.1 process Personal Data only in accordance with the Provider's instructions as set out in the written agreement, including instructions regarding transfers of Personal Data outside the EU or to an international organisation unless such transfer is required by Law, in which case the Data Processor shall inform the Provider of that requirement before processing takes place, unless this is prohibited by law on the grounds of public interest;~~
- ~~21.15.2.2 ensure that persons authorised to process the personal data on behalf of the Sub-Contractor have committed themselves to confidentiality or are under appropriate statutory obligations of confidentiality;~~
- ~~21.15.2.2~~ 21.15.2.3 comply at all times with obligations equivalent to those imposed on the Provider by virtue of the Seventh Data Protection Principle or for so long as the DPA 1998 remains in force and after that time with those obligations set out at Article 32 of the GDPR and equivalent provisions implemented into Law by DPA 2018;
- ~~21.15.2.4 impose obligations as set out in this clause GC21.15.2 on any Sub-processor appointed by the Sub-Contractor;~~
- ~~21.15.2.5 taking into account the nature of the processing, assist the Provider by taking appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Provider's obligation to respond to requests for exercising rights granted to individuals by Data Protection Legislation;~~
- ~~21.15.2.6 assist the Provider in ensuring compliance with the obligations set out at Article 32 to 36 of the GDPR and equivalent provisions implemented into Law, taking into account the nature of processing and the information available to the Sub-Contractor;~~
- ~~21.15.2.7 at the choice of the Provider, delete or return all Personal Data to the Provider after the end of the provision of services relating to processing, and delete existing copies unless the Law requires storage of the Personal Data;~~
- ~~21.15.2.8 create and maintain a record of all categories of data processing activities carried out under this Contract, containing:~~
 - ~~21.15.2.8.1 the name and contact details of the Data Protection Officer;~~
 - ~~21.15.2.8.2 the categories of processing carried out on behalf of the Provider;~~
 - ~~21.15.2.8.3 where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where relevant, the documentation of suitable safeguards;~~
 - ~~21.15.2.8.4 a general description of the technical and organisation security measures taken to ensure the security and integrity of the Personal Data processed under this Contract.~~

[Drafting note: Clause 21.15.2.8 is not included in the draft data processing clauses in the PPN. However, at paragraph 20(ii) the PPN does require contracts with data processors to include a clause requiring the processor to maintain records of processing. This requirement is imposed directly on data processors by article 30(5). There is a carve out for companies with fewer than 250 staff but this does not apply if the processing includes personal data about health.]

21.15.2.9 guarantee that it has technical and organisational measures in place that are sufficient to ensure that the processing complies with Data Protection Legislation and ensures that the rights of Data Subject are protected.

[Drafting note: Clause 21.15.1.9 is not included in the draft data processing clauses in the PPN. However, at paragraph 20(iii) the PPN does require that only processors who provide sufficient guarantees about the measures they have in place for security and the protection of data subject rights are appointed.]

~~21.15.2.3~~21.15.2.10 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~~21.15.2.11 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.GC15; and~~

21.15.2.12 carry out and and record appropriate due diligence before the Sub-Contractor processes any Personal Data in order to demonstrate compliance with Data Protection Legislation.

[Drafting note: The PPN contains guidance on due diligence/ procurement (see Annex B).]

21.16 The agreement required by GC21.15 must also set out:

21.16.1 the subject matter of the processing;

21.16.2 the duration of the processing;

21.16.3 the nature and purposes of the processing;

21.16.4 the type of personal data processed;

21.16.5 the categories of data subjects; and

21.16.6 the plan for return and destruction of the data once processing is complete unless the Law requires that the data is preserved

The Provider as a Data Processor

~~21.16~~21.17 ~~Notwithstanding GC21.9, where~~Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of a Commissioner, the ~~Provider must: provisions of Schedule 6F (Provider Data Processing Agreement) will apply.~~

~~21.16.2~~ 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

~~21.16.3 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;~~

~~21.16.4 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~~

~~21.16.5 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Commissioner.~~

[Drafting note: If the Provider is acting as a data processor (either under an existing contract or a new one) then under the proposed changes the terms of the new Schedule 6F must be incorporated into that data processing agreement. We have adopted a more flexible approach for sub-contractors, as these may be large IT suppliers who will not adapt their standard terms.]

Freedom of Information and Transparency

~~21.17~~ 21.18 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:

21.18.1 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;

21.18.2 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;

21.18.3 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;

21.18.4 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;

21.18.5 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

21.18.6 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.

~~21.19~~ 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.

~~21.20~~ 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.

~~21.21~~ In preparing a copy of this Contract for publication under GC21.~~4920~~ 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.

~~21.22~~ 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 require 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 of any claim made against the Secretary of State or any Commissioner by virtue of section 2 of the Consumer Protection Act 1987 in respect of the use of any defective product by the Provider or any Staff or Sub-Contractor in the provision of the Services.

GC24 Change in Control

- 24.1 This GC24 applies to any Provider Change in Control and/or any Material Sub-Contractor Change in Control, but not to a Change in Control of a company which is a Public Company.
- 24.2 The Provider must:
- 24.2.1 as soon as possible on, and in any event within 5 Operational Days following, a Provider Change in Control; and/or
 - 24.2.2 immediately on becoming aware of a Material Sub-Contractor Change in Control, notify the Co-ordinating Commissioner of that Change in Control and submit to the Co-ordinating Commissioner a completed Change in Control Notification.
- 24.3 If the Provider indicates in the Change in Control Notification an intention or proposal to make any consequential changes to its operations then, to the extent that those changes require a change to the terms of this Contract in order to be effective, they will only be effective when a Variation is made in accordance with GC13 (*Variations*). The Co-ordinating Commissioner will not and will not be deemed by a failure to respond or comment on the Change in Control Notification to have agreed to or otherwise to have waived its rights under to GC13 (*Variations*) in respect of that intended or proposed change.
- 24.4 The Provider must specify in the Change in Control Notification any intention or proposal to make a consequential change to its operations which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract. If the Provider does not do so it will not be entitled to propose a Variation in respect of that for a period of 6 months following the date of that Change in Control Notification, unless the Co-ordinating Commissioner agrees otherwise.
- 24.5 If (and subject always to GC24.3) the Provider does not specify in the Change in Control Notification an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Provider's Premises as a result of or in connection with the Change in Control then, unless the Co-ordinating Commissioner provides its written consent to the relevant action, the Provider must:
- 24.5.1 ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract; and
 - 24.5.2 continue providing the Services from the Provider's Premises,
- in each case for at least 12 months following the date of that Change in Control Notification. The provisions of this GC24.5 will not apply to an assignment by way of security or the grant of any other similar rights by the Provider consequent upon a financing or re-financing of the transaction resulting in Change of Control.
- 24.6 The Provider must supply (and must use its reasonable endeavours to procure that the relevant Material Sub-Contractor supplies) to the Co-ordinating Commissioner, whatever further information relating to the Change in Control the Co-ordinating Commissioner may, within 20 Operational Days after receiving the Change in Control Notification, reasonably request.
- 24.7 The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Material Sub-Contractor include a provision obliging the Material Sub-Contractor to inform the Provider in writing on, and in any event within 5 Operational Days following, a Material Sub-Contractor Change in Control in respect of that Material Sub-Contractor.

24.8 If:

24.8.1 there is a Material Sub-contractor Change in Control; and

24.8.2 following consideration of the information provided to the Co-ordinating Commissioner in the Change in Control Notification or under GC24.6, the Co-ordinating Commissioner reasonably concludes that, as a result of that Material Sub-Contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Material Sub-Contractor to provide Services in accordance with this Contract (and, in reaching that conclusion, the Co-ordinating Commissioner may consider any factor, in its absolute discretion, that it considers relevant to the provision of Services),

then:

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

24.8.4 the Provider must replace the relevant Material Sub-Contractor within the period specified under GC24.8.3; and

24.8.5 for the avoidance of doubt, the provisions of GC12 (*Assignment and Sub-Contracting*) will apply in relation to the replacement Material Sub-Contractor and, on the granting of the approval referred to in GC12 (*Assignment and Sub-Contracting*), the provisions of Schedules 5B1 (*Provider's Mandatory Material Sub-Contractors*) and 5B2 (*Provider's Permitted Material Sub-Contractors*) will be amended accordingly.

24.9 Notwithstanding any other provision of this Contract:

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

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

24.10 If the Provider breaches GC24.9.2, the Co-ordinating Commissioner may by serving written notice upon the Provider, require the Provider to replace the relevant Material Sub-Contractor within:

24.10.1 5 Operational Days; or

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

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

24.11 Nothing in this GC24 will prevent or restrict the Provider from discussing with the Co-ordinating Commissioner a proposed Change in Control before it occurs. In those circumstances, all and any information provided to or received by the Co-ordinating Commissioner in relation to that proposed

Change in Control will be Confidential Information for the purposes of GC20 (*Confidential Information of the Parties*).

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

GC25 Warranties

- 25.1 The Provider warrants to each Commissioner that:

- 25.1.1 it has full power and authority to enter into this Contract and all governmental or official approvals and consents and all necessary Consents have been obtained and are in full force and effect;
- 25.1.2 its execution of this Contract does not and will not contravene or conflict with its constitution, Monitor's Licence, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- 25.1.3 the copies of all documents supplied to the Commissioners or any of their advisers by or on its behalf and listed in Schedule 5A (*Documents Relied On*) from time to time are complete and their contents are true;
- 25.1.4 it has the right to permit disclosure and use of its Confidential Information for the purpose of this Contract;
- 25.1.5 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract;
- 25.1.6 any Material Sub-Contractor will have and maintain all Indemnity Arrangements and Consents and will deliver the subcontracted services in accordance with the Provider's obligations under this Contract;
- 25.1.7 all information supplied by it to the Commissioners during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Commissioners which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract; and
- 25.1.8 it has notified the Co-ordinating Commissioner in writing of any Occasions of Tax Non-compliance or any litigation in which it is involved in connection with any Occasions of Tax Non-compliance.

- 25.2 Each Commissioner warrants to the Provider that:

- 25.2.1 it has full power and authority to enter into this Contract and all necessary approvals and consents have been obtained and are in full force and effect;
- 25.2.2 its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- 25.2.3 the copies of all documents supplied to the Provider or any of its advisers by it or on its behalf and listed in Schedule 5A (*Documents Relied On*) from time to time are complete and their contents are true;

- 25.2.4 it has the right to permit disclosure and use of its Confidential Information for the purpose of this Contract; and
- 25.2.5 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract.
- 25.3 The warranties set out in this GC25 are given on the Effective Date and repeated on every day during the Contract Term.
- 25.4 Each Party must notify the others within 5 Operational Days following the occurrence of any event or circumstance which would or might render any warranty on its part untrue or misleading, providing full details as appropriate.

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 GC17.10.12 (*Termination*) and to recover from the Provider the amount of any loss resulting from the termination; and
 - 26.2.2 to recover from the Provider the amount or value of any gift, consideration or commission concerned; and
 - 26.2.3 to recover from the Provider any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

GC27 Conflicts of Interest 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 This GC28 must be read in conjunction with SC31 (*Force Majeure: Service-specific provisions*).
- 28.2 If an Event of Force Majeure occurs, the Affected Party must:
 - 28.2.1 take all reasonable steps to mitigate the consequences of that event;
 - 28.2.2 resume performance of its obligations as soon as practicable; and
 - 28.2.3 use all reasonable efforts to remedy its failure to perform its obligations under this Contract.

- 28.3 The Affected Party must serve an initial written notice on the other Parties immediately when it becomes aware of the Event of Force Majeure. This initial notice must give sufficient detail to identify the Event of Force Majeure and its likely impact. The Affected Party must then serve a more detailed written notice within a further 5 Operational Days. This more detailed notice must contain all relevant information as is available, including the effect of the Event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome the event and resume full delivery of Services.
- 28.4 If it has complied with its obligations under GC28.2 and 28.3, the Affected Party will be relieved from liability under this Contract if and to the extent that it is not able to perform its obligations under this Contract due to the Event of Force Majeure.
- 28.5 The Commissioners will not be entitled to exercise their rights under the Withholding and Retention of Payment Provisions to the extent that the circumstances giving rise to those rights arise as a result of an Event of Force Majeure.

GC29 Third Party Rights

- 29.1 A person who is not a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Contract, 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, GC5.3.2 and GC5.15 to GC5.17 (*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 any Service, if the matter to be enforced or the benefit to be enjoyed arises under GC5.11 to GC5.14 (*Staff*);
 - 29.1.7 the relevant NHS Employer, if the matter to be enforced or the benefit to be enjoyed arises under GC5.15 to GC5.17 (*Staff*).
- 29.2 Subject to GC13.2.2 (*Variations*), the rights of the Parties to terminate, rescind or agree any Variation, waiver or settlement under this Contract are not subject to the consent of any person who is not a party to this Contract.

GC30 Entire Contract

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

in this Contract as a warranty or in any document agreed by the Parties to be relied on and listed in Schedule 5A (*Documents Relied On*).

30.3 Nothing in this GC30 will exclude any liability for fraud or any fraudulent misrepresentation.

GC31 Severability

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

GC32 Waiver

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

GC33 Remedies

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

GC34 Exclusion of Partnership

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

GC35 Non-Solicitation

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

35.2 Subject to Guidance, it will not be considered to be a breach of GC35.1 if:

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

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

GC36 Notices

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

36.2 Notices:

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

36.2.2 by hand will be effective upon delivery; and

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

GC37 Costs and Expenses

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

GC38 Counterparts

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

GC39 Governing Law and Jurisdiction

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

DEFINITIONS AND INTERPRETATION

[Drafting Note: We have taken the view that any terms that refer to the DPA 1998 should be updated to refer to the new legislation. Where possible we have used defined terms from the Procurement Policy Note (PPN) 03/17: Changes to Data Protection Legislation & General Data Protection Regulation (<https://www.gov.uk/government/publications/procurement-policy-note-0317>) (PPN). In some cases we have amended those definitions to ensure a better fit with this contract. In particular, in the PPN many terms are defined by reference to the GDPR. Rather than referring to the GDPR we have referred to Data Protection Legislation. This will help future-proof contracts for after Brexit, when the GDPR will no longer apply.]

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:

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

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

1983 Act the Mental Health Act 1983

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

2005 Act the Mental Capacity Act 2005

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 Act the Care Act 2014

2014 Regulations the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

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

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

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*)

Activity Management Plan a plan which, without limitation:

- (i) specifies any thresholds set out in any Activity Planning Assumptions which have been breached and/or otherwise identifies any unexpected or unusual patterns of Referrals and/or Activity in relation to the relevant Commissioners;
- (ii) includes the findings of any Joint Activity Review;
- (iii) includes an analysis of the causes and factors that contribute to the unexpected or unusual patterns of Referrals and/or Activity;
- (iv) includes specific locally agreed actions and timescales by which those actions must be met and completed by the Provider and/or the relevant Commissioners in order to restore levels of Referrals and/or Activity to within agreed thresholds;
- (v) (except in respect of unexpected or unusual patterns of Referrals and/or Activity caused wholly or mainly as a result of the exercise by Service Users of their legal rights to choice) includes the consequences for the Provider and/or the relevant Commissioners for breaching or failing to implement the Activity Management Plan; and
- (vi) (except in respect of unexpected or unusual patterns of Referrals and/or Activity caused wholly or mainly as a result of the exercise by Service Users of their legal rights to choice) may specify the immediate consequences (whether in relation to payment for Services delivered or to be delivered or otherwise) in relation to the identified unexpected or unusual patterns of Referrals and/or Activity

Activity Planning Assumptions the ratios and/or obligations to be met and satisfied by the Provider in relation to Service User flows and Activity following initial assessment regarding the Services as identified in Schedule 2C (*Activity Planning Assumptions*), as amended or updated for the relevant Contract Year or Contract Years

Activity Query Notice a notice setting out in reasonable detail a query on the part of the Co-ordinating Commissioner or the Provider in relation to levels of Referrals and/or Activity

Actual Annual Value for the relevant Contract Year the aggregate of all payments made to the Provider under this Contract in respect of all Services delivered in that Contract Year (excluding VAT and

payments in relation to any CQUIN Indicator or Local Incentive Scheme and after any deductions, withholdings or set-off), as reconciled under SC36 (*Payment Terms*). For the purposes of Schedule 4 (*Quality Requirements*) and SC38 (*Commissioning for Quality and Innovation (CQUIN)*) only, the Actual Annual Value will exclude the value of any items or Activity on which CQUIN is not payable, as set out in CQUIN Guidance

Actual Monthly Value for the relevant month the aggregate of all payments made to the Provider under this Contract in respect of all Services delivered in that month (excluding VAT and payments in relation to any CQUIN Indicator or Local Incentive Scheme 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

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 or Local Incentive Scheme 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

A-EQUIP Guidance the model of clinical midwifery supervision published by NHS England and available at <https://www.england.nhs.uk/publication/a-equip-a-model-of-clinical-midwifery-supervision/>

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

Agenda for Change the single pay system in operation in the NHS, which applies to all directly-employed NHS staff with the exception of doctors, dentists and some very senior managers

Approved Research Study a clinical research study:

- (i) which is of clear value to the NHS;
- (ii) which is subject to high quality peer review (commensurate with the size and complexity of the study);
- (iii) which is subject to NHS research ethics committee approval where relevant;
- (iv) which meets all the requirements of any relevant Regulatory or Supervisory Body; and
- (v) in respect of which research funding is in place compliant with NHS Treatment Costs Guidance

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

Auditor an appropriately qualified, independent third party auditor appointed by the Co-ordinating Commissioner in accordance with GC15.8 (*Governance, Transaction Records and Audit*)

Authorised Person the Co-ordinating Commissioner and each Commissioner or their authorised representatives, any body or person concerned with the treatment or care of a Service User approved by the Co-ordinating Commissioner or the relevant Commissioner, and (for the purposes permitted by Law) any authorised representative of any Regulatory or Supervisory Body

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

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

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

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

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

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

Care Programme Approach the framework introduced to deliver effective mental healthcare for people with severe mental health problems (as amended, revised, re-issued or replaced from time to time by the Department of Health), being the Care Programme Approach referred to in:

- (i) *Department of Health, Effective care co-ordination in mental health services; modernising the Care Programme Approach 1999* (a policy booklet);
- (ii) *Reviewing the Care Programme Approach 2006* (a consultation document) Care Services Improvement Partnership Department of Health; and
- (iii) *Re-focusing the Care Programme Approach – Policy and Positive Practice Guidance 2008*, being the process used to assess the care needs of Service Users based on the Principles of HC 90(23)

Care Transfer Plan an appropriately detailed and comprehensive plan relating to the transfer of and/or discharge from care of a Service User, to ensure a consistently high standard of care for that Service User is at all times maintained

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

CEDR the Centre for Effective Dispute Resolution

Change in Control

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

Change in Control Notification a notification in the form of the template to be found via <http://www.england.nhs.uk/nhs-standard-contract/> completed as appropriate

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

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

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

Child Protection Information Sharing Project the 'Child Protection - Information Sharing' project, being a project to improve the way that health and social care services work together across England to protect vulnerable children: <https://www.england.nhs.uk/ourwork/safeguarding/our-work/cp-is/>

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

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

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

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

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

Commissioner Earliest Termination Date the date referred to as such in the Particulars

Commissioner Notice Period the period specified as such in the Particulars

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

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

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

Contract Management Meeting a meeting of the Co-ordinating Commissioner and the Provider held in accordance with 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

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

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

CQC Regulations the Care Quality Commission (Registration) Regulations 2009

CQUIN Commissioning for Quality and Innovation

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 Payments on Account the payments to be made on account in respect of the relevant CQUIN Payments as set out in CQUIN Table 2 (and as adjusted from time to time in accordance with SC38.10 (*Commissioning for Quality and Innovation (CQUIN)*))

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

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

CQUIN Reconciliation Account an account prepared by or on behalf of the Provider which:

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

CQUIN Table 1, CQUIN Table 2 the tables at Schedule 4D (*Commissioning for Quality and Innovation (CQUIN)*) under those headings

Critical Care healthcare or treatment at a higher level or more intensive level than is normally provided in an acute ward (often to support one or more of a patient's organs) and normally forming part of a comprehensive acute care pathway, but which may be required in other circumstances alone or together with Emergency Care

CRS commissioner requested services, as defined in CRS Guidance

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

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 Protection Legislation](#)

[Drafting Note: The PPN refers to the definition in the GDPR. We have taken the view it is preferable to refer to Data Protection Legislation instead, so that contracts will not have to be updated when the GDPR is replaced by the anticipated Data Protection Act 2018.]

Data Guidance any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Contract or not) to the extent published and publicly available or their existence or contents have been notified to the Provider by the Co-ordinating Commissioner and/or any relevant Regulatory or Supervisory Body. This includes but

is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, the Department of Health, NHS England, the Health Research Authority, Public Health England, the European Data Protection Board and the Information Commissioner

[Drafting Note: We have inserted a new definition of data guidance to capture the guidance issued on data privacy.]

Data Loss Event any event that results, or may result, in unauthorised processing of Personal Data held by the Provider under this Contract or Personal Data for which the Provider has responsibility under this Contract including without limitation actual or potential loss, destruction, corruption or inaccessibility of Personal Data, including any Personal Data Breach

[Drafting Note: We have amended the PPN drafting slightly to cover all unauthorised processing, personal data which is not held by the Provider but for which the Provider has responsibility. This definition is only used in Schedule 6F so does not have to be included if the Provider is not acting as a data processor and therefore Schedule 6F does not apply.]

Data Processing Services the data processing services described in the Annex to Schedule 6F

[Drafting Note: This definition is only used in Schedule 6F so does not have to be included if the Provider is not acting as a data processor and therefore Schedule 6F does not apply.]

Data Processor has the meaning given to it in the DPA

Data Protection Officer has the meaning given to it in Data Protection Legislation

[Drafting Note: The Data Protection Officer (DPO) is the person appointed under article 37 of the GDPR.]

Data Protection Legislation (i) the DPA 1998 (ii) the GDPR, the LED and any applicable national Laws implementing them as amended from time to time (iii) the DPA 2018 (iv) all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations

[Drafting Note: We have amended the definition of Data Protection Legislation in the PPN so that it (i) it includes the DPA 1998 while it is in force (ii) refers expressly to privacy laws that are relevant to the health and social care sector.]

Data Protection Impact Assessment an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

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

Data Subject has the meaning given to it in Data Protection Legislation

Data Subject Access Request a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access their Personal Data

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

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

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

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

Delivery Method

- (i) direct automatic transfer onto the GP practice electronic patient record system through a suitable secure interface; or
- (ii) (until 30 September 2018) secure email using an NHS Net secure account or equivalent, as required or permitted by the relevant Transfer of and Discharge from Care Protocol

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

Derogation agreement by NHS England that specified provisions within a National Service Specification do not apply to the Provider on a time-limited basis, pending action being taken by that Provider to ensure that, from an agreed date, it can meet all of the requirements of the National Service Specification on an ongoing basis

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

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

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

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

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

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 1998 the Data Protection Act 1998

DPA 2018 the Data Protection Act 2018

EDS2 the *Equality Delivery System for the NHS – EDS2*, being a tool designed to help NHS organisations, in discussion with local stakeholders, to review and improve their equality performance for people with characteristics protected by the Equality Act 2010, and to support them in meeting their duties under section 1 of the Equality Act 2010, available at:

<http://www.england.nhs.uk/wp-content/uploads/2013/11/eds-nov131.pdf>

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

Effective Date the date referred to as such in the Particulars

e-Invoicing Guidance guidance relating to the application and use of the NHS Shared Business Services e-Invoicing Platform, available at: https://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

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

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

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

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

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

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

e-Prescribing use of electronic systems to facilitate and enhance the communication of a prescription or medicine order, aiding the choice, administration and supply of a medicine through knowledge and decision support and providing a robust audit trail for the entire medicines use processes

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

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

- (i) *NHS England Emergency Preparedness, Resilience and Response Framework*;
 - (ii) *NHS England Core Standards for Emergency Preparedness, Resilience and Response (EPRR)*; and
 - (iii) *NHS England Business Continuity Management Framework (Service Resilience)*,
- all available via: <http://www.england.nhs.uk/ourwork/epr/>

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

European Data Protection Board has the meaning given to it in Data Protection Legislation

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

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

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

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

Exception Report a report issued in accordance with GC9.20 (*Contract Management*) notifying the relevant Party's Governing Body of that Party's breach of a Remedial Action Plan and failure to remedy that breach

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

Expert the person designated to determine a Dispute in accordance with GC14.8 or 14.9 (*Dispute Resolution*)

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

Expiry Date the last day of the Contract Term

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

Final Reconciliation Date the date when the final SUS reconciliation report for the relevant month is available for the Commissioners to view and use to validate reconciliation accounts received from the Provider, as advised by NHS Digital from time to time

First Reconciliation Date the date when the first SUS reconciliation report on Activity for the relevant month is available for the Commissioners to view to facilitate reconciliation between the Provider and Commissioners, as advised by NHS Digital from time to time

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

FOIA the Freedom of Information Act 2000

Food Standards Guidance the following publications:

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

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

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

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

Friends and Family Test the Friends and Family Test as defined in FFT Guidance

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

GDPR the General Data Protection Regulation (*Regulation (EU) 2016/679*)

Genomic Laboratory Hub an organisation which holds a contract with NHS England to arrange and/or perform genomic laboratory services for a defined geographical population (details of each Genomic Laboratory Hub and the catchment it will serve will be published by NHS England from time to time, together with the sub-contracted organisations that are designated within the GLH to provide any of the services within the hub catchment area)

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

Government Buying Standards Government Buying Standards for Food and Catering Services (Department of Environment, Food and Rural Affairs)

<https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-food-and-catering-services>

Government Prevent Strategy the policy forming part of HM Government's counter-terrorism strategy, available at:

<http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/prevent-strategy-review?view=Binary>

GP a general medical practitioner 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.gov.uk/government/uploads/system/uploads/attachment_data/file/323188/One_chance_to_get_it_right.pdf

and, for providers of acute services, *Transforming end of life care in acute hospitals*, 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

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

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

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

Healthcare Professional a person qualified in a healthcare-related profession

Healthcare Safety Investigation Branch the body established to provide support and guidance on investigations, and to carry out its own investigations, into patient safety incidents:

<https://www.gov.uk/government/groups/independent-patient-safety-investigation-service-ipsis-expert-advisory-group>

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

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

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

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

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

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

Hospital Food Standards Report the Hospital Food Standards Panel's report on standards for food and drink in NHS hospitals:
<https://www.gov.uk/government/publications/establishing-food-standards-for-nhs-hospitals>

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

HRA the Human Rights Act 1998

IG Guidance for Serious Incidents NHS Digital's *Checklist Guidance for Information Governance Serious Incidents Requiring Investigation* June 2013, available at:
<https://www.igt.hscic.gov.uk/KnowledgeBaseNew/HSCIC%20IG%20SIRI%20%20Checklist%20Guidance%20V2%200%201st%20June%202013.pdf>

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

Incident or Emergency an event or occurrence which:

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

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

Indemnity Arrangements either:

- (i) a policy of insurance;
- (ii) 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 but, for the avoidance of doubt, excluding any costs incurred remedying any breach of Data Protection Legislation

[Drafting Note: GC11 sets out a mutual indemnity for “Losses” incurred as a result of negligence or breach of contract etc by the other party. The definition of “Losses” excludes “Indirect Losses”, so Indirect Losses are not covered by the indemnity provisions. We have amended the definition of Indirect Losses to make clear that clean-up costs arising out of a breach by the other party of Data Protection Legislation are not included. This means that the indemnity provisions will apply to these costs.]

Information Breach any material failure on the part of the Provider to comply with its obligations under SC23.4 (Service User Health Records), SC28 (Information Requirements) and Schedule 6A (Reporting Requirements)

Information Commissioner the independent authority established to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals ico.org.uk and any other relevant data protection or supervisory authority recognised pursuant to Data Protection Legislation

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

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

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

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

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

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

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

Joint Activity Review a joint review of Activity by the Co-ordinating Commissioner and the Provider held in accordance with SC29.16 (*Managing Activity and Referrals*)

Joint Investigation an investigation into the matters referred to in a Contract Performance Notice in accordance with GC9.8

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

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/>

LED Law Enforcement Directive (Directive (EU) 2016/680)

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

Legal Services Provider a solicitor or firm of solicitors, claims management organisation or other provider, promoter or arranger of legal services

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 Access Policy a policy, consistent with the 18 Weeks Referral-to-Treatment Standard, setting out the application of waiting time rules, the role and the rights and responsibilities of the Provider and of Service Users and describing how the Provider will manage situations where a Service User does not attend an appointment or chooses to delay an appointment or treatment, ensuring that any decisions to discharge patients after non-attendance are made by clinicians in the light of the circumstances of individual Service Users and avoiding blanket policies which require automatic discharge to the GP following a non-attendance

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 Incentive Scheme the locally agreed incentive scheme or schemes set out in Schedule 4E (*Local Incentive Scheme*) from time to time

Local Modification a modification to a National Price where provision of a Service by the Provider at the National Price would be uneconomic, as approved or granted by 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 Security Management Specialist the accredited local security management specialist appointed by the Commissioner or the Provider (as appropriate)

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

Longstop Date each date referred to as such in the Particulars

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

Making Every Contact Count Guidance the guidance and tools issued by NHS England, Public Health England and Health Education England, available via:
<https://www.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/>

Mandatory Material Sub-Contract a Material Sub-Contract without which the Provider would be unable to deliver, or seriously hampered in delivering, the Services in accordance with this Contract, as designated by the Co-ordinating Commissioner and listed at Schedule 5B1 (*Provider's Mandatory Material Sub-Contracts*) from time to time

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

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

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

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

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

Policies) and updated from time to time in accordance with SC32 (*Safeguarding, Mental Capacity and Prevent*)

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

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

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

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

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

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

National 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 Genomic Test Directory the document published from time to time by NHS England listing all of the commissioned and provided genomic tests. The Directory includes genetic testing for rare and more common inherited disorders where constitutional genomic testing directs clinical care, and for cancer covers somatic genomic testing where findings are actionable in clinical care or as part of conferring eligibility to clinical trials

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

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

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

National Service Specifications the Service Specifications published by NHS England for prescribed specialised services, available via:
<http://www.england.nhs.uk/ourwork/commissioning/spec-services/npc-crg/>

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

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

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

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

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

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/>

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

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

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

NHS the National Health Service in England

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

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

NHS Care Records Guarantee the publication setting out the rules that govern how patient information is used in the NHS and what control the patient can have over this, available here: <http://systems.digital.nhs.uk/rasmarcards/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 Chaplaincy Guidelines *NHS England – NHS Chaplaincy Guidelines 2015: Promoting Excellence in Pastoral, Spiritual & Religious Care*, available at: <https://www.england.nhs.uk/wp-content/uploads/2015/03/nhs-chaplaincy-guidelines-2015.pdf>

NHS Choice Framework the framework providing information about patients' rights to choice in the NHS: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417057/Choice_Framework_k_2015-16.pdf

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

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

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

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

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

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

NHS Employment Check Standards the 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 England Prevent Training and Competencies Framework the framework available at: <https://www.england.nhs.uk/ourwork/safeguarding/our-work/prevent/>

NHS e-Referral Guidance guidance in relation to best practice use of the NHS e-Referral Service, available at: [eRS Best-Practice-Guidelines](#), and on management of referrals (e-Referral Service: guidance for managing referrals), available at <https://www.england.nhs.uk/digitaltechnology/nhs-e-referral-service/>

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

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

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

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

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 Improvement the combined organisation comprising Monitor and NHSTDA

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

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

NHS 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

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

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

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

NHS Treatment Costs Guidance *Attributing the costs of health and social care Research & Development* (AcoRD), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/140054/dh_133883.pdf and HSG (97) 32, available at http://webarchive.nationalarchives.gov.uk/+/http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthserviceguidelines/DH_4018353 and *Guidance on excess treatment costs*, available at <https://www.england.nhs.uk/wp-content/uploads/2015/11/etc-guidance.pdf> and any subsequent guidance to be published by NHS England and/or the Department of Health

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)

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

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

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

Occasion of Tax Non-compliance

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

ODS the NHS organisation data service that is responsible for:

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

Open API Policy the guidance available at:

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

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

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

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

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:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/666031/UPDATED_Guidance_to_Charging_Regulations_post_23_October.pdf

and

<https://www.england.nhs.uk/wp-content/uploads/2015/05/guidance-chargeable-overseas-visitor.pdf>
<https://www.england.nhs.uk/publication/improving-systems-for-cost-recovery-for-overseas-visitors/>

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

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

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

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

PEPPOL Pan-European Public Procurement Online. See:

<https://www.gov.uk/government/publications/nhs-e-procurement-strategy>

Permitted Material Sub-Contract a Material Sub-Contract without which the Provider would nevertheless be able to deliver, without being seriously hampered, the Services in accordance with this Contract (whether by means of its own performance and/or that of another Sub-Contractor), as designated by the Co-ordinating Commissioner and listed at Schedule 5B2 (*Provider's Permitted Material Sub-Contracts*) from time to time

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

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

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

NHS England, in partnership with The Coalition for Collaborative Care, has published a handbook which provides information on care and support, which is available at:

<http://www.england.nhs.uk/resources/resources-for-ccgs/out-frwrk/dom-2/ltc-care/>

Personal Data has the meaning given to it in the [DPA Data Protection Legislation](#)

Personal Data Breach has the meaning given to it in the [Data Protection Legislation](#)

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 be only be used in exceptional circumstances

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

Post Reconciliation Inclusion Date the date by which the Provider must submit to SUS all of the final activity data on which it believes payment for the month in question should be based, as advised by NHS Digital from time to time

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

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

and

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

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

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

Price a National Price, or a National Price adjusted by a Local Variation or Local Modification, or a Local Price, as appropriate

Primary Care Services the primary care services described in Schedule 2L (*Provisions Applicable to Primary Care Services*), to which the provisions of that Schedule apply

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

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

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62091/two-tier-code.pdf

including Annex A of that guidance note setting out a set of voluntary principles of good employment practice

Prior Approval the approval by the Responsible Commissioner of care or treatment, including diagnostics, to an individual Service User or a group of Service Users prior to referral or following initial assessment

Prior Approval Response Time Standard the timescale, set out in the Particulars, within which the relevant Commissioner must respond to a requirement for approval for treatment of an individual Service User under a Prior Approval Scheme

Prior Approval Scheme a scheme under which one or more Commissioners give Prior Approval for treatments and services prior to referral or following initial assessment that may form part of the Services required by the Service User following referral

Privacy Notice the information that must be provided to a Data Subject under whichever of the following Laws is in force at the relevant time:

- (i) paragraph 2(3) of Part II of Schedule 1 DPA 1998
- (ii) Article 13 and Article 14 of the GDPR; or
- (iii) DPA 2018

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

Prohibited Act the Provider:

- (i) offering, giving, or agreeing to give the Commissioners (or any of their officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the Provider, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Provider; and
- (ii) in connection with this Contract, paying or agreeing to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Co-ordinating Commissioner; or
- (iii) committing an offence under the Bribery Act 2010

Proposer a Party making a Variation Proposal

Protective Measures appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures

Provider the party identified as such in the Particulars

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

Provider 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 Earliest Termination Date the date referred to as such in the Particulars

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 Notice Period the period specified as such in the Particulars

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

Provider Sustainability Fund the arrangement described in *Refreshing NHS Plans for 2018/19* (<https://www.england.nhs.uk/wp-content/uploads/2018/02/planning-guidance-18-19.pdf>) through which NHS Trusts and Foundation Trusts can access non-recurrent funding

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

Quality Incentive Scheme Indicator an indicator or measure of the Provider's performance in relation a CQUIN Scheme or a Local Incentive Scheme

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

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

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/>

Recipient a Party receiving a draft Variation Agreement

Redundancy Repayment the sum £R, calculated as follows:

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

where:

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

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

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

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

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

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

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

Referrer

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

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

- (i) CQC;
- (ii) NHS Improvement;
- (iii) NHS England;
- (iv) the Department of Health;
- (v) NICE;
- (vi) Healthwatch England and Local Healthwatch;
- (vii) Public Health England;
- (viii) the General Pharmaceutical Council; ~~and~~
- (ix) the Healthcare Safety Investigation Branch;
- (x) the Information Commissioner; and
- (xi) the European Data Protection Board

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

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

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

Service Specifications each of (i) the service specifications defined by the Commissioners and set out in Schedule 2A (*Service Specifications*); and (ii) in the case of any Specialised Services each of the National Service Specifications listed and/or set out in Schedule 2A (*Service Specifications*) subject to any Derogations agreed by NHS England and set out in Schedule 2A1 (*Specialised Services – Derogations From National Service Specifications*); and (iii) where appropriate, the provisions of Schedule 2L (*Provisions Applicable to Primary Care Services*)

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

Service Variation a Variation proposed by the Co-ordinating Commissioner which relates to a Service and reflects:

- (i) the assessment by Commissioners of pathway needs, the availability of alternative providers and demand for any Service; and/or
- (ii) the joint assessment of the Provider and Commissioners of the quality and clinical viability of the relevant Service and the Services Environment; and/or
- (iii) the likely impact of any transformational need and/or reconfiguration of a care pathway that might affect the Service

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

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

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

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

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

[Drafting Note: This definition will no longer be needed once the GDPR/ new UK data protection act comes into force. We have left it in for the time being until there is greater clarity on when the DPA will be repealed.]

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

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

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

Specialised Services the prescribed specialised services commissioned by NHS England as specified in the identification rules available at:
<https://www.england.nhs.uk/commissioning/spec-services/key-docs/>

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

Staffing Guidance any Guidance applicable to the Services in relation to Staff numbers or skill-mix, including the National Quality Board publication *Supporting NHS providers to deliver the right staff, with the right skills, in the right place at the right time*, available at <https://www.england.nhs.uk/wp-content/uploads/2013/04/nqb-guidance.pdf>

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

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

Standard DBS Position any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236659/DBS_guide_to_eligibility_v2.pdf

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

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

Sub-processor any Sub-Contractor appointed by a Data Processor to process Personal Data on behalf of the Commissioners pursuant to this Contract

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

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

Sugar-Sweetened Beverage

any drink, hot or cold, carbonated or non-carbonated, containing 5 grams or more of added sugar per 100ml. For the purposes of this definition, added sugars:

- (i) include sugars added to pre-packaged drinks or added to made-to-order drinks (including without limitation sugar syrup, hot chocolate powder, sweetened milk alternatives and whipped cream);
- (ii) do not include sugars naturally occurring in fruit juices and fruit nectars. Where products described in the Fruit Juices and Fruit Nectars (England) Regulations 2013 (S.I. 2013/2775) are used to sweeten drinks, such products do not constitute added sugar for the purposes of this definition;
- (iii) do not include sugars naturally occurring in milk. A drink which contains 95-100% milk is not considered a sugar-sweetened beverage for the purpose of this definition. A drink which contains either between 0% and 49.9% of milk and more than 5g/100ml of total sugars or between 50% and 94.9% milk and more than 10g/100ml of total sugars is considered a sugar-sweetened beverage for the purpose of this definition;
- (iv) do not include sugar added by the customer after the point of sale.

For further information see Annex B of Action to reduce sales of sugar-sweetened drinks on NHS premises: Consultation response and next steps, published by NHS England at <https://www.england.nhs.uk/publication/sugar-action>.

Summary Care Records Service the national system providing those treating Service Users in any emergency or out-of-hours with fast access to key clinical information, as described at: <https://digital.nhs.uk/summary-care-records>

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

SUS the Secondary Uses Services

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

Suspension Event the occurrence of any of the following:

- (i) any Commissioner and/or any Regulatory or Supervisory Body having reasonable grounds to believe that the Provider is or may be in breach of the Law, or in material breach of the Quality Requirements or regulatory compliance Standards issued by a Regulatory or Statutory Body; or

- (ii) any Commissioner and/or any Regulatory or Supervisory Body having reasonable and material concerns as to the continuity, quality or outcomes of any Service, or for the health and safety of any Service User; or
- (iii) the Provider receiving a Contract Performance Notice in respect of a Service within 12 months after having agreed to implement a Remedial Action Plan in respect of the same issue with that Service; or
- (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) an Exception Report being issued under GC9.20 (*Contract Management*) and the Provider's Governing Body failing to procure the rectification of the relevant breach of the Remedial Action Plan within the timescales indicated in that Exception Report; or
- (vi) the Provider or any Sub-Contractor being prevented from providing a Service due to the termination, suspension, restriction or variation of any Consent or Monitor's Licence

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/delivering-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 Hospitals Stays* (www.nhs.uk/NHSEngland/keogh-review/Documents/quick-guides/background-docs/TEMPLATE-POLICY.docx)

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

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

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

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

UK Standard Methods for Investigation a comprehensive referenced collection of recommended algorithms and procedures for clinical microbiology:

<https://www.gov.uk/government/collections/standards-for-microbiology-investigations-smi>

Urgent 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/>

Urgent and Emergency Mental Health Care Pathway for Children and Young People the evidence-based treatment pathway for urgent and emergency mental health care for children and young people, developed by NHS England, NICE and the National Collaborating Centre for Mental Health and available at <https://www.england.nhs.uk/mental-health/adults/crisis-and-acute-care/>

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

Utilisation the Provider's capacity and use of resources in relation to both anticipated and accepted numbers of Referrals

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*) which may be a Service Variation, a National Variation, or any other variation

Variation Agreement an agreement in writing in the form available at: <https://www.england.nhs.uk/nhs-standard-contract/17-18/>

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

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

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

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

Withholding and Retention of Payment Provisions the provisions in this Contract relating to withholding and/or retention of payment as set out in SC28.14 to SC28.18 (*Information Requirements*)

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

Draft

© Crown copyright 2018
First published: November 2016
Republished: January 2018
Republished: March 2018 (draft)
Published in electronic format only