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# NHS Standard Contract 2023/24

## General Conditions (Full Length)

Version 1, March 2023

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## **GC1 Definitions and Interpretation**

- 1.1 This Contract is to be interpreted in accordance with the Definitions and Interpretation, unless the context requires otherwise.
- 1.2 If there is any conflict or inconsistency between any 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.
- 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), abide by the staff pledges and responsibilities outlined in the NHS Constitution and implement the actions expected of employers as set out in the NHS People Plan.
- 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 undertake robust quality impact assessments, as required by Staffing Guidance, before making any material changes to Staff numbers, skill-mix or roles;
  - 5.2.4 continually evaluate in respect of each Service individually and the Services as a whole:
    - 5.2.4.1 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
    - 5.2.4.2 the impact of variations in actual numbers and skill mix of clinical Staff on duty on Service User experience and outcomes, by reference to the measures recommended in Staffing Guidance;
  - 5.2.5 undertake a detailed review of staffing requirements every 12 months to ensure that the Provider remains able to meet the requirements set out in GC5.2.1;
  - 5.2.6 report the outcome of each review undertaken under GC5.2.5 to its Governing Body and submit further reports on staffing matters regularly to its Governing Body as required by Staffing Guidance;
  - 5.2.7 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;
  - 5.2.8 report to the Co-ordinating Commissioner on the outcome of those reviews and evaluations at least once every 12 months, and in any event as soon as practicable and by no later than 20 Operational Days following receipt of written request;
  - 5.2.9 demonstrate at Review Meetings the extent to which improvements to each affected Service have been made as a result of insight derived from those reviews and evaluations; and
  - 5.2.10 make the outcome of those reviews and evaluations 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 12 months.
- 5.3 The Provider must implement a standard operating procedure, as required by Staffing Guidance, for responding to any day-to-day shortfalls in the number and skill mix of Staff available to provide each Service and inform the Co-ordinating Commissioner immediately of any actual or expected material

impact on the delivery of Services arising from any such shortfall and/or implementation of the procedure. The implementation of any such standard operating procedure will not affect the rights and obligations of the Parties under this Contract in respect of any Suspension Event or Event of Force Majeure, or in respect of any failure on the part of the Provider to comply with any obligation on its part under this Contract.

- 5.4 The Provider must ensure that all Staff:
- 5.4.1 if applicable, are registered with and where required have completed their revalidations by the appropriate professional regulatory body;
  - 5.4.2 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;
  - 5.4.3 are covered by the Provider's (and/or by the relevant Sub-Contractor's) Indemnity Arrangements for the provision of the Services;
  - 5.4.4 carry, and where appropriate display, valid and appropriate identification; and
  - 5.4.5 are aware of and respect equality and human rights of colleagues, Service Users, Carers and the public.
- 5.5 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:
- 5.5.1 proper and sufficient induction, continuing professional and personal development, clinical supervision, training and instruction;
  - 5.5.2 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
  - 5.5.3 professional leadership appropriate to the Services,
- each in accordance with Good Practice and the standards of their relevant professional body (if any), and having regard to the Core Skills Training Framework and, in relation to clinical supervision for nurses and midwives, to A-EQUIP Professional Advocate Guidance.
- 5.6 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.
- 5.7 The Provider must co-operate with NHS England, local ICBs and local NHS Trusts and NHS Foundation Trusts in the manner and to the extent that they request in the development and delivery of healthcare workforce plans and in the planning and provision of education and training for healthcare workers. The Provider must have regard to the Health Education and Training Quality Framework and to Guidance for Placement of Doctors in Training.
- 5.8 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.

## Staff Health and Wellbeing

5.9 The Provider must:

- 5.9.1 use all reasonable endeavours to promote Staff health and wellbeing, ensuring that this is addressed within the Staff appraisals carried out under GC5.5.2, and that Staff are made aware of any health and wellbeing support services available and are enabled to access those services where needed;
- 5.9.2 (if it is an NHS Trust or an NHS Foundation Trust) appoint a Wellbeing Guardian and ensure that the Co-ordinating Commissioner is kept informed at all times of the person holding this position; and
- 5.9.3 use all reasonable endeavours to implement the NHS Violence Prevention and Reduction Standard.

## Freedom To Speak Up

5.10 The Provider must:

- 5.10.1 appoint and at all times have in place 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;
- 5.10.2 ensure that the Co-ordinating Commissioner and the National Guardian's Office are kept informed at all times of the person or persons holding this position;
- 5.10.3 co-operate with the National Guardian's Office in relation to any speaking up reviews and take appropriate and timely action in response to the findings of such reviews;
- 5.10.4 have in place, promote and operate (and ensure that all Sub-Contractors have in place, promote and operate) a policy and effective procedures, in accordance with Freedom to Speak Up Policy and Guidance, to ensure that Staff have appropriate means through which they may speak up about any concerns they may have in relation to the Services and how they can be improved;
- 5.10.5 give due regard to, and comply with all recommendations set out in, Settlement Agreement Guidance;
- 5.10.6 ensure that nothing in any contract of employment, or contract for services, settlement agreement 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, that member of Staff from speaking up about any concerns they may have in relation to the quality and/or safety of the care provided by their employer or by any other organisation, nor from speaking up to any Regulatory or Supervisory Body or professional body in accordance with their professional and ethical obligations including those obligations set out in guidance issued by any Regulatory or Supervisory Body or professional body from time to time, nor prejudice any right of that member of Staff to make disclosures under the Employment Rights Act 1996; and
- 5.10.7 without prejudice to GC5.10.5, ensure that the following provision is included in each settlement agreement or any other agreement entered into by it or any Sub-Contractor with any member of Staff on or in relation to the termination or expiry of employment or engagement of that member of Staff:

*“For the avoidance of doubt, nothing in this agreement shall:*

- (a) prevent or inhibit, or purport to prevent or inhibit, [the worker] from speaking up about any concerns he/she may have in relation to the quality and/or safety of the care provided by his/her employer or by any other organisation, nor from speaking up to any statutory, regulatory, supervisory or professional body in accordance with his/her professional and ethical obligations including those obligations set out in guidance issued by any statutory, regulatory, supervisory or professional body from time to time; nor*
- (b) prejudice any right of [the worker] to make disclosures under the Employment Rights Act 1996.”*

## **Pre-employment Checks**

- 5.11 Subject to GC5.12, 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:
  - 5.11.1 NHS Employment Check Standards; and
  - 5.11.2 other checks as required by the DBS or which are to be undertaken in accordance with current and future national guidelines and policies.
- 5.12 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 and 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.

## **Workforce Sharing Arrangements**

- 5.13 Where the Provider intends to implement, with another provider of NHS-funded healthcare services, arrangements to deploy staff on a flexible basis across their respective sites and services, it must enter into an appropriate Workforce Sharing Arrangement with that other provider to document those arrangements.

## **TUPE**

- 5.14 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:
  - 5.14.1 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;
  - 5.14.2 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
  - 5.14.3 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.

- 5.15 If the Co-ordinating Commissioner notifies the Provider that any Commissioner intends to conduct a process to select a provider of 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) but excluding the requirement to provide details of employee identity as set out in Regulation 11(2)(a) 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 GC5.15.
- 5.16 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:
- 5.16.1 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);
  - 5.16.2 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);
  - 5.16.3 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;
  - 5.16.4 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
  - 5.16.5 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.
- 5.17 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:
- 5.17.1 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;
  - 5.17.2 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
  - 5.17.3 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

- 5.18 If at any time during the term of this Contract a Commissioner, 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 relevant Party must (or the Provider must ensure that the Sub-Contractor will):
- 5.18.1 require that individual to disclose whether, within the period of twelve months ending with the proposed commencement of their employment or engagement with the Commissioner, the Provider or Sub-Contractor (as appropriate), 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
  - 5.18.2 require the individual to identify that NHS Employer;
  - 5.18.3 require that individual to notify the NHS Employer of their conditional offer of employment or engagement with the Commissioner, the Provider or Sub-Contractor (as appropriate);
  - 5.18.4 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 Commissioner, the Provider or Sub-Contractor the provisions set out in GC5.18.6 below;
  - 5.18.5 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 Commissioner, the Provider or Sub-Contractor (as appropriate) of the provisions set out in GC5.18.6; and
  - 5.18.6 unless it has received confirmation from the NHS Employer in accordance with GC5.18.5(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 1 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 1 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

- 5.19 If at any time during the term of this Contract any Commissioner or the Provider engages a management consultancy or other advisory business to provide management, financial, clinical or other advisory services, it must require, as a term of that engagement, that no individual who has received a contractual redundancy payment from an NHS Employer consequent on their redundancy from a post as a Very Senior Manager within the previous twelve months is involved in any way in the provision of those services unless that individual has paid to the NHS Employer the Redundancy Repayment.
- 5.20 A Commissioner must not, the Provider must not, and the Provider 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 GC5.18 or 5.19.
- 5.21 If a Commissioner or the Provider fails to comply with its obligations under GC5.18, 5.19 or 5.20 in respect of any relevant individual, it 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 proposed in relation to this Contract;
  - 8.1.6 the Prices;
  - 8.1.7 performance of and payments to Sub-Contractors in compliance with GC12.6.3 (*Assignment and Sub-Contracting*); and
  - 8.1.8 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 the Co-ordinating Commissioner and the Provider must agree 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; and
- 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 Expected Monthly Value or of the Actual Monthly Value in any month, as applicable, 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 Engage or Agree**

9.15 If:

- 9.15.1 either the Co-ordinating Commissioner or the Provider fails to attend a Contract Management Meeting within 20 Operational Days following the date of the Contract Performance Notice to which it relates; or
- 9.15.2 at a Contract Management Meeting the Co-ordinating Commissioner and the Provider fail to agree a course of action in accordance with GC9.7, and subsequently fail to agree within 20 Operational Days following the Contract Management Meeting the terms of reference and timescale for a Joint Investigation in accordance with GC9.8; or
- 9.15.3 on completion of a Joint Investigation, the Co-ordinating Commissioner and the Provider fail to agree a JI Report in accordance with GC9.9 before the next Review Meeting; or
- 9.15.4 it has been agreed that a Remedial Action Plan is to be implemented, but 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 (and if one Party refuses to do so, the other may do so on behalf of both Parties).

- 9.16 If, 10 Operational Days after notifying the Governing Bodies, and due wholly or mainly to unreasonableness or failure to engage on the part of the Provider:
- 9.16.1 the Co-ordinating Commissioner and the Provider have still not both attended a Contract Management Meeting; or
  - 9.16.2 the Co-ordinating Commissioner and the Provider have still not agreed either a course of action or the terms of reference and timescale for a Joint Investigation; or
  - 9.16.3 the Co-ordinating Commissioner and the Provider have still not agreed a JI Report; or
  - 9.16.4 the Co-ordinating Commissioner and the Provider have still not agreed a Remedial Action Plan,

as the case may be, the Co-ordinating Commissioner may recommend the Commissioners to withhold, or itself withhold (on behalf of all Commissioners), a reasonable and proportionate sum up to 2% of the Expected Monthly Value or of the Actual Monthly Value, as applicable, for each further month that the particular failure to attend or agree, as referred to in GC9.16.1 - 9.16.4 continues.

- 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 (or, if earlier, of the withdrawal of the relevant Contract Performance Notice). 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 receipt of notice requiring it to do so, 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 Expected Monthly Value or of the Actual Monthly Value, as applicable, 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 Expected Monthly Value or of the Actual Monthly Value, as applicable; 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 Expected Monthly Value or of the Actual Monthly Value, as applicable, 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 Expected Monthly Value or of the Actual Monthly Value, as applicable, 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 Expected Monthly Value or of the Actual Monthly Value, as applicable, for each month in respect of which those sums were withheld.

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

- 10.1 The Commissioners have appointed the Co-ordinating Commissioner to exercise certain functions in relation to this Contract as set out in this Contract. If different Commissioners are to perform different Co-ordinating Commissioner functions, the allocation of those functions is 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. Except as expressly stated in this GC11, the liability of any Commissioner under this GC11.1 will not be excluded or limited in any way.
- 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. Except as expressly stated in this GC11, the liability of the Provider under this GC11.2 will not be excluded or limited in any way.

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.

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

11.5 If the proceeds of any Indemnity Arrangements are insufficient to cover the settlement of any claim relating to this Contract the Provider must make good any deficiency.

11.6 The Provider must not take any action or fail to take any reasonable action nor (in so far as it is reasonable and within its power) allow others to take action or fail to take any reasonable action, as a result of which any Indemnity Arrangements put in place in accordance with GC11.3 may be rendered wholly or partly void, voidable, unenforceable, or be suspended or impaired, or which may otherwise render any sum paid out under those Indemnity Arrangements wholly or partly repayable.

11.7 On and following expiry or termination of this Contract, the Provider must (and must use its reasonable endeavours to procure that each of its Sub-Contractors must) procure that any ongoing liability it has or may have in negligence to any Service User or Commissioner arising out of a Service User's care and treatment under this Contract will continue to be the subject of appropriate Indemnity Arrangements for 21 years following termination or expiry of this Contract or (if earlier) until that liability may reasonably be considered to have ceased.

11.8 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.

11.9 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.

- 11.10 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.
- 11.11 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.
- 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 The Provider must not novate this Contract nor 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.
- 12.2 The Co-ordinating Commissioner may require, as a condition of the approval of any assignment or novation, the assignee or novatee to provide a guarantee from its parent or other party acceptable to the Co-ordinating Commissioner (acting reasonably), in such form as the Co-ordinating Commissioner may reasonably require.
- 12.3 The approval of any sub-contracting arrangement may:
  - 12.3.1 include approval of the terms of the proposed Sub-Contract (such approval not to be unreasonably withheld or delayed); and
  - 12.3.2 require, as a condition of that approval, that appropriate Indemnity Arrangements are in place in relation to the proposed Sub-Contractor.
- 12.4 The Co-ordinating Commissioner has designated the Sub-Contracts listed in Schedule 5B (*Provider's Material Sub-Contracts*) as Material Sub-Contracts and may (at its discretion but acting reasonably) designate any further sub-contracting arrangement approved by it as a Material Sub-Contract.
- 12.5 The Provider must not:
  - 12.5.1 terminate a Material Sub-Contract; or
  - 12.5.2 make any material changes to the terms of a Material Sub-Contract; or
  - 12.5.3 replace a Material Sub-Contractor under a Material Sub-Contract (and must ensure that a replacement does not otherwise occur), including by delivering all or part of a Service itself; or
  - 12.5.4 enter into a new Material Sub-Contract with an existing Material Sub-Contractor,without the prior written approval of the Co-ordinating Commissioner. Schedule 5B (*Provider's Material Sub-Contracts*) must be updated as appropriate to reflect any designation made, or termination, change or replacement approved, by the Co-ordinating Commissioner.

- 12.6 If the Provider enters into a Sub-Contract it must:
- 12.6.1 ensure that a provision is included in that Sub-Contract which requires payment to be made of all undisputed 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 the provision referred to in GC12.6.1 above;
  - 12.6.3 at all times comply with the provision referred to in GC12.6.1 above; and
  - 12.6.4 ensure that the Sub-Contractor does not further sub-contract its obligations under the Sub-Contract without the approval of the Co-ordinating Commissioner (such approval not to be unreasonably withheld or delayed).
- 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 an ICB; 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 in connection with any Sub-Contract or 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.

### **Disclosure of Information**

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.

### **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 by the Parties except in accordance with this GC13.

13.2 The Parties:

13.2.1 may agree to vary any locally-agreed insertion, selection or content of the Particulars; and

13.2.2 may not agree to vary any other provision of this Contract (including, for the avoidance of doubt, any part of the Service Conditions or the General Conditions).

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 Not used.

- 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 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 NHS Payment Scheme.
- 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 Not used.
- 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 not 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 by NHS England, where the Commissioners are ICBs and/or NHS England and the Provider is an NHS Trust or an NHS Foundation 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 arranged by 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 Where the Commissioners are ICBs and/or NHS England and the Provider is an NHS Trust or NHS Foundation Trust, the Expert will be an independent person with relevant expertise nominated by NHS England and deemed appointed by the Parties in Dispute.
- 14.9 Where GC14.8 does not apply:
- 14.9.1 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; and
- 14.9.2 if 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 clinical outcome review programme; 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, having given the Provider not less than 10 Operational Days' notice of its intention to do so, 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 in respect of the Quality Requirements; and/or
  - 15.8.5 the Provider's compliance with documents referred to in Schedule 2G (*Other Local Agreements, Policies and Procedures*) and/or any Prior Approval Scheme and/or the Service Specifications; and/or
  - 15.8.6 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
  - 15.8.7 pass-through costs on high cost drugs, devices and procedures; and/or
  - 15.8.8 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 compliance with Data Protection Legislation (including 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, 15.8.7 or 15.8.8 as a result of a Commissioner contesting a payment in accordance with SC36.31 (*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 documents referred to in Schedule 2G (*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; and/or

- 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, 15.8.7, or 15.8.8 other than as a result of a Commissioner contesting a payment in accordance with SC36.31 (*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 GC15.8.6:
  - 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; and
  - 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.
- 16.10 Where the Co-ordinating Commissioner exercises its rights under GC16 (*Suspension*), it will not be deemed to have waived its rights under GC17 (*Termination*) where such rights exist.

## 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 Not used.
- 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 or referred to in either regulation 73(1)(a) or 73(1)(c) of the Public Contracts Regulations 2015, or any equivalent provisions under the Procurement Act or the NHS Provider Selection Regime (as applicable to this Contract), apply.

**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 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; or
  - 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
  - 17.10.8 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
  - 17.10.9 there is:
    - 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
    - 17.10.9.2 a breach of GC24.9.1 (*Change in Control*); or
    - 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
    - 17.10.9.4 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
  - 17.10.10 the Provider:
    - 17.10.10.1 fails to obtain any Consent; or
    - 17.10.10.2 loses any Consent; or
    - 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

- 17.10.11 the Provider fails materially to comply with the requirements of GC23 (*NHS Identity, Marketing and Promotion*); or
- 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
- 17.10.13 the Provider has breached the terms of GC26 (*Prohibited Acts*); or
- 17.10.14 the Provider Licence for the Provider or any Material Sub-Contractor is revoked, varied or restricted; or
- 17.10.15 the Provider breaches the terms of GC12 (*Assignment and Sub-Contracting*); or
- 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/Determination); or
- 17.10.17 any warranty given by the Provider under GC25.1 (*Warranties*) is found to be materially untrue or misleading; or
- 17.10.18 the Co-ordinating Commissioner reasonably believes that the circumstances set out or referred to in either regulation 73(1)(b) of the Public Contracts Regulations 2015, or any equivalent provisions under the Procurement Act or the NHS Provider Selection Regime, (as applicable to this Contract) 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 GC17.10 (*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 Requirements*); 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 must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations.
- 21.2 The Provider must complete and publish an annual information governance assessment in accordance with, and comply with the mandatory requirements of, the NHS Data Security and Protection Toolkit, 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;
  - 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 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 via the NHS Data Security and Protection Toolkit.
- 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 and Social Care, NHS England and/or NHS Digital pursuant to or in connection with those 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 Data Security and Protection Toolkit submission is audited in accordance with Information Governance Audit Guidance where applicable. The Provider must inform



the Co-ordinating Commissioner of the results of each audit and publish the audit report both within the NHS Data Security and Protection Toolkit and on its website.

- 21.7 The Provider must report and publish any Data Breach and any Information Governance Breach in accordance with Guidance on Reporting a Data Security Incident. 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**

- 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, 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 on behalf of one or more of the Commissioners for the purposes of this Contract by completion or otherwise of Schedule 6E (*Data Processing Services*).
- 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 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 legal basis for the sharing of Personal Data.

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

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

21.14 Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of a Commissioner, the provisions of Annex B to the Service Conditions (*Provider Data Processing Agreement*) and Schedule 6E (*Data Processing Services*) will apply.

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

21.15 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.

21.16 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:

21.16.1 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;

21.16.2 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

21.16.3 as far as practicable include in the terms of the sub-contract terms equivalent to those set out in Annex B to the Service Conditions (*Provider Data Processing 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:

21.16.3.1 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 UK 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;

21.16.3.2 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;

21.16.3.3 comply at all times with those obligations set out at Article 32 of the UK GDPR and equivalent provisions implemented into Law by DPA 2018;

21.16.3.4 impose obligations as set out in this GC21.16.3 on any Sub-processor appointed by the Sub-Contractor;

21.16.3.5 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;

- 21.16.3.6 assist the Provider in ensuring compliance with the obligations set out at Article 32 to 36 of the UK GDPR and equivalent provisions implemented into Law, taking into account the nature of processing and the information available to the Sub-Contractor;
- 21.16.3.7 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;
- 21.16.3.8 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 the 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; and
  - 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;
- 21.16.3.9 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;
- 21.16.3.10 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
- 21.16.3.11 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 GC21.16.3.

21.17 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**

- 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 GC21.20 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.

### **NHS Data Sharing Principles**

21.23 The Provider must have regard to the NHS Data Sharing Principles.

### **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 Schedule 5B (*Provider's Material Sub-Contracts*) 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, the Provider 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. As soon as possible after the end of each Contract Year, the Provider must publish on its website the name and position of any Decision-Making Staff who have neither completed a declaration of interest nor submitted a nil return in respect of that Contract Year, as required of them under Managing Conflicts of Interest in the NHS. In accordance with its general obligation to comply with Data Protection Legislation under GC21.1, the Provider must ensure that an appropriate Privacy Notice is provided to Staff to enable publication of such information.

## 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, GC5.4.2 and GC5.18 to GC5.21 (*Staff*);
  - 29.1.2 the Secretary of State;
  - 29.1.3 a Regulatory or Supervisory Body;
  - 29.1.4 any ICB 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 GC5.14 to GC5.17 (*Staff*); or
  - 29.1.7 the relevant NHS Employer, if the matter to be enforced or the benefit to be enjoyed arises under GC5.18 to GC5.21 (*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

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 and Social Care (<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 and Social Care 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

**2018 Act** the Mental Health Units (Use of Force) Act 2018

**2018 Act Guidance** Mental Health Units (Use of Force) Act 2018: statutory guidance for NHS organisations in England and police forces in England and Wales, available at:

<https://www.gov.uk/government/publications/mental-health-units-use-of-force-act-2018>

**2018 Act Responsible Person** the board-level officer of the Provider responsible for overseeing the Provider's actions to comply with the 2018 Act, identified as such in the Particulars

**2022 Act** the Health and Care Act 2022

**Access and Waiting Time Standard for Children and Young People with an Eating Disorder** guidance on establishing and maintaining a community eating disorder service, published at:

<https://www.england.nhs.uk/mental-health/cyp/eating-disorders/>

**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:

<https://www.england.nhs.uk/ourwork/accessibleinfo/>

**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, consistent with the relevant Indicative Activity Plan, 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*) and/or as notified by the Commissioner to the Provider in accordance with SC29.7

**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 after any deductions, withholdings or set-off), as reconciled under SC36 (*Payment Terms*)

**Actual Monthly Value** where no Expected Annual Contract Value has been agreed 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 but before any deductions, withholdings or set-off), as reconciled under SC36 (*Payment Terms*)

**A-EQUIP Professional Advocate Guidance** the model of clinical nursing and midwifery supervision, involving the establishment of Professional Nurse Advocate and Professional Midwifery Advocate roles, published by NHS England and available at: <https://www.england.nhs.uk/publication/professional-nurse-advocate-a-equip-model-a-model-of-clinical-supervision-for-nurses/> and <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

**Alcohol and Tobacco Brief Interventions Guidance** the guidance available at: <https://www.gov.uk/government/publications/preventing-ill-health-commissioning-for-quality-and-innovation>

**Aligned Payment and Incentive Rules** the rules set out in section 4 of the NHS Payment Scheme

**Antimicrobial Stewardship Toolkit for English Hospitals** the document entitled *Start Smart – Then Focus*, available at: <https://www.gov.uk/government/publications/antimicrobial-stewardship-start-smart-then-focus>

**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 statement and principles set out in section 343AA(1) of the Armed Forces Act 2006

**Armed Forces Duty Statutory Guidance** guidance issued by the Secretary of State for Defence under section 343AE of the Armed Forces Act 2006, available at: <https://www.gov.uk/government/publications/armed-forces-covenant-duty-statutory-guidance>

**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 (*Aligned Payment and Incentive Rules*) or Schedule 3B (*Locally Agreed Adjustments to NHS Payment Scheme Unit Prices*) or Schedule 3C (*Local Prices*) under which an overall fixed price is agreed which will not change as a result of any changes in Activity levels

**Board Assurance Framework for Seven Day Hospital Services** the framework for use by acute hospital providers in measuring their progress in implementing seven-day hospital services, as published by NHS England at <https://www.england.nhs.uk/publication/seven-day-services-clinical-standards/>

**Broad-Spectrum Antibiotic Usage** the number of defined daily doses of broad-spectrum antibiotics from the World Health Organisation Watch and Reserve lists dispensed by the Provider to NHS patients undergoing care on an outpatient, day case or inpatient basis during a Contract Year, per 1000 admissions of NHS patients during the same Contract Year, calculated in accordance with the more detailed definition in the AMR Local Indicators database, available at: <https://fingertips.phe.org.uk/profile/amr-local-indicators/data#page/1>

**Broad-Spectrum Antibiotic Usage 2017 Baseline** the number of defined daily doses of broad-spectrum antibiotics from the World Health Organisation Watch and Reserve lists dispensed by the Provider to NHS patients undergoing care on an outpatient, day case or inpatient basis during 2017, per 1000 admissions of NHS patients during 2017, calculated in accordance with the more detailed definition in the AMR Local Indicators database, available at: <https://fingertips.phe.org.uk/profile/amr-local-indicators/data#page/1>

**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) published at <https://www.england.nhs.uk/ourwork/epr/bc/> 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 (Education) and Treatment Review** a review of a Service User undertaken in accordance with Care (Education) and Treatment Review Guidance, including a Care, Education and Treatment Review for a child or young person

**Care (Education) and Treatment Review Guidance** the guidance documents for commissioners and providers on Care and Treatment Reviews, and on Care, Education and Treatment Reviews for children and young people, published by NHS England at: <https://www.england.nhs.uk/learning-disabilities/care/ctr/care-education-and-treatment-reviews/>

**Care Connect APIs** the seventeen resource APIs listed at: <https://nhsconnect.github.io/CareConnectAPI/>



**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) in the case of a corporation with share capital, 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 beneficial ownership of 50% or more of the issued share capital of that corporation, 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 and/or the legal power to direct or cause the direction of the management of that corporation), 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.
- (ii) in the case of a company limited by guarantee or other corporation without share capital, any transfer of or change in membership (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the legal power to direct or cause the direction of the management of that corporation and/or 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 transfer or change the same entities directly or indirectly exercise the same degree of control over the relevant corporation;
- (iii) in the case of any corporation, any transfer to or acquisition by a third party of all or substantially all of the business and assets of that corporation; or
- (iv) in respect of an NHS Trust, NHS Foundation Trust or NHS Body, 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 Protection Information Sharing Project** a project to improve the way that health and social care services work together across England to protect vulnerable children: <https://digital.nhs.uk/services/child-protection-information-sharing-project>

**Child Sexual Abuse and Exploitation Guidance** the *Child Sexual Exploitation: Health Working Group Report* and the Department of Health and Social Care'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

**Clinic Letter** a summary of information relevant to the Service User to be produced by the Provider following outpatient clinic attendance, which must be a structured message capable of carrying both human

readable narrative and coded (SNOMED CT) information, consistent with the standards published by the Professional Record Standards Body at: <https://theprsb.org/standards/>

**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 Conduct for Data-Driven Health and Care Technology** the principles published by DHSC to enable the development and adoption of safe, ethical and effective data-driven health and care technologies, available at: <https://www.gov.uk/government/publications/code-of-conduct-for-data-driven-health-and-care-technology/initial-code-of-conduct-for-data-driven-health-and-care-technology>

**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>

**Commencement Date** the date that a section or a paragraph of a schedule of the 2022 Act comes into force

**Commercial Contract Research Study** a research project that is fully sponsored and fully funded by a commercial company

**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/data-services/commissioning-flows/>

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

**Commissioner Deliverables** all documents, products and materials developed by any 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

**Compliant Ambulance Vehicle Supply Contract**

- (i) (for base vehicle purchases) a contract with a supplier entered into by the Provider pursuant to the mini-competition conducted by NHS England (reference CCZJ19A03) under Lot 7 of the Crown Commercial Service Vehicle Purchase framework agreement RM6060; or
- (ii) (for vehicle conversions) a contract with a supplier entered into by the Provider pursuant to the mini competition conducted by NHS England under Lot 1 of the NHS National Agreement for the Supply of Ambulance Vehicle Conversions framework agreement 2020/S 240-594961

**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/>

**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

**Core Skills Training Framework** the framework which sets out national minimum standards for statutory and mandatory training for clinical and non-clinical staff employed or engaged by providers of healthcare services, available at: <https://skillsforhealth.org.uk/info-hub/statutory-mandatory-core-skills-training-framework-cstf/>

**COSOP** the Cabinet Office Statement of Practice Staff Transfers in the Public Sector January 2000 available at: <https://www.gov.uk/government/publications/staff-transfers-in-the-public-sector>

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

**CQC Regulations** the Care Quality Commission (Registration) Regulations 2009

**CQUIN** the Commissioning for Quality and Innovation scheme, given effect through the Aligned Payment and Incentive Rules within the NHS Payment Scheme

**CQUIN Guidance** guidance on the application and operation of CQUIN 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 Schedule 3F (*CQUIN*)

**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 Schedule 3F (*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, as recorded in the relevant CQUIN Performance Reports;
- (ii) confirms the payments on account already made to the Provider in respect of CQUIN for 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

**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 England in relation to commissioner requested services, available at: <https://www.england.nhs.uk/licensing-and-oversight-of-independent-providers/information-for-commissioners/>

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

**Data Controller** has the same meaning as "Controller" in the Data Protection Legislation

**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 Coordinating 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 and Care, the Department of Health and Social Care, NHS England, the Health Research Authority, the UK Health Security Agency and the Information Commissioner

**Data Landing Portal** the secure and confidential portal for the receipt of electronic submissions of local patient-level datasets from providers, available at: <https://digital.nhs.uk/services/data-landing-portal>

**Data Landing Portal Acceptable Use Statement** the acceptable use statement which sets out requirements on providers relating to the use of the Data Landing Portal, available at: <https://digital.nhs.uk/services/data-landing-portal>

**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

**Data Processing Services** the data processing services described in Schedule 6E (*Data Processing Services*)

**Data Processor** has the same meaning as “Processor” in the Data Protection Legislation

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

**Data Protection Legislation**

- (i) the UK GDPR
- (ii) the DPA 2018
- (iii) 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 2003

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

**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 Plans*)

**Data Quality Maturity Index** the publication which assesses the completeness and quality of datasets submitted nationally by individual providers in relation to different services, available at: <https://digital.nhs.uk/data-and-information/data-tools-and-services/data-services/data-quality>

**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

**DCB0160** the standard defined in *Clinical Risk Management: its Application in the Deployment and Use of Health IT Systems*, available at: <https://digital.nhs.uk/services/solution-assurance/the-clinical-safety-team/clinical-risk-management-standards>

**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

**Decision-Making Staff** has the meaning given to it in Managing Conflicts of Interest in the NHS

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

**Delivering a 'Net Zero' National Health Service** the report setting out the NHS's commitment to achieving net zero carbon emissions, published by NHS England at:

<https://www.england.nhs.uk/greenernhs/publication/delivering-a-net-zero-national-health-service/>

**Delivery Method**

- (i) in respect of communications with a Service User's GP, direct automatic transfer onto the GP practice electronic patient record system through a suitable secure interface such as Message Exchange for Social Care and Health (details available at: <https://digital.nhs.uk/services/message-exchange-for-social-care-and-health-mesh>); or
- (ii) in respect of communications with any other Referrer or with any third party provider of health or social care, either direct automatic transfer onto that party's electronic patient record system through a suitable secure interface or secure email using an NHS secure account or equivalent, as required or permitted by the relevant Transfer of and Discharge from Care Protocol

**Department of Health and Social Care or DHSC** the Department of Health and Social Care in England of HM Government and its predecessor departments, or such other body superseding or replacing it from time to time and/or the Secretary of State

**Development Plan for Personalised Care** the agreed plan describing actions which the Provider and/or the Commissioners will take, aimed at ensuring that Service Users have choice and control over the way their care is planned and delivered, as set out in Schedule 2M (*Development Plan for Personalised Care*)

**Direction Letter/Determination** a letter or determination 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 or Section 25(5) of the Public Service Pensions Act 2013) to the Provider (or any Sub-Contractor, as appropriate), setting out the terms on which the Provider (or any 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, for discharges from inpatient, day case or A+E Services, must be a structured message capable of carrying both human readable narrative and coded (SNOMED CT) information, consistent with the standards published by the Professional Record Standards Body at: <https://theprsb.org/standards/> and, in relation to discharges from inpatient acute care, with the Transfer of Care – Acute Inpatient Discharge Information Standard (DAPB4042), published at: <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/dapb4042-transfer-of-care-acute-inpatient-discharge>

**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 and 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 2018** the Data Protection Act 2018

**Early Intervention in Psychosis Scoring Matrix** the quality improvement and accreditation scoring matrix published by the Royal College of Psychiatrists at: <https://www.rcpsych.ac.uk/improving-care/ccqi/national-clinical-audits/national-clinical-audit-of-psychosis/EIP-spotlight-audit-resources>

**EDS** the Equality Delivery System for the NHS, available at: <https://www.england.nhs.uk/about/equality/equality-hub/eds/>

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

**Effective Date** the date referred to as such in the Particulars

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

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

**EIR** the Environmental Information Regulations 2004

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

**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 and 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 and Barred List Check (as appropriate) is permitted

**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 and Social Care guidance in *NHS E-Procurement Strategy* available at: <http://www.gov.uk/government/collections/nhs-procurement>

**EPRR Guidance** the emergency preparedness, resilience and response guidance published by NHS England, including:

- (i) *NHS Emergency Preparedness, Resilience and Response Framework*; and
  - (ii) *NHS Core Standards for Emergency Preparedness, Resilience and Response (EPRR)*
- available at: <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)

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

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

**Event of Force Majeure** an event or circumstance which is beyond the reasonable control of the Party claiming relief under GC28 (*Force Majeure*), including war, civil war, armed conflict or terrorism, strikes or lock outs, riot, fire, flood or earthquake, and which directly causes that Party to be unable to comply with all or a material part of its obligations under this Contract in relation to any Service

**Evidence-Based Interventions Guidance** national guidance relating to the commissioning of specific interventions on the basis of their known clinical appropriateness and effectiveness, published by the Academy of Medical Royal Colleges at: <https://www.aomrc.org.uk/ebi/resource/>

**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 3D (*Expected Annual Contract Values*) for each Commissioner, in respect of each relevant Service for the Contract Year

**Expected Monthly Value** where an Expected Annual Contract Value has been agreed, the amount of that value paid in advance to the Provider for the month in question, as agreed under SC36.13 and Schedule 3D (*Expected Annual Contract Values*)

**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** guidance on the implementation of the NHS Friends and Family Test, available at: <https://www.england.nhs.uk/fft>



**Final Monthly Reconciliation Date** the date when the final separate SUS reconciliation reports for the relevant month are available for the Commissioners to view and use to validate reconciliation accounts received from the Provider, as published at:

<https://digital.nhs.uk/services/secondary-uses-service-sus/payment-by-results-guidance>

**Final Quarterly Reconciliation Date** the date when the final separate SUS reconciliation reports on Activity for all three months in the relevant Quarter are available for the Commissioners to view and use to validate reconciliation accounts received from the Provider, as published at:

<https://digital.nhs.uk/services/secondary-uses-service-sus/payment-by-results-guidance>

**First Monthly 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 published at: <https://digital.nhs.uk/services/secondary-uses-service-sus/payment-by-results-guidance>

**First Quarterly Reconciliation Date** the date when the first SUS separate reconciliation reports on Activity for all three months in the relevant Quarter are available for the Commissioners to view to facilitate reconciliation between the Provider and Commissioners, as published at:

<https://digital.nhs.uk/services/secondary-uses-service-sus/payment-by-results-guidance>

**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

**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 National Guardian's Office Guidance and identified as such in the Particulars

**Freedom to Speak Up Policy and Guidance** the national policy on speaking up available at: <https://www.england.nhs.uk/publication/the-national-speak-up-policy/> and the associated national guidance available at: <https://www.england.nhs.uk/publication/the-guide-for-the-nhs-on-freedom-to-speak-up/>

**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

**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, listed at:

<https://www.england.nhs.uk/genomics/genomic-laboratory-hubs/>

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

**General Condition** or **GC** any of the General Conditions as published by NHS England from time to time at: <https://www.england.nhs.uk/nhs-standard-contract>, 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 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

**GP Referred Service** a Service which accepts elective Referrals from GPs, as set out in NHS e-Referral Service guidance

**Green Plan** the plan to be produced and maintained by the Provider in accordance with Green Plan Guidance and SC18 (*Green NHS and Sustainability*)

**Green Plan Guidance** guidance issued by NHS England on the development, content and/implementation of an organisational Green Plan, available at:

<https://www.england.nhs.uk/greenernhs/get-involved/organisations/>

**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 for Placement of Doctors in Training** guidance setting out arrangements under which non-NHS providers providing NHS-funded services can host doctors in training, available at:

<https://www.hee.nhs.uk/our-work/doctors-training/guidance-placement-doctors-training-independent-sector>

#### **Guidance on End of Life Care**

- (i) *NICE Guidance 31: Care of dying adults in the last days of life*, available at: <https://www.nice.org.uk/guidance/ng31>
- (ii) *NICE Guidance 142: End of life care for adults: service delivery*, available at: <https://www.nice.org.uk/guidance/ng142>
- (iii) *NICE Guidance 61: End of life care for infants, children and young people with life-limiting conditions: planning and management*, available at: <https://www.nice.org.uk/guidance/ng61>
- (iv) *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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323188/One_chance_to_get_it_right.pdf)
- (v) 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>
- (vi) *Ambitions for Palliative and End of Life Care: A national framework for local action 2021-2026*, available at: <https://www.england.nhs.uk/publication/ambitions-for-palliative-and-end-of-life-care-a-national-framework-for-local-action-2021-2026/>
- (vii) *Universal Principles for Advance Care Planning*, available at: <https://www.england.nhs.uk/publication/universal-principles-for-advance-care-planning/>
- (viii) *Do not attempt cardiopulmonary resuscitation (DNACPR) and people with a learning disability and or autism*, available at: <https://www.england.nhs.uk/long-read/dnacpr-and-people-with-a-learning-disability-and-or-autism/>

**Guidance on Implementing Patient Initiated Follow-up** Implementing patient-initiated follow-up: guidance for local health and care systems, available at: <https://www.england.nhs.uk/publication/implementing-patient-initiated-follow-up-guidance-for-local-health-and-care-systems/>

**Guidance on Personalised Care** guidance published by NHS England aimed at ensuring that people have choice and control over the way their care is planned and delivered, available at: <https://www.england.nhs.uk/publication/universal-personalised-care-implementing-the-comprehensive-model/>

**Guidance on Prescribing in Primary Care** NHS England guidance to ICBs to support them to fulfill their duties around appropriate use of prescribing resources, including: <https://www.england.nhs.uk/publication/conditions-for-which-over-the-counter-items-should-not-routinely-be-prescribed-in-primary-care-guidance-for-ccgs/> and <https://www.england.nhs.uk/medicines/items-which-should-not-be-routinely-prescribed/>

**Guidance on Reporting a Data Security Incident** the Guide to the Notification of Data Security and Protection Incidents, published at: <https://www.dsptoolkit.nhs.uk/Help/incident-reporting>

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

**Health Education and Training Quality Framework**, the national framework of quality standards for the clinical learning environment, available at: <https://hee.nhs.uk/our-work/quality>

**Health Inequalities Action Plan** the agreed plan describing actions which the Provider and/or Commissioners will take with the aim of reducing inequalities in access to, experience of and outcomes from the Services, as set out in Schedule 2N (*Health Inequalities Action Plan*)

**Health Inequalities Lead** the board-level officer of the Provider responsible for overseeing the Provider's actions to address and reduce health inequalities, identified as such in the Particulars

**Health and Social Care Network** the new data network for health and care organisations (replacing the previous N3 arrangements) under which providers are able to obtain network connectivity from multiple suppliers in a competitive market place, described further at: <https://digital.nhs.uk/services/health-and-social-care-network>

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

**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/>

**Health Services Safety Investigations Body**

- (i) until the Commencement Date for section 109 and Schedule 13 of the 2022 Act, the Healthcare Safety Investigation Branch, being 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>, and
- (ii) with effect from the Commencement Date for section 109 and Schedule 13 of the 2022 Act, the body corporate established by section 109 and Schedule 13 of the 2022 Act

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

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

**High Emission Vehicle** a vehicle which is neither a Zero and Ultra-Low Emission Vehicle nor meets the relevant Euro 6 standard

**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

**HQIP** the Healthcare Quality Improvement Partnership: <https://www.hqip.org.uk/>

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

**HRA** the Human Rights Act 1998

**HRA/NIHR Research Reporting Guidance** the guidance published by the Health Research Authority and the National Institute for Health Research regarding publication by any Provider of data showing the progress of research studies in which that Provider is participating, available at: <https://www.nihr.ac.uk/researchers/manage-your-funding/manage-your-project/reporting-impact.htm>

**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)

**Independent Investigation into East Kent Maternity Services** the recommendations from the independent review of maternity services at the East Kent Hospitals University NHS Foundation Trust, published by DHSC at: <https://www.gov.uk/government/publications/maternity-and-neonatal-services-in-east-kent-reading-the-signals-report>

**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 in remedying any breach of Data Protection Legislation

**Infection Prevention Lead** the Provider's officer, identified as such in the Particulars, having responsibility at Governing Body level for infection prevention, including cleanliness, as described in the Code of Practice on the Prevention and Control of Infections; where the Provider is an NHS Trust or an NHS Foundation Trust, this individual will typically be the Director of Infection Prevention and Control

**Information Breach** any material failure on the part of the Provider to comply with its obligations under SC23.4 (*NHS Number*), 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 Audit Guidance** guidance issued by the Department of Health and Social Care 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 Guidance on Reporting a Data Security Incident

**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

**Integrated Care Board or ICB** an integrated care board as defined in Section 14Z25 of the 2006 Act

**Integrated Care Partnership** an integrated care partnership as defined in Section 116ZA (1) of the Local Government and Public Involvement in Health Act 2007

**Integrated Care Strategy** the integrated care strategy developed by an Integrated Care Partnership pursuant to section 116ZB of the 2006 Act

**Intercollegiate Guidance in Relation to Safeguarding Training** intercollegiate guidance in relation to safeguarding training, including

- (i) *Safeguarding children and young people: roles and competences for health care staff*, available at: <https://www.rcn.org.uk/professional-development/publications/pub-007366>
- (ii) *Looked after children: Knowledge, skills and competences of health care staff*, available at: [https://www.rcpch.ac.uk/sites/default/files/Looked\\_after\\_children\\_Knowledge\\_skills\\_and\\_competence\\_of\\_healthcare\\_staff.pdf](https://www.rcpch.ac.uk/sites/default/files/Looked_after_children_Knowledge_skills_and_competence_of_healthcare_staff.pdf); and
- (iii) *Adult Safeguarding: Roles and Competencies for Health Care Staff*, available at: <https://www.rcn.org.uk/Professional-Development/publications/adult-safeguarding-roles-and-competencies-for-health-care-staff-uk-pub-007-069>

**Invoice Validation Guidance** the NHS England publication *Who Pays? Information Governance Advice for Invoice Validation* December 2013, available at: <https://www.england.nhs.uk/ig/in-val/invoice-validation-faqs/>

**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

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

**IUC Clinical Assessment Service** a telephone-based urgent care clinical assessment service, commissioned to operate in conjunction with 111 services and described in the Integrated Urgent Care

Service Specification published by NHS England at: <https://www.england.nhs.uk/wp-content/uploads/2014/06/Integrated-Urgent-Care-Service-Specification.pdf>

**JCVI and Green Book Guidance** guidance from the Joint Committee on Vaccination and Immunisation on vaccination and immunisation for the public and for healthcare workers, published from time to time at: <https://www.gov.uk/government/groups/joint-committee-on-vaccination-and-immunisation>; and the Green Book which includes information on vaccines and vaccination procedures, published at: <https://www.gov.uk/government/collections/immunisation-against-infectious-disease-the-green-book>

**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 (*Contract Management*)

**Joint System Plan** the joint forward plan developed by an ICB and its partner NHS Trusts and NHS Foundation Trusts pursuant to section 14Z52 of the 2006 Act

**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

**Learning Disability Improvement Standards** the standards for the provision of healthcare services for people with learning disabilities, published by NHS England at: <https://www.england.nhs.uk/learning-disabilities/about/resources/the-learning-disability-improvement-standards-for-nhs-trusts/>

**Learning from Lives and Deaths Platform** the platform used to report the death of a Service User with a learning disability and/or autism, available at: <https://leder.nhs.uk/>

**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

**Lester Tool** the tool used to assess the cardiovascular and metabolic health of Services Users with severe mental illness, published by NHS England and the Royal College of Psychiatrists at: [https://www.rcpsych.ac.uk/docs/default-source/improving-care/ccqi/national-clinical-audits/ncap-library/ncap-e-version-nice-endorsed-lester-uk-adaptation.pdf?sfvrsn=39bab4\\_2](https://www.rcpsych.ac.uk/docs/default-source/improving-care/ccqi/national-clinical-audits/ncap-library/ncap-e-version-nice-endorsed-lester-uk-adaptation.pdf?sfvrsn=39bab4_2)

**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 county borough council in England, a district council in England, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly

**Local Counter Fraud Specialist** the accredited local counter fraud specialist nominated 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 Maternity and Neonatal System** the collaborative forum established in each local health system involving the relevant ICB and local providers of maternity and neonatal services

**Local Medical Committee** the local recognised statutory committee representing GPs

**Local Price** the price agreed by the Co-ordinating Commissioner and the Provider or determined as payable in accordance with section 7 (*Local Payment Arrangements*) of the NHS Payment Scheme for a health care service where none of the payment mechanisms set out in sections 4 – 6 of the NHS Payment Scheme apply

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

**Locally Agreed Adjustment** an adjustment to an NHSPS Unit Price agreed by the Co-ordinating Commissioner and the Provider in accordance with rule 3 of section 6 of the NHS Payment Scheme

**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, charges and fines 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 available at:  
<https://www.e-lfh.org.uk/programmes/making-every-contact-count/>

**Managing Conflicts of Interest in the NHS** the NHS publication by that name available at:  
<https://www.england.nhs.uk/publication/managing-conflicts-of-interest-in-the-nhs-guidance-for-staff-and-organisations/>

**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, as designated by the Co-ordinating Commissioner and listed at Schedule 5B (*Provider's Material Sub-Contracts*) from time to time

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

**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 Children and Adults*)

**Medical Devices Safety Officer** the individual designated by the Provider to promote, and provide expert advice on, the safe use of medical devices in relation to the Services, as described further at:

<https://www.england.nhs.uk/patient-safety/patient-safety-alerts/enduring-standards/informing-broader-local-safety-initiatives/linking-with-national-systems/>,  
<https://www.gov.uk/government/publications/managing-medical-devices>, and  
<https://www.england.nhs.uk/publication/patient-safety-alerts-improving-medical-device-incident-reporting-and-learning/>

**Medical Examiner Guidance** guidance published by NHS England from time to time at:  
<https://www.england.nhs.uk/establishing-medical-examiner-system-nhs/>

**Medical Examiner Office** the function for scrutiny and oversight of deaths not referred to the relevant coroner, described at: <https://www.england.nhs.uk/establishing-medical-examiner-system-nhs/>

**Medical Practitioners Assurance Framework** defined as the framework published by the Independent Healthcare Providers Network, aimed at improving consistency in effective clinical governance for medical practitioners across the independent sector, available at: <https://www.ihpn.org.uk/resources/mpaf/>

**Medication Safety Officer** the individual designated by the Provider to promote, and provide expert advice on, the safe use of medicines in relation to the Services, as described further at:

<https://www.england.nhs.uk/patient-safety/patient-safety-alerts/enduring-standards/informing-broader-local-safety-initiatives/linking-with-national-systems/>,  
<https://www.sps.nhs.uk/home/guidance/medication-safety/>, and  
<https://www.england.nhs.uk/publication/patient-safety-alert-improving-medication-error-incident-reporting-and-learning/>

**MedTech Funding Mandate Guidance** guidance in relation to the adoption of and payment for innovations that are effective, deliver material savings to the NHS, are cost-saving in-year and are affordable to the NHS:

<https://www.england.nhs.uk/aac/what-we-do/how-can-the-aac-help-me/the-medtech-funding-mandate/>

**Mental Capacity and Liberty Protection Safeguards 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 (and/or, once in effect, the Liberty Protection 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/>

**MHRA Central Alerting System** the web-based cascading system for issuing patient safety alerts, important public health messages and other safety critical information and guidance to the NHS and others, hosted by the Medicines and Healthcare Products Regulatory Agency and available at:

<https://www.cas.mhra.gov.uk/Home.aspx>

**National Ambulance Vehicle Specification** the national specification for emergency ambulance vehicles to be used in the provision of NHS-funded services, published by NHS England at:

[https://www.england.nhs.uk/wp-content/uploads/2018/09/B0356\\_National-specification-base-vehicle-and-conversion\\_October-2021.pdf](https://www.england.nhs.uk/wp-content/uploads/2018/09/B0356_National-specification-base-vehicle-and-conversion_October-2021.pdf)



**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: <https://www.hqip.org.uk/national-programmes/#.XfkmCqg7JJU>

**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 and Social Care, 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 Directive on Commercial Contract Research Studies** the mandatory requirements governing participation by Providers in Commercial Research Studies, published jointly by NHS England, the National Institute for Health Research and the Health Research Authority from time to time at: <https://www.nihr.ac.uk/documents/national-directive-on-commercial-contractresearch-studies/11346>

**National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care** the document of this name published by DHSC, available at: <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

**National Genomic Test Directory** the document listing all of the genomic tests which are commissioned by the NHS in England, published by NHS England at: <https://www.england.nhs.uk/publication/national-genomic-test-directories>

**National Guardian's Office** the office of the National Guardian, which leads, trains and supports a network of Freedom to Speak Up Guardians in England and conducts speaking up reviews to identify learning and support improvement of the speaking up culture of the healthcare sector: <https://www.nationalguardian.org.uk/>

**National Guardian's Office Guidance** the universal job description for a Freedom to Speak Up Guardian and other guidance published by the National Guardian's Office, available at: <https://nationalguardian.org.uk/for-guardians/guidance/>

**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 Infection Prevention and Control Manual**, the National Infection Prevention and Control Manual for England, available at: <https://www.england.nhs.uk/publication/national-infection-prevention-and-control/>

**National Institute for Health Research or NIHR** the organisation established by the Department of Health and Social Care to transform research in the NHS

**National Medical Examiner** the individual appointed at national level to provide professional and strategic leadership to regional and trust-based medical examiners, as described at: <https://www.england.nhs.uk/establishing-medical-examiner-system-nhs/>

**National Patient Safety Alert** a communication on an issue critical to patient safety, issued to relevant providers of NHS-funded healthcare services using the national template and accredited process approved by the National Patient Safety Alerting Committee (as described at: <https://www.england.nhs.uk/patient-safety/national-patient-safety-alerting-committee/>)

**National Principles on Hospital Visiting** Living with COVID-19: Visiting healthcare inpatient settings principles, published by NHS England at: <https://www.england.nhs.uk/coronavirus/documents/c1606-living-with-covid-19-visiting-healthcare-inpatient-settings-principles/>

**National Quality Requirements** the requirements set out in Annex A (*National Quality Requirements*) to the Service Conditions as published by NHS England from time to time at: <https://www.england.nhs.uk/nhs-standard-contract/>

**National Quarterly Pulse Survey** the National Quarterly Pulse Survey as defined in National Quarterly Pulse Survey Guidance

**National Quarterly Pulse Survey Guidance** guidance on the implementation of the National Quarterly Pulse Survey, available at: <https://www.england.nhs.uk/fft/nqps/>

**National Reporting and Learning System** the central database of patient safety incident reports at: <https://report.nrls.nhs.uk/nrlsreporting/>

**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 at: <https://www.england.nhs.uk/specialised-commissioning-document-library/service-specifications/>

**National Standards for Healthcare Food and Drink** the food and drink standards for healthcare providers published at: <https://www.england.nhs.uk/publication/national-standards-for-healthcare-food-and-drink/>

**National Standards of Healthcare Cleanliness** the cleanliness standards for healthcare providers published at: <https://www.england.nhs.uk/wp-content/uploads/2021/04/B0271-national-standards-of-healthcare-cleanliness-2021.pdf>

**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 Workforce Disability Equality Standard** the workforce disability equality standard for the NHS, available at: <https://www.england.nhs.uk/about/equality/equality-hub/wdes/>

**National Workforce Race Equality Standard** the workforce race equality standard for the NHS, available at: <http://www.england.nhs.uk/ourwork/gov/equality-hub/equality-standard/>

**Nationally Contracted Products Programme** the procurement programme operated by NHS England 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://www.supplychain.nhs.uk/savings/nationally-contracted-products/>

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

**Net Zero Lead** the board-level officer of the Provider, identified as such in the Particulars

**Never Events Policy Framework** the *Never Events Policy Framework*, available at: <https://www.england.nhs.uk/publication/never-events/>

**NEWS 2 Guidance** *National Early Warning Score (NEWS) 2: Standardising the assessment of acute-illness severity in the NHS. Updated report of a working party*, Royal College of Physicians, London, 2017, available at: <https://www.rcplondon.ac.uk/projects/outputs/national-early-warning-score-news-2>

**NEW Score** the aggregate score for an individual Service User when assessed at any point using the parameters set out in NEWS 2 Guidance

**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: <https://webarchive.nationalarchives.gov.uk/20130513181153/http://www.nigb.nhs.uk/pubs/nhscrg.pdf>

**NHS Car Parking Guidance** published by DHSC at: <https://www.gov.uk/government/publications/nhs-patient-visitor-and-staff-car-parking-principles/nhs-patient-visitor-and-staff-car-parking-principles>

**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 Requirements** the counter-fraud requirements and guidance (informed by Government Functional Standard GovS 013: Counter Fraud) issued by NHSCFA and available at: <https://cfa.nhs.uk/government-functional-standard/NHS-requirements>

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

**NHS Choice Framework** the framework which sets out the choices available to individuals in respect of their health care, published by DHSC at: <https://www.gov.uk/government/publications/the-nhs-choice-framework>

**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 Data Security and Protection Toolkit** an online system which allows NHS Bodies and non-NHS providers of NHS-funded services to assess their compliance with UK GDPR and with the National Data Guardian's Data Security Standards, available at: <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/data-security-and-protection-toolkit>

**NHS Data Sharing Principles** the document which sets out guiding principles and a framework to help the NHS realise benefits for patients and the public where the NHS shares data with researchers, published by DHSC at:

<https://www.gov.uk/government/publications/creating-the-right-framework-to-realise-the-benefits-of-health-data/creating-the-right-framework-to-realise-the-benefits-for-patients-and-the-nhs-where-data-underpins-innovation>

**NHS Digital** the Health and Social Care Information Centre, the functions of which were transferred to NHS England and which was abolished on 1 February 2023 by regulations made under section 103 of the 2022 Act: <https://digital.nhs.uk/>

**NHS Discharge Medicines Service** the service provided by community pharmacy contractors, to ensure better communication of changes to a patient's medication following discharge from hospital and to reduce incidences of avoidable harm caused by medicines, as further described at:

<https://www.england.nhs.uk/primary-care/pharmacy/nhs-discharge-medicines-service/>

**NHS Discharge Medicine Service Toolkit** the toolkit published by NHS England to support cross-sector implementation of the NHS Discharge Medicines Service, available at:

<https://www.england.nhs.uk/publication/nhs-discharge-medicines-service-essential-service-toolkit-for-pharmacy-staff-in-community-primary-and-secondary-care/>

**NHS Elective Recovery Plan** delivery plan for tackling the COVID-19 backlog of elective care, published by NHS England at: <https://www.england.nhs.uk/coronavirus/publication/delivery-plan-for-tackling-the-covid-19-backlog-of-elective-care/>

**NHSE Medicines Framework Agreements** the framework agreements put in place by NHS England, covering supply of generic medicines, branded medicines, biosimilar medicines, intravenous fluids, blood products, dose banded chemotherapy and flu vaccines for hospitals, available via: <https://pharmacycatalogue.cmu.nhs.uk/pharmacycatalogue/>

**NHSE Medicines Framework Product** a medicine or other product which is generally available for purchase by an NHS Trust or NHS Foundation Trust via an NHSE Medicines Framework Agreement

**NHS Employer** has the meaning given to it in Annex 1 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 or Supervisory Body policy, and those that are required for access to Service User Health Records:

<https://www.nhsemployers.org/topics-networks/employment-standards-and-regulation>

**NHS England** the body established by section 1H of the 2006 Act

**NHS England Prevent Training and Competencies Framework** the framework available at:

<https://www.webarchive.org.uk/wayback/archive/20171001092907/https://www.england.nhs.uk/publication/prevent-training-and-competencies-framework/>

**NHS England Quality Accounts List** the list of national clinical audits, registries and clinical outcome review programmes in respect of which providers must report their participation as part of their annual Quality Accounts, as described in HQIP's annual publication at: <https://www.hqip.org.uk/national-programmes/quality-accounts/>

**NHS e-Referral Guidance** guidance in relation to best practice use of the NHS e-Referral Service, available at: <https://digital.nhs.uk/services/nhs-e-referral-service> 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 Guidance on Prescribing Responsibilities** the document published by NHS England which describes the prescribing responsibilities of healthcare professionals from primary, secondary and tertiary care, available at: <https://www.england.nhs.uk/publication/responsibility-for-prescribing-between-primary-and-secondary-tertiary-care/>

**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 Internet First Policy** the national policy under which all externally accessible health and social care digital services must be securely accessible over the public internet, as further described at: <https://digital.nhs.uk/services/internet-first>

**NHS Model Employer Strategy** the NHS Workforce Race Equality Standard leadership strategy, aimed at increasing black and minority ethnic representation at senior levels across the NHS, available at: <https://www.england.nhs.uk/publication/a-model-employer/>

**NHS Net Zero Supplier Roadmap** the requirements and guidance for NHS organisations in relation to how their procurement of goods and services is to support delivery of the NHS net zero ambition by 2030, published by NHS England at: <https://www.england.nhs.uk/greenernhs/get-involved/suppliers/>

**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 Payment Scheme** the NHS payment scheme published by NHS England under section 114A of the 2012 Act, as applicable at the time at which the relevant Service is provided

**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), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), and the National Health Service Pension Scheme Regulations 2015 (SI 2015/94)

**NHS People Plan** the document published by NHS England at: <https://www.england.nhs.uk/ournhspeople/>

**NHS Premises Assurance Model** or **PAM** the toolkit which allows NHS Trusts and NHS Foundation Trusts to assess how efficiently they run their estate and facilities, published by NHS England at: <https://www.england.nhs.uk/nhs-premises-assurance-model/>

**NHS Provider Selection Regime** the regime governing the selection of providers of NHS-funded clinical services, established by regulations made under section 12ZB of the 2006 Act

**NHSPS Unit Price** the unit price as published in Annex A to the NHS Payment Scheme (where applicable, as adjusted in accordance with rule 3 of section 6 of the NHS Payment Scheme)

**NHS Serious Incident Framework** NHS England's serious incident framework, available at: <https://www.england.nhs.uk/patient-safety/serious-incident-framework/>

**NHS Smoking Cessation Advance Service** the service provided by community pharmacies, described at <https://www.nhsbsa.nhs.uk/pharmacies-gp-practices-and-appliance-contractors/dispensing-contractors-information/smoking-cessation-advance-service-referral-secondary-care-community-pharmacy>

**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 function operated by Supply Chain Coordination Limited providing a dedicated supply chain to the NHS in England

**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**

- (i) *Attributing the costs of health and social care Research and Development (AcoRD)*, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/140054/dh\\_133883.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/140054/dh_133883.pdf);
- (ii) HSG (97) 32, available at: [http://webarchive.nationalarchives.gov.uk/+http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthserviceguidelines/DH\\_4018353](http://webarchive.nationalarchives.gov.uk/+http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthserviceguidelines/DH_4018353); and
- (iii) *Excess treatment costs: Guidance on the national management model for England*, available at: <https://www.england.nhs.uk/publication/excess-treatment-costs-guidance-on-the-national-management-model-for-england/>

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

**NHS Violence Prevention and Reduction Standard** the risk-based framework which supports NHS staff to work in a safe and secure environment which safeguards against abuse, aggression and violence, available at: <https://www.england.nhs.uk/publication/violence-prevention-and-reduction-standard/>

**NHS Website** <https://www.nhs.uk/>

**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** the person responsible for supervising the management of the Services, being:

- (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

**Ockenden Review** the emerging findings and recommendations from the independent review of maternity services at the Shrewsbury and Telford Hospital NHS Trust, published by DHSC at:

<https://www.gov.uk/government/publications/ockenden-review-of-maternity-services-at-shrewsbury-and-telford-hospital-nhs-trust>

**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 and Guidance** the following publications:

- (i) the policy on Open Application Programming Interfaces, published by NHS England at: <https://www.england.nhs.uk/digitaltechnology/connecteddigitalsystems/interoperability/open-api/>; and
- (ii) guidance on the NHS Standard Contract requirements on discharge summaries and clinic letters and on interoperability of clinical IT systems, published by NHS England at: <https://www.england.nhs.uk/publication/guidance-on-the-nhs-standard-contract-requirements-on-discharge-summaries-and-clinic-letters-and-on-interoperability-of-clinical-it-systems/>

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

**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 at:

<https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>

**Overseas Visitor Charging Regulations** the regulations made by the Secretary of State under section 175 of the National Health Service Act 2006, available at:

<http://www.legislation.gov.uk/uksi/2015/238/contents/made>,  
<http://www.legislation.gov.uk/uksi/2017/756/contents/made>, and  
<https://www.legislation.gov.uk/uksi/2020/1423/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

**Patient Safety Incident Investigation** an investigation into a Patient Safety Incident relating to the Services, undertaken by the Provider or an external body

**Patient Safety Incident Response Framework** the national NHS framework for developing and maintaining effective systems and processes for responding to patient safety incidents for the purpose of learning and improving patient safety, available at: <https://www.england.nhs.uk/patient-safety/incident-response-framework/>

**Patient Safety Incident Response Plan** the plan which each Provider must put in place, publish and implement to specify the methods it intends to use to maximise learning and improvement and how these will be applied to different patient safety incidents, as described further at: <https://www.england.nhs.uk/patient-safety/incident-response-framework/>

**Patient Safety Incident Response Policy** the policy which each Provider must put in place, publish and implement to describe its overall approach to responding to and learning from patient safety incidents for improvement, as described further at: <https://www.england.nhs.uk/patient-safety/incident-response-framework/>

**Patient Safety Specialist** the individual designated by the Provider to provide leadership and visibility and expert support to patient safety in relation to the Services, as described in the NHS Patient Safety Strategy available at: <https://www.england.nhs.uk/patient-safety/patient-safety-specialists/>

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

**Perinatal Quality Surveillance Model** the quality surveillance model for providing consistent and methodical oversight of maternity services, available at: <https://www.england.nhs.uk/publication/implementing-a-revised-perinatal-quality-surveillance-model/>

**Personal Data** has the meaning given to it in Data Protection Legislation

**Personal Data Breach** has the meaning given to it in Data Protection Legislation

**Personalised Care and Support Plan** a plan for care and support for a Service User, developed by the Provider, in partnership with a Service User and/or their Carer or Legal Guardian (as appropriate), and in association with other relevant providers of health and social care which:

- (i) records the health and wellbeing outcomes which the Service User wishes to achieve, following a personalised conversation about what matters to them;
- (ii) records the support available to them, whether through NHS or Local Authority services, local voluntary and charitable sector services, through personal connections or otherwise, to help them build the knowledge, skills and confidence to manage their health and well-being;
- (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

For further information, see <https://www.england.nhs.uk/personalisedcare/upc/comprehensive-model/> and the *Personalised Care and Support Planning (PCSP) Checklist* at:

[https://www.aomrc.org.uk/ebi/wp-content/uploads/2021/05/Personalised\\_Care\\_Support\\_Planning\\_Checklist.pdf](https://www.aomrc.org.uk/ebi/wp-content/uploads/2021/05/Personalised_Care_Support_Planning_Checklist.pdf)

and the PRSB standard for digital recording of care plans at:

<https://theprsb.org/standards/personalisedcareandsupportplan/>



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

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

**Post Reconciliation Monthly Inclusion Date** the date by which the Provider must submit to SUS all of the final activity data for a month on which it believes the final reconciliation account for the Quarter in which that month falls should be based

**Prevent Guidance** Government guidance on the Prevent duty, available at: <https://www.gov.uk/government/publications/prevent-duty-guidance>, and on the Channel duty, available at: <https://www.gov.uk/government/publications/channel-guidance>

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

**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

**Price** the price payable by a Commissioner under this Contract, as described in SC36 (*Payment Terms*)

**Primary Care Menu** the menu within the NHS e-Referral Service of services which are only available on a restricted basis, for referral of patients whose Responsible Commissioner has specifically commissioned that service

**Primary Care Network** or **PCN** a locally-established network of providers of general medical services, as described at: <https://www.england.nhs.uk/gp/gp/v/redesign/primary-care-networks/>

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

**Principles of Good Employment Practice** the guidance note issued by the Cabinet Office in December 2010 titled *Supplier Information Note: Withdrawal of Two-Tier Code* available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/62091/two-tier-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62091/two-tier-code.pdf) including Annex A of that guidance note setting out a set of voluntary principles of good employment practice

**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) Article 13 and Article 14 of the UK GDPR; or
- (ii) DPA 2018

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

**Procurement Act** the Procurement Bill (HL Bill 4) once it has received royal assent

**Prohibited Act** the Provider:

- (i) offering, giving, or agreeing to give the Commissioners (or an 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** Party proposing a Variation

**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 Licence** a licence granted under section 87 of the 2012 Act

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

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

**Provider's Premises** land and buildings controlled or used by the Provider for any purpose connected directly or indirectly with the provision of the Services (whether or not set out or identified in a Service Specification and whether or not open to Service Users, Staff, visitors and/or the public), including entrances, waiting areas, retail and catering areas, roads, access ways, paths, car parks and landscaping

**PRSB Clinical Referral Information Standard** the standard for information to be provided when referring patients to hospital consultants and other health care professionals providing outpatient services, as published by the Professional Record Standards Body at:

<https://theprsb.org/standards/clinicalreferralinformation/>

**PSIRF Implementation Date** the date agreed between the Co-ordinating Commissioner and the Provider as the date from which the Provider will adopt and comply with the Patient Safety Incident Response Framework

**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

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

**Quality Requirements** the National Quality Requirements and the Local Quality Requirements

**Quarter** with effect from the Service Commencement Date, each period of 3 months or part thereof ending 30 June, 30 September, 31 December or 31 March and "Quarterly" will be construed accordingly

**Recipient** a Party receiving a draft Variation Agreement

**Records Management Code of Practice for Health and Social Care** guidance on management and retention of records available at: <https://www.gov.uk/government/publications/records-management-code-of-practice-for-health-and-social-care>

**Redundancy Repayment** the sum £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 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 or consultancy;

**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 England;
- (iii) the Department of Health and Social Care;
- (iv) NICE;
- (v) Healthwatch England and Local Healthwatch;
- (vi) the UK Health Security Agency;
- (vii) the General Pharmaceutical Council;
- (viii) the Health Services Safety Investigations Body; and
- (ix) the Information Commissioner

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

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

**Remedial Action Plan** or **RAP** a plan to rectify a breach of or performance failure under this Contract (or, where appropriate, a Previous Contract), specifying actions and improvements required, dates by which they must be achieved and consequences for failure to do so, as further described in GC9.12 (*Contract Management*)

**Renewable Sources** REGO certified sources of electricity generation such as wind, rain, tides, waves, and geothermal heat

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

**Restricted Person**

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

**Review Meeting** a meeting to be held in accordance with GC8.1 (*Review*) at the intervals set out in the Particulars or as otherwise requested in accordance with GC8.4 (*Review*)

**Review Record** a written record of a Review Meeting as described in GC8.2 (*Review*)

**Royal College of Psychiatrists Standards** standards on the application of section 136 of the Mental Health Act 1983 (England and Wales), published by the Royal College of Psychiatrists at: <https://www.rcpsych.ac.uk/docs/default-source/improving-care/better-mh-policy/college-reports/college-report-cr159.pdf>

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

**Safeguarding Guidance**

- (i) *Care and Support Statutory Guidance issued under the Care Act*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/315993/Care-Act-Guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315993/Care-Act-Guidance.pdf)
- (ii) *Working Together to Safeguard Children - Statutory guidance on inter-agency working to safeguard and promote the welfare of children*  
<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>
- (iii) *Safeguarding Children, Young People and Adults at Risk in the NHS: Safeguarding Accountability and Assurance Framework*  
<https://www.england.nhs.uk/publication/safeguarding-children-young-people-and-adults-at-risk-in-the-nhs-safeguarding-accountability-and-assurance-framework/>
- (iv) *NICE Quality Standard QS116 Domestic Violence and Abuse*  
<https://www.nice.org.uk/guidance/qs116>

**Safeguarding Policies** the Provider's written policies for safeguarding children, young people and adults, as appended in Schedule 2K (*Safeguarding Policies and Mental Capacity Act Policies*) and updated from time to time in accordance with SC32 (*Safeguarding Children and Adults*)

**Saving Babies' Lives Care Bundle** the document setting out key evidence-based interventions aimed at reducing stillbirth rates, published by NHS England at: <https://www.england.nhs.uk/mat-transformation/saving-babies/>

**SCCI 1580 (Palliative Care Co-ordination: Core Content)** the information standard specifying the core content to be held in electronic palliative care co-ordination systems (EPACCS), published at: <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/scci1580-palliative-care-co-ordination-core-content>

**Secondary Care Menu** the menu within the NHS e-Referral Service of services which are available to all Referrers in England

**Secretary of State** the Secretary of State for Health and Social Care and/or the Department of Health and Social Care

**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

**Sepsis Implementation Guidance** *Sepsis guidance implementation advice for adults*, available at: <https://www.england.nhs.uk/publication/sepsis-guidance-implementation-advice-for-adults/>

**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 as published by NHS England from time to time at: <https://www.england.nhs.uk/nhs-standard-contract/>, 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 6C (*Service Development and Improvement Plans*)

**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*); (including, where appropriate, Schedule 2Ai and/or 2Aii) 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*); and
- (iii) where appropriate, the provisions of Schedule 2L (*Provisions Applicable to Primary Medical 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:

<https://www.england.nhs.uk/publication/seven-day-services-clinical-standards/>

**Settlement Agreement Guidance** NHS Employers' guidance *The Use of settlement agreements and confidentiality clauses*, available at:

<https://www.nhsemployers.org/case-studies-and-resources/2019/02/the-use-of-settlement-agreements-and-confidentiality-clauses>

**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 collaborative 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 a Service User, with that Service User and/or their Carer or Legal Guardian (as appropriate); further details are available at: <https://www.england.nhs.uk/shared-decision-making/>

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

**Smoke-free** no smoking of tobacco or anything which contains tobacco, or smoking of any other substance, or being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked

**Specialised Services** the prescribed specialised services commissioned by NHS England (or commissioned by an ICB, where NHS England has delegated the function of commissioning those services), 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>, and, for NHS Trusts and NHS Foundation Trusts, the NHS England publication, *Developing Workforce Safeguards*, available at: <https://www.england.nhs.uk/ourwork/safe-staffing/developing-workforce-safeguards/>

**Staff Survey Guidance** guidance on the implementation of the NHS staff surveys and their applicability to different providers, available at: <https://nhsstaffsurveys.com>

**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/publications/dbs-check-eligible-positions-guidance>

**Standards for Inpatient Mental Health Services** the document published by the Royal College of Psychiatrists at: <https://www.rcpsych.ac.uk/improving-care/ccqi/resources/core-standards-project>

**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

**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/services/summary-care-records-scr>

**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 Service, the single, comprehensive repository for healthcare data in England, described at: <https://digital.nhs.uk/services/secondary-uses-service-sus>

**SUS Guidance** guidance in relation to the use of SUS, available at: <https://digital.nhs.uk/services/secondary-uses-service-sus/secondary-uses-services-sus-guidance> and <https://digital.nhs.uk/services/secondary-uses-service-sus/payment-by-results-guidance>

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

- (i) the Co-ordinating Commissioner having the right to terminate this Contract in whole or in part in accordance with GC17.10 (*Termination: Provider Default*);
- (ii) 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 Supervisory Body; or
- (iii) 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



- (iv) 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
- (v) 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
- (vi) 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
- (vii) the Provider or any Sub-Contractor being prevented from providing a Service due to the termination, suspension, restriction or variation of any Consent or of its Provider Licence or of any Sub-Contract

**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 National Framework for Inter-Facility Transfers* (<https://www.england.nhs.uk/publication/inter-facility-transfers-framework/>)
- (v) *Hospital discharge service: policy and operating model* (<https://www.gov.uk/government/publications/hospital-discharge-service-policy-and-operating-model>)

**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 *Guide to reducing long hospital stays*, available at: <https://www.england.nhs.uk/urgent-emergency-care/reducing-length-of-stay/>

**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 at: <https://www.gov.uk/government/collections/nhs-procurement>

**TUPE** the Transfer of Undertakings (Protection of Employment) Regulations 2006

**UEC Booking Standard** the technical standard for information technology systems to enable direct electronic booking into Accident and Emergency services and Urgent Treatment Centre services from 111 services, published at: <https://digital.nhs.uk/services/booking-and-referral-standard> and expected to be confirmed through an Information Standards Notice in due course

**UEC DoS** the central directory of services which is accessed by staff involved in the provision of urgent and emergency care services and which provides real-time information about available services and clinicians across all care settings (<https://digital.nhs.uk/directory-of-services>)

**UEC DoS Contact** the officer or employee of the Provider responsible for validating that UEC DoS entries in relation to the Services are complete, accurate and up to date, identified as such in the Particulars

**UEC DoS Lead** the individual appointed by a Commissioner as the point of contact for validation of UEC DoS entries

**UK GDPR** the General Data Protection Regulation (*Regulation (EU) 2016/679*) as incorporated into UK legislation by way of the European Union (Withdrawal Agreement) Act 2020 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

**UK Health Security Agency** the executive agency, sponsored by DHSC, with responsibility for planning, preventing and responding to external health threats, and providing intellectual, scientific and operational leadership at national and local level

**UK Standards for Microbiology Investigations** a comprehensive referenced collection of recommended algorithms and procedures for clinical microbiology:

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

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

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

**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, or any other variation

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

**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

**Wellbeing Guardian** the board-level officer of the Provider who provides oversight, assurance and support in relation to ensuring the health and wellbeing of Staff, as described at:

<https://www.england.nhs.uk/supporting-our-nhs-people/health-and-wellbeing-programmes/wellbeing-guardians/>

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

**Withholding and Retention of Payment Provisions** the provisions in this Contract relating to withholding and/or retention of payment as set out in SC28.18 to SC28.23 (*Information Requirements*)

**Workforce Sharing Arrangement** a formal agreement between providers of NHS-funded healthcare services, governing the temporary redeployment of staff from one to another in a safe and efficient manner; model documentation and guidance in relation to such arrangements are available in the Enabling Staff Movement Toolkit published by NHS England at:

<https://www.england.nhs.uk/enabling-staff-movement-toolkit/>

**Zero and Ultra-Low Emission Vehicle** a vehicle which meets the Vehicle Certification Agency classification published at: <https://www.vehicle-certification-agency.gov.uk/fuel-consumption-co2/fuel-consumption-guide/zero-and-ultra-low-emission-vehicles-ulevs/>

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