



NHS Standard Contract (shorter form) 2017/18 and 2018/19 (May 2018 edition)

National Variation Agreement for existing 2016/17, 2017-19 (November 2016 edition) and 2017-19 (January 2018 edition) form contracts

**NHS Standard Contract (shorter form) 2017/18 and 2018/19 (May 2018 edition)**

**National Variation Agreement for existing 2016/17, 2017-19 (November 2016) and 2017-19 (January 2018 edition) form contracts**

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*(please do not return completed National Variations to this email address)*

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| Please note that the parties must complete the fields highlighted in yellow in this National Variation Agreement. |

**NHS [ ] CLINICAL COMMISSIONING GROUP (1)**

**[*insert names of other Commissioners*]**

**[ ]**

**[ ]**

**[ ]**

**[*Local Authority*]**

**[*NHS England*]**

**AND**

**[ ] (2)**

**AS PROVIDER**

|  |
| --- |
| **NATIONAL VARIATION AGREEMENT**  **2017-19 (May 2018 edition)**  **in relation to the Contract dated [*insert date of original contract*]**  **in the form of the Shorter Form**  **[NHS STANDARD CONTRACT 2017-19 (January 2018 edition)] [NHS STANDARD CONTRACT 2017-19 (November 2016 edition)] [NHS STANDARD CONTRACT 2016/17] [*select year of original contract*]** |

**THIS NATIONAL VARIATION AGREEMENT is dated [ ]2018 and made between:**

1. **NHS [ ] CLINICAL COMMISSIONING GROUP** whose principal office is at   
   [ ]

**[***insert other Commissioners’ names and addresses***]**

**[***insert Local Authority name and address if applicable***]**

**[***insert NHS England name and address if applicable***]**

(the **Commissioners**)

and

1. **[ ]** whose principal and/or registered office address is at [ ] (the **Provider**).

**WHEREAS**

1. The Commissioners and the Provider entered into a contract dated [*insert date of original 2017-19 (January 2018 edition), 2017-19 (November 2016 edition), OR 2016/17 contract*] as varied pursuant to GC13 of that contract (the **Contract**).
2. GC13 of the Contract requires the Parties to vary the Contract to apply National Variations.
3. The Parties wish to vary the Contract in accordance with GC13 so as to bring the Contract into alignment with certain provisions of the NHS Standard Contract 2017-19 (May 2018 edition) published by NHS England.
4. In consideration of their mutual obligations under this National Variation Agreement and the payment by each Party to the other of £1 (receipt of which each Party acknowledges), the Parties have therefore agreed to vary the Contract on the terms set out in this National Variation Agreement.

**IT IS AGREED:**

1. **Definitions and Interpretation**
   1. In this National Variation Agreement unless the context otherwise requires or an expression is defined as a capitalised term in clause 1.2 below, the expression shall have the same meaning given to it in the Contract.
   2. In this National Variation Agreement:

**Contract** has the meaning given to it in Recital A of this National Variation Agreement (and which may be the 2017-19 (January 2018 edition), 2017-19 (November 2016) edition), or the 2016/17 Contract);

**2016/2017 Contract** means the shorter form NHS Standard Contract published by NHS England for the year 2016/2017, as subsequently varied in accordance with applicable National Variations;

**2017-19 (November 2016 edition) Contract** means theshorter formNHS Standard Contract published by NHS England in November 2016 for the years 2017-19, as subsequently varied in accordance with applicable National Variations;

**2017-19 (January 2018 edition) Contract** means the shorter form NHS Standard Contract published by NHS England in January 2018 for the years 2017-19;

**GC** and **SC** mean respectively any General Condition or Service Condition of the 2017-19 (January 2018 edition) Contract or of the applicable 2016/17 Contract, or 2017-19 (November 2016 edition), as the context requires;

**National Variation Agreement** means this agreement including its recitals and appendices; and

**Variations** means the variations set out in clauses 3 to 13 (inclusive) of this National Variation Agreement.

* 1. Except where otherwise expressly identified, all references in this National Variation Agreement to numbered SCs, GCs or Schedules relate to the SCs, GCs and Schedules of the Contract.
  2. Where the application of any content in the 2017-19 (January 2018 edition)Contract is limited in the 2017-19 (January 2018 edition) Contract to certain Service or Provider categories only, the same limitations will apply where that content is added to the Contract by this National Variation Agreement.

1. **Effective Date of VAriations**

The Variations apply with effect from the dates specified below.

**Particulars**

1. **ParticuLARS Service Requirements**

3.1 With effect from 25 May 2018, underneath ‘Prior Approval Response Time Standard’, insert the following:

|  |  |
| --- | --- |
| **Is the Provider acting as a Data Processor in order to deliver the Services?** | **YES/NO** |

1. **ParticuLARS GOVERNANCE AND REGULATORY**

4.1 With effect from 25 May 2018, underneath ‘Provider’s Information Governance Lead’, insert the following:

|  |  |
| --- | --- |
| **Provider’s Data Protection Officer (if required by Data Protection Legislation)** | **[ ]**  **Email: [ ]**  **Tel: [ ]** |

1. **particulars schedule 4a operational standards and national quality requirements**

5.1 With effect from 1 April 2018, delete the contents of Schedule 4A (Operational Standards and National Quality Requirements) and replace with the equivalent Part A set out in Appendix 2 completed with local content where applicable. Any references to “Application” are to be interpreted as in the 2017-19 (January 2018) Contract.

1. **particulars schedule 6a reporting requirements National requirements reported centrally**

6.1 With effect from 1 April 2018, delete the text in line 1 and replace with:

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| 1. As specified in the list of omnibus, secure electronic file transfer data collections and BAAS schedule of approved collections published on the NHS Digital website to be found at   <https://digital.nhs.uk/services/the-challenging-burden-service/central-register-of-collections>  where mandated for and as applicable to the Provider and the Services |

1. **particulars schedule 6f**

6.1 **Where the Provider is acting as a Data Processor in order to deliver the Services**, with effect from 25 May 2018, add a new Schedule 6F as set out in Appendix 3 completed with mandatory and local content as applicable.

**service conditions**

1. **SC23 (SErvice User Health Records)**

7.1 With effect from 25 May 2018, delete the text of SC23.1 and SC23.2 and replace with:

| 23.1 The Provider must create and maintain Service User Health Records as appropriate for all Service Users. The Provider must securely store, retain and destroy those records in accordance with Data Guidance, Information Governance Alliance Guidance and in any event in accordance with Data Protection Legislation. | **All** |
| --- | --- |
| 23.2 At a Commissioner’s reasonable request, the Provider must promptly deliver to any third party provider of healthcare or social care services nominated by that Commissioner a copy (or, at any time following the expiry or termination of this Contract, the original) of the Service User Health Record held by the Provider for any Service User for whom that Commissioner is responsible. | **All** |

1. **SC28 (Information Requirements)**

8.1 With effect from 25 May 2018, delete the text of SC28.1 and replace with:

|  |  |
| --- | --- |
| 28.1 The Provider must:  28.1.1 provide the information specified in and in accordance with this SC28 and Schedule 6A (Reporting Requirements);  28.1.2 where and to the extent applicable, conform to all NHS information standards notices, data provision notices and information and data standards approved or published by, the Secretary of State, NHS England or NHS Digital on their behalf, as appropriate;  28.1.3 implement any other datasets and information requirements agreed from time to time between it and the Co-ordinating Commissioner;  28.1.4 comply with Data Guidance issued by NHS England and NHS Digital and with Data Protection Legislation in relation to protection of patient identifiable data;  28.1.5 subject to and in accordance with Law and Guidance and any relevant standards issued by the Secretary of State, NHS England or NHS Digital, use the Service User’s verified NHS Number as the consistent identifier of each record on all patient datasets; and  28.1.6 comply with the Data Guidance and Data Protection Legislation on the use and disclosure of personal confidential data for other than direct care purposes. |  |

1. **SC36 (Payment Terms)**

9.1 With effect from 1 April 2018, delete the text of SC36.27A (2016/17 Contract: SC36.17A), and replace with the wording below (for 2016/17 Contract, with the numbering below amended accordingly):

|  |  |
| --- | --- |
| 36.27A If the Provider has been granted access to the general element of the Provider Sustainability Fund, and has, as a condition of access:  36.27A.1 agreed with the national teams of NHS Improvement and NHS England an overall financial control total and other associated conditions for the Contract Year 1 April 2018 to 31 March 2019; and  36.27A.2 (where required by those bodies):  36.27A2.1 agreed with those bodies and with the Commissioners specific performance trajectories to be achieved during the Contract Year 1 April 2018 to 31 March 2019 (as set out in an SDIP contained or referred to in Schedule 2G (*Other Local Agreements, Policies and* Procedures));and/or  36.27A2.2 submitted to those bodies assurance statements setting out commitments on performance against specific Operational Standards and National Quality Requirements to be achieved during the Contract Year 1 April 2018 to 31 March 2019 which have been accepted by those bodies (as set out in an SDIP contained or referred to in Schedule 2G (*Other Local Agreements, Policies and Procedures*)),  no repayment will be required to be made, nor any deduction made, in relation to any breach of any threshold which occurs during that Contract Year 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 and National Quality Requirements*). | **All** |

**general conditions**

1. **GC9 (Contract Management)**

10.1 With effect from 1 April 2018, delete the text of GC9.9 and replace with:

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| **Provider Sustainability Fund**   * 1. If the Provider has been granted access to the general element of the Provider Sustainability Fund, and has, as a condition of access:      1. agreed with the national teams of NHS Improvement and NHS England an overall financial control total and other associated conditions for the Contract Year 1 April 2018 to 31 March 2019; and      2. (where required by those bodies):         1. agreed with those bodies and with the Commissioners specific performance trajectories to be achieved during the Contract Year 1 April 2018 to 31 March 2019 (as set out in an SDIP contained or referred to in Schedule 2G (*Other Local Agreements, Policies and* Procedures)); and/or         2. submitted to those bodies assurance statements setting out commitments on performance against specific Operational Standards and National Quality Requirements to be achieved during the Contract Year 1 April 2018 to 31 March 2019 which have been accepted by those bodies (as set out in an SDIP contained or referred to in Schedule 2G (*Other Local Agreements, Policies and* Procedures)),   no Commissioner may withhold or retain payment under this GC9 (*Contract Management*) or otherwise in relation to any breach of any threshold which occurs during that Contract Year for which such financial control totals and specific performance trajectories have been agreed and/or such assurance statements have been submitted and accepted in respect of any Operational Standard or National Quality Requirement shown in bold italics in Schedule 4A (*Operational Standards and National Quality Requirements*) and/or any failure to comply with specific performance trajectories or assurances as referred to above. |

1. **GC17 (TERMINATION)**

11.1 With effect from 25 May 2018, add a new GC17.5.6 as follows, and renumber accordingly:

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| the Provider has been issued with any enforcement or penalty notice under the DPA 2018, or the Provider or any member of Staff is found guilty or admits guilt in respect of an offence under the DPA 2018, in relation to any matter connected with this Contract or the Services. |

1. **GC21 (Patient Confidentiality, Data Protection, Freedom of Information and Transparency)**

12.1 With effect from 25 May 2018, delete the text of GC21 and replace with:

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| --- |
| **Information Governance – General Responsibilities**   1. The Parties must comply with Data Protection Legislation Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations. 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. 3. The Provider must: 4. nominate an Information Governance Lead; 5. 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 where required by Data Protection Legislation, nominate a Data Protection Officer;  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  21.3.5 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).  21.4 The Provider must adopt and implement the National Data Guardian’s Data Security Standards and must comply with further Guidance issued by the Department of Health, NHS England and/or NHS Digital pursuant to or in connection with Standards. The Provider must be able to demonstrate its compliance with those Standards in accordance with the requirements and timescales set out in such Guidance, including requirements for enabling patient choice.   1. 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. 2. The Provider must ensure that its NHS Information Governance Toolkit (or any successor framework) submission is audited in accordance with Information Governance Audit Guidance where applicable. The Provider must inform the Co-ordinating Commissioner of the results of each audit and publish the audit report both within the NHS Information Governance Toolkit (or any successor framework) and on its website. 3. 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. This GC21.7 does not require the Provider to provide the Co-ordinating Commissioner with information which identifies any individual affected by the Personal Data Breach where doing so would breach Data Protection Legislation.   **Data Protection**   1. The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, 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 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 for the purposes of this Contract.   * 1. The Provider must ensure that all Personal Data processed by or on behalf of the Provider in the course of delivering the Services is processed in accordance with the relevant Parties’ obligations under the Data Protection Legislation and the Data Guidance.   2. In relation to Personal Data processed by the Provider in the course of delivering the Services, the Provider must publish, maintain and operate:      1. policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Practice;      2. policies that describe the personal responsibilities of Staff for handling Personal Data;      3. a policy that supports the Provider’s obligations under the NHS Care Records Guarantee;      4. agreed protocols to govern the sharing of Personal Data with partner organisations; and      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.   * 1. 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:      1. provide such information in pseudonymised form where possible; and in any event      2. ensure that there is a legal basis for the sharing of Personal Data.   2. 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.   **The Provider as a Data Processor**   * 1. Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of a Commissioner, the provisions of Schedule 6F *(Provider Data Processing Agreement*) will apply.   **Responsibilities when engaging Sub-Contractors**   * 1. 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.   2. Without prejudice to GC12 (*Assignment and Sub-Contracting*), if the Provider is to require any Sub-Contractor to act as a Data Processor on its behalf, the Provider must:      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;      2. carry out and record appropriate due diligence before the Sub-Contractor processes any Personal Data in order to demonstrate compliance with Data Protection Legislation; and      3. 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)* (if any) and in any event ensure that the Sub-Contractor is engaged under the terms of a binding written agreement requiring the Sub-Contractor to:         1. process Personal Data only in accordance with the Provider’s instructions 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;         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;         3. comply at all times with obligations equivalent to those imposed on the Provider by virtue of the Seventh Data Protection Principle 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;         4. impose obligations the same as set out in this clause GC21.16.3 on any Sub-processor appointed by the Sub-Contractor;         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;         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;         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;         8. create and maintain a record of all categories of data processing activities carried out under the Sub-Contract, containing:   21.16.3.8.1 the name and contact details of Data Protection Officer (where required by Data Protection Legislation to have one);  21.16.3.8.2 the categories of processing carried out on behalf of the Provider;  21.16.3.8.3 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;  21.16.3.8.4 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;   * + - 1. 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;       2. 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       3. 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 GC21.16.3.   1. The agreement required by GC21.16 must also set out:   21.17.1 the subject matter of the processing;  21.17.2 the duration of the processing;  21.17.3 the nature and purposes of the processing;  21.17.4 the type of personal data processed;  21.17.5 the categories of data subjects; and  21.17.6 the plan for return and destruction of the data once processing is complete unless the Law requires that the data is preserved  **Freedom of Information and Transparency**   * 1. 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:      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;      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;      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;      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;      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      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.   2. 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.   3. 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.   4. In preparing a copy of this Contract for publication under GC21.19 the Commissioners may consult with the Provider to inform decision-making regarding any redactions but the final decision in relation to the redaction of information will be at the Commissioners’ absolute discretion.   5. The Provider must assist and cooperate with the Commissioners to enable the Commissioners to publish this Contract. |

1. **General Conditions: Definitions and Interpretation**

13.1 With effect from the dates set out in Appendix 1, insert the new definitions set out in Part 1 of Appendix 1; amend the definitions set out in Part 2 of Appendix 1 as described in that Part 2; delete the definitions set out in Part 3 of Appendix 1, as applicable.

1. **Counterparts**

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

1. **Precedence of this National Variation Agreement**

15.1 In the event of any inconsistency between the terms of this National Variation Agreement and the Contract, the terms of this National Variation Agreement shall take precedence.

1. **Continuing effect**

16.1 Subject to the Variations, the Contract shall continue in full force and effect in all respects.

1. **Governing Law and Jurisdiction**

17.1 This National Variation Agreement shall be subject to the provisions of GC39 of the Contract.

**IN WITNESS OF WHICH the Parties have signed this National Variation Agreement on the date(s) shown below**

|  |  |
| --- | --- |
| **SIGNED by** | ………………………………………………….  Signature |
| **[INSERT AUTHORISED**  **SIGNATORY’S**  **NAME] for**  **and on behalf of**  **[INSERT COMMISSIONER NAME]** | ………………………………………………….  Title  ………………………………………………….  Date |
| **[INSERT AS ABOVE FOR**  **EACH COMMISSIONER]** |  |
| **SIGNED by** | …………………………………………………  Signature |
| **[INSERT AUTHORISED**  **SIGNATORY’S**  **NAME] for**  **and on behalf of**  **[INSERT PROVIDER NAME]** | ………………………………………………  Title  ………………………………………………  Date |

**Appendix 1: Definitions**

**Appendix 1 Part 1: New Defined Terms**

With effect from 1 April 2018, add the following definitions to the General Conditions (*Definitions and Interpretation*) in alphabetical sequence:

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| **Health Research Authority** the executive non-departmental public body sponsored by the Department of Health which protects and promotes the interests of patients and the public in health and social care research |
| **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 |

With effect from 25 May 2018, add the following definitions to the General Conditions (*Definitions and Interpretation*) in alphabetical sequence:

|  |
| --- |
| **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 |
| **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 |
| **Data Protection Officer** has the meaning given to it in Data Protection Legislation |
| **Data Subject** has the meaning given to it in Data Protection Legislation |
| **DPA 1998** the Data Protection Act 1998 |
| **DPA 2018** the Data Protection Act 2018 |
| **European Data Protection Board** has the meaning given to it in Data Protection Legislation |
| **GDPR** the General Data Protection Regulation *(Regulation (EU) 2016/679)* |
| **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 |
| **LED** Law Enforcement Directive *(Directive (EU) 2016/680)* |
| **Personal Data Breach** has the meaning given to it in the Data Protection Legislation |
| **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 |
| **Sub-processor** any Sub-Contractor appointed by a Data Processor to process Personal Data on behalf of the Commissioners pursuant to this Contract |

**Appendix 1 Part 2: Variations to Defined Terms**

With effect from 1 April 2018, delete the definitions given to the following defined terms and replace with the amended definitions as follows or where applicable vary the defined term as described below (and, where the defined term itself is amended, any use in the Contract of the original term is to be read as the amended term):

| **Term:** | **Amended definition or amendment to defined term** |
| --- | --- |
| **Contract Technical Guidance** | technical guidance in relation to the NHS Standard Contract, available at:  <https://www.england.nhs.uk/nhs-standard-contract/> |
| **e-Invoicing Guidance** | guidance relating to the application and use of the NHS Shared Business Services e-Invoicing Platform, available at: https://networkgrowth.s3.amazonaws.com/Tradeshift%20Supplier%20Training%20Guide.pdf |
| **HEE Quality Framework** | the Health Education England Quality Framework, available at: https://hee.nhs.uk/our-work/quality |
| **Never Events Policy Framework** | the *Never Events Policy Framework*, available at: <https://improvement.nhs.uk/resources/never-events-policy-and-framework/> |
| **NHS Clinical Classifications Service** | the NHS resource responsible for the delivery of national clinical classifications standards and guidance for the NHS clinical coding profession: <https://isd.digital.nhs.uk/trud3/user/guest/group/61/home> |
| **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/publication/improving-systems-for-cost-recovery-for-overseas-visitors/> |
| **Proposer** | a Party making a Variation Proposal |
| **Safeguarding Guidance** | *Working* Together *to Safeguard Children - A guide to inter-agency working to safeguard and promote the welfare of children – statutory guidance*  <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>  *Care and Support Statutory Guidance issued under the Care Act*  <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315993/Care-Act-Guidance.pdf> |
| **Safeguarding Training Guidance** | guidance in relation to safeguarding published by the Department for Education, including *Safeguarding children and young people: roles and competencies for health care staff*, available at:  <https://www.rcpch.ac.uk/resources/safeguarding-children-young-people-roles-competences-healthcare-staff> |
| **SCCI** | the body with delegated responsibility for appropriate information standards for the health and social care system (or that body’s predecessor):  <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions> |
| **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/publications/dbs-check-eligible-positions-guidance |
| **Who Pays? Guidance** | **Who Pays? Guidance** Who Pays? Determining the responsibility for payments to providers, available at: https://www.england.nhs.uk/who-pays/ |

With effect from 25 May 2018, delete the definitions given to the following defined terms and replace with the amended definitions as follows or where applicable vary the defined term as described below (and, where the defined term itself is amended, any use in the Contract of the original term is to be read as the amended term):

|  |  |
| --- | --- |
| **Term:** | **Amended definition or amendment to defined term** |
| **Data Controller** | has the meaning given to it in the Data Protection Legislation |
| **Data Processor** | has the meaning given to it in Data Protection Legislation |
| **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 in remedying any breach of Data Protection Legislation |

|  |  |
| --- | --- |
| **Personal Data** | has the meaning given to it in the Data Protection Legislation |
| **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:   1. CQC; 2. NHS Improvement; 3. NHS England; 4. the Department of Health; 5. NICE; 6. Healthwatch England and Local Healthwatch; 7. Public Health England; 8. the General Pharmaceutical Council; 9. the Healthcare Safety Investigation Branch; 10. the Information Commissioner; and 11. the European Data Protection Board |
| **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> |

**Appendix 1 Part 3: Deleted Defined Terms**

With effect from 1 April 2018, delete the definition given to the following defined term:

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

With effect from 25 May 2018, delete the definition given to the following defined term:

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| **DPA** the Data Protection Act 1998 |

**Appendix 2:**

# SCHEDULE 4 – QUALITY REQUIREMENTS

1. **Operational Standards and National Quality Requirements**

| **Ref** | **Operational Standards/National Quality Requirements** | **Threshold** | **Method of Measurement** | **Consequence of breach** | **Timing of application of consequence** | **Applicable Service Category** |
| --- | --- | --- | --- | --- | --- | --- |
| ***E.B.4*** | ***Percentage of Service Users waiting 6 weeks or more from Referral for a diagnostic test\**** | ***Operating standard of no more than 1%*** | ***Review of Service Quality Performance Reports*** | ***Where the number of Service Users waiting for 6 weeks or more at the end of the month exceeds the tolerance permitted by the threshold, £200 in respect of each such Service User above that threshold*** | ***Monthly*** | ***CS***  ***D*** |
| E.B.S.3 | Care Programme Approach (CPA): The percentage of Service Users under adult mental illness specialties on CPA who were followed up within 7 days of discharge from psychiatric in-patient care\* | Operating standard of 95% | Review of Service Quality Performance Reports | Where the number of Service Users in the Quarter not followed up within 7 days exceeds the tolerance permitted by the threshold, £200 in respect of each such Service User above that threshold | Quarterly | MH |
|  | Duty of candour | Each failure to notify the Relevant Person of a suspected or actual Notifiable Safety Incident in accordance with Regulation 20 of the 2014 Regulations | Review of Service Quality Performance Reports | Recovery of the cost of the episode of care, or £10,000 if the cost of the episode of care is unknown or indeterminate | Monthly | All |
|  | ***Completion of a valid NHS Number field in mental health commissioning data sets submitted via SUS, as defined in Contract Technical Guidance*** | ***99%*** | ***Review of Service Quality Performance Reports*** | ***Where the number of breaches in the month exceeds the tolerance permitted by the threshold, £10 in respect of each excess breach above that threshold*** | ***Monthly*** | ***MH*** |
|  | ***Completion of Mental Health Services Data Set ethnicity coding for all detained and informal Service Users, as defined in Contract Technical Guidance*** | ***Operating standard of 90%*** | ***Review of Service Quality Performance Reports*** | ***Where the number of breaches in the month exceeds the tolerance permitted by the threshold, £10 in respect of each excess breach above that threshold*** | ***Monthly*** | ***MH*** |
|  | ***Completion of IAPT Minimum Data Set outcome data for all appropriate Service Users, as defined in Contract Technical Guidance*** | ***Operating standard of 90%*** | ***Review of Service Quality Performance Reports*** | ***Where the number of breaches in the month exceeds the tolerance permitted by the threshold, £10 in respect of each excess breach above that threshold*** | ***Monthly*** | ***MH*** |
| ***E.H.4*** | ***Early Intervention in Psychosis programmes: the percentage of Service Users experiencing a first episode of psychosis or ARMS (at risk mental state) who wait less than two weeks to start a NICE-recommended package of care\**** | ***For the period 1 April 2017 to 31 March 2018, operating standard of 50%. From 1 April 2018, operating standard of 53%*** | ***Review of Service Quality Performance Reports*** | ***Issue of Contract Performance Notice and subsequent process in accordance with GC9*** | ***Quarterly*** | ***MH*** |
| ***E.H.1*** | ***Improving Access to Psychological Therapies (IAPT) programmes: the percentage of Service Users referred to an IAPT programme who wait six weeks or less from referral to entering a course of IAPT treatment\**** | ***Operating standard of 75%*** | ***Review of Service Quality Performance Reports*** | ***Issue of Contract Performance Notice and subsequent process in accordance with GC9*** | ***Quarterly*** | ***MH*** |
| ***E.H.2*** | ***Improving Access to Psychological Therapies (IAPT) programmes: the percentage of Service Users referred to an IAPT programme who wait 18 weeks or less from referral to entering a course of IAPT treatment\**** | ***Operating standard of 95%*** | ***Review of Service Quality Performance Reports*** | ***Issue of Contract Performance Notice and subsequent process in accordance with GC9*** | ***Quarterly*** | ***MH*** |

In respect of the Operational Standards and National Quality Requirements shown in ***bold italics*** the provisions of SC36.27A apply.

\* as further described in *Joint Technical Definitions for Performance and Activity 2017/18-2018/19,* available at: <https://www.england.nhs.uk/wp-content/uploads/2015/12/joint-technical-definitions-performance-activity.pdf>

**Appendix 3:**

**SCHEDULE 6 – CONTRACT MANAGEMENT, REPORTING AND INFORMATION REQUIREMENTS**

**F. Provider Data Processing Agreement**

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| Where the Provider is to act as a Data Processor, insert text locally (mandatory template drafting available via <http://www.england.nhs.uk/nhs-standard-contract/>).  If the Provider is not to act as a Data Processor, state Not Applicable |