SECTION E

CORE LEGAL CLAUSES AND DEFINITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 This Agreement shall be interpreted in accordance with Schedule 1 (*Definitions and Interpretation*), unless the context requires otherwise.

1.2 Where there is any conflict or inconsistency between the provisions of this Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

1.2.1 Section E (Core Legal Clauses and Definitions);

1.2.2 Section A (the Particulars); and

1.2.3 Section B, Section C and Section D,

unless a Clause in the Core Legal Clauses expressly states otherwise or where a Clause in the Core Legal Clauses has been varied in accordance with Clause 52.2.2.

1.3 The Parties shall have regard to the NHS Constitution and the Principles and Rules for Cooperation and Competition.

1.4 The Parties shall have regard to the delivery of safe, effective and Service User centred high quality care.

1.5 The Parties agree that each of them shall at all times act in good faith towards the other Parties.

2. CONDITIONS PRECEDENT

2.1 The Provider shall deliver to the Co-ordinating Commissioner on or prior to the Service Commencement Date the Condition Precedent documents set out in Section C Part 1, or where appropriate copies of them.

2.2 The Provider shall notify the Co-ordinating Commissioner of any material change to any Conditions Precedent document it has delivered pursuant to Clause 2.1 of the Core Legal Clauses within 5 Operational Days of becoming aware of such change.

3. DOCUMENTS TO BE DELIVERED BY THE CO-ORDINATING COMMISSIONER

3.1 The Co-ordinating Commissioner shall deliver to the Provider on or prior to the Effective Date the documents set out in Section C Part 2, or where appropriate copies of them.

3.2 The Co-ordinating Commissioner shall notify the Provider of any material change to any documents it has delivered pursuant to Clause 3.1 of the Core Legal Clauses within 5 Operational Days of becoming aware of such change.

4. TRANSITION PERIOD

4.1 The period beginning on the Effective Date and ending on the day before the Service Commencement Date shall be the transition period (the "**Contract Transition Period**").

4.2 During the Contract Transition Period:

4.2.1 the Provider shall satisfy the Conditions Precedent;

4.2.2 the Parties shall work together and reasonably assist one another to

facilitate the delivery of the Services on the Service Commencement Date; and

4.2.3 the Parties shall implement any Transition Arrangements set out in Section C Part 3.

5. SERVICE PROVISION

5.1 Subject to Clause 21.2, the Provider shall provide the Services in accordance with:

5.1.1 the Service Specifications set out in Section B Part 1 (*Service Specifications*);

5.1.2 where applicable to the Service, the requirements set out in Clause 10 (*Service User Booking and Choice and Referrals*);

5.1.3 the Quality Requirements;

5.1.4 where applicable to the Service, any Prior Approval Scheme; and

5.1.5 the Law.

5.2 Where social care services are to be provided under this Agreement, the provisions of Section C Part 12 (*Social Care Provisions*) shall apply to such Services.

5.3 Where the Provider provides mental health and learning disability services, the Provider shall where applicable comply with the Emergency and Crisis Care Procedure set out in Section C Part 7.4 (*Emergency and Crisis Care Procedure*).

6. REGULATORY AND QUALITY IMPROVEMENTS

Regulatory Requirements

6.1 The Provider shall carry out the Services in accordance with the Law, Good Clinical Practice and Good Health and/or Social Care Practice, and shall, unless otherwise agreed (subject to the Law) with the Co-ordinating Commissioner in writing:

6.1.1 comply, where applicable, with the registration and regulatory compliance guidance of CQC or Other Regulatory Body and any other standards or recommendations issued from time to time by CQC or Other Regulatory Body;

6.1.2 respond to CQC or Other Regulatory Body requirements and any CQC or Other Regulatory Body enforcement action;

6.1.3 comply, where applicable, with the standards and recommendations from time to time issued by Monitor;

6.1.4 consider and respond to the recommendations arising from any audit, Serious Incident report or Patient Safety Incident report;

6.1.5 comply with the recommendations issued from time to time by a Competent Body;

6.1.6 comply with the standards and recommendations issued from time to time by any relevant professional body and agreed in writing between the Co-ordinating Commissioner and the Provider;

6.1.7 comply with the recommendations from time to time contained in guidance and appraisals issued by the National Institute for Health and Clinical Excellence;

6.1.8 comply with the Quality Requirements;

6.1.9 comply, where applicable to the Service, with the 18 Weeks Referral-to-Treatment Standard; and

6.1.10 comply with the HCAI Reduction Plan and meet any requirements or objectives relating to the transmission of any HCAI.

Quality Requirements

6.2 The Parties shall comply with their duties under the Law to improve the quality of clinical and/or care services for Service Users through the integrated governance arrangements set out in the National Standards and having regard to Guidance, in particular the Department of Health guidance on clinical governance.

6.3 Where required by Law, the Provider shall meet its obligations in relation to the production and publication of Quality Accounts in accordance with such Law.

6.4 For the avoidance of doubt, nothing in this Agreement is intended to prevent this Agreement from setting higher quality requirements than those laid down under the Provider's Terms of Authorisation (if any) or required by CQC or Other Regulatory Body.

6.5 Prior to the end of the Contract Year, the Co-ordinating Commissioner and the Provider shall agree the Quality Requirements that shall apply in the following Contract Year (where applicable), and in order to secure continual improvement in the quality of the Services, such Quality Requirements shall not, other than in exceptional circumstances, be lower than those which they are to supersede. The Co-ordinating Commissioner and the Provider shall give effect to the revised Quality Requirements that will apply in the following Contract Year by means of a Service Variation made under Clause 52 (*Variations*).

6.6 Without prejudice to Clause 6.5, the Parties shall by no later than 1 month after the start of each Contract Year, agree in writing or adopt (as appropriate) the Quality Incentive Scheme (in accordance with Section B Part 9.2) for such Contract Year. In order to ensure a continual improvement in the quality of the Services, the revised Quality Incentive Scheme Indicators shall not be lower than those which they are to supersede. The Commissioners and the Provider shall give effect to the revised Quality Incentive Scheme to apply in the following Contract Year (if any) by means of a Service Variation made under Clause 52 (*Variations*). In the event that such Quality Incentive Scheme cannot be agreed between the Parties, the Parties shall submit such Dispute to dispute resolution in accordance with Clause 53 (*Dispute Resolution*).

6.7 For the avoidance of doubt, the Quality Incentive Scheme Indicators shall apply in addition to and not in substitution of the Quality Requirements.

7. PRICES AND PAYMENT

Payment Principles

7.1 Subject to any express provision of this Agreement to the contrary (including without limitation the Provisions relating to Withholding and/or Retention of Payment), each Commissioner shall pay the Provider in accordance with the PbR Rules, to the extent

applicable, for all Services that the Provider delivers to it in accordance with Clause 5.1 of the Core Legal Clauses.

Prices

7.2 The prices payable under Clause 7.1 shall be:

7.2.1 for all the Services to which the National Tariff applies:

7.2.1.1 the National Tariff plus the Market Forces Factor ("**Full Tariff**"); or

7.2.1.2 less than Full Tariff where agreed between the Co-ordinating Commissioner and the Provider in accordance with the PbR Rules ("**Variations to Tariff Prices**"),

except for any A&E Emergency Activity that occurs above the level set out in the Indicative Activity Plan which shall be paid in accordance with the PbR Rules; and

7.2.2 for all the Services to which the National Tariff does not apply, as agreed between the Co-ordinating Commissioner and the Provider ("**Non-Tariff Prices**") for each Contract Year,

(together the "**Prices**").

Variations to Tariff Prices

7.3 The basis of calculation of the Variations to Tariff Prices shall be subject to the PbR Rules and where appropriate the Variations to Tariff Prices shall be set out in Section B Part 6.2 (*Variations to Tariff Prices*).

7.4 The Co-ordinating Commissioner and the Provider may agree Variations to Tariff Prices for each Contract Year or for the duration of this Agreement.

7.5 Where the Co-ordinating Commissioner and the Provider agree Variations to Tariff Prices for a Contract Year only, such prices shall be reviewed prior to expiry of the relevant Contract Year. Unless the Co-ordinating Commissioner and the Provider agree new Variations to Tariff Prices to apply to the following Contract Year which, if agreed, shall be set out in Section B Part 6.2 (*Variations to Tariff Prices*), the price payable for the relevant Services during the following Contract Year shall be Full Tariff pursuant to Clause 7.1.

7.6 Where the Co-ordinating Commissioner and the Provider agree Variations to Tariff Prices for the duration of this Agreement, if at any time during the term of this Agreement, the Variations to Tariff Price becomes greater than the Full Tariff for a Service, then unless new Variations to Tariff Prices are agreed the price payable for such Service shall be the Full Tariff pursuant to Clause 7.1.

Non-Tariff Prices

7.7 The calculation and basis of calculation of the Non-Tariff Prices shall be transparent and equitable and shall be set out together with the Non-Tariff Prices in Section B Part 6.1 (*Non-Tariff Prices*).

7.8 The Co-ordinating Commissioner and the Provider shall review the Non-Tariff Prices prior to expiry of the Contract Year to which they apply and they shall agree the Non-Tariff Prices to apply to the following Contract Year.

7.9 If the Co-ordinating Commissioner and the Provider cannot agree the Non-Tariff Prices for the following Contract Year, either may refer the matter under Clause 53 (*Dispute Resolution*) to escalated negotiation and then mediation if they fail to agree such prices pursuant to the escalated negotiation process. If on or following completion of the mediation process the Co-ordinating Commissioner and the Provider cannot agree the Non-Tariff Prices for the following Contract Year, either may terminate the Services for which Non-Tariff Prices cannot be agreed by giving the other not less than 6 months' written notice. For the avoidance of doubt, the Provider's termination right under this Clause 7.9 shall be subject to the Provider's obligation to continue to provide the Essential Services and/or Mandatory Goods and Services.

Payment to Small Providers where the Parties have agreed an Expected Annual Contract Value

7.10 This Clause 7.10 applies solely when the Provider falls within the category of Small Provider as defined in Schedule 1 (*Definitions and Interpretation*) and where the Parties have agreed an Expected Annual Contract Value. On the Service Commencement Date and each Quarter thereafter, each Commissioner shall pay to the Provider one quarter of its Expected Annual Contract Value in advance of Service delivery on receipt of an invoice from the Provider, provided that all payments made under this Clause 7.10 relate to Services delivered within the same Contract Year as the Contract Year during which the payment is made. To facilitate the making of such payments, the Provider shall supply to each Commissioner a quarterly statement.

Reconciliation accounts for Small Providers where the Parties have agreed an Expected Annual Contract Value

7.11 This Clause 7.11, Clause 7.12 and Clause 7.13 apply solely when the Provider falls within the category of Small Provider as defined in Schedule 1 (*Definitions and Interpretation*) and where the Parties have agreed an Expected Annual Contract Value. Subject to Clause 7.24, which shall apply to Block Arrangements, in order to ascertain the actual sums payable for the Services delivered, the Co-ordinating Commissioner shall provide a separate reconciliation account for itself and each Associate for each Quarter after the Service Commencement Date, showing the sum equal to the Prices for all the Services delivered and completed in that Quarter. Each reconciliation account shall be based on the information submitted by the Provider to the Co-ordinating Commissioner under Clause 39 (*Information Requirements*) and Section B Part 14 (*Reporting and Information Management*) and sent by the Co-ordinating Commissioner to the Provider within 25 Operational Days after the end of each Quarter to which it relates.

7.12 The reconciliation account produced pursuant to Clause 7.11 shall either be agreed by the Provider, or be wholly or partially contested by the Provider in accordance with Clause 7.30.

7.13 The Provider's agreement of a reconciliation account (such agreement not to be unreasonably withheld or delayed) shall trigger a reconciliation payment by the relevant Commissioner to the Provider or by the Provider to the relevant Commissioner, as appropriate, and such payment shall be made within 10 Operational Days of the Provider's agreement of the reconciliation account.

Payment to Providers that are not Small Providers where the Parties have agreed an Expected Annual Contract Value

7.14 This Clause 7.14 applies to all Providers who do not fall within the category of Small Provider as defined in Schedule 1 (*Definitions and Interpretation*) and where the Parties have agreed an Expected Annual Contract Value. On the 15th day of each

month (or such other day as the Provider and the Co-ordinating Commissioner agree in writing) after the Service Commencement Date each Commissioner shall pay to the Provider one twelfth of its individual Expected Annual Contract Value, such payments being a payment on account and to facilitate the making of such payments the Provider shall supply to each Commissioner a monthly statement of account.

Payment to all Providers where the Parties have not agreed an Expected Annual Contract Value

7.15 Subject to Clause 7.1 and Clause 7.30 in respect only of Services for which the Parties have not agreed an Expected Annual Contract Value, the Provider shall issue a monthly invoice to each Commissioner in respect of those Services, or such part of Services provided to that Commissioner, which the Commissioner shall pay within 10 Operational Days of its receipt.

Reconciliation for Services to which Non-Tariff Prices apply for Providers that are not Small Providers where the Parties have agreed an Expected Annual Contract Value

7.16 For Services to which a Non-Tariff Price applies, the reconciliation provisions set out in Clause 7.17 shall apply in relation to such Services, unless the Parties agree in writing to reconcile the payments for such Services on the basis of the reconciliation provisions relating to National Tariff set out in Clauses 7.18 to 7.20 (inclusive).

7.17 Unless the Parties have agreed under Clause 7.16 that the reconciliation provisions set out in Clauses 7.18 to 7.20 (inclusive) are to apply, then subject to Clause 7.24, which shall apply to Block Arrangements, in order to ascertain the actual sums payable for delivered Services to which Non-Tariff Prices apply, the Co-ordinating Commissioner shall provide a separate reconciliation account for itself and each Associate for each month after the Service Commencement Date (unless otherwise agreed by the Parties in writing in accordance with the PbR Rules), showing the sum equal to the Non-Tariff Prices for all such Services delivered and completed in that month and each reconciliation account shall be:

7.17.1 based on the information submitted by the Provider to the Co-ordinating Commissioner under Clause 39 (*Information Requirements*) and Section B Part 14 (*Reporting and Information Management*); and

7.17.2 sent by the Co-ordinating Commissioner to the Provider within 5 Operational Days after the Reconciliation Point for the month to which it relates.

Reconciliation for Services to which the National Tariff applies for Providers that are not Small Providers where the Parties have agreed an Expected Annual Contract Value

7.18 For Services to which the National Tariff applies, and where applicable in relation to reconciliations pursuant to Clause 7.16, in order to ascertain the actual sums payable for the Services delivered, the Co-ordinating Commissioner shall provide a separate reconciliation account for itself and each Associate for each month after the Service Commencement Date, showing the sum equal to the Prices for all the Services delivered and completed in that month. Such reconciliation accounts shall be based on the information submitted by the Provider to the Co-ordinating Commissioner under Clause 39 (*Information Requirements*) and Section B Part 14 (*Reporting and Information Management*) by the Inclusion Date.

7.19 Following the First Reconciliation Point, the Co-ordinating Commissioner shall raise with the Provider any data validation queries it has and the Provider shall answer any

such queries promptly and fully. The Parties shall use all reasonable endeavours to resolve all such queries by the Post Reconciliation Inclusion Date.

7.20 The Co-ordinating Commissioner shall send the Provider a final reconciliation account for the month in question within 5 Operational Days after the Final Reconciliation Point.

Additional Reconciliation Matters for Services to which Non-Tariff Prices apply and/or Services to which the National Tariff applies for Providers that are not Small Providers where the Parties have agreed an Expected Annual Contract Value

7.21 The reconciliation account produced pursuant to Clause 7.17 or the final reconciliation account produced pursuant to Clause 7.20 shall either be agreed by the Provider, or be wholly or partially contested by the Provider in accordance with Clause 7.30.

7.22 The Provider's agreement of a reconciliation account or agreement of a final reconciliation account as the case may be (such agreement not to be unreasonably withheld or delayed) shall trigger a reconciliation payment by the relevant Commissioner to the Provider or by the Provider to the relevant Commissioner, as appropriate, and such payment shall be made within 10 Operational Days of the Provider's agreement of the reconciliation account or the final reconciliation account as the case may be.

Reconciliation for Cost and Volume Arrangements and Block Arrangements

7.23 Where there is a Cost and Volume Arrangement there shall be reconciliation in accordance with Clauses 7.17, 7.21 and 7.22.

7.24 Where there is a Block Arrangement there shall be no reconciliation in relation to such Block Arrangement.

Aggregation and Disaggregating of Payments

7.25 The Co-ordinating Commissioner may make or receive all (but not some only) of the payments becoming due under Clauses 7.1, 7.10, 7.13, 7.14, 7.15 and 7.22 in aggregate amounts for itself and on behalf of each of its Associates provided that it gives the Provider 20 Operational Days' written notice of its intent to do so. These aggregated payments shall not prejudice any immunity from liability of the Co-ordinating Commissioner, or any rights of the Provider to recover any overdue payment from the relevant Commissioners individually. However, they shall discharge the separate liability or entitlement of the Commissioners in respect of their separate Services. To avoid doubt, notices to aggregate and reinstate separate payments may be repeated from time to time, but must be recorded in Section D Part 2 (*Notices to Aggregate/ Disaggregate Payments*).

Statutory and Other Charges

7.26 The Provider shall administer all statutory benefits to which the Service User is entitled as if the Provider were itself an NHS Trust in England, and within a maximum of 20 Operational Days of receipt of an appropriate invoice the relevant Commissioner shall reimburse the Provider any such benefits correctly administered.

7.27 The Provider shall administer and collect all statutory charges which the Service User is liable to pay and which may lawfully be made in relation to the provision of the Services, and shall account to such person as the Co-ordinating Commissioner may reasonably direct in respect of such charges.

7.28 In its performance of this Agreement the Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Agreement, the Law and/or Guidance).

VAT

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

Contested Payments

7.30 If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this Clause 7:

7.30.1 the contesting Party shall within 5 Operational Days notify the other Party or Parties, setting out in reasonable detail the reasons for contesting such account, and in particular identifying which elements are contested and which are not contested;

7.30.2 any uncontested amount shall be paid in accordance with this Agreement by the Party from whom it is due; and

7.30.3 if the matter has not been resolved within 20 Operational Days of the date of notification under Clause 7.30.1, the contesting Party shall refer the matter to dispute resolution under Clause 53 (*Dispute Resolution*),

and following the resolution of any Dispute referred to dispute resolution in accordance with this Clause 7.30, the relevant Party shall pay any amount agreed or determined to be payable immediately with interest calculated in accordance with Clause 7.31.

Interest on Late Payments

7.31 Subject to any express provision of this Agreement to the contrary (including without limitation the Provisions relating to Withholding and/or Retention of Payment), each Party shall be entitled, without prejudice to any other right or remedy, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.

Set Off

7.32 Whenever any sum of money is due from one Party to another as a consequence of reconciliation under this Clause 7 or dispute resolution under Clause 53 (*Dispute Resolution*), the Party that is due to be paid such sum may deduct it from any amount that it is due to pay the other, provided that it has given 5 Operational Days notice in writing of its intention to do so.

Payment by Results

7.33 Where appropriate to the Services the Parties shall comply with the PbR Rules and for the avoidance of doubt the Provider shall be paid in accordance with the PbR Rules in relation to Emergency Readmissions.

Developments in National Tariff

7.34 If requested by the Co-ordinating Commissioner, the Provider will use its reasonable endeavours to assist with the development of the National Tariff.

Quality Incentive Payments

7.35 The Commissioners shall pay the Provider a Quality Incentive Payment in accordance with Section B Part 9.2 (*CQUIN*) to reflect the Provider's progress against its Quality Incentive Scheme Indicators set out at Section B Part 9.2 (*CQUIN*) and any other Quality Incentive Payments in accordance with the applicable terms of the Quality Incentive Scheme.

No Payment for Nationally Specified Events

7.36 The Provider shall repay to the relevant Commissioner or the relevant Commissioner shall not pay the Provider (as appropriate), the relevant sums set out in Section B Part 8.2 (*Nationally Specified Events*) (as may be amended from time to time by Guidance) for any Service or part of a Service in relation to which a Nationally Specified Event Threshold has been breached.

Never Events

7.37 If, and each time a Never Event occurs, the Commissioner shall apply the Never Event Consequence set out in Section B Part 8.3 (*Never Events*) applicable to the Never Event in accordance with relevant Guidance.

Non-Contract Activity

7.38 The Provider shall be paid for Non-Contract Activity in accordance with the PbR Rules and shall provide Non-Contract Activity in accordance to the terms of this Agreement to the extent practicable and unless otherwise provided by the PbR Rules.

Other Clinical Arrangements

7.39 Where the Provider is a party to any Other Clinical Arrangement under the terms of which any clinical services which could be provided within the Services could alternatively be provided, and under which such services could be provided within the scope of a fixed or guaranteed payment commitment (being "**Alternate Activity**"), the Provider shall not provide such Alternate Activity as part of the Services under this Agreement, but shall provide it under such Other Clinical Arrangement.

7.40 If, notwithstanding Clause 7.39, the Provider provides any Alternate Activity within the Services under this Agreement, then:

7.40.1 in relation to any Alternate Activity which could have been provided within the scope of a fixed or guaranteed payment commitment under an Other Clinical Arrangement, the Provider shall waive its right to such payment from the Other NHS Party under that Other Clinical Arrangement by an amount equal to the price payable under this Agreement for such Alternate Activity; and

7.40.2 the relevant Other NHS Party shall have the right to enforce the obligation in Clause 7.40.1 notwithstanding that such Other NHS Party may not be a party to this Agreement.

8. SERVICE USER INVOLVEMENT

8.1 As appropriate, the Parties shall ensure the primary health and/or social care needs of Service Users are met.

8.2 The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and Good Health and/or Social Care Practice and with their human rights.

8.3 The Provider shall carry out Service User surveys and Carer surveys and shall carry out any other surveys reasonably required by the Commissioners in relation to the Services and shall co-operate with any surveys that the Commissioners may, acting reasonably, carry out. Subject to the Law the form, frequency and reporting of such surveys shall be in accordance with the requirements set out in Section B Part 12 *(Service User, Carer and Staff Surveys)* or as otherwise agreed between the Parties in writing from time to time.

8.4 The Provider shall review the responses from Service User surveys and Carer surveys and identify any actions reasonably required to be undertaken by the Provider and shall implement such actions as soon as practicable. The Provider shall publish the outcomes and actions taken in relation to such surveys.

9. EVIDENCE OF SERVICE USER INVOLVEMENT

9.1 The Provider shall evidence to the Co-ordinating Commissioner the involvement of Service Users and Carers in the development of Services and shall provide to the Co-ordinating Commissioner such evidence on the Co-ordinating Commissioner's reasonable request without delay.

10. SERVICE USER BOOKING AND CHOICE AND REFERRALS

Service User Choice and Referrals

10.1 The Parties shall comply with Patient Choice Guidance and Choice Guidance and the Provider shall take any necessary actions reasonably required by the Co-ordinating Commissioner relating to Patient Choice Guidance and Choice Guidance.

10.2 The Provider shall describe and publish all relevant Services in Choose and Book, through a Directory of Service and in relation to such Services:

10.2.1 the Provider shall agree the content of its Directory of Service entries with the appropriate Commissioner(s) in line with the national naming conventions and with regard to best practice as described at: http://www.chooseandbook.nhs.uk/staff/started/providers/dos;

10.2.2 the Provider shall make specified information available to prospective NHS Service Users through the NHS Choices website, and shall in particular use NHS Choices to promote awareness of such Services among the communities it serves, ensuring the information provided is accurate, up-to-date, and complies with the provider profile policy set out at www.nhs.uk (or such replacement website as is made available from time to time);

10.2.3 the Commissioners shall use their best endeavours to ensure that all referrals to the Provider are made through the Choose and Book system;

10.2.4 the Provider shall offer clinical advice and guidance to GPs on potential referrals through Choose and Book, whether this leads to a referral being

made or not.

Service User Booking

10.3 The Provider and the Commissioners shall:

10.3.1 adhere to Guidance in relation to the use of Choose and Book and ensure service users are fully supported in their use of Choose and Book; and

10.3.2 work together to ensure that service users are not delayed or inconvenienced by insufficient slots being made available to Choose and Book.

11. UNMET NEEDS

11.1 Where the Provider believes that a Service User, or a group of Service Users other than those to whom the Provider is providing the Services, may have an unmet health or social care need, then the Provider shall notify the Responsible Commissioner who shall be responsible for making an assessment to determine what remedial steps are required to be taken.

12. OTHER SERVICES

12.1 If the Provider considers that a Service User has an urgent need for care which is outside the scope of the Services, the Provider shall notify the Referrer without delay and shall co-operate with the Referrer to secure the provision to the Service User of the relevant care, acting at all times in the best interests of the Service User.

13. SERVICE USER HEALTH RECORDS

13.1 The Provider shall create, maintain, store and retain Service User Health Records for all Service Users. The Provider shall retain such records for the periods of time identified in Law and securely destroy them thereafter.

13.2 Where relevant and subject to compliance with the Law, the Provider shall at the reasonable request of the Commissioner promptly transfer or deliver a copy of the Service User Health Record held by the Provider for any Service User for which the Commissioner is responsible to a third party provider of healthcare or social care services designated by the Commissioner.

13.3 The Provider shall:

13.3.1 use Service User Health Records solely for the execution of the Provider's obligations under this Agreement; and

13.3.2 give each Service User full and accurate information regarding his/her treatment and shall evidence that in writing in the relevant Service User Health Record.

13.4 Subject to Guidance, the Service User Health Records for Service Users shall include the verified NHS number.

Caldicott Guardian and Senior Information Risk Owner

13.5 If the Provider replaces its Caldicott Guardian or Senior Information Risk Owner at any time during the term of this Agreement, it shall promptly notify the Co-ordinating Commissioner of the identity and contact details of such replacements.

14. PLACES OF SAFETY

14.1 The Parties shall ensure that the requirements regarding Places of Safety are met, and that agreement is reached on the identification of Places of Safety in accordance with Good Clinical Practice and Good Health and/or Social Care Practice for the appropriate Services.

15. CARE PLANNING

15.1 The Provider shall ensure that there is shared decision making with the Service User, Carer and Legal Guardian (as appropriate) in the development of the Care Plan and shall provide the Service User with a copy of the same.

15.2 The Provider shall be responsible for preparing and updating the Care Plans for all Service Users, as appropriate in its provision of the Services.

15.3 The Provider shall prepare, evaluate, review and audit Care Plans on an ongoing basis during the term of this Agreement.

16. ESSENTIAL SERVICES CONTINUITY

16.1 The Provider shall at all times during the term of this Agreement maintain its ability to provide, and shall ensure that it is able to offer to the Commissioners, the Essential Services.

16.2 The Provider shall have and at all times maintain an up-to-date plan agreed with the Co-ordinating Commissioner to ensure the continual availability to the Commissioners of the Essential Services in the event of any interruption or suspension of the Provider's ability to provide them, and in the event of any partial or entire suspension or termination of this Agreement (the "**Essential Services Continuity Plan**"). The Provider shall, in consultation with the Co-ordinating Commissioner, implement the Essential Services Continuity Plan as required in any such event.

17. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS

17.1 The Provider shall comply with the relevant transfer of and discharge from care obligations set out in Section C Part 6 (*Transfer of and Discharge from Care Obligations)* and the Transfer of and Discharge from Care Protocols applicable to the Services, as set out in Section C Part 7.1. For the avoidance of doubt, Section C Part 6 is not a Variable Section and therefore shall not be varied other than pursuant to Clause 52.2.2.

Ambulance Services Handover Plan

17.2 Where the Provider is an acute services or ambulance services provider it shall, if required by the Co-ordinating Commissioner have an Ambulance Services Handover Plan and shall comply with its obligations under such Ambulance Services Handover Plan.

18. CO-OPERATION

18.1 The Provider and the Commissioners shall co-operate in accordance with the Law, Good Clinical Practice and Good Health and/or Social Care Practice to ensure the performance of the Services in accordance with this Agreement, having regard at all times to the welfare and rights of the Service Users.

18.2 The Provider shall co-operate fully and liaise appropriately with:

18.2.1 the Commissioners;

18.2.2 any third party provider from whose care a Service User may be transferred to the Provider;

18.2.3 any third party provider to whose care the Provider may transfer or discharge the Service User;

18.2.4 any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and

18.2.5 primary and social care services,

in order to:

18.2.6 ensure that a consistently high standard of care for the Service User is at all times maintained;

18.2.7 ensure a co-ordinated approach is taken to promoting the quality of Service User care across all Pathways spanning more than one provider;

18.2.8 achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Commissioners or members of the public; and

18.2.9 where ambulance services are provided under this Agreement, develop alternative Service User Pathways for Service Users who do not need to be taken to A&E departments.

18.3 The Provider shall ensure that the provision by it of any activity to any third parties shall not hinder or in any way adversely affect its delivery of the Services to the Commissioners or its performance of this Agreement generally.

19. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

19.1 The Parties shall not, except where permitted by the Law, discriminate between or against Service Users, Carers or Legal Guardians on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics.

19.2 The Provider shall provide appropriate assistance and make reasonable adjustments for Service Users, Carers and Legal Guardians who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).

19.3 The Provider shall, in consultation with the Co-ordinating Commissioner, and upon reasonable request, provide a plan or plans setting out how it will comply with its obligations under Clause 19.4. For the avoidance of doubt, where the Provider has previously produced any such plan in order to comply with the Law, then the Provider may submit such plan to the Co-ordinating Commissioner in order to comply with this Clause 19.3.

19.4 The Provider shall have due regard in its performance of this Agreement to the obligations contemplated by section 149 of the Equality Act 2010 to:

19.4.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;

19.4.2 advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and

19.4.3 foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

and for the avoidance of doubt this obligation shall apply irrespective of whether the Provider is a public authority for the purposes of such section.

19.5 The Provider shall provide to the Commissioners any information, in addition to that required under Clause 39 (*Information Requirements*) and Section B Part 14 (*Reporting and Information Management*), that the Commissioners may reasonably require to:

19.5.1 monitor the equity of access to the Services; and

19.5.2 fulfil their obligations under the Law.

19.6 The Commissioners and the Provider shall each have and at all times maintain an Equality Impact Assessment in accordance with the Law.

20. PASTORAL, SPIRITUAL AND CULTURAL CARE

20.1 The Provider shall take account of the spiritual, religious, pastoral and cultural needs of Service Users and shall as appropriate in each case liaise with the relevant spiritual and pastoral authorities.

21. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

Rejection of Referral

21.1 Except where the Provider is prohibited from rejecting a referral under Patient Choice Guidance or Choice Guidance, the Provider may reject a referral of a Service User:

21.1.1 on the grounds of any service limitations in the Service Specifications set out in Section B Part 1 (*Service Specifications*);

21.1.2 on the grounds of the location of the Referrer other than in relation to emergency response ambulance services; or

21.1.3 on the grounds that a Prior Approval request made by the Provider under the Prior Approval Scheme has been rejected by the Commissioner.

Withholding and/or Discontinuation

21.2 Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to Service Users:

21.2.1 who in the reasonable professional opinion of the Provider are unsuitable to receive the relevant Service, for as long as such unsuitability remains;

21.2.2 in respect of whom no valid consent has been given in accordance with the Service User Consent Policy (where such consent is required);

21.2.3 who display abusive, violent or threatening behaviour unacceptable to the Provider (provided that the Provider must act reasonably and take into account the mental health of such Service Users);

21.2.4 whose domiciliary care circumstances or setting (as applicable) poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or

21.2.5 where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as such instruction continues.

21.3 Where the Provider proposes not to provide or to discontinue provision of Services to any Service User under Clause 21.2:

21.3.1 where reasonably possible, the Provider shall explain to the Service User, Carer or Legal Guardian (as appropriate) taking into account any communication or language needs, the action that it is taking, when such action takes effect, and the reasons for it (following up any oral explanations in writing within 2 Operational Days);

21.3.2 the Provider shall tell the Service User, Carer or Legal Guardian (as appropriate) that he/she has the right to challenge the Provider's decision through the Provider's complaints procedure;

21.3.3 the Provider shall inform the relevant Referrer and if the Service User's GP is not the relevant Referrer, subject to obtaining consent where appropriate, the Service User's GP, in writing without delay, wherever possible in advance of taking the relevant action referred to in Clause 21.3.1; and

21.3.4 the Provider shall liaise with the Responsible Commissioner and the relevant Referrer to resolve the issue of the provision of the relevant care to the Service User in a way that minimises any disruption to the Service User's care,

provided that nothing in this Clause 21 shall entitle the Provider not to provide or to discontinue provision of the Services in cases where to do so would be contrary to the Law.

21.4 Where pursuant to Clause 21.3.4 the Provider, the Responsible Commissioner and the Referrer, (or in the case of ambulance services the Provider, the Responsible Commissioner and the emergency incident coordinator who has primacy of the relevant incident), cannot agree on the continued provision of the relevant care to a Service User, the Provider shall (subject to any requirements under Clause 17 (*Transfer of and Discharge from Care Obligations*)) notify the Responsible Commissioner and where applicable the Referrer that it will discontinue the provision of care to that Service User, and the Responsible Commissioner shall, as soon as reasonably practicable, liaise with the Referrer to procure alternative services for that Service User.

21.5 The Provider shall not withhold any Service that is in the best interests of any Service User and that the Service User requires urgently, other than in accordance with Clause 21.2.

21.6 Where the Provider discontinues provision of Services to a Service User under Clause 21.2, and provided that the Provider has complied with Clause 21.3, the Responsible Commissioner shall pay the Provider in accordance with Clause 7

(*Prices and Payment*) for Services provided to such Service User prior to the discontinuance.

21.7 Unless a relevant Prior Approval Scheme applies, the Provider shall avoid carrying out, or referring to another provider to carry out, any non-urgent or routine physical treatment and/or care that is unrelated to a Service User's original referral or presentation without first referring the matter to the Service User's GP, provided that the Provider shall at all times comply with Good Clinical Practice and Good Health and/or Social Care Practice.

22. SERVICES ENVIRONMENT AND EQUIPMENT

22.1 The Provider shall at all times comply with the Law and any applicable Quality Requirements in relation to the Services Environment and the Equipment.

22.2 The Provider shall ensure that the Services Environment and the Vehicles are fit for the purpose of providing the Services and are clean, safe, suitable, sufficient, adequate, functional, accessible (making reasonable adjustments where required) and effective.

22.3 Unless provided otherwise in this Agreement, the Provider shall at all times and at its own cost provide all Equipment necessary to provide the Services in accordance with the Law and any necessary Consents.

22.4 Where applicable, the Provider shall ensure that appropriate Equipment and Staff training are provided and that agreements with other providers (such as ambulance service providers and acute services providers) and agencies are in place together with appropriate supporting policies and procedures such that any Emergency Care involving resuscitation of the Service User can be provided in accordance with Good Clinical Practice and Good Health and/or Social Care Practice.

23. STAFF

23.1 Whenever applicable, the Provider shall comply with the Fair Deal for Staff Pensions and be aware of the Principles of Good Employment Practice.

23.2 The Provider shall have sufficient appropriately qualified and experienced medical, nursing and other clinical and non-clinical Staff to ensure that the Services are provided in all respects and at all times in accordance with this Agreement. If requested by the Co-ordinating Commissioner, the Provider shall as soon as practicable and by no later than 20 Operational Days of receipt of such written request, provide the Co-ordinating Commissioner with evidence of the Provider's compliance with this Clause 23.2.

23.3 The Provider shall ensure that the Staff:

23.3.1 if applicable, are registered with and where required have completed their revalidations by the appropriate professional regulatory body;

23.3.2 possess the appropriate qualifications, experience, skills and competencies to perform the duties required of them and be appropriately supervised (including where appropriate preceptorship and rotations arrangements), managerially and professionally;

23.3.3 are covered by the Provider's Indemnity Arrangements (as identified and to the extent set out in Clause 50 (*Liability and Indemnity)*) for the provision of the Services;

23.3.4 carry, and where appropriate display, valid and appropriate identification in accordance with Good Health and/or Social Care Practice; and

23.3.5 are aware of and respect equality and human rights of colleagues, Service Users, Carers and the public.

23.4 The Provider shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:

23.4.1 proper and sufficient continuous professional and personal development, training and instruction;

23.4.2 full and detailed appraisal (in terms of performance and on-going education and training) utilising where applicable the Knowledge and Skills Framework or a similar equivalent framework; and

23.4.3 professional leadership commensurate with the Services,

each in accordance with Good Clinical Practice and Good Health and/or Social Care Practice and the standards of their relevant professional body, if any.

23.5 Where the Provider's Staff are members of the NHS pension scheme the Provider shall participate in any applicable data collection exercise and shall ensure that all data relating to Staff membership of the NHS pension scheme is up to date.

23.6 The Provider shall carry out Staff Surveys in relation to the Services at reasonable intervals in accordance with the Law and shall implement any actions it identifies to be taken as a result of such Staff Surveys. The Provider shall co-operate with any surveys that the Commissioners may reasonably carry out. Subject to the requirements of the Law or as otherwise required by this Agreement, the form, frequency and reporting of such surveys shall be in accordance with the requirements of Section B Part 12 (*Service User, Carer and Staff Surveys*) or as otherwise agreed between the Parties from time to time.

23.7 Subject to Clause 23.8 before the Provider 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, at its own cost, shall without limitation, comply with the following Guidance as amended from time to time:

23.7.1 NHS Employment Check Standards; and

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

23.8 The Provider may engage a person in an ECRC Position or CRC Position (as applicable) pending receipt of the Standard Disclosure or Enhanced Disclosure (as applicable), provided such person is at all times properly supervised in the delivery of the Services.

23.9 Persons employed by the Provider shall have the right to enforce this Agreement as and to the extent identified in Clause 68 (*Third Party Rights*).

23.10 The Provider shall deliver to the Co-ordinating Commissioner on the Effective Date a copy of all agreements entered into by the Provider to deliver accredited supervisory support commitments which are in force on the Effective Date and such agreements shall be listed in Section C Part 4 *(Documents Relied On*).

23.11 The Provider during the term of this Agreement shall deliver to the Co-ordinating Commissioner a copy of any agreement it enters into to deliver accredited supervisory support commitments within 15 Operational Days of entering into such agreement. Such agreements shall be added in Section C Part 4 *(Documents Relied On*) and such additions or variations to Section C Part 4 *(Documents Relied On*) shall not be subject to the variation procedure set out in Clause 52 *(Variations)*.

23.12 Without prejudice to Clause 23.4, the Provider shall have regard to the Joint Statement on Access to Skills, Trade Unions and Advice in Government Contracting, including without limitation, adopting the Government's Skill Pledge where the Provider receives central funding for education and training.

23.13 Where the Commissioner has notified the Provider that it intends to tender or retender any Services, the Provider shall on written request and in any event within 20 Operational Days of such request (unless otherwise agreed in writing) provide the Commissioner with anonymised details of Staff engaged in the provision of such Services to be tendered or retendered that may be subject to TUPE.

23.14 The Provider shall where requested by the Co-ordinating Commissioner:

23.14.1 assist SHA clusters with the development and setting up of Local Education and Training Boards;

23.14.2 cooperate with SHA clusters, the Local Education and Training Boards, Health Education England, other providers of health services and any other relevant body, in relation to understanding the local healthcare workforce requirements, planning of the future local healthcare workforce requirements and with the planning and provision of education and training to such workforce.

24. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

24.1 The Provider shall adopt Safeguarding Policies and such policies shall comply with the local multi-agency policies as amended from time to time and be appended at Section C Part 7.2 (*Safeguarding Policies*).

24.2 At the reasonable written request of the Commissioner and by no later than 10 Operational Days following receipt of such request, the Provider shall provide evidence to the Commissioner that it is addressing any safeguarding concerns raised through the relevant multi-agency reporting systems.

24.3 If requested by the Co-ordinating Commissioner, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan

25. INCIDENTS REQUIRING REPORTING

25.1 The Provider shall comply with the arrangements for notification of Serious Incidents to CQC and to any other regulatory body as appropriate, in accordance with the Law.

25.2 The Provider shall, in accordance with the timescales set out in Section C Part 7.3 (*Incidents Requiring Reporting Procedure*), send the Commissioner a copy of any notification it gives to CQC, any other regulatory body or Monitor where that notification directly or indirectly concerns any Service User.

25.3 The Parties shall comply with the:

25.3.1 arrangements for investigating Serious Incidents; and

25.3.2 procedures for implementing and sharing the Lessons Learned in relation to Serious Incidents,

that are agreed between the Provider and the Co-ordinating Commissioner and set out in Section C Part 7.3 (*Incidents Requiring Reporting Procedure*).

25.4 The Provider shall comply in all respects with the procedures:

25.4.1 relating to Patient Safety Incidents; and

25.4.2 for implementing and sharing the Lessons Learned in relation to Patient Safety Incidents,

that are agreed between the Provider and the Co-ordinating Commissioner and set out in Section C Part 7.3 (*Incidents Requiring Reporting Procedure*).

25.5 The Commissioners shall have complete discretion to use the information provided by the Provider under this Clause 25 and Section C Part 7.3 (*Incidents Requiring Reporting Procedure*) in any report which they make to Monitor, CQC, any NHS Body, any Strategic Health Authority, any office or agency of the Crown, or any other appropriate regulatory or official body in connection with such Serious Incidents, or in relation to the prevention of Serious Incidents, provided that they shall in each case notify the Provider of the information disclosed, and the body to which they have disclosed it.

26. CONSENT

26.1 The Provider shall operate a Service User consent policy ("**Service User Consent Policy**") to comply with Good Clinical Practice, Good Health and/or Social Care Practice and the Law.

27. COMPLAINTS

27.1 The Commissioners and the Provider shall each operate and publicise a complaints procedure that complies with the Law.

27.2 The Provider shall implement Lessons Learned from complaints and demonstrate at Reviews the extent to which Service improvements have been made as a result.

28. DEATH OF A SERVICE USER

28.1 The Provider shall maintain and operate a policy that complies with Good Clinical Practice, Good Health and/or Social Care Practice and the Law, which details the procedures that it shall follow in the event of the death of a Service User whilst in the Provider's care.

29. SERVICE DEVELOPMENT AND IMPROVEMENT PLAN

29.1 The Parties wish to encourage the improvement of the Services and shall therefore by the Effective Date agree a Service Development and Improvement Plan ("**SDIP"**), as appended to this Agreement at Section B Part 11. The Commissioners and Provider shall comply with the SDIP to the extent applicable to each Party and the Provider shall report performance against the SDIP in accordance with Section B Part 14.2 (*National Requirements Reported Locally*). The SDIP may be varied by way of a Service Variation pursuant to Clause 52 (*Variations*).

30. ELIMINATING MIXED SEX ACCOMMODATION

30.1 The Provider shall each year on or before 1 April publish a Declaration of Compliance or Declaration of Non-Compliance, as appropriate, in accordance with Guidance or where the Effective Date is later than 1 April on the Effective Date unless the Provider has already published a Declaration of Compliance or Declaration of Non-Compliance, as appropriate, in accordance with Guidance.

30.2 Where appropriate to the Services Environment the Provider and the Co-ordinating Commissioner shall agree an EMSA Plan by the Effective Date. The Provider shall:

30.2.1 implement and comply with the obligations in the EMSA Plan; and

30.2.2 report any breaches of the EMSA Plan to the Co-ordinating Commissioner in accordance with Section B Part 14.2 (*National Requirements Reported Locally*).

30.3 Where the Provider publishes a Declaration of Non-Compliance, the Provider shall, within 20 Operational Days of such publication, submit to the Co-ordinating Commissioner a proposal in writing identifying milestones which if implemented would put the Provider in the position of publishing a Declaration of Compliance by or on the following 1 April. The Co-ordinating Commissioner and the Provider shall use all reasonable endeavours to agree these milestones and where appropriate consequences for failing to implement these milestones within 10 Operational Days of receipt of the proposal and the EMSA Plan shall be updated with the agreed milestones and consequences.

30.4 Prior to the Effective Date the Provider shall undertake a self-assessment of the delivery of Services from the perspective of Service User experience, culture, equality, human rights, estates and systems and procedures and, with reference to that self-assessment, the Provider and the Co-ordinating Commissioner shall include in the EMSA Plan milestones to be achieved by the Provider during the Contract Year. Each of those milestones will be reviewed as part of the review process referred to in Clause 46 (*Review*).

30.5 The Provider shall report any Mixed Sex Associated Breaches to the Co-ordinating Commissioner in accordance with Section B Part 14.2 (*National Requirements Reported Locally*) and shall agree milestones with the Co-ordinating Commissioner to rectify such Mixed Sex Associated Breaches which shall be incorporated into the EMSA Plan.

30.6 If the Provider fails to implement any milestone in accordance with the EMSA Plan, the Co-ordinating Commissioner may exercise any consequence set out in the EMSA Plan in relation to such failure.

30.7 Where appropriate, the Co-ordinating Commissioner and Provider shall within 1 month of the Service Commencement Date agree a Decision Matrix in relation to Sleeping Accommodation Breaches.

31. TRANSFERS PURSUANT TO LOCAL COMMISSIONING PLANS

31.1 The Commissioner may transfer the Service User (in accordance with Clause 17 (*Transfer of and Discharge from Care Obligations*) to reflect changes to the Local Commissioning Plans, subject always to the best interests of the Service User as determined solely by the Responsible Commissioner acting in accordance with Good Clinical Practice and Good Health and/or Social Care Practice.

32. VENOUS THROMBOEMBOLISM

32.1 For acute services only the Provider shall perform:

32.1.1 root cause analyses of all confirmed cases of pulmonary embolism and deep vein thrombosis acquired by Service Users whilst in hospital (including those cases arising during a current hospital stay and those cases where there is a history of hospital admission within the last three months, but not including Service Users admitted to hospital with a confirmed venous thromboembolism with no history of an admission to hospital within the last three months); and

32.1.2 where required by the Co-ordinating Commissioner, local audits of Service Users at risk of venous thromboembolism,

and the Provider shall report the results of such root cause analyses and audits in accordance with Clause 39 (*Information Requirements*) and Section B Part 14.2 (*National Requirements Reported Locally*).

33. HCAI REDUCTION PLAN

33.1 The Provider shall have an HCAI Reduction Plan for each Contract Year and shall comply with its obligations under that plan. The HCAI Reduction Plan should reflect local and national priorities relating to HCAI including without limitation antimicrobial resistance.

34. PROCEDURES AND PROTOCOLS

34.1 If requested by the Co-ordinating Commissioner or the Provider, the Co-ordinating Commissioner or the Provider (as the case may be) shall within 5 Operational Days of receipt of the request send or make available to the Co-ordinating Commissioner or the Provider (as applicable) copies of any Services guide or other written policy, procedure or protocol implemented by the Co-ordinating Commissioner or Provider (as applicable).

34.2 The Co-ordinating Commissioner shall notify the Provider and the Provider shall notify the Co-ordinating Commissioner of any material changes to any items it has disclosed under Clause 34.1.

35. NETWORKS AND SCREENING PROGRAMMES

35.1 The Provider shall:

35.1.1 participate in the Clinical Networks and Screening Programmes listed in Section B Part 13;

35.1.2 participate in the national clinical audits within the National Clinical Audit and Patient Outcomes Programme (NCAPOP) relevant to the Services; and

35.1.3 where it deems it to be appropriate having regard to its obligations under Clause 18 (*Co-operation*), participate in such other partnership arrangements as may be in place in the relevant local health economies,

and the Provider shall adhere to all protocols and procedures they operate or recommend, unless they conflict with existing protocols and procedures agreed between the Parties, in which case the Parties shall review any such conflict and shall resolve it.

36. EMERGENCY PREPAREDNESS AND RESILIENCE INCLUDING MAJOR INCIDENTS

36.1 The Provider shall act in accordance with national and local civil contingency plans and comply with the Civil Contingencies Act 2004 to the extent applicable.

36.2 The Provider, where appropriate, shall have plans to manage all surges in activity.

36.3 The Parties shall contribute to and co-operate in the development and review of any relevant Major Incident Plan.

36.4 If required, the Parties shall assist in the development of and participate in joint planning and training exercises connected with any relevant Major Incident Plans and shall participate in joint planning and training exercises for emergency preparedness with other NHS organisations, contracted healthcare providers, local authorities and other local organisations. For ambulance services such training requirement shall be in addition to the enhanced training for Hazardous Area Response Team (HART) support staff.

36.5 The Provider and each Commissioner shall have and maintain an up-to-date Emergency Response Plan, to which the provisions of Clause 34 (*Procedures and Protocols*) shall apply.

36.6 If there is a Major Incident the Parties shall:

36.6.1 comply with any relevant Major Incident Plan;

36.6.2 implement their Emergency Response Plans; and

36.6.3 where the Provider is an acute services provider the provisions of Section C Part 7.5 (*Major Incidents for Acute Services Provider*) shall also apply.

36.7 In the event of a Major Incident the Provider shall provide the Commissioners with such further assistance as may reasonably be required by the Commissioners to deal with the Major Incident, and the right of any Commissioner to withhold or retain sums under Clauses 47.1 and 47.18, 47.22, 47.24, 47.26 and 47.27 and to suspend under Clause 55.2 shall not apply where the relevant right to withhold, retain or suspend has arisen as a result of the Provider complying with its obligations under this Clause 36.

36.8 In the event of a Major Incident the Commissioners shall provide the Provider with such further assistance as may reasonably be required by the Provider to deal with the Major Incident.

37. NHS COUNTER-FRAUD AND SECURITY MANAGEMENT

37.1 Prior to the Service Commencement Date, the Provider shall put in place appropriate Counter Fraud and Security Management Arrangements.

37.2 Within 1 month of the Service Commencement Date, the Provider shall undertake a risk assessment of its Counter Fraud and Security Management Arrangements, using the applicable Crime Risk Assessment Toolkit.

37.3 Where any risks are identified following completion of the risk assessment pursuant to Clause 37.2, the Provider shall remedy such risks by implementing the relevant mitigating actions in accordance with NHS Protect Guidance.

37.4 The Provider shall on request by the Co-ordinating Commissioner permit any of:

37.4.1 the Local Counter Fraud Specialist nominated by each Commissioner from time to time;

37.4.2 a person duly authorised to act on a Local Counter Fraud Specialist's behalf;

37.4.3 the Local Security Management Specialist nominated by each Commissioner from time to time;

37.4.4 a person duly authorised to act on a Local Security Management Specialist's behalf,

to review the Counter Fraud and Security Management Arrangements put in place by the Provider pursuant to Clause 37.1 and the Provider shall implement such modifications to those arrangements within such time periods as a person described in Clauses 37.4.1 to 37.4.4 may reasonably require.

37.5 The Provider shall at the reasonable request of NHS Protect, permit a person duly authorised to act on behalf of NHS Protect to review the Counter Fraud and Security Management Arrangements put in place by the Provider pursuant to Clause 37.1 and the Provider shall implement such modifications to those arrangements within such time periods as a person duly authorised by NHS Protect may reasonably require.

37.6 The Provider shall, promptly upon becoming aware of:

37.6.1 any suspected fraud or corruption involving a Service User or public funds, report such matter to the Local Counter Fraud Specialist of the relevant NHS Body and NHS Protect; and/or

37.6.2 any security incident or security breach involving Staff who deliver NHS funded services or involving NHS resources, report such matter to the Local Security Management Specialist of the relevant NHS Body and NHS Protect and the Local Security Management Specialist of the Co-ordinating Commissioner.

37.7 Upon the request of the Secretary of State, or the Co-ordinating Commissioner or NHS Protect, the Provider shall ensure that NHS Protect is given access as soon as it is reasonably practicable, taking into consideration the circumstances, and in any event not later than 5 Operational Days from the date of the request to:

37.7.1 all property, premises, information (including records and data) owned or controlled by the Provider relevant to the detection and investigation of cases of fraud and/or corruption, security incidents, and/or security breaches directly or indirectly connected to this Agreement; and

37.7.2 all members of Staff who may have information to provide that is relevant to the detection and investigation of cases of fraud and/or corruption, security incidents, and/or security breaches directly or indirectly in connection with this Agreement.

38. PARTNERSHIP ARRANGEMENTS

Provider Partnership Arrangements

38.1 If the Provider is a party to a Partnership Agreement which relates to or otherwise affects the provision of any Service under this Agreement, the Provider:

38.1.1 shall supply to the Co-ordinating Commissioner a copy of any agreement which sets out the terms of such Partnership Agreement within 10 Operational Days of the Co-ordinating Commissioner's request;

38.1.2 warrants to the Commissioners that notwithstanding such Partnership Agreement it has full power and authority to enter into this Agreement, and to exercise its rights and perform its obligations under this Agreement in accordance with its terms without hindrance, interference delay or any other adverse effect arising out of or in connections with such Partnership Agreement;

38.1.3 without prejudice to the generality of Clause 38.1.2 warrants to the Commissioners that such Partnership Agreement shall not hinder, interfere, delay or otherwise affect adversely in any way its provision of the Services in accordance with this Agreement;

38.1.4 warrants to the Commissioners that any Partnership Agreement to which it is a party complies with section 75 of the 2006 Act or section 10 of the Children Act 2004 as appropriate, and with the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000; and

38.1.5 warrants to the Commissioners, where it is a party to a Partnership Agreement, that in performing its obligations under this Agreement it does not exceed its authority under section 75 of the 2006 Act, or under section 10 of the Children Act 2004, or under the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, or under any Partnership Agreement to which it is a party.

Commissioner Partnership Arrangements

38.2 Each Commissioner that is a party to a Partnership Agreement which relates to or otherwise affects the commissioning of any Service under this Agreement:

38.2.1 shall supply to the Provider a copy of any agreement which sets out the terms of such Partnership Agreement within 10 Operational Days of the Provider's request to the Co-ordinating Commissioner;

38.2.2 warrants to the Provider that notwithstanding such Partnership Agreement it has full power and authority to enter into this Agreement, and to exercise its rights and perform its obligations under this Agreement in accordance with its terms without hindrance, interference delay or any other adverse effect arising out of or in connections with such Partnership Agreement;

38.2.3 warrants to the Provider that notwithstanding such Partnership Agreement it has full powder and authority to enter into the Consortium Agreement, and to exercise its rights and perform its obligations under the Consortium Agreement in accordance with its terms without hindrance, interference, delay or any other adverse effect arising out of or in connection with such Partnership Agreement;

38.2.4 warrants to the Providers that any Partnership Agreement to which it is a party complies with section 75 of the 2006 Act or section 10 of the Children Act 2004 as appropriate, and with the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000; and

38.2.5 warrants to the Provider, where it is a party to a Partnership Agreement, that in performing its obligations under this Agreement it does not exceed its authority under section 75 of the 2006 Act, or under section 10 of the Children Act 2004, or under the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, or under any Partnership Agreement to which it is a party.

39. INFORMATION REQUIREMENTS

39.1 The Provider shall provide the information specified in this Clause 39 and in Section B Part 14 (*Reporting and Information Management*):

39.1.1 within the applicable time period identified in Clause 7 (*Prices and Payment*) and Section B Part 14 (*Reporting and Information Management*); or

39.1.2 where Clause 39.1.1 does not apply, in a timely manner.

39.2 Where the Provider is an NHS Foundation Trust, the Co-ordinating Commissioner shall not require the Provider to supply any information for the purposes of national reporting which the Provider is not obliged to supply under its Terms of Authorisation.

39.3 The Provider and Co-ordinating Commissioner shall ensure that any information provided to the other Party in relation to this Agreement is accurate and complete.

39.4 The Provider shall where and to the extent applicable:

39.4.1 comply with all relevant published NHS information and data standards and Information Standards Board recommendations; and

39.4.2 implement any other datasets and information requirements agreed from time to time between it and the Co-ordinating Commissioner.

39.5 The Parties shall comply with Guidance relating to clinical coding published by the NHS Classifications Service and with the definitions of activity maintained under the NHS Data Model and Dictionary.

39.6 The Provider may implement any change of practice in the counting and coding of activity as may be agreed from time to time between it and the Co-ordinating Commissioner. The Provider shall give the Co-ordinating Commissioner at least 6 months notice of such proposed change and any such change agreed by the Parties may only be implemented on 1 April of the following Contract Year, unless:

39.6.1 the Parties agree a different date for the implementation; or

39.6.2 the changes are mandated by the Department of Health, in which case the provisions of Clause 39.4 shall apply; or

39.6.3 the changes are required by the PbR Rules in which case the changes shall come into effect from the date specified in the PbR Rules.

39.7 The Co-ordinating Commissioner may request from the Provider any other information it reasonably requires in relation to this Agreement and the Provider shall

supply such information in a timely manner.

39.8 All information to be provided by the Provider pursuant to this Clause 39 and Section B Part 14 (*Reporting and Information Management*) and which is necessary for the purposes of Clause 7 (*Prices and Payment*), including without limitation the reconciliation provisions in Clause 7, shall be provided:

39.8.1 to the Co-ordinating Commissioner in aggregate form, and in disaggregated form for each Commissioner and its use of the Services; and

39.8.2 direct to each Commissioner in disaggregated form relating to its own use of the Services.

39.9 The Provider shall collect and provide national datasets within the timescales set out in the relevant ISN and submit the coded data to SUS where applicable within 5 Operational Days of expiry of such applicable timescales and all datasets shall be completed by the date required for the purposes of reconciliation as described in Clause 7 (*Prices and Payment*).

39.10 Where SUS is applicable, in the event of:

39.10.1 a failure of SUS; or

39.10.2 an interruption of the availability of SUS to the Provider or to any Commissioner; or

39.10.3 an occurrence of circumstances which prevent the Provider from complying with Clause 39.9; or

39.10.4 the Co-ordinating Commissioner's reasonable request,

the Provider shall submit directly to the Co-ordinating Commissioner the national datasets collected in accordance with Clause 39.9 within the timescales set out in Clause 39.9.

39.11 Unless otherwise agreed between the Parties in accordance with Clause 39.16 and set out in the Data Quality Improvement Plan, where the Co-ordinating Commissioner reasonably believes that the Provider has failed to meet the requirements of this Clause 39 and/or Section B Part 14 (*Reporting and Information Management*), the Co-ordinating Commissioner shall inform the Provider of this by notice in writing, detailing the Provider's breaches and the Co-ordinating Commissioner's intention to instruct the Commissioners to withhold the sums specified in Clause 39.12 unless the information is rectified and/or provided within 5 Operational Days of such written notice.

39.12 If:

39.12.1 the information described in Clause 39.11 is not provided and/or rectified by the Provider within 5 Operational Days of the date of the notice served in accordance with Clause 39.11 ("**Information Breach**"); and

39.12.2 such information is required for the purposes of Clause 7 (*Prices and Payment*); or

39.12.3 such information is required for purposes other than those under Clause 7 (*Prices and Payment*),

and provided that the Information Breach is not due to any act or omission of any Commissioner, then the Co-ordinating Commissioner may instruct the Commissioners to withhold up to 1% of all the monthly sums payable by them pursuant to Clause 7 (*Prices and Payment*) in relation to each Information Breach and thereafter for each and every month such Information Breach continues.

39.13 Subject to Clauses 39.14 and 39.15, the Commissioners shall withhold the sums withheld under Clause 39.12 for each Information Breach until the Provider reasonably rectifies the relevant Information Breach and the Commissioners shall then pay the Provider the withheld sums within 10 Operational Days and no interest shall be payable by the Commissioners to the Provider on any sum withheld under Clause 39.12.

39.14 The Commissioners shall not release to the Provider any sum withheld under Clause 39.12 relating to an Information Breach where the Provider fails to reasonably rectify such Information Breach:

39.14.1 within 6 months of the written notice served under Clause 39.11; or

39.14.2 prior to the Expiry Date; or

39.14.3 prior to the termination of this Agreement, for any reason,

whichever is the earlier, in which event the Commissioners shall be entitled to permanently retain such withheld sums.

39.15 Where within 20 Operational Days of the date of the first payment by the Commissioner to the Provider of a sum withheld under Clause 39.12 the Provider produces evidence satisfactory to the Co-ordinating Commissioner that the relevant sums were withheld unjustifiably, then the Commissioners shall pay interest to the Provider on their respective sums withheld at the Default Interest Rate for the period of their withholding. If the Co-ordinating Commissioner does not accept the Provider's evidence, the Provider may refer the matter to dispute resolution under Clause 53 (*Dispute Resolution*).

Data Quality Improvement Plan

39.16 The Parties may at any time during the term of this Agreement agree a Data Quality Improvement Plan (which shall be appended to this Agreement at Section B Part 14.4) setting out milestones and subject to the maximum monthly sums identified in Clause 39.12, consequences for failing to meet each milestone, provided that where any milestone is in relation to providing information pursuant to Part B Section 14.1 (*National Requirements Reported Centrally*) the Parties shall not agree to any waiver or delay in withholding sums under Clause 39.12 which the Co-ordinating Commissioner would otherwise be entitled to pursuant to Clauses 39.11 and 39.12. Where the Provider fails to meet a milestone by the agreed date for its completion, the Co-ordinating Commissioner may exercise the relevant agreed consequence.

40. SERVICE STANDARDS

40.1 The Provider shall avoid breaching the Nationally Specified Events Thresholds, shall ensure that Never Events do not occur, and shall meet the Quality Requirements in addition to applicable national standards and outcomes measures from time to time set out in Guidance or otherwise specified by the Secretary of State.

40.2 A failure by the Provider to comply with Clause 40.1 shall be excused if it is directly attributable to or caused by an act or omission of a Commissioner, provided that (for the avoidance of doubt) no such excuse shall apply if the failure was caused primarily

by an increase in Service User referrals, which shall include activity due to an increased use of 999 or any other emergency telephone numbers in relation to ambulance services provided under this Agreement.

40.3 It shall be a material breach by the Provider if the Provider does not co-operate fully with the Responsible Commissioner and the original Referrer in any re-referral of the Service User to another provider (including providing Service User Health Records, other information relating to the Service User's Package of Care and clinical opinion if reasonably requested).

40.4 If the Provider does not comply with Clause 40.1, the Co-ordinating Commissioner may, without prejudice to any other rights that it may have under this Agreement:

40.4.1 issue a Contract Query under Clause 47 (*Contract Management*) in relation to such breach or Never Event occurrence; and/or

40.4.2 take action to remove the Service User affected from the Provider's care; and/or

40.4.3 if it reasonably considers that there may be further such non-compliance in relation to other Service Users, take action to remove those Service Users from the Provider's care.

40.5 Without prejudice to Clauses 40.1 and 40.2, where a Service User is admitted by the Provider for acute Elective Care services and the Provider cancels that Service User's operation after his/her admission for non-clinical reasons, the terms of the NHS Constitution Handbook cancelled operations pledge shall apply, so that the Provider shall within 5 calendar days offer the Service User a new date falling within 28 calendar days of the original treatment date or fund the Service User's treatment at the time and hospital of the Service User's choice, and where applicable within the 18 Weeks Referral-to-Treatment Standard.

41. MANAGING ACTIVITY AND REFERRALS

Monitoring and Managing Activity

41.1 The Commissioners and the Provider shall each monitor and manage activity and referrals for the Services in accordance with this Clause 41.

41.2 Subject to Clauses 21.1 and 21.2 (and without prejudice to Clauses 7.38 and 7.39), the Provider shall accept all appropriate referrals of Service Users howsoever made.

41.3 The Commissioners agree:

41.3.1 to manage activity for the Services via GP referrals, or other primary care referrals (as appropriate), and to use their reasonable endeavours to promptly notify the Provider of any anticipated changes in such numbers of referrals;

41.3.2 to liaise with other Referrers (other than GPs);

41.3.3 to procure that their agents and practitioners adhere to any referral and treatment protocols as may be agreed between the Parties.

41.4 The Provider agrees to manage activity in accordance with the Activity Planning Assumptions and any caseloads and occupancy levels set out in a Service Specification and shall in particular, but without limitation:

41.4.1 comply with the reasonable requests of the Commissioners to assist the Commissioners in understanding and managing the referrals; and

41.4.2 require its agents, sub-contractors and employees to adhere to any referral and treatment protocols that may be agreed between the Parties.

41.5 Where applicable to the Service, the Provider shall manage the provision of the Service so as to meet the 18 Weeks Referral-to-Treatment Standard.

Indicative Activity Plan

41.6 Prior to the start of each Contract Year, the Parties shall agree an Indicative Activity Plan specifying the threshold for each activity and such agreed thresholds may be zero. Where the Parties fail to agree an Indicative Activity Plan prior to the start of each Contract Year, an Indicative Activity Plan with an indicative activity of zero activity shall be deemed to apply for the relevant Contract Year.

41.7 The Indicative Activity Plan shall comprise the aggregated Indicative Activity Plans of all of the Commissioners.

Activity Planning Assumptions

41.8 Prior to the start of each Contract Year, the Co-ordinating Commissioner shall notify the Provider of any Activity Planning Assumptions, specifying a threshold for each assumption, which shall be applicable to the relevant Contract Year and the Provider shall comply with such Activity Planning Assumptions.

Monitoring and Reporting of Indicative Activity and Activity Planning Assumptions

41.9 The Provider shall submit to the Co-ordinating Commissioner a monthly Activity Report to be provided at the intervals and in the format agreed between the Parties and set out in Section B Part 14.2 (*National Requirements Reported Locally*).

41.10 The Co-ordinating Commissioner and the Provider shall monitor, through the Activity Report, actual activity against:

41.10.1 indicative activity levels set out in the Indicative Activity Plan; and

41.10.2 where the Co-ordinating Commissioner has notified the Provider of Activity Planning Assumptions pursuant to Clause 41.8, the Activity Planning Assumptions.

41.11 Without prejudice to Clause 41.9, the Parties shall review any variances against the thresholds set out in the Indicative Activity Plan and/or any breaches of the thresholds set out in the Activity Planning Assumptions, in each case, without delay.

Activity management following breaches of the Activity Planning Assumptions

41.12 Without prejudice to Clauses 41.3 to 41.11, if the Provider breaches the threshold(s) set out in the Activity Planning Assumptions:

41.12.1 the Provider shall notify the Co-ordinating Commissioner of such breach without delay; and

41.12.2 the Co-ordinating Commissioner and the Provider shall agree an Activity Management Plan within 10 Operational Days of the date of the notification under Clause 41.12.1 (or where the Provider fails to notify the Co-

ordinating Commissioner under Clause 41.12.1 within 10 Operational Days of the Co-ordinating Commissioner becoming aware of the breach) and the Activity Management Plan shall be appended at Section B Part 5.

41.13 Where the Co-ordinating Commissioner and the Provider fail to agree an Activity Management Plan pursuant to Clause 41.12.2 the Parties shall issue a joint notice to the Board of Directors of the Provider and Commissioners (or where a joint notice is not agreed each Party shall notify its own Board of Directors) informing them of the failure to agree an Activity Management Plan and if the Parties fail to agree an Activity Management Plan within 10 Operational Days of the date of such notice, either Party may refer the matter to dispute resolution under Clause 53 (*Dispute Resolution*).

41.14 Where an Activity Management Plan is agreed pursuant to Clause 41.12.2 or otherwise, the Provider shall implement the Activity Management Plan within the timescales set out in such plan.

41.15 If the Provider breaches an Activity Management Plan or fails to implement an agreed Activity Management Plan, the Co-ordinating Commissioner may exercise any consequences set out in the relevant Activity Management Plan.

Prior Approval Scheme

41.16 Prior to the start of each Contract Year, the Co-ordinating Commissioner shall notify the Provider of the terms of any Prior Approval Scheme for each Commissioner.

41.17 If and to the extent only that a Prior Approval Scheme contains any obligation upon a Provider that would, if performed by the Provider, operate to restrict Patient Choice Guidance then:

41.17.1 such term shall be deemed deleted from the Prior Approval Scheme and shall have no contractual force or effect and the Prior Approval Scheme shall be amended accordingly; and

41.17.2 if the Provider provides a Service in accordance with the Prior Approval Scheme as amended in accordance with Clause 41.17.1, then the Commissioner shall be liable to pay for such Service in accordance with Clause 7.

41.18 Without prejudice to Clause 41.17, if the Co-ordinating Commissioner requires any amendments to be made to a Prior Approval Scheme during the Contract Year, then the Co-ordinating Commissioner shall give the Provider not less than one month's notice in writing of the amendments to the Prior Approval Scheme and such amendments shall be implemented by the Provider on the date set out in such notice, and any such amendment to a Prior Approval Scheme shall only be applicable to referrals of Service Users made after the expiration of such notice period.

41.19 Subject to Clause 41.17, the Provider shall manage Service Users in accordance with the terms of any relevant Prior Approval Scheme and where the Provider fails to comply with the terms of any relevant Prior Approval Scheme in providing a Service, the Commissioner shall not be liable to pay for such Service.

41.20 The Co-ordinating Commissioner shall, where the 18 Weeks Referral-to-Treatment Standard is at risk for any activity that is the subject of a Prior Approval Scheme, require the Provider to specify a revised pathway to mitigate any risk of failure to meet the 18 Weeks Referral-to-Treatment Standard.

41.21 Each Commissioner shall respond in accordance with its Prior Approval Scheme to any Provider request for Prior Approval that complies with the terms of such Prior Approval Scheme. Failure by the Commissioner to respond to a request for Prior Approval within the appropriate time period specified in such Prior Approval Scheme shall be deemed to be an approval for the purposes of that Prior Approval Scheme, and for the avoidance of doubt the Commissioner shall pay the Provider for any such referral in accordance with Clause 7 (*Prices and Payment*).

41.22 In the event of urgent clinical need or risk to patient safety, the relevant Commissioner may grant retrospective approval for activity performed on a Service User by the Provider which would otherwise have required Prior Approval, subject to approval by the medical director of the Commissioner, such approval not to be unreasonably withheld or delayed.

Risk Share Agreement

41.23 Where the Parties have agreed a Risk Share Agreement, the Provider and the Commissioners will follow the activity reporting and monitoring arrangements set out in the Risk Share Agreement which shall be appended to this Agreement at Section D Part 5.

42. WAITING TIMES

42.1 The Provider is under a duty to provide Services so as to comply with any waiting times which the Commissioners are obliged to make arrangements to secure pursuant to directions made under section 8 of the 2006 Act or otherwise.

43. 18 WEEKS REFERRAL-TO-TREATMENT STANDARD FOR CONSULTANT-LED SERVICES AND FINANCIAL ADJUSTMENTS

43.1 This Clause 43 shall only apply in respect of Consultant-led Services to which the 18 Weeks Referral-to Treatment Standard applies.

43.2 Without prejudice to any requirement to submit data or information relating to performance against the 18 Weeks Referral-to-Treatment Standard to SUS pursuant to Clause 39 (*Information Requirements*) or otherwise, the Co-ordinating Commissioner and the Provider shall, where applicable to the Service, monitor performance against the 18 Weeks Referral-to-Treatment Standard.

43.3 The Service User Pathways, in respect of Consultant-led Services to which the 18 Weeks Referral-to Treatment Standard applies, implemented under this Agreement shall be agreed by each Commissioner based on the level of risk to delivery of the 18 Weeks Referral-to-Treatment Standard.

43.4 Subject to Clause 43.6, if in any month the Provider underachieves the 18 Weeks Referral-to-Treatment Standard threshold set out in Section B Part 8.2 (*Nationally Specified Events*) for any specialty, then the Commissioners shall deduct for each such specialty an amount calculated in accordance with Section B Part 8.4 and weighted in accordance with Clause 43.5, from any payments to be made to the Provider under this Agreement.

43.5 All sums calculated in accordance with Section B Part 8.4 for the purpose of Clause 43.3 shall be weighted as follows:

43.5.1 adjustments relating to performance for admitted care will apply to 75% of Contract Month Elective Care 18 Weeks Revenue; and

43.5.2 adjustments relating to performance for non-admitted care will apply to 25% of Contract Month Elective Care 18 Weeks Revenue.

43.6 If the Provider underachieves the 18 Weeks Referral-to-Treatment Standard by 10% or more in any month, the deductions by Commissioners under Clause 43.4 shall not exceed 5% of the relevant Contract Month Elective Care 18 Weeks Revenue.

44. FINANCIAL ADJUSTMENTS FOR PERFORMANCE IN REDUCING CLOSTRIDIUM DIFFICILE

44.1 This Clause 44 shall only apply to acute services provided by the Provider at the Provider's Premises.

44.2 The Provider shall not exceed the Baseline Threshold for the number of cases of Clostridium difficile in delivering the acute services at the Provider's Premises.

44.3 At the end of each Contract Year, the Parties shall review the number of cases of Clostridium difficile for that Contract Year and where the Provider has exceeded the Baseline Threshold the Co-ordinating Commissioner shall make financial deductions calculated in accordance with this Clause 44.

44.4 Any deductions calculated and made in accordance with this Clause 44 shall not exceed 2% of the Total Acute Services Contract Year Revenue for the Contract Year to which the adjustment relates.

Baseline Threshold is greater than 75

44.5 Where the applicable Baseline Threshold:

44.5.1 is 75 or more; and

44.5.2 in the applicable Contract Year the number of cases of Clostridium difficile represents more than a 1% increase on the Baseline Threshold, then

at or after the end of such Contract Year the Commissioners shall deduct or the Provider shall pay the Commissioners an amount calculated in accordance with Table 1 at Section B Part 8.5 (*Clostridium difficile Adjustments Tables*).

Baseline Threshold is between 35 to 74

44.6 Where the applicable Baseline Threshold:

44.6.1 is between 35 and 74 (inclusive); and

44.6.2 in the applicable Contract Year the number of cases of Clostridium difficile exceeds 75, then

at or after the end of such Contract Year the Commissioners shall deduct or the Provider shall pay the Commissioners an amount calculated in accordance with Table 2 at Section B Part 8.5 (*Clostridium difficile Adjustments Tables*).

44.7 Where the applicable Baseline Threshold:

44.7.1 is between 35 and 74 (inclusive); and

44.7.2 in the applicable Contract Year the number of cases of Clostridium difficile does not exceed 75 but exceeds by 2 or more cases the Baseline Threshold, then

at or after the end of such Contract Year the Commissioners shall deduct or the Provider shall pay the Commissioners an amount calculated in accordance with Table 3 at Section B Part 8.5 (*Clostridium difficile Adjustments Tables*).

Baseline Threshold less than 35

44.8 Where the applicable Baseline Threshold:

44.8.1 is less than 35; and

44.8.2 in the applicable Contract Year the number of cases of Clostridium difficile exceeds 35 and exceeds by 2 or more cases the Baseline Threshold; then

at or after the end of such Contract Year the Commissioners shall deduct or the Provider shall pay the Commissioners an amount calculated in accordance with Table 4 at Section B Part 8.5 (*Clostridium difficile Adjustments Tables*).

45. SERVICE QUALITY REVIEW

45.1 The Provider shall for each month of this Agreement produce and in accordance with Section B Part 14.2 (*National Requirements Reported Locally*) deliver to the Co-ordinating Commissioner a report (the "**Service Quality Performance Report**") detailing its performance against the Quality Requirements and including, without limitation:

45.1.1 details of any Nationally Specified Events Thresholds that have been breached and any Never Events that have occurred; and

45.1.2 details of all Quality Requirements satisfied; and

45.1.3 details of, and reasons for, any failure to meet the Quality Requirements; and

45.1.4 details of progress towards satisfying any Quality Incentive Scheme Indicators, including details of all Quality Incentive Scheme Indicators satisfied or not satisfied; and

45.1.5 the outcome of all root cause analyses and audits performed pursuant to Clause 32 (*Venous Thromboembolism*).

45.2 The Provider, unless agreed otherwise with the Co-ordinating Commissioner, shall submit each Service Quality Performance Report to the Co-ordinating Commissioner within 10 Operational Days of the end of the month to which it relates or as soon as practicable, whichever is the earlier.

45.3 The Provider and the Co-ordinating Commissioner shall review the Provider's Service Quality Performance Report pursuant to Clause 46 (*Review*) or as otherwise agreed.

46. REVIEW

46.1 The Co-ordinating Commissioner and the Provider shall jointly review and monitor performance under this Agreement and discuss any matters that either considers necessary in relation to it at such intervals as the Parties agree as set out in the Particulars, which shall not be less than every six months. Unless otherwise agreed all issues raised in such a Review shall be completed by the end of the relevant Contract Year.

46.2 Prior to the end of each Contract Year the Co-ordinating Commissioner and the

Provider shall review Sections A, B and C of this Agreement where applicable and plan and agree realistic requirements under this Agreement for the following Contract Year.

46.3 Each Review shall be completed by the Co-ordinating Commissioner and the Provider signing a written review record ("**Review Record**") containing without limitation a summary of all the matters raised during the Review, actions taken, agreements reached, Disputes referred to dispute resolution under Clause 53 (*Dispute Resolution*) and the outcome of any such referrals, and any Variations agreed.

46.4 If any Dispute which has arisen during the Review is not shown in the Review Record or is not referred to dispute resolution under Clause 53 (*Dispute Resolution*) within 10 Operational Days after signature of that Review Record it shall be deemed to have been withdrawn.

46.5 A referral to dispute resolution under Clause 53 (*Dispute Resolution*) in or following a Review shall not of itself give grounds for any suspension or termination of this Agreement, and in accordance with this Agreement the Provider shall deliver and shall be entitled to be paid for Services delivered until such time as the Dispute is resolved.

46.6 Notwithstanding Clause 46.1, where either the Co-ordinating Commissioner or the Provider reasonably considers a circumstance constitutes an emergency or is materially important, such Party may request that a Review meeting be held as soon as practicable and in any event such Review meeting shall be held within 5 Operational Days of such request.

47. CONTRACT MANAGEMENT

47.1 Where the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Requirement as set out in Section B Part 8.1 (*Quality Requirements*) and the Provider fails to meet the Quality Requirement, the Co-ordinating Commissioner may exercise such agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Co-ordinating Commissioner may have under this Clause 47.

47.2 The provisions of this Clause 47 are without prejudice to any other rights and obligations the Parties may have under this Agreement, including without limitation the rights of the Commissioners and the obligation of the Provider under Clauses 7.36 and 7.37.

47.3 Clauses 47.18, 47.22, 47.24, 47.26 and 47.27 shall 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 of the Co-ordinating Commissioner or relevant Commissioner.

Contract Query

47.4 Where the Co-ordinating Commissioner or the Provider:

47.4.1 has a query regarding the other's performance; or

47.4.2 considers a performance deficiency has occurred under this Agreement; or

47.4.3 considers there has been a breach of a term of this Agreement,

(each a "**Contract Query**"),

it may issue ("**Issuing Party**") to the other party ("**Other Party**") a notice in writing setting out the nature and details (to the extent reasonably practicable) of its Contract Query ("**Contract Query Notice**").

Excusing Notice

47.5 Where in the view of the Other Party:

47.5.1 the matter or matters giving rise to the Contract Query Notice may be clearly explained or justified; or

47.5.2 the matter or matters giving rise to the Contract Query Notice are:

47.5.2.1 due in whole or in part to an act or omission by the Issuing Party; or

47.5.2.2 a direct result of the Other Party following the instructions of the Issuing Party; or

47.5.2.3 due to circumstances beyond the Other Party's reasonable control which do not constitute an Event of Force Majeure or a Major Incident,

then the Other Party may issue an Excusing Notice within 5 Operational Days of the date of the Contract Query Notice setting out its explanation based on the applicable reasons identified above.

47.6 The Issuing Party shall consider the contents of any Excusing Notice, and if the Issuing Party accepts the validity of the detailed reasons in the Excusing Notice, the Issuing Party shall cancel the Contract Query Notice in writing within 10 Operational Days of the date of the Contract Query Notice.

Contract Management Meeting

47.7 Subject to Clause 47.6, the Parties shall meet to discuss the subject matter of the Contract Query Notice and any related Excusing Notice within 10 Operational Days of the date of the Contract Query Notice unless otherwise agreed by the Parties in writing ("**Contract Management Meeting**").

47.8 If no Excusing Notice is issued in respect of a Contract Query Notice or an Excusing Notice's contents are considered not to be valid by the Issuing Party at the Contract Management Meeting, in order to rectify the subject matter of the Contract Query Notice, the Parties shall agree either:

47.8.1 to implement a Remedial Action Plan, in which case Clauses 47.12 to 47.27 inclusive shall apply; or

47.8.2 to conduct a joint investigation into the matters referred to in the Contract Query Notice, in which case, the Parties shall agree without limitation the terms of reference, the timescale for the investigation which shall be no longer than 2 months, and the appropriate clinical and/or non-clinical representatives from each Party who shall participate in such investigation ("**Joint Investigation**"), and Clauses 47.10 and 47.11 shall apply to the Joint Investigation.

47.9 Where a Joint Investigation is to be undertaken under Clause 47.8.2 the Parties may agree an Immediate Action Plan and where such plan is agreed the Immediate Action Plan shall be implemented concurrently with the Joint Investigation.

Joint Investigation

47.10 On completion of a Joint Investigation, the Parties shall produce and agree a report detailing the findings and outcomes of the Joint Investigation ("**JI Report**") which shall include (without limitation) a recommendation to be considered at the next Review meeting (under Clause 46 (*Review*)) that either:

47.10.1 the Contract Query be closed; or

47.10.2 a Remedial Action Plan be agreed and implemented.

47.11 Either Party may call an emergency Review meeting under Clause 46.6 to consider a JI Report (including its recommendations) and such Review meeting shall be held within the time limits set out in Clause 46.6.

Remedial Action Plan

47.12 A Remedial Action Plan shall set out:

47.12.1 milestones and timescales within which performance shall be remedied;

47.12.2 the date by which each milestone must be completed; and

47.12.3 subject to the maximum sums identified in Clause 47.22, the consequences for failing to meet each milestone by the specified date.

47.13 The Parties shall agree the contents of any Remedial Action Plan within:

47.13.1 5 Operational Days of the Contract Management Meeting; or

47.13.2 5 Operational Days of the Review meeting in the case of a Remedial Action Plan recommended under Clause 47.10.

47.14 Each Party shall implement or meet the milestones applicable to it in any Remedial Action Plan within the timescales set out in such plan.

47.15 Each Party (as relevant) shall detail progress made or developments under any Remedial Action Plan in accordance with the time intervals agreed in a Remedial Action Plan and such update reports shall be considered at the next Review meeting under Clause 46 (*Review*).

47.16 If following implementation of a Remedial Action Plan:

47.16.1 the matters that gave rise to the relevant Contract Query Notice have been resolved, it should be noted in writing, within 5 Operational Days of the next Review meeting, that the Remedial Action Plan has been completed; or

47.16.2 any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of either Party unresolved, nothing in this Clause 47 shall prevent either Party (as applicable) issuing a further Contract Query Notice and the relevant provisions of this Clause 47 shall apply to such Contract Query Notice.

Withholding Payment for Failure to Agree Remedial Action Plan

47.17 Subject to Clause 47.3, if the Parties fail to agree a Remedial Action Plan within the applicable time period specified in Clause 47.13, the Parties shall issue a joint notice to the Board of Directors of the Provider and Commissioners (or where a joint notice

is not agreed each Party shall notify its own Board of Directors) informing them of the failure to agree a Remedial Action Plan ("**RAP Failure to Agree Notice**").

47.18 If the Parties fail to agree a Remedial Action Plan within 10 Operational Days of the date of the RAP Failure to Agree Notice, the Co-ordinating Commissioner may instruct the Commissioners to withhold up to 2% of all the monthly sums payable by them under Clause 7 (*Prices and Payment*) for each month the Remedial Action Plan is not agreed.

47.19 The Commissioners shall pay the Provider any sums withheld under Clause 47.18 within 10 Operational Days of receiving the Provider's agreement to the Remedial Action Plan, which sums, subject to Clause 47.25, shall be paid without interest.

Exception Reports

47.20 If either Party breaches a Remedial Action Plan and fails to remedy such breach within 5 Operational Days of its occurrence, the Provider or the Co-ordinating Commissioner (as the case may be) may issue an exception report ("**First Exception Report**") to the relevant Commissioner's or the Provider's Board of Directors (as the case may be) and the Co-ordinating Commissioner may also instruct the Commissioners to withhold payment from the Provider in accordance with Clause 47.22.

47.21 If following receipt of the First Exception Report, the Board of Directors receiving such report fails to procure rectification of the breach or breaches of the Remedial Action Plan within the timescales indicated in the First Exception Report, the Co-ordinating Commissioner or the Provider (as the case may be) may issue a second exception report ("**Second Exception Report**") to:

47.21.1 the relevant Commissioner's or the Provider's Board of Directors (as the case may be); and/or

47.21.2 any relevant Strategic Health Authority; and/or

47.21.3 CQC or Other Regulatory Body (if appropriate); and/or

47.21.4 Monitor (if applicable),

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

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

47.22 Subject to Clause 47.3, the Co-ordinating Commissioner may from the date of issuing a First Exception Report and for each month the Provider's breach of the relevant Remedial Action Plan relating to such First Exception Report continues, instruct the Commissioners to withhold up to 2% of all the monthly sums payable by the Commissioners under Clause 7 (*Prices and Payment),* in respect of each milestone not met in the relevant Remedial Action Plan, subject to a maximum monthly withholding of 10% of all the monthly sums payable by the Commissioners under Clause 7 (*Prices and Payment*) in relation to each Remedial Action Plan.

47.23 The Commissioners shall pay the Provider any sums withheld under Clause 47.22 within 10 Operational Days of a Review meeting confirming that the Remedial Action Plan has been implemented, which sums, subject to Clause 47.25, shall be paid without interest.

Retention of Sums Withheld at Second Exception Report for Breach of Remedial Action Plan

47.24 Subject to Clause 47.3 the Co-ordinating Commissioner may at the date of issuing any Second Exception Report in respect of a Provider's breach of a Remedial Action Plan, instruct the Commissioners to permanently retain any sums withheld pursuant to Clause 47.22.

Unjustified Withholding or Retention of Payment

47.25 Where the Commissioners withhold under Clauses 47.18 or 47.22 or retain under Clause 47.24 a sum otherwise payable to the Provider, and within 20 Operational Days of the date of its withholding the Provider produces evidence satisfactory to the Co-ordinating Commissioner that the relevant sum was withheld or retained unjustifiably, then the Commissioners shall pay the withheld or retained sum to the Provider within 10 Operational Days of the date of the Co-ordinating Commissioner's acceptance of the Provider's evidence, together with interest on the withheld sum at the Default Interest Rate for the period of its withholding and, where applicable, interest on the retained sum at the Default Interest Rate for the period of its retention. If the Co-ordinating Commissioner does not accept the Provider's evidence, the Provider may refer the matter to dispute resolution under Clause 53 (*Dispute Resolution*).

Retention of Sums Withheld on Expiry or Termination of this Agreement

47.26 Subject to Clause 47.3 and without prejudice to any other provision in this Clause 47, where the Provider fails to agree a Remedial Action Plan:

47.26.1 within 6 months of the relevant time period set out in Clause 47.13 for agreeing a Remedial Action Plan; or

47.26.2 prior to the Expiry Date; or

47.26.3 prior to the termination of this Agreement, for any reason,

whichever is the earlier, the Co-ordinating Commissioner may instruct the Commissioners to permanently retain any withheld sums under Clause 47.18.

47.27 Subject to Clause 47.3 and without prejudice to any other provision in this Clause 47, where the Provider fails to rectify a breach of a Remedial Action Plan:

47.27.1 prior to the Expiry Date; or

47.27.2 prior to the termination of this Agreement, for any reason,

whichever is the earlier, the Co-ordinating Commissioner may instruct the Commissioners to permanently retain any withheld sums under Clauses 47.22.

48. COMMISSIONER AND REPRESENTATIVES

48.1 The Co-ordinating Commissioner shall in relation to this Agreement act for itself and as agent for its Associates (who are separate principals) provided that sums payable to the Provider are to be severally attributed to the relevant Associate or to the Co-ordinating Commissioner, as appropriate.

48.2 The Co-ordinating Commissioner and the Provider shall each appoint representatives and deputy representatives to be their key points of contact for day-to-day communications.

49. BUSINESS CONTINUITY

49.1 The Provider shall maintain a Business Continuity Plan and shall notify the Co-ordinating Commissioner as soon as reasonably practicable of its activation and in any event no later than 5 Operational Days from the date of such activation.

49.2 In the event of any conflict between the Provider's obligation to notify the Co-ordinating Commissioner of the activation of its Business Continuity Plan pursuant to Clause 49.1 and the requirements for notification and investigation of Serious Incidents set out in Section C Part 7.3 (*Incidents Requiring Reporting Procedure*), then the requirements set out in Section C Part 7.3 (*Incidents Requiring Reporting Procedure*) shall prevail.

50. LIABILITY AND INDEMNITY

50.1 Without prejudice to its liability for breach of any of its obligations under this Agreement, each Commissioner shall be severally liable to the Provider for, and shall indemnify and keep the Provider indemnified against, and the Provider shall be liable to each Commissioner for, and shall indemnify and keep each Commissioner indemnified against:

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

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

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

50.1.2 any Losses of the indemnified Party,

that result from or arise out of the indemnifying Party's negligence or breach of contract in connection with the performance of this Agreement or the provision of the Services (including, in the case of the Provider (without limitation) its use of Equipment or other materials or products, and the actions or omissions of the Staff or sub-contractors in the provision of the Services), except insofar as such 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 indemnified Party, its employees or agents.

50.2 The Provider shall put in place and/or maintain in force (and/or procure that its sub-contractors shall maintain in force) at its own cost appropriate Indemnity Arrangements in respect of:

50.2.1 employers' liability;

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

50.2.3 public liability; and

50.2.4 professional negligence.

50.3 The Provider shall where requested by the Co-ordinating Commissioner and in any event within 5 Operational Days of a written demand from the Co-ordinating Commissioner, provide documentary evidence to the Co-ordinating Commissioner that any Indemnity Arrangements required under Clause 50.2 are fully maintained

and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

50.4 For the avoidance of doubt, the Provider shall be liable to make good any deficiency in the event that the proceeds of any Indemnity Arrangement are insufficient to cover the settlement of any claim relating to this Agreement.

50.5 The Provider warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which any Indemnity Arrangements put in place pursuant to Clause 50.2 may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such Indemnity Arrangements repayable in whole or in part.

50.6 Upon the expiry or termination of this Agreement, the Provider shall (and shall use its reasonable endeavours to procure that each of its Material Sub-contractors shall) 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 Agreement shall continue to be the subject of appropriate Indemnity Arrangements for the period of 21 years from termination or expiry of this Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.

50.7 In connection with the Services, unless the Co-ordinating Commissioner and the Provider otherwise agree in writing, the Provider shall not require, and shall ensure that no other person shall 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, except for where such a document is required pursuant to medical research procedures approved by the local research ethics committee and the Service User has given consent in accordance with the Service User Consent Policy.

50.8 Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation.

50.9 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which one Party is entitled to bring a claim against the other pursuant to this Agreement.

51. ASSIGNMENT AND SUB-CONTRACTING

51.1 Where the Provider is responsible for co-ordinating the whole Pathway for the Commissioner (and/or the Provider provides emergency ambulance services), the Provider may sub-contract any of its rights or obligations under this Agreement, other than its obligation to co-ordinate the Pathway, provided that the Commissioner shall have approved the Material Sub-contractors and the Material Sub-contract arrangements in advance (except that the requirement for such approval shall not apply where the Service User requires Emergency Care).

51.2 Subject to Clauses 51.1 and 51.5, the Provider shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or obligations under this Agreement without the prior written consent of the Co-ordinating Commissioner.

51.3 No Commissioner shall assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or obligations under this Agreement without the prior written consent of the Provider, except that the Commissioners may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of their rights and/or obligations under this Agreement without the prior written consent of the Provider to

any appropriate body or organisation identified in the Health and Social Care Bill, and the Provider shall promptly execute any documents necessary to give effect to such transfer.

51.4 Notwithstanding Clause 59 (*Confidential Information of the Parties*), a Commissioner that assigns, delegates, sub-contracts, transfers, charges or otherwise disposes of all or any of its rights or obligations under this Agreement may disclose to the assignee any information in its possession that relates to this Agreement or its subject matter, the negotiations relating to it and the Provider.

51.5 The Provider is permitted to provide the Services using, or using the assistance of, the Material Sub-contractors specified in Section C Part 5.2 (*Material Sub-contractors*).

51.6 The Provider shall be responsible for the performance of and shall be liable to the Commissioners for the acts and omissions of its sub-contractors. The Provider shall ensure that any sub-contractor meets all Quality Requirements and complies with all quality assurance measures required of the Provider under this Agreement.

51.7 The Provider shall be responsible for the performance of and shall be liable to the Commissioners for the acts and omissions of any other party to which it may assign, transfer or otherwise dispose of any obligation under this Agreement ("**New Party**") as if they were the acts or omissions of the Provider, unless:

51.7.1 the Provider has obtained the prior written consent of the Co-ordinating Commissioner in accordance with Clause 51.2; and

51.7.2 the terms of such assignment, transfer or disposal have been approved and accepted by the New Party so that the New Party is liable to the Commissioners for its acts and omissions.

Nothing in this Clause 51.7 shall prejudice or otherwise affect the operation of Clause 17 (*Transfer of and Discharge from Care Obligations*).

51.8 This Agreement shall be binding on and shall be to the benefit of the Provider and each Commissioner and their respective successors and permitted transferees and assigns.

51.9 Where the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing any of its obligations under the Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

51.10 For the avoidance of doubt, where the Provider acts as a Gatekeeper (either in connection with co-ordinating the Pathway or otherwise) it shall not be responsible under this Agreement for the provision of treatment or care to the Service User and shall not be entitled unless otherwise agreed by the Commissioner to any payment from the Commissioner under this Agreement.

52. VARIATIONS

52.1 This Agreement may not be amended or varied other than in accordance with this Clause 52.

52.2 The Parties:

52.2.1 subject to Clause 63.4 may agree to vary any of the Variable Sections; and

52.2.2 shall not vary any provision of this Agreement that is not a Variable Section without the approval of the Secretary of State or the Department of Health.

52.3 Subject to Clauses 52.2 and 63.4, the provisions of this Agreement may be varied at any time by agreement in writing, signed by the Co-ordinating Commissioner's representative on behalf of the Commissioners, and by the Provider's representative on behalf of the Provider.

52.4 Subject to Clause 63.4, where any Party, with a view to reaching agreement on a proposed Variation requests that it be considered in detail, then the provisions of Clauses 52.13 to 52.17 (inclusive) shall apply, except that in relation to National Variations and Service Variations Clauses 52.13 to 52.16 (inclusive) shall only apply.

52.5 All requests for Variations shall be made in writing and all Variations shall be recorded in Section D Part 1 (*Recorded Variations*).

52.6 Each Party that requests a Variation shall have regard to its impact on the other Services, and in particular where applicable the Mandatory Goods and Services and the Essential Services.

52.7 Where a Co-ordinating Commissioner proposed Variation would have the effect of increasing the Expected Annual Contract Value, then that increase shall be in line with the Prices agreed under Clause 7 (*Prices and Payment*). In all other circumstances agreement over such Variation must include agreement in respect of the costs associated with implementing it.

52.8 Where a Variation would have a cost implication for the Commissioners, including for the avoidance of doubt and without limitation, additional activity, new treatments, drugs or technologies, then:

52.8.1 the Provider shall provide a full and detailed cost and benefit analysis of the requested or proposed Variation; and

52.8.2 the Co-ordinating Commissioner shall, after consultation with the Provider, in its absolute discretion have the right to refuse or withdraw the requested or proposed Variation; and

52.8.3 the Commissioners shall have no liability to the Provider for any costs arising from the requested or proposed Variation should the Provider implement it other than in accordance with this Agreement.

52.9 Where a Service Variation is agreed which involves the withdrawal of a Service and the Provider withdraws the Service prior to the date agreed for such withdrawal then the Provider shall be liable to the Commissioners for all reasonable costs and losses directly attributable to the early withdrawal of such Service. Where a Service Variation is agreed which involves the withdrawal of a Service and a Commissioner ceases to commission the Service prior to the date agreed for such withdrawal then the Commissioner shall be liable to the Provider for all reasonable costs and losses directly attributable to the early cessation of such commissioning.

52.10 Where the Parties fail to agree a National Variation, having followed the procedure set out in Clauses 52.13 to 52.16, the Provider may terminate this Agreement in accordance with Clause 56.1.2 or the Co-ordinating Commissioner may terminate this Agreement in accordance with Clause 56.2.2.

52.11 Where the Parties fail to agree a Service Variation, having followed the procedure in Clauses 52.13 to 52.16, then (unless the circumstances set out in Clause 52.12 apply):

52.11.1 the Provider may terminate the Service or part of a Service affected by matters in the proposed Services Variation pursuant to Clause 56.1.3; or

52.11.2 the Co-ordinating Commissioner may terminate the Service or part of a Service affected by matters in the proposed Services Variation pursuant to Clause 56.2.3.

52.12 The right of the Provider under Clause 56.1.3 and the Co-ordinating Commissioner under Clause 56.2.3 to terminate a Service or part of a Service shall not apply where:

52.12.1 the proposed Service Variation is substantially a proposal that a Service should be performed for a different price from that agreed under this Agreement and without material change to the delivery of that Service commensurate with such proposed change in price; or

52.12.2 the proposed Service Variation does not reasonably relate to a variation reflecting:

52.12.2.1 the assessment by a Commissioner/Commissioners of Pathway needs, the availability of alternative providers and demand for Services; and/or

52.12.2.2 the joint assessment of the Provider and a Commissioner of the quality and clinical viability of the relevant Services and the Services Environment; and/or

52.12.2.3 the likely impact of any transformational need and/or reconfiguration of a care pathway that might affect the Service(s).

Variation Procedure

52.13 The Party proposing a Variation (the "**Proposer**") shall make a proposal in writing to the other Party (a "**Variation Proposal**" or "**VP**") setting out the Variation proposed and the date upon which the Proposer requires it to take effect.

52.14 Upon receipt of a VP, the receiving Party (the "**Recipient**") shall respond to it in writing within 10 Operational Days of the date of the VP.

52.15 The Parties shall then, unless otherwise agreed in writing, meet within 10 Operational Days of the date of the Recipient's response pursuant to Clause 52.14 to discuss the VP and acting reasonably and in good faith shall use reasonable endeavours to agree the Variation.

52.16 Notwithstanding Clause 52.15 above, if the Recipient does not agree the Variation, the Recipient shall give notice in writing to the Proposer that the Variation is refused and shall set out reasonable grounds for such refusal.

52.17 Where the Parties fail to agree a Variation, other than a National Variation or a Service Variation, the Proposer may:

52.17.1 withdraw the VP; or

52.17.2 refer the matter to dispute resolution under Clause 53 (*Dispute Resolution*).

53. DISPUTE RESOLUTION

Escalated Negotiation

53.1 Except to the extent that any injunction is sought relating to a matter arising out of Clause 59 (*Confidential Information of the Parties*), if any Dispute arises out of or in connection with this Agreement, the Parties in Dispute shall first attempt to settle it by either of them making a written negotiation offer to the other, and during the 15 Operational Days following receipt of the first such offer (the "**Negotiation Period**") each of the Parties in Dispute shall negotiate and be represented:

53.1.1 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

53.1.2 for the last 5 Operational Days, by its chief executive, director, or board member who has authority to settle the Dispute,

provided that no Party in Dispute where practicable shall be represented by the same individual under Clauses 53.1.1 and 53.1.2.

Mediation

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

53.2.1 to mediation arranged by the relevant Strategic Health Authority where the Commissioners are PCTs and the Provider is an NHS Trust; and

53.2.2 to mediation by CEDR or other independent body or organisation agreed between the Parties prior to the Service Commencement Date as set out in paragraph 1 of Section D Part 3.2 (*Details of Mediator and Independent Binding Pendulum Adjudicator*), in all other cases.

53.3 In relation to mediation in accordance with Clauses 53.2.1, during the mediation phase and in advance of the mediation session, each Party to the Dispute must submit to the mediator within 5 Operational Days of the mediator's request a signed position statement describing the precise points on which the Parties in Dispute disagree, and describing its own solution to the Dispute.

53.4 The provisions of Clauses 53.5, 53.6, 53.7 and 53.8:

53.4.1 shall apply to mediations under Clause 53.2.1; and

53.4.2 shall not apply to mediations under Clause 53.2.2 which shall follow the mediation process of CEDR or other independent body or organisation set out in paragraph 1 of Section D Part 3.2 (*Details of Mediator and Independent Binding Pendulum Adjudicator*).

53.5 Where the mediator is satisfied that the nature of the Dispute has been adequately documented in accordance with Clause 53.3, the mediator will allow each Party in Dispute 5 Operational Days in which to comment to him/her in writing on the other Party in Dispute's solution to the Dispute. The mediator may, in his/her absolute discretion, request any Party in Dispute to clarify any aspects of its signed position statement and upon receipt of such clarification, will forward the same to the other Party in Dispute. Following distribution by the mediator of the signed position statements and any clarification to the respective Parties in Dispute, the mediator will arrange a mediation session at a venue chosen by him/her to facilitate negotiation

and settlement of the Dispute. The mediation session shall be fixed for a date at least 10 Operational Days following receipt by the Parties in Dispute of the later of the other's signed position statement and any clarification.

53.6 Save that each Party in Dispute shall make an opening presentation of its position to the other and that the mediator will then meet each of the Parties in Dispute separately for such time as the mediator considers appropriate, the mediator shall determine the procedure of the mediation session. Neither Party in Dispute will terminate its participation in the mediation session until after the opening presentations have been given and the mediator has met both Parties in Dispute as provided for above.

53.7 The Parties in Dispute will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with the mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.

53.8 All information, whether oral, in writing or otherwise, arising out of or in connection with the mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever, provided that the provisions of this Clause 53.8 shall not apply to any information which would in any event have been admissible or disclosable in any such proceedings.

Independent Binding Pendulum Adjudication

53.9 If the Parties in Dispute are unable to settle the Dispute through mediation, then:

53.9.1 the Dispute shall be referred to independent binding pendulum adjudication by a written request, made within 10 Operational Days of the termination or failure of any mediation, from either Party in Dispute to:

53.9.1.1 CEDR to appoint an independent panel for that purpose, which independent panel shall have a maximum of 3 members. None of the members of the independent panel shall be, or have been, employed, or engaged, in any capacity by, nor have any interest in, any of the Parties in Dispute; or

53.9.1.2 any other independent organisation or body agreed between the Parties prior to the Service Commencement Date and set out in paragraph 2 of Section D Part 3.2 (*Details of Mediator and Independent Binding Pendulum Adjudicator*);

53.9.2 the procedures for an independent binding pendulum adjudication shall be determined by CEDR or by the organisation or body appointed pursuant to Clause 53.9.1.2, as applicable; and

53.9.3 the independent panel appointed by CEDR pursuant to Clause 53.9.1.1 or other independent organisation or body appointed pursuant to Clause 53.9.1.2 is authorised to determine the Dispute, but may do so only by making a finding wholly in favour of one of the Parties in Dispute.

53.10 The Parties in Dispute agree that a final and binding decision on a Dispute submitted to independent binding pendulum adjudication under Clause 53.9 shall be enforceable in court as if it were an agreement made directly between the Parties in Dispute.

53.11 The costs of any mediation under this Clause 53 will be borne equally by the Parties

in Dispute.

53.12 The costs of any independent binding pendulum adjudication under this Clause 53 will be borne by the unsuccessful Party in Dispute.

53.13 Unless this Agreement shall have been repudiated or terminated and notwithstanding that a Dispute remains unresolved, the Parties in Dispute shall continue to carry out their respective obligations in accordance with this Agreement and its Variations recorded in Section D Part 1 (*Recorded Variations*). All agreements and decisions resulting from dispute resolutions shall be recorded in Section D Part 3.1 (*Recorded Dispute Resolutions*).

Disputes between Different Divisions of Same NHS Body

53.14 To the extent that the Parties in Dispute are different divisions of the same NHS Body, including without limitation where the Parties in Dispute are the commissioning arm and the provider arm of the same PCT, such Parties in Dispute shall follow the procedure for dispute resolution set out in Section D Part 3.3 (*Disputes*) and in such circumstances the provisions of Clauses 53.1 to 53.13 shall not apply.

54. GOVERNANCE, TRANSACTION RECORDS AND AUDIT

54.1 The Provider shall comply with all reasonable written requests made by Monitor, CQC, the National Audit Office, the Audit Commission or its appointed auditors, any Authorised Person or the authorised representatives of Local Involvement Networks 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 such premises and/or the provision of the Services, and for information relating to the provision of the Services.

54.2 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 such premises and/or the provision of the Services, and for information relating to the provision of the Services. During such visits, subject to Law, Good Clinical Practice and Good Health and/or Social Care Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider shall not restrict access and shall give all reasonable assistance and provide all reasonable facilities.

54.3 Within 10 Operational Days of the Co-ordinating Commissioner's reasonable request, the Provider shall 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.

54.4 Subject to compliance with the Law and Good Clinical Practice and Good Health and/or Social Care Practice or unless otherwise agreed with the Co-ordinating Commissioner, the Parties shall implement all relevant recommendations:

54.4.1 in any report by CQC or Monitor;

54.4.2 agreed with the National Audit Office or the Audit Commission following any audit;

54.4.3 of any appropriate clinical audit; and

54.4.4 that are otherwise agreed by the Provider and the Co-ordinating

Commissioner to be implemented.

54.5 The Parties shall maintain complete and accurate accounts and transaction records of all payments, receipts and financial and other information relevant to the provision of the Services ("**Transaction Records**").

54.6 The Co-ordinating Commissioner and the Provider shall each have the right to appoint an independent third party auditor ("**Auditor**") who:

54.6.1 for the Co-ordinating Commissioner, may audit the Provider's coding and units of measurement in relation to the Prices or any other matters in respect of which the Co-ordinating Commissioner appoints an Auditor; and

54.6.2 for the Provider, may audit payment of the Expected Annual Contract Values, any non-payment made by a Commissioner, matters relating to the National Tariff and any other matters in respect of which the Provider appoints an Auditor,

and subject to any applicable Service User consent requirements, the Party being audited shall allow the Auditor a right of 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 shall be treated in accordance with Clause 59 (*Confidential Information of the Parties*).

54.7 In relation only to a Co-ordinating Commissioner required audit of Non-Tariff Prices and the Provider's compliance with Clause 7.7, the Provider shall provide the Auditor with particulars of its costs (including the costs of sub-contractors and suppliers) and permit the costs to be verified by inspection of accounts and other documents and records, and any Confidential Information so disclosed shall be treated in accordance with Clause 59 (*Confidential Information of the Parties*). If the Auditor concludes that the Provider has overcharged or undercharged, the Provider shall not be required to reimburse any overcharge and the Commissioners shall not be required to pay any undercharge for the relevant Contract Year, but the Parties may use the Auditor's report in agreeing Non-Tariff Prices for future Contract Years. The cost of the audit shall be borne by the Co-ordinating Commissioner.

54.8 Except in the case of an audit of Non-Tariff Prices pursuant to Clause 54.7, if the Auditor concludes that the Provider has overcharged, the Provider shall, within 10 Operational Days of receiving written notice of the overcharge, reimburse the overcharged Commissioner the amount of the overcharge and shall pay the reasonable costs of the audit.

54.9 Except in the case of an audit of Non-Tariff Prices pursuant to Clause 54.7, if the Auditor concludes that the Provider has undercharged, the undercharged Commissioner shall, within 10 Operational Days of receiving notice of the undercharge, pay to the Provider the amount of the undercharge and shall pay the reasonable costs of the audit.

54.10 Each Commissioner shall on request provide to the Provider the results of any annual Clinical Coding Audit relating to the Provider, and for the avoidance of doubt the provisions of Clauses 54.8 and 54.9 shall not apply in respect of any such Clinical Coding Audit.

54.11 If the Auditor concludes that the Provider has charged the correct amount, the costs of the audit shall be borne by the appointing Party.

55. SUSPENSION

55.1 A suspension event shall have occurred if:

55.1.1 the Co-ordinating Commissioner reasonably considers that a breach by the Provider of any obligation under this Agreement:

55.1.1.1 may create an immediate and serious threat to the health or safety of any Service User; or

55.1.1.2 may result in a material interruption in the provision of any one or more of the Services; or

55.1.2 the Provider has received a Contract Query Notice in respect of a Service or Services within 12 months of having agreed to implement a Remedial Action Plan in respect of the same issue with such Service or Services as is identified in the Contract Query Notice; or

55.1.3 Clauses 55.1.1 and 55.1.2 do not apply, but the Co-ordinating Commissioner, acting reasonably, considers that the circumstances constitute an emergency, including an Event of Force Majeure affecting provision of a Service or Services; or

55.1.4 a Second Exception Report has been issued under Clause 47.21 (*Contract Management*) and the Provider's Board of Directors has failed to rectify a breached Remedial Action Plan within the timescales indicated in that Second Exception Report; or

55.1.5 the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent; or

55.1.6 where the Provider is an NHS Foundation Trust, the Provider's Terms of Authorisation are amended such that the Provider is no longer able to provide the Services; or

55.1.7 the Co-ordinating Commissioner is advised in writing by the applicable SHA to suspend this Agreement in accordance with Guidance;

(each a "**Suspension Event**").

55.2 Where a Suspension Event occurs the Co-ordinating Commissioner:

55.2.1 may suspend the affected Service, or part of the Service, until the Provider demonstrates to the reasonable satisfaction of the Co-ordinating Commissioner that it is able to and will perform the suspended Service, or part of the Service (as applicable) to the required standard; and

55.2.2 shall promptly notify CQC or Other Regulatory Body, if appropriate, of such suspension.

55.3 The right to suspend a Service or part of a Service under Clause 55.2 may only be exercised by the issue of a Suspension Notice by the Co-ordinating Commissioner to the Provider.

55.4 When the Co-ordinating Commissioner becomes reasonably satisfied that the Provider is able to and will perform the suspended Service, or part of the Service (as applicable) to the required standard, it may require the Provider to restore the

provision of the suspended Service or part of the Service (as applicable) by issuing a notice to the Provider (a "**Restoration Notice**").

55.5 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 though the relevant suspension pursuant to Clause 55.2.1 has been referred to dispute resolution under Clause 53 (*Dispute Resolution*).

Consequences of Suspension

55.6 During the suspension of any Service, or part of a Service, under Clause 55.2, the Provider shall not be entitled to claim or receive any payment for the suspended Service or part of the Service.

55.7 Except where suspension occurs by reason of an Event of Force Majeure, the Provider shall indemnify the Commissioners and keep the Commissioners indemnified in respect of any Losses directly and reasonably incurred by a Commissioner in respect of a suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service or part of a Service from an alternative provider) and the Commissioners shall take all reasonable steps to minimise and mitigate such Losses.

55.8 On suspension of a Service, or part of a Service, the Provider shall for a reasonable period after service of the Suspension Notice:

55.8.1 co-operate fully with the Co-ordinating Commissioner and any successor provider of the suspended Service, or part of the Service in order to ensure continuity and a smooth transfer of the suspended Service, or part of the Service, to avoid any inconvenience or any risk to the health and safety of Service Users or employees of the Commissioners or members of the public, and for these purposes the Provider may be required by the Co-ordinating Commissioner to agree with the Co-ordinating Commissioner, and with any alternative successor provider a transition plan; and

55.8.2 at the reasonable request of the Co-ordinating Commissioner and at the cost of the Provider:

55.8.2.1 promptly render all reasonable assistance and provide all information necessary to effect an orderly assumption of the suspended Service, or part of the Service by an alternative successor provider; and

55.8.2.2 deliver to the Co-ordinating Commissioner all materials, papers, documents and operating manuals owned by the Commissioners and utilised by the Provider in the provision of the suspended Service or part of the Service,

and the Parties shall use all reasonable endeavours to minimise any inconvenience caused to or likely to be caused to Service Users or prospective service users as a result of the suspension of the Service or part of the Service.

55.9 If it is determined, pursuant to Clause 53 (*Dispute Resolution*), that the Co-ordinating Commissioner acted unreasonably in suspending a Service, or part of a Service, the relevant Commissioner shall indemnify and keep the Provider indemnified in respect of any Losses directly and reasonably incurred by the Provider in respect of such suspension, and the Provider shall take all reasonable steps to minimise and mitigate such Losses.

55.10 During any period of suspension of a Service, or part of a Service:

55.10.1 the Commissioners shall use reasonable efforts to ensure that no further Service Users are referred to the Provider who require the suspended Service or part of the Service;

55.10.2 the Provider shall cease to accept any referrals of Service Users who require the suspended Service or part of the Service; and

55.10.3 where appropriate, the Provider shall implement its Essential Services Continuity Plan and the Parties shall co-operate fully with the intention of ensuring that:

55.10.3.1 the suspended Service or part of the Service is commissioned without delay from an alternative provider; and

55.10.3.2 there is no interruption in the availability to the relevant Commissioner of the Mandatory Goods and Services and the Essential Services.

56. TERMINATION

56.1 Subject to any obligation to continue to provide Mandatory Goods and Services and/or Essential Services, the Provider may voluntarily terminate this Agreement or any part of the Services:

56.1.1 by giving the Co-ordinating Commissioner not less than 12 months' written notice at any time after the Service Commencement Date; or

56.1.2 subject always to Clause 52.10, in the case only of the Parties failing to agree a National Variation, by giving the Co-ordinating Commissioner not less than 3 months' written notice following the issue of a notice that a National Variation is refused; or

56.1.3 subject always to Clause 52.11, and only in relation to the Service, or part of a Service affected by the matters in a Service Variation proposal served pursuant to Clause 52 (*Variations*), by giving the Co-ordinating Commissioner not less than 3 months' written notice, or 6 months' written notice where the Service Variation is likely to have a material adverse effect on Staff, following the issue of a notice that such Service Variation is refused.

56.2 The Co-ordinating Commissioner may voluntarily terminate this Agreement or any part of the Services:

56.2.1 by giving the Provider not less than 12 months written notice at any time after the Service Commencement Date; or

56.2.2 subject always to Clause 52.10, in the case only of the Parties failing to agree a National Variation, by giving the Provider not less than 3 months' written notice following the issue of a notice that a National Variation is refused; or

56.2.3 subject always to Clause 52.11, and only in relation to the Service or part of a Service affected by the matters in a Service Variation proposal served pursuant to Clause 52 (*Variations*), by giving the Provider not less than 3 months' written notice or 6 months' written notice where the Service Variation is likely to have a material adverse effect on Staff, following the

issue of a notice that such Service Variation is refused.

56.3 Either the Co-ordinating Commissioner or the Provider may terminate this Agreement by written notice, with immediate effect, if and to the extent that one of the Commissioners or the Provider suffers an Event of Force Majeure and such Event of Force Majeure persists for more than 20 Operational Days without the Parties agreeing alternative arrangements.

56.4 Subject to any express provision of this Agreement to the contrary (including without limitation the Provisions relating to Withholding and/or Retention of Payment), and provided that the Provider has complied with its obligations under Clause 7 (*Prices and Payment*), if at any time the aggregate undisputed amount due to the Provider from the Co-ordinating Commissioner and/or any one or more of its Associates exceeds:

56.4.1 25% of the Expected Annual Contract Value; or

56.4.2 where there is no applicable Expected Annual Contract Value, the equivalent to the Provider of 3 months' average income under this Agreement,

and if full payment is not made by the Commissioner(s) within 20 Operational Days of receipt of written notice from the Provider requiring payment to be made, the Provider may terminate this Agreement in respect of the whole (but not part only) of the relevant Services by serving written notice to take effect immediately.

56.5 The Co-ordinating Commissioner may terminate this Agreement, any Services or part of the Services, with immediate effect, by written notice to the Provider if:

56.5.1 the Provider ceases to carry on its business or substantially the whole of its business; or

56.5.2 a Provider Insolvency Event of Default occurs; or

56.5.3 subject to the provisions of Clause 47 (*Contract Management*), the Provider is in persistent or repetitive breach of the Quality Requirements or regulatory compliance standards issued by CQC or Other Regulatory Body or, if applicable, Monitor; or

56.5.4 pursuant to Clause 47.21 two or more Second Exception Reports are issued to the Provider within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under the procedure for dispute resolution in Clause 53 (*Dispute Resolution*); or

56.5.5 the Provider fails to comply with Clause 63.2 or Clause 63.5 and the Provider has failed to remedy such breach within 20 Operational Days of receipt of a notice from the Co-ordinating Commissioner identifying such breach; or

56.5.6 there is:

56.5.6.1 a Provider Change in Control and, within 30 Operational Days following receipt of the information provided to the Co-ordinating Commissioner in the Change in Control Notification, the Co-ordinating Commissioner reasonably considers that, as a result of such 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 Agreement (and, in reaching

such conclusion regarding the effect that the Provider Change in Control may have on the ability of the Provider to provide the Services, the Co-ordinating Commissioner may consider any factor, in its absolute discretion, that it considers relevant including any concerns or issues raised by CQC (or Other Regulatory Body), Monitor or the Charity Commission); or

56.5.6.2 a breach of Clause 63.9.1 (*Change in Control*); or

56.5.6.3 a breach of Clause 63.9.2 (*Change in Control*) and the Provider has failed to replace the Material Sub-contractor within the relevant period specified in the notice served upon the Provider pursuant to Clause 63.10 (*Change in Control*); or

56.5.6.4 a Material Sub-contractor Change in Control and the Provider has failed to replace the Material Sub-contractor within the relevant period specified in the notice served upon the Provider pursuant to Clause 63.8.3 (*Change in Control*); or

56.5.7 the Conditions Precedent are not met by the Longstop Date; or

56.5.8 the Provider:

56.5.8.1 fails to obtain any Consent; or

56.5.8.2 loses any Consent; or

56.5.8.3 has any Consent varied or restricted,

the effect of which might reasonably be considered by the Co-ordinating Commissioner to have a material adverse effect on the provision of the Services; or

56.5.9 the Provider materially fails to comply with the requirements of Clause 61 (*NHS Branding, Marketing and Promotion*); or

56.5.10 the Provider has breached any of its obligations under this Agreement and such breach materially and adversely affects the performance of the Provider's obligations under this Agreement, and the Provider has failed to remedy such breach(es) within 40 Operational Days of receipt of notice from the Co-ordinating Commissioner identifying such breach(es); or

56.5.11 the Provider has breached the terms of Clause 65 (*Prohibited Acts*); or

56.5.12 any of the Provider's registrations are cancelled by CQC or where applicable Other Regulatory Body.

56.6 In addition to the Co-ordinating Commissioner's rights under Clause 56.5 (and without limitation to any other rights it may have under this Agreement), if the Provider is an NHS Foundation Trust the Co-ordinating Commissioner may terminate this Agreement, with immediate effect, by written notice to the Provider, if:

56.6.1 an Order is made pursuant to section 54 of the 2006 Act to dissolve the Provider; or

56.6.2 Monitor exercises any one or more of the powers in sections 52(3) or 52(4) of the 2006 Act or requires action under section 53 of the 2006 Act; or

56.6.3 Monitor transfers the Provider's responsibility for Mandatory Goods and Services and/or Essential Services and/or Protected Assets, and such transfer materially affects the Provider's ability to perform its obligations under this Agreement; or

56.6.4 the Provider's Terms of Authorisation are amended such that the Provider is no longer able to provide the Services; or

56.6.5 the Provider applies to Monitor for its dissolution and transfer of its property and liabilities to another body corporate pursuant to section 56 of the 2006 Act.

56.7 The right to terminate under Clause 56.6 shall not apply when the Secretary of State indicates to the Co-ordinating Commissioner in writing his intention to make an Order, or Monitor indicates to the Co-ordinating Commissioner in writing its intention to issue an Authorisation for an NHS Foundation Trust to offer a complete novation of this Agreement to a successor provider. When such Order is made or Authorisation is issued (and the successor provider is able and willing), the Commissioners shall enter into a novation agreement with the successor provider.

56.8 If the Order is not made or the Authorisation is not issued pursuant to Clause 56.7 within 3 months, or the successor provider is not willing to enter into a novation agreement within a further month, the Co-ordinating Commissioner may terminate this Agreement, with immediate effect, by written notice to the Provider.

56.9 If the Co-ordinating Commissioner becomes entitled to terminate this Agreement under this Clause 56 then, without prejudice to any other right or remedy it may have under this Agreement:

56.9.1 the Co-ordinating Commissioner may instead of terminating this Agreement elect to issue a written notice to the Provider terminating any of the Services and/or part of the Services, and such notice shall take immediate effect; and

56.9.2 each Commissioner may itself provide or procure the provision of the terminated Services.

In exercising its rights under this Clause 56.9, each of the Commissioners shall have due regard for other Services provided by the Provider, and in particular for the effect on the Provider's ability to maintain the provision of relevant Mandatory Goods and Services and Essential Services.

56.10 The Provider may terminate this Agreement, with immediate effect, by written notice to the Co-ordinating Commissioner if any Commissioner is in persistent material breach of its obligations under this Agreement which has a material and adverse effect on the ability of the Provider to provide the Services, and the Commissioner fails to remedy such breach within 40 Operational Days of the Co-ordinating Commissioner's receipt of the Provider's notice identifying the breach.

56.11 Where a Service becomes a duly designated service during the term of this Agreement and the Provider is unable or fails to meet the designated service standards, the Commissioner may terminate that part of this Agreement which relates to that designated service by written notice with immediate effect.

56.12 Expiry or termination of this Agreement shall not affect any rights or liabilities of the Parties that have accrued prior to the date of expiry or termination.

57. CONSEQUENCE OF EXPIRY OR TERMINATION

57.1 Except where termination occurs under Clauses 56.1.1, 56.2.1, 56.3, 56.4 or 56.10, if as a result of termination of this Agreement, or termination of any Services or part of the Services in accordance with this Agreement, any Commissioner either procures the Services or part of them from an alternative provider or executes the Services or part of them itself, and the reasonable cost of doing so exceeds the amount that would have been payable to the Provider for providing the same Services or part of them, then that Commissioner, acting reasonably, shall be entitled to recover the excess cost, together with all reasonable administration costs, in addition to any other sums payable by the Provider to the Co-ordinating Commissioner in respect of any termination, from the Provider for a period of 6 months after termination.

57.2 In the event that this Agreement expires or is terminated by reason of an Event of Force Majeure, each Commissioner shall pay the Provider pro rata for any Services delivered by the Provider following such expiration or termination in accordance with Clause 7 (*Prices and Payment*) until the Provider ceases to provide the Services.

57.3 On termination of this Agreement or termination of any Services or part of the Services, and where reasonable and appropriate on the expiry of this Agreement, the Provider shall for a reasonable period before (and during any applicable notice period) and after such termination or expiry:

57.3.1 co-operate fully with the Co-ordinating Commissioner and any successor provider of the Services or part of the Services that have been terminated in order to ensure continuity and a smooth transfer of the Services or such part of the 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 to that end the Provider may agree with the Co-ordinating Commissioner, and where appropriate with any successor provider, a transition plan; and

57.3.2 at the reasonable cost and reasonable request of the Co-ordinating Commissioner:

57.3.2.1 promptly render all reasonable assistance and information to the extent necessary to effect an orderly assumption of the Services or such part of the Services by a successor provider;

57.3.2.2 deliver to the Co-ordinating Commissioner all materials, papers, documents and operating manuals owned by the Commissioners and utilised by the Provider in the provision of any Services or such part of the Services which have been terminated; and

57.3.2.3 in so far as it is in the power of the Provider to do so, 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 Services or such part of the Services which have been terminated,

and the Parties shall use all reasonable endeavours to minimise any inconvenience caused to or likely to be caused to Service Users or prospective service users as a result of the expiry or termination of this Agreement or part of the Services.

57.4 Each Commissioner shall pay the Provider pro rata for any Services properly delivered by the Provider following termination of this Agreement, or termination of any Services or any part of the Services until the Provider ceases to provide the Services or such part of the Services.

57.5 On expiry or termination of this Agreement or termination of any Services or any part of the Services:

57.5.1 the Commissioners shall use reasonable efforts to ensure that no further Service Users are referred to the Provider who require any expired or terminated Services or part of the Services;

57.5.2 the Provider shall cease to accept any referrals that require any expired or terminated Services or part of the Services; and

57.5.3 subject to any appropriate arrangements made under Clause 57.3.1, the Provider shall immediately cease its treatment of Service Users requiring the terminated or expired Services, or arrange for their transfer or discharge as soon as is practicable in accordance with Good Clinical Practice and Good Health and/or Social Care Practice.

57.6 Where any termination of this Agreement or termination of any Services or part of the Services takes place with immediate effect in accordance with Clause 56 (*Termination*), and therefore the Provider is not able or is not permitted to continue to provide the Services or part of the Services under any transition plan, or implement arrangements for the transition to a successor provider, then the Provider shall implement its Essential Services Continuity Plan and shall co-operate fully with the Co-ordinating Commissioner and any relevant Commissioners to ensure that:

57.6.1 the relevant Services are, or any part of the Services is commissioned without delay from an alternative provider; and

57.6.2 there is no interruption in the availability to the relevant Commissioners of the Mandatory Goods and Services and the Essential Services.

57.7 If as part of any procurement exercise for the award of this Agreement any exit arrangements are agreed and/or it was agreed that costs on termination (over and above any other termination sums payable in accordance with the terms of this Agreement) shall be payable by any of the Parties (as appropriate) upon termination of this Agreement or any Service or any part of a Service, and the relevant exit arrangements and/or termination costs have been set out in Section C Part 11 (*Exit Arrangements*), such exit arrangements and/or agreed termination costs shall be completed and/or paid on the terms set out in Section C Part 11 (*Exit Arrangements*).

58. PROVISIONS SURVIVING TERMINATION

58.1 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 Agreement, together with all indemnities, shall continue after such expiry or termination, subject to such limitations of time as are expressed in this Agreement.

58.2 For the avoidance of doubt and without limiting the scope of this Clause 58, the provisions of Clause 7 (*Prices and Payment*), Clause 13 (*Service User Health Records*), Clause 16 (Essential *Services Continuity*), Clause 17 (*Transfer of and Discharge from Care Obligations*), Clause 23 (*Staff)*, Clause 25 (*Incidents Requiring Reporting*), Clause 27 (*Complaints),* Clause 28 (*Death of a Service User*), Clause 37 (*NHS Counter-fraud and Security Management*), Clause 39 (*Information*

Requirements), Clause 43 (*18 Weeks Referral-to-Treatment Standard for Consultant-led Services and Financial Adjustments*), Clause 44 (*Financial Adjustments for performance in Reducing Clostridium Difficile*), Clause 47 (*Contract Management*), Clause 50 (*Liability and Indemnity*), Clause 54 (save for Clause 54.7), (*Governance, Transaction Records and Audit*), Clause 56 (*Termination*), Clause 57 (*Consequence of Expiry or Termination*), Clause 59 (*Confidential Information of the Parties*), Clause 60 (*Data Protection, Freedom of Information and Transparency*), Clause 62 (*Intellectual Property*), Clause 65 (*Prohibited Acts*), the reconciliation provisions of Section B Part 9 (*Quality Incentive Schemes*) and Section D Part 5 (*Risk Share Agreement*) shall survive expiry or termination of this Agreement.

59. CONFIDENTIAL INFORMATION OF THE PARTIES

59.1 Other than as allowed in this Agreement, Confidential Information is owned by the Party that discloses it (the "**Disclosing Party**") and the Party that receives it (the "**Receiving Party**") has no right to use it.

59.2 Subject to Clauses 59.3 and 59.4, the Receiving Party agrees:

59.2.1 to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;

59.2.2 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

59.2.3 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.

59.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

59.3.1 in connection with any dispute resolution under Clause 53 (*Dispute Resolution*);

59.3.2 in connection with any litigation between the Parties;

59.3.3 to comply with the Law;

59.3.4 to CQC, Other Regulatory Body and/or to Monitor as required;

59.3.5 to its staff, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in Clause 59.2;

59.3.6 to NHS Bodies for the purpose of carrying out their duties; and

59.3.7 as permitted under or as may be required to give effect to Clause 47 (*Contract Management*).

59.4 The obligations in Clauses 59.1 and 59.2 shall not apply to any Confidential Information which:

59.4.1 is in or comes into the public domain other than by breach of this Agreement;

59.4.2 the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or

59.4.3 the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

59.5 Subject to Clause 64.1.3 and Clause 64.2.3 (*Warranties*), the Disclosing Party does not warrant the accuracy or completeness of the Confidential Information.

59.6 The Receiving Party shall indemnify the Disclosing Party and shall 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 Clause 59 (*Confidential Information of the Parties*).

59.7 The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause 59 (*Confidential Information of the Parties*) by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Clause 59 (*Confidential Information of the Parties*).

59.8 This Clause 59 (*Confidential Information of the Parties*) shall survive the expiry or the termination of this Agreement for any reason, for a period of 5 years.

59.9 This Clause 59 (*Confidential Information of the Parties*) shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

60. DATA PROTECTION, FREEDOM OF INFORMATION AND TRANSPARENCY

60.1 The Parties acknowledge their respective duties under the DPA and the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

Data Protection

60.2 The Provider shall achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit applicable to it. Where the Provider has not achieved level 2 performance by the Service Commencement Date, the Co-ordinating Commissioner may, in its sole discretion, agree a plan with the Provider to enable the Provider to achieve level 2 performance within a reasonable time.

60.3 To the extent that the Provider is acting as a Data Processor on behalf of a Commissioner, the Provider shall, in particular, but without limitation:

60.3.1 only process such Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by the Commissioner under this Agreement;

60.3.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements in Clause 60.4.3 below, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;

60.3.3 take reasonable steps to ensure the reliability of Staff who will have access to such Personal Data, and ensure that such Staff are aware of and trained in the policies and procedures identified in Clauses 60.4.4, 60.4.5 and 60.4.6 below; and

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

60.4 The Provider and each Commissioner shall ensure that Personal Data is safeguarded at all times in accordance with the Law, which shall include without limitation obligations to:

60.4.1 perform an annual information governance self-assessment using the NHS information governance toolkit;

60.4.2 have an information governance lead able to communicate with the Provider's board, who will take the lead for information governance and from whom the Provider's board shall receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;

60.4.3 (where transferred electronically) only transfer data (i) where this is essential having regard to the purpose for which the transfer is conducted; and (ii) that is encrypted to the higher of the international data encryption standards for healthcare and the National Standards (this includes, but is not limited to, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes);

60.4.4 have policies which are rigorously applied that describe individual personal responsibilities for handling Personal Data;

60.4.5 have a policy that allows it to perform its obligations under the NHS Care Records Guarantee;

60.4.6 have agreed protocols for sharing Personal Data with other NHS organisations and (where appropriate) with non-NHS organisations; and

60.4.7 where appropriate have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of such recordings.

Freedom of Information and Transparency

60.5 Where the Provider is not a Public Authority, the Provider acknowledges that the Commissioners are subject to the requirements of the FOIA and shall assist and co-operate with each Commissioner to enable the Commissioner to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:

60.5.1 that this Agreement and any other recorded information held by the Provider on the Commissioners' behalf for the purposes of this Agreement are subject to the obligations and commitments of the Commissioners under the FOIA;

60.5.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Commissioner to whom the request is addressed;

60.5.3 that where the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the relevant Commissioner to whom the request is addressed) and will promptly (and in any event within 2 Operational Days) transfer the request to the relevant

Commissioner;

60.5.4 that the Commissioners, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Agreement either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and

60.5.5 to assist the Commissioners in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Commissioner within 5 Operational Days of such request and without charge.

60.6 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.

60.7 Notwithstanding any other term of this Agreement, the Provider hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to the Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

60.8 In preparing a copy of this Agreement for publication pursuant to Clause 60.7 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 shall be at the Commissioners' absolute discretion.

60.9 The Provider shall assist and cooperate with the Commissioners to enable the Commissioners to publish this Agreement.

61. NHS BRANDING, MARKETING AND PROMOTION

61.1 The Provider shall comply with the applicable NHS brand policy and guidelines, as revised, updated or re-issued from time to time by the Department of Health, and which are currently accessible at www.nhsidentity.nhs.uk (or such replacement website as is made available from time to time). In addition, where appropriate to the Services the Provider shall comply with the applicable local authority brand guidance and guidelines.

62. INTELLECTUAL PROPERTY

62.1 Except as set out expressly in this Agreement no Party shall acquire the IPR of any other Party.

62.2 The Provider now grants the Commissioners a fully paid up non-exclusive licence to use Provider IPR for the duration of this Agreement for the purposes of the exercise of their functions and obtaining the full benefit of the Services which shall include the dissemination of best practice within the NHS.

62.3 The Commissioners now grant the Provider a fully paid up non-exclusive licence to use Commissioner IPR for the duration of this Agreement for the sole purpose of providing the Services.

62.4 Where Provider IPR is software the Provider shall enter into an Escrow Arrangement

on the Effective Date.

62.5 In the event that the Provider, or the Commissioners at any time devise, discover or acquire rights in any Improvement it shall promptly notify the owner of the IPR to which such Improvement relates giving full details of the Improvement and such information and explanations as that party may reasonably require to be able to use such Improvement effectively and shall assign to that party all rights and title in any such Improvement without charge.

62.6 The Provider shall disclose all documents and information concerning the development of Best Practice IPR to the Co-ordinating Commissioner at Reviews and shall grant the Commissioners a fully paid up non-exclusive perpetual licence to use Best Practice IPR solely for the purpose of teaching, training and research within their own organisations.

63. CHANGE IN CONTROL

63.1 This Clause 63 applies to any Change in Control of:

63.1.1 the Provider or any of its Holding Companies (if any) (a "**Provider Change in Control**"); and/or

63.1.2 a Material Sub-contractor or any of its Holding Companies (if any) (a "**Material Sub-contractor Change in Control**"),

but this Clause 63 shall not apply to a Change in Control of a company which is a Public Company.

63.2 The Provider shall,

63.2.1 as soon as possible upon, and in any event within 5 Operational Days following, a Provider Change in Control; and/or

63.2.2 immediately upon becoming aware of a Material Sub-contractor Change in Control,

notify the Co-ordinating Commissioner of such Change in Control and submit to the Co-ordinating Commissioner a completed Change in Control Notification.

63.3 If the Provider indicates in the Change in Control Notification an intention or proposal to make any changes as a result of or in connection with such Change in Control, then to the extent that such intended or proposed changes shall require a change to the terms of this Agreement in order to be effective, such intended or proposed change shall only be effective when a Variation is made in accordance with Clause 52 (*Variations*). The Co-ordinating Commissioner shall not and shall not be deemed, by a failure to respond or comment on the Change in Control Notification, to have either assented to or to otherwise have waived its rights pursuant to Clause 52 (*Variations*) in respect of any such intended or proposed change.

63.4 If the Provider does not specify in the Change in Control Notification an intention or proposal to make a change, which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Agreement as a result of or in connection with such Change in Control, then, unless the Co-ordinating Commissioner shall provide its written consent to the relevant action, the Provider shall not be entitled to a Service Variation in respect of such proposed change for a period of 6 months from the date of such Change in Control Notification.

63.5 If 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 such Change in Control then, unless the Co-ordinating Commissioner shall provide its written consent to the relevant action, the Provider shall:

63.5.1 procure that there is no sale or other disposal of the legal or beneficial interest in the Provider's Premises which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Agreement; and

63.5.2 continue providing the Services from the Provider's Premises,

in each case for a period of 12 months from the date of such Change in Control Notification. The provisions of this Clause 63.5 shall 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.

63.6 Without prejudice to Clause 63.2, the Provider shall supply (and shall use its reasonable endeavours to procure that a Material Sub-contractor shall supply) to the Co-ordinating Commissioner, such further information relating to the Change in Control as the Co-ordinating Commissioner may reasonably request, provided that the Co-ordinating Commissioner makes any such request within 20 Operational Days of receiving the Change in Control Notification.

63.7 The Provider shall use its reasonable endeavours to ensure that the terms of its contract with any Material Sub-contractor shall include a provision obliging the Material Sub-contractor to inform the Provider in writing upon, and in any event within 5 Operational Days of, a Material Sub-contractor Change in Control in respect of such Material Sub-contractor.

63.8 If:

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

63.8.2 following consideration of the information provided to the Co-ordinating Commissioner in the Change in Control Notification or pursuant to Clause 63.6, the Co-ordinating Commissioner reasonably considers that, as a result of such 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 Agreement (and, in reaching such conclusion, the Co-ordinating Commissioner may consider any factor, in its absolute discretion, that it considers relevant to the provision of Services),

then:

63.8.3 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 such other period as the Co-ordinating Commissioner may, acting reasonably, consider appropriate taking into account the interests of Service Users and the need for the continuity of Services), and such other period shall be specified in the written notice or notified to the Provider as soon as practicable thereafter; and

63.8.4 the Provider shall replace the relevant Material Sub-contractor within the relevant period specified in the notice served by the Co-ordinating Commissioner pursuant to Clause 63.8.3; and

63.8.5 for the avoidance of doubt, the provisions of Clause 51 (*Assignment and Sub-contracting*) shall apply in relation to such replacement Material Sub-contractor and, upon the granting of the consent referred to in Clause 51.1 or 51.2, the provisions of Section C Part 5 (*Provider's Material Sub-*contractors) shall be amended accordingly.

63.9 Notwithstanding any other provision of this Agreement, a Restricted Person shall not, and:

63.9.1 the Provider shall not permit a Restricted Person to, at any time hold five (5) per cent 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

63.9.2 the Provider shall not permit (and shall procure that a Material Sub-contractor shall not at any time permit) a Restricted Person to, at any time hold five (5) per cent 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.

63.10 If the Provider breaches Clause 63.9.2, the Co-ordinating Commissioner may by serving a written notice upon the Provider, require the Provider to replace the relevant Material Sub-contractor:

63.10.1 within 5 Operational Days; or

63.10.2 within such other period specified in the written notice (including immediately), where the Co-ordinating Commissioner reasonably considers that such other period is necessary or appropriate (taking into account any factors which the Co-ordinating Commissioner considers relevant in its absolute discretion, including without limitation, the interests of Service Users and the need for the continuity of Services), and

the Provider shall replace the relevant Material Sub-contractor within the relevant period specified in such notice.

63.11 Nothing in this Clause 63 shall prevent or restrict the Provider from discussing with the Co-ordinating Commissioner a proposed Change in Control in advance of the same occurring. In such circumstances, all and any such information provided to or received by the Co-ordinating Commissioner in relation to such proposed Change in Control shall be Confidential Information for the purposes of Clause 59 (*Confidential Information of the Parties*) of this Agreement.

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

64. WARRANTIES

64.1 The Provider warrants to the Commissioners that:

64.1.1 it has full power and authority to enter into this Agreement and all governmental or official approvals and consents and all necessary Consents have been obtained and are in full force and effect;

64.1.2 its execution of this Agreement does not and will not contravene or conflict with its constitution, Terms of Authorisation, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;

64.1.3 the copies of all documents supplied to the Commissioners or any of their advisers by or on its behalf and listed in Section C Part 4 (*Documents Relied On*) from time to time are complete and their contents are true;

64.1.4 it has the right to permit disclosure and use of Confidential Information for the purpose of this Agreement;

64.1.5 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 Agreement;

64.1.6 any Material Sub-contractor shall have and shall maintain all Indemnity Arrangements and Consents and deliver the subcontracted services in accordance with the Provider's obligations under this Agreement; and

64.1.7 all information supplied by it to the Commissioners during the award procedure leading to the execution of this Agreement 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 Agreement.

64.2 Each Commissioner warrants to the Provider that:

64.2.1 it has full power and authority to enter into this Agreement and all necessary governmental or official approvals and consents have been obtained and are in full force and effect;

64.2.2 its execution of this Agreement 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;

64.2.3 the copies of all documents supplied to the Provider or any of its advisers by it or on its behalf and listed in Section C Part 4 (*Documents Relied On*) from time to time are complete and their contents are true;

64.2.4 it has the right to permit disclosure and use of Confidential Information for the purpose of this Agreement; and

64.2.5 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 Agreement.

64.3 The warranties set out in this Clause 64 are given on the Effective Date and repeated on every day during the term of this Agreement.

65. PROHIBITED ACTS

65.1 The Provider shall not do any of the following ("**Prohibited Acts**"):

65.1.1 offer, give, or agree to give the Commissioners (or any of their officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not

having done any act in relation to the obtaining of performance of this Agreement or any other contract with the Provider, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Provider; and

65.1.2 in connection with this Agreement, pay or agree 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.

65.2 If the Provider or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the Co-ordinating Commissioner in relation to this Agreement, the Co-ordinating Commissioner shall be entitled:

65.2.1 to exercise its right to terminate under Clause 56.5.11 and to recover from the Provider the amount of any loss resulting from the termination; and

65.2.2 to recover from the Provider the amount or value of any gift, consideration or commission concerned; and

65.2.3 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.

66. CONFLICTS OF INTEREST

66.1 If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on another Party's decision (acting reasonably) to determine whether or not to contract or continue to contract with that other Party substantially on the terms of this Agreement, the Party aware of the conflict shall immediately declare such an interest to the other and the other Party may take such action under this Agreement as it deems necessary without prejudice to any other right it may have under Law.

67. FORCE MAJEURE

67.1 Where a Party is (or claims to be) affected by an Event of Force Majeure, it shall take all reasonable steps to mitigate the consequences of it, resume performance of its obligations as soon as practicable and use all reasonable efforts to remedy its failure to perform its obligations under this Agreement.

67.2 Subject to Clause 67.1 (and subject to Clause 67.3 for ambulance services only), the Party claiming relief shall be relieved from liability under this Agreement to the extent that because of the Event of Force Majeure it is not able to perform its obligations under this Agreement.

67.3 Where the Provider provides ambulance services, nothing in this Agreement shall

67.3.1 relieve the Provider from its obligations to provide such Services in accordance with this Agreement and the Law (including, without limitation, the Civil Contingencies Act 2004) where such Services required relate to an Event of Force Majeure that has arisen;

67.3.2 subject to Clause 67.3.1, prevent the Provider from relying upon Clause 67.2 where the Services required relate to an event or circumstance in respect of which, due to the subsequent occurrence of an Event of Force Majeure, the Provider is prevented from performing its obligations under this Agreement.

67.4 The Co-ordinating Commissioner shall not be entitled to exercise its rights under the Provisions relating to Withholding and/or Retention of Payment), to the extent that the circumstances giving rise to such rights arise as a result of an Event of Force Majeure.

67.5 The Party claiming relief shall serve an initial written notice on the other Party immediately it becomes aware of the Event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief shall then serve a detailed written notice within a further 5 Operational Days. This detailed notice shall contain all relevant available information relating to the failure to perform 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 it and resume full delivery of Services.

67.6 Notwithstanding any other provision in this Agreement, where an Event of Force Majeure occurs that affects the Provider, the Provider shall where applicable ensure that all Service Users that it detains securely in accordance with the Law shall remain in a state of secure detention as required by the Law.

68. THIRD PARTY RIGHTS

68.1 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Agreement, provided that:

68.1.1 to the extent that this Agreement applies in their favour, it may be enforced by:

68.1.1.1 a person who is the Provider's employee and is performing the Services for the Provider, where the matter to be enforced or the benefit to be enjoyed arises under Clause 23 (*Staff*), other than Clauses 23.2 and 23.3.2; and

68.1.1.2 the Secretary of State; and

68.1.1.3 the Department of Health; and

68.1.1.4 any relevant Strategic Health Authority; and

68.1.1.5 CQC or Other Regulatory Body; and

68.1.1.6 Monitor; and

68.1.1.7 NHS Protect; and

68.1.1.8 the National Audit Office; and

68.1.1.9 the Audit Commission; and

68.1.1.10 any PCT.

68.2 Subject to Clause 52.2.2 (*Variations*), the rights of the Parties to terminate, rescind or agree any Variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

69. ENTIRE AGREEMENT

69.1 This Agreement constitutes the entire agreement and understanding of the Parties

and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement, 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.

69.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement as a warranty or in any document agreed by the Parties to be contractually binding and listed in Section C Part 4 (*Documents Relied On*).

69.3 Nothing in this Clause 69 shall exclude any liability for fraud or any fraudulent misrepresentation.

70. SEVERABILITY

70.1 If any provision or part of any provision of this Agreement is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable shall be severed from this Agreement and this shall not affect the validity and/or enforceability of the remaining part of the provision or other provisions.

71. WAIVER

71.1 Any relaxation or delay of any Party in exercising any right under this Agreement shall not be taken as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right.

72. REMEDIES

72.1 Save as may be expressly set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity, by statute or otherwise.

72.2 Neither the expiry nor the termination of this Agreement shall prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any Commissioner or to the Provider.

73. EXCLUSION OF PARTNERSHIP

73.1 Nothing in this Agreement shall create a partnership or joint venture or relationship of employer and employee or principal and agent between any Commissioner and the Provider.

74. NON-SOLICITATION

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

74.2 Subject to Guidance, it shall not be considered to be a breach of the obligation under Clause 74.1 where 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 the relevant Party for the recruitment of clinical or nursing staff or consultants and 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 relevant Party.

75. NOTICES

75.1 Any notices given under this Agreement shall be in writing and shall be served by hand, post, or electronic mail by sending the same to the address for the relevant Party set out in the Particulars.

75.2 Notices:

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

75.2.2 by hand shall be effective upon delivery;

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

76. COMPLIANCE WITH THE LAW

76.1 The Parties shall comply with the Law in performing their obligations under this Agreement, provided that, where an obligation under this Agreement to comply with the Law would oblige a Party to comply with Guidance where in exceptional individual circumstances to do so would:

76.1.1 not be consistent with Good Clinical Practice; or

76.1.2 not be consistent with Good Health and/or Social Care Practice; or

76.1.3 not be in the best interests of a Service User; or

76.1.4 otherwise be substantially inconsistent with the aims of this Agreement,

such Party may in its reasonable discretion elect not to follow the relevant Guidance, without taking a substantially different course to it.

77. COSTS AND EXPENSES

77.1 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

78. COUNTERPARTS

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

79. GOVERNING LAW AND JURISDICTION

79.1 This Agreement shall be considered as a contract made in England and shall be subject to the laws of England.

79.2 Subject to the provisions of Clause 53 (*Dispute Resolution*), the Parties agree that the courts of England shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement.

SCHEDULE 1 - DEFINITIONS AND INTERPRETATION

1. The headings in this Agreement shall not affect its interpretation.

2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.

4. References to Clauses, Sections and Schedule 1 are to the Clauses, Sections and Schedule 1 of this Agreement, unless expressly stated otherwise.

5. References to any body, organisation or office shall include reference to its applicable successor from time to time.

6. Any references to this Agreement or any other documents includes reference to this Agreement or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.

7. Use of the singular includes the plural and vice versa.

8. The following terms shall have the following meanings:

"18 Week Clock" and "18 Week Pathway"	means in relation to Consultant-led Services, the part of a patient's care following initial referral, which initiates a clock start, leading up to the start of first definitive treatment or other 18 week clock stop point;
"18 Week Guidance"	means the "18-week rules suite" published on 28 November 2007 as amended on 24 March 2011 (available at http://www.dh.gov.uk/en/Publicationsandstatistics/Statistics/Performancedataandstatistics/ReferraltoTreatmentstatistics/DH_089757);
"18 Weeks Referral-to-Treatment Standard"	means in relation to Consultant-led Services, the NHS's commitment from 1 January 2009 that no-one should wait more than 18 weeks from the time they are referred to the start of their treatment unless its clinically appropriate to do so, or they choose to wait longer;
"1983 Act"	means the Mental Health Act 1983 (as amended by the Mental Health Act 2007);
"1983 Act Code"	means the 'Code of Practice' published by the Department of Health pursuant to section 118 of the 1983 Act (as amended, extended or replaced from time to time);
"2006 Act"	means the National Health Service Act 2006 as amended by the 2009 Act;
"2008 Act"	means the Health and Social Care Act 2008;
"2009 Act"	means the Health Act 2009;
"A&E department"	means a hospital department or other facility dedicated to reception and treatment of patients in need of Emergency Care or other Unscheduled Care as a result of an accident or other emergency;
"A&E Emergency Activity"	means as defined and identified in the PbR Rules;

"Activity Management Plan" means a plan, which without limitation:

(i) shall specify any thresholds set out in the Activity Planning Assumptions which have been breached;

(ii) shall include the findings of any Review insofar as they relate to the breach;

(iii) shall include an analysis of the causes and factors that contribute to the breach of a threshold;

(iv) shall include specific locally agreed actions and timescales by which such actions shall be met and completed;

(v) shall include the consequences for breaching or failing to implement an Activity Management Plan;

"Activity Planning Assumptions" means the ratios and/or obligations to be met and satisfied by the Provider in relation to service user flows and activity following initial assessment regarding the Services as identified in Section B Part 4, as amended or updated for each Contract Year;

"Activity Report" means a report which the Provider is required to submit to the Commissioner pursuant to Clause 41.9 and Section B Part 14.2 through which the Parties shall monitor actual activity against the thresholds in the Indicative Activity Plan and the thresholds in the Activity Planning Assumptions;

"Actual Outturn Value" means the value paid by each Commissioner to the Provider on the basis of the Prices for the Services delivered to that Commissioner in each Contract Year, as reconciled under Clause 7 (*Prices and Payment*);

"Agreement" has the meaning given to it in the Particulars;

"Alternate Activity" has the meaning given to it in Clause 7.39;

"Ambulance Services Handover Plan" means the written plan prepared and agreed between the Provider and the relevant providers of emergency ambulance services in accordance with the Law, Good Clinical Practice and Good Health and/or Social Care Practice, a copy of which has been provided to and approved by the Co-ordinating Commissioner, and which sets out in reasonable detail:

(i) the obligations of the Provider and the relevant providers of emergency ambulance services for reducing any delay in the handover of Service User care from the relevant providers of emergency ambulance services to the Provider;

(ii) a clear strategy demonstrating how any such reduction in delay in handover of Service User care will be achieved by the Provider and the relevant providers of emergency ambulance services; and

(iii) the process to be followed by the Provider and the relevant providers of emergency services to monitor and evaluate their actual performance against such obligations and

strategy, and for rectifying any failures in relation to that plan;

(iv) the arrangements for linking the exchange of the Provider's reference number and, if known, the Service User's NHS number and receiving the relevant provider's reference number;

"Associates" means the NHS Bodies and where applicable Local Authorities listed in the Particulars and which have entered into the Consortium Agreement or the Establishment Agreement included in Section C Part 9 (*Consortium Agreement*);

"Audit Commission" means the independent public body established under the Audit Commission Act 1998 which is responsible for ensuring that public money is spent economically, efficiently and effectively in the areas of local government, housing, health, criminal justice and the fire and rescue services or such other body that is designated as its successor in function;

"Auditor" has the meaning given to it in Clause 54.6;

"Authorisation" means an authorisation by Monitor issued pursuant to section 56 of the 2006 Act;

"Authorised Person" means the Co-ordinating Commissioner and each of its Associates and any body or person concerned with the treatment or care of a Service User approved by such Commissioner;

"Baseline Threshold" means the figure as notified to the Provider and recorded at Section B Part 8.2 (*Nationally Specified Events*) setting out the threshold of the number of reported cases of Clostridium difficile for the applicable Contract Year and such figure may change as notified by the Co-ordinating Commissioner to the Provider for each subsequent Contract Year;

"Best Practice IPR" means any IPR developed by the Provider (including Improvements) in connection with or as a result of the Services that a Commissioner might reasonably be able to use within its organisation for teaching and training of NHS best practice;

"Block Arrangement" means an arrangement described in Section B Part 7 (*Expected Annual Contract Values*) as such, where an overall fixed price is agreed which is not varied due to any changes in activity levels;

"Board of Directors" means, in respect of any Party, the board of directors or other governing body having overall responsibility for the actions of that Party;

"Business Continuity Plan" means the Provider's plan referred to in Section C Part 1 (*Conditions Precedent*) and Clause 49.1 relating to continuity of all of the Services, as agreed with the Co-ordinating Commissioner and as may be amended from time to time, which for the avoidance of doubt shall include a plan in relation to the ongoing provision of the Services Environment, the Vehicles and the Equipment or equivalent replacements thereof;

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

"Care Co-ordinator"	means the practitioner who is responsible for preparing, updating and co-ordinating the delivery of the Care Plan;
"Care Plan"	means a plan to deliver Services that are appropriate to the needs of the Service User and that pays proper attention to the Service User's culture, ethnicity, gender, age and sexuality and takes account of the needs of any children and Carers;
"Care Professional"	means a person qualified in a social care related profession;
"Care Programme Approach' or "CPA"	means the framework introduced to deliver effective mental healthcare for people with severe mental health problems (as amended, revised, re-issued or replaced from time to time by the Department of Health), being the Care Programme Approach referred to in: (i) Department of Health, Effective care co-ordination in mental health services: modernising the Care Programme Approach 1999 (a policy booklet); (ii) Reviewing the Care Programme Approach 2006 (a consultation document) Care Services Improvement Partnership Department of Health; and (iii) Re-focussing the Care Programme Approach – Policy and Positive Practice Guidance 2008; being the process used to assess the care needs of Service Users based on the Principles of HC 90(23);
"Care Quality Commission" or "CQC"	means the care quality commission established under the 2008 Act;
"Care Transfer Plan"	has the meaning given to it in paragraph 1.5 of Section C Part 6C (*Transfer of and Discharge from Care Obligations for Community Services*);
"Care Spell"	means a continuous period of care or assessment provided by a specialist mental health service, commencing with an initial assessment, which may comprise a series of episodes, attendances, contacts or stays, and ending when all the associated episodes and attendances are explicitly ceased;
"Carer"	means 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;
"Category A"	means Ambulance Service Users who are or may be immediately life threatened and who will benefit from a timely clinical intervention;
"Category B"	means Ambulance Service Users who require urgent face to face clinical attention but who are not immediately life threatened;
"Category C"	means Ambulance Service Users whose condition is not immediately serious or life threatening;
"CEDR"	means the Centre for Effective Dispute Resolution;

"Change in Control" means:

(i) any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the ability to control the exercise of 50 percent 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 shall be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation; or

(ii) any change in the ability to control an NHS Foundation Trust, NHS Trust or NHS Body by virtue of the entering into of any franchise, management or other agreement or arrangement, under the terms of which the control over the management of the relevant NHS Foundation Trust, NHS Trust or NHS Body is conferred on another person in circumstances where the Co-ordinating Commissioner has not given its prior written consent to such agreement or arrangement,

and shall include a Provider Change in Control and a Material Sub-contractor Change in Control;

"Change in Control Notification" means a notification in the form set out in Section D Part 4, completed as appropriate;

"Charity Commission" means the Charity Commission established under the Charities Act 2006;

"Choice Guidance" means any guidance issued by the Department of Health and/or directions given relating to extending the range of choices available to patients (other than in relation to Patient Choice as defined below) as revised, re-issued or replaced from time to time;

"Choose and Book" means the national electronic booking service that gives patients a choice of place, date and time for first hospital or clinic appointments;

"Clinical Coding Audit" means the annual audit conducted by a Commissioner in relation to the Provider's clinical coding of Services provided under Clause 54 (*Governance, Transaction Records and Audit*) of this Agreement;

"Clinical Networks" means 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;

"Code of Conduct for Payment by Results" means the Code of Conduct for Payment by Results, applicable for 2012/13 as revised, re-issued or replaced from time to time;

"Core Legal Clauses" means the clauses in Section E of this Agreement;

"Commissioner IPR" means any IPR owned by or licensed to a Commissioner which is relevant and necessary to the performance of the Services by the Provider, including without limitation the IPR set out in Section C Part 8.1, including Improvements;

"Commissioners"	means the Co-ordinating Commissioner and its Associates, or such of them as the context requires, and "Commissioner" means any one of them;
"Commissioning Guidance"	means guidance issued to Commissioners from time to time by the Department of Health or other applicable body in relation to the commissioning of services;
"Competent Body"	means any body that has authority to issue standards or recommendations with which the Parties must comply;
"Conditions Precedent"	means the conditions precedent to commencement of service delivery referred to in Clause 2.1 of the Core Legal Clauses and set out in Section C Part 1;
"Confidential Information"	means 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, without limitation, financial information, or marketing or development or work force 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 Clause 60 (*Data Protection, Freedom of Information and Transparency*), pursuant to an FOIA request, or information which is published as a result of government policy in relation to transparency;
"Consent"	means: (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 Agreement or for the provision by the Provider of the Services in accordance with this Agreement, including any registration with Monitor or CQC;
"Consortium Agreement"	means the agreement between the Co-ordinating Commissioner and its Associates included in Section C Part 9 (*Consortium Agreement*);
"Consultant"	means 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"	means 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"	means a meeting between the Parties in respect of a Contract Query Notice issued under Clause 47 (*Contract Management*);
"Contract Month Elective Care	means the Provider's total revenue each month derived from the

18 Weeks Revenue"	provision of Consultant-led Services to which the 18 Weeks referral to Treatment Standard applies;
"Contract Query"	has the meaning given to it in Clause 47.4;
"Contract Query Notice"	has the meaning given to it in Clause 47.4;
"Contract Transition Period"	has the meaning given to it in Clause 4.1 of the Core Legal Clauses;
"Contract Year"	means the period commencing on the Service Commencement Date until the following 31 March and each subsequent period of twelve (12) calendar months commencing on 1 April, provided that the final Contract Year shall be such period as commences on the 1 April that falls in the year in which this Agreement expires or is terminated (for whatever reason) and ends on the Expiry Date or termination date pursuant to Clause 56 (*Termination*), whichever is the earlier;
"Cost and Volume Arrangement"	means an arrangement where an overall nominal value is set for a Service that has associated unit price(s) and indicative activity levels, an the amount payable may be varied within defined tolerances (eg. £100,000 per annum contract value +/- 10% tolerance would mean that between £110,000 and £90,000 may be payable depending on the actual activity level) as set out in Section B Part 7 (*Expected Annual Contract Values*);
"Counter Fraud and Security Management Arrangements"	means the security management arrangements, including those for anti-fraud work put in place by the Provider in accordance with clause 37.1: (i) for the security of Staff providing NHS-funded care, for Service Users receiving NHS funded care and for NHS resources, with reference to the NHS Security Management Service strategy and the NHS Security Management Service national framework as updated or replaced from time to time; and (ii) to prevent and detect fraud by the Staff, by or in relation to, Service Users and/or in relation to public funds with reference to CFSMS strategy and the CFSMS national framework as updated or replaced from time to time;
"Counter Fraud and Security Management Service" or "CFSMS" or "NHS Protect"	means the Counter-Fraud and Security Management Service Division established and maintained by the NHS Business Services Authority pursuant to the NHS Business Services Authority Directions issued by the Secretary of State under the 2006 Act;
"CRB Code of Practice"	means the code of practice which organisations must comply with when requesting an Enhanced Disclosure or a Standard Disclosure and which can be found at www.homeoffice.gov.uk/agencies-public-bodies/crb/partners-reg-bodies/code-of-practice;
"CRC Position"	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which Standard Disclosure is permitted;
"**Crime Risk Assessment Toolkit**"	means the risk assessment toolkits found at www.nhsbsa.nhs.uk/Protect;
"Crisis Care"	means an integrated care pathway with uninterrupted round-the-clock emergency access to mental health assessment, home

	treatment and/or acute inpatient care and psychiatric intensive care unit as required;
"Crisis Plan"	means a plan agreed between the Care Co-ordinator and the Service User prescribing the action to be taken if the Service User's mental health deteriorates;
"Critical Care"	means 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;
"Data Processor"	has the meaning set out in the DPA;
"Data Quality Improvement Plan" or "DQIP"	means a plan setting out specific data and information improvements to be achieved by the Provider in accordance with the timescales in such plan completed on the basis of and appended at Section B Part 14.4;
"Data Subject"	has the meaning set out in the DPA;
"Debt Securities"	means debentures, debenture or loan stock, bonds and notes, whether secured or unsecured;
"Decision Matrix"	means a framework agreed in accordance with the Professional Letter (in particular taking into consideration Annex B of the Professional Letter) to determine whether an episode of mixed Sleeping Accommodation is justified or is a Sleeping Accommodation Breach;
"Declaration of Compliance"	means a statement that the Provider has eliminated mixed-sex accommodation, except where it is in the overall best interest of the patient, or reflects their personal choice or as otherwise required by Guidance;
"Declaration of Non-Compliance"	means a statement that the Provider has not eliminated mixed-sex accommodation, except where it is in the overall best interest of the patient, or reflects their personal choice or as otherwise required by Guidance;
"Default Interest Rate"	means LIBOR plus 2% per annum, and "LIBOR" means the London Interbank Offered Rate for 6 months sterling deposits in the London market;
"Delayed Service Commencement Date"	means, where applicable, the date set out in the Particulars;
"Delivery Method"	means either: (i) email using an NHS Net secure account; or (ii) secure fax; or (iii) direct automatic transfer onto the GP practice electronic patient record system through a suitable secure interface;
"Department of Health"	means the Department of Health in England of HM Government or other relevant body, or such other body that may supersede or

replace them from time to time;

"Destination Facility" means the healthcare facility or provider to which the Service User is transported as part of the Provider's provision of Services;

"Directly Bookable Services" means Services in respect of which the Provider's PAS is compliant with and communicates with Choose and Book enabling available time slots to show on Choose and Book, thereby enabling a referrer to book a service user appointment directly into the Provider's PAS;

"Directory of Service" means 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 appropriate services to which they can refer Service Users;

"Discharge from Care" means the completion of a Care Spell or the cessation of the provision of Services to a Service User in accordance with the 1983 Act Code (other than a Discharge from In-Patient Treatment), whether such Care Spell or Services occurred in an in-patient or out-patient setting;

"Discharge from Care Plan" has the meaning set out in paragraph 12 of Section C Part 6B (Transfer of and Discharge from Care Obligations for Mental Health and Learning Disability Services);

"Discharge from Detention" means the release of a Service User who has been detained within a secure or in-patient setting under the 1983 Act, and includes the release of a Service User from supervised community treatment following the expiry of a community treatment order (in all cases, in accordance with the 1983 Act Code);

"Discharge from In-Patient Treatment" means the discharge of a Service User from an in-patient hospital setting in accordance with the 1983 Act Code (and excludes, for the avoidance of doubt, any temporary discharge of a Service User, such as a discharge for temporary leave);

"Discharge from In-Patient Treatment Plan" has the meaning set out in paragraph 9 of Section C Part 6B (*Transfer of and Discharge from Care Obligations for Mental Health and Learning Disability Services*);

"Discharge Letter" means a document issued to the Service User by the senior clinician of the ward or department responsible for the Service User's treatment for the Service User to use in the event of any query or concern immediately following discharge, containing information about the Service User's treatment, including without limitation:

(i) the Service User's demographics;

(ii) the dates of the Service User's admission and discharge;

(iii) details of any clinical procedure undertaken;

(iv) the name of the Service User's responsible lead clinician or Consultant at the time of the Service User's discharge;

(v) details of any medication prescribed at the time of discharge;

(vi) any other relevant or necessary information or instructions; and

(vii) contact details for the Provider's facility;

"Discharge Summary" means a summary of information relevant to each Service User to be produced by the Provider, which shall be easily legible and shall without limitation contain:

(i) the date of the Service User's admission by the Provider;

(ii) the date of the Service User's discharge by the Provider;

(iii) details of any Services provided to the Service User, including any operation(s) and diagnostic procedures performed and their outcomes;

(iv) a summary of the key, confirmed and tentative diagnosis made during the Service User's admission and ICD-10 code;

(v) details of any medication prescribed at the time of the Service User's discharge;

(vi) any adverse reactions or allergies to medications or treatments observed in the Service User during admission;

(vii) the name of the responsible Consultant and/or Key Worker at the time of the Service User's discharge;

(viii) any immediate post-discharge requirement from the primary healthcare team;

(ix) any planned follow-up arrangements;

(x) whether the Service User has any relevant infection, for example MRSA;

(xi) the name and position of the person to whom questions about the contents of the Discharge Summary may be addressed, and complete and accurate contact details (including a telephone number) for that person;

(xii) where applicable the Service User's status under the 1983 Act at the time of the admission, any changes to such status during the admission and such status on discharge where applicable to the provision of mental health and learning disability Services,

and which shall where required be accompanied by a certification of sickness;

"Disclosing Party" has the meaning given to it in Clause 59.1;

"Dispute" means a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Agreement;

"DPA" means the Data Protection Act 1998;

"ECRC Position" means 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, and

	in relation to which Enhanced Disclosure is permitted;
"Effective Date"	has the meaning given to it in the Particulars;
"Elective Care"	means Consultant-led Services or treatment that is not Non-elective Care;
"Eliminating Mixed Sex Accommodation Plan" or "EMSA Plan"	means the Provider's single plan agreed with the Co-ordinating Commissioner pursuant to Clause 30.2 setting out milestones and where appropriate consequences for failing to meet each milestone in relation to: (i) continuing to meet the Same Sex Accommodation Requirements where the Provider has published a Declaration of Compliance; or (ii) actions reasonably required to put the Provider in a position to publish a Declaration of Compliance; and/or (iii) rectifying Mixed Sex Associated Breaches; and (iv) any other matter relating to the Same Sex Accommodation Requirements, as appended at Section B Part 10;
"Emergency and Crisis Care Procedure"	means the Emergency and Crisis Care Procedure set out in Section C Part 7.4 (*Emergency and Crisis Care Procedure*);
"Emergency Care"	means healthcare or treatment for which a Service User has an urgent clinical need (assessed in accordance with Good Clinical Practice and Good Health and/or Social Care Practice) and which is in the Service User's best interests;
"Emergency Readmissions"	has the meaning given to it in the PbR Rules;
"Emergency Response Plan"	means each Party's operational plan to respond to Major Incidents in accordance with the requirements of any relevant Major Incident Plans;
"Enhanced Disclosure"	means the same as Standard Disclosure and in addition includes the disclosure of information held locally by the Police, disclosed in accordance with the CRB Code of Practice;
"Equality Impact Assessment"	means a published process for narrowing the health inequalities that exist in England between people from different ethnic backgrounds, people with disabilities, men and women (including trans-gendered people), people with different sexual orientations, people in different age groups, people with different religions or beliefs and people from different social and economic groups;
"Equipment"	means anything save for the Provider's Premises, the Services Environment and the Staff that the Provider may use in the delivery of the Services (including without limitation Vehicles);
"Escrow Arrangement"	means an agreement between the Provider and the National Computing Centre or other similar body for the benefit of the Commissioners for the current version of the source code of software, on the basis of the National Computing Centre or other

	similar body's standard terms approved by the Co-ordinating Commissioner;
"Essential Services"	means those Services, not being Mandatory Goods and Services, which are identified by each Commissioner as being required as essential in its respective local health economy and set out in Section B Part 2 (*Essential Services*);
"Essential Services Continuity Plan"	has the meaning given to it in Clause 16.2;
"Establishment Agreement"	means the agreement between NHS Bodies establishing a Specialised Commissioning Group and allocating certain functions and responsibilities to it relating to the procurement of specialised services;
"Establishment Order"	means an order made by the Secretary of State (and as amended from time to time) to establish an NHS Trust for the purposes specified in section 5(1) of the National Health Service and Community Care Act 1990;
"European Economic Area"	means the European Economic Area (EEA) which consists of the European Union and all the European Free Trade Association (EFTA) countries except Switzerland;
"Event of Force Majeure"	means an event or circumstance which is beyond the reasonable control of the Party claiming relief under Clause 67 (*Force Majeure*), including without limitation 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 Agreement, but excluding Major Incidents;
"Excusing Notice"	means a notice in writing made under Clause 47.5 (*Contract Management*);
"Expected Annual Contract Value"	means the agreed figure(s) (if any) set out in Section B Part 7 (*Expected Annual Contract Values*) appropriate to each Commissioner identifying the expected annual contract value of the Services (or part of the Services) for that Commissioner, as amended or updated for each Contract Year;
"Expected Service Commencement Date"	means the date set out in the Particulars;
"Expiry Date"	means the date set out or referred to in the Particulars;
"Fair Deal for Staff Pensions"	means the guidance note issued by HM Treasury in June 2004 titled "FAIR DEAL FOR STAFF PENSIONS: PROCUREMENT OF BULK TRANSFER AGREEMENTS AND RELATED ISSUES" relating to the treatment of pension issues in compulsory transfers of public sector staff including NHS staff, as amended, superseded or otherwise from time to time;
"Final Reconciliation Point"	means the date when the final reconciliation data should be available to the Commissioners for the month in question, such date being specified in the PbR Rules;
"First Exception Report"	has the meaning given to it in Clause 47.20;

"First Reconciliation Point"	means the date by which the data submitted by the Provider should be available to Commissioners to facilitate reconciliation, such date being specified in the PbR Rules;
"First-tier Tribunal"	means the independent judicial body that operates under the provisions of the 1983 Act whose main purposes is to review the cases of service users detained under the 1983 Act
"FOIA"	means the Freedom of Information Act 2000;
"Full Tariff"	has the meaning given to it in Clause 7.2.1.1;
"Gatekeeper"	means the Provider acting as co-ordinator for a Service User's access to the Services within the Pathway on behalf of a third party commissioner in circumstances where the Provider may not be paid by the third party commissioner by whom it is engaged;
"Good Clinical Practice"	means using standards, practices, methods and procedures conforming to the Law 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 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;
"Good Health and/or Social Care Practice"	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced provider and a person engaged in the provision of services the same as or similar to the Services at the time the Services are provided;
"GP"	means a general medical practitioner or general dental practitioner registered on a Performers List of a Primary Care Trust in England;
"Guidance"	means any applicable health or social care guidance, direction or determination (including without limitation guidelines issued by the joint Royal Colleges Ambulance Liaison Committee) which the Co-ordinating Commissioner and/or the Provider has a duty to have regard to, 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 the Department of Health and which for the avoidance of doubt shall include the NHS Operating Framework;
"HCAI"	means health care associated infection, as that term is defined in sections 20(6) and 20(7) of the 2008 Act;
"HCAI Reduction Plan"	means the plan for the Contract Year agreed between the Provider and the Commissioner which sets out obligations for the management and reduction of HCAI;
"Health and Social Care Bill"	means the Health and Social Care Bill (Bill 132 2010-11) presented to Parliament on 19 January 2011 and as amended from time to time, and including as relevant the Act of Parliament resulting from it, and any secondary legislation contemplated in it or passed under

	such Act of Parliament;
"Healthcare Professional"	means a person qualified in a healthcare-related profession;
"HM Government"	means 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;
"HRG"	means "healthcare resource group" as further defined from time to time by the NHS Information Authority;
"Immediate Action Plan"	means a plan setting out immediate actions to be undertaken by the Provider to protect the safety of Services to Service Users, the public and/or Staff;
"Improvement"	means any improvement, enhancement or modification to the Provider IPR which cannot be used independently of the Provider IPR or any improvement, enhancement or modification to the Commissioner IPR which can not be used independently of the Commissioner IPR;
"Inclusion Date"	means the latest date by which the Provider must submit data for all activity for the month in question, such date being specified in the PbR Rules;
"Indemnity Arrangement"	means either: (i) a policy of insurance; (ii) an arrangement made for the purposes of indemnifying a person or organisation; or (iii) a combination of a policy of insurance and an arrangement made for the purposes of indemnifying a person or organisation;
"Indicative Activity Plan"	means a plan identifying the anticipated indicative activity for the applicable Contract Year as set out in Section B Part 3;
"Indirect Losses"	means loss of profits (other than profits directly and solely attributable to provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;
"Information Breach"	has the meaning given to it in Clause 39.12.1;
"Information Standards Board" or "ISB"	means the body established to govern information standards. The Information Standards Board for Health and Social Care in England is tasked with the independent approval, assurance and governance of information standards for adoption by the NHS and Adult Social Care and its website is www.isb.nhs.uk;
"Information Standards Notice" or "ISN"	means a notice of an Information Standard approved by the Information Standards Board;

"Institutional Investor"	means an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including banks, mutual funds, pension funds, private equity firms, venture capitalists, insurance companies and investment trusts;
"Inter-agency Agreements"	means any agreement between two or more public bodies, whether or not the agreement also involves third sector and independent sector organisations;
"IPR"	means inventions, copyright, patents, database right, trade marks, 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 all such rights;
"ISA"	means the Independent Safeguarding Authority established pursuant to the Safeguarding Vulnerable Groups Act 2006;
"Issuing Party"	has the meaning given to it in Clause 47.4;
"JI Report"	has the meaning given to it in Clause 47.10;
"Joint Investigation"	has the meaning given to it in Clause 47.8.2;
"Joint Statement on Access to Skills, Trade Unions and Advice in Government Contracting"	means the joint statement launched by the Cabinet Office, to improve the quality of services delivered under Government contracts, by raising the skills of service providers' employees and by helping to ensure fair treatment;
"Key Worker"	has the meaning in the CPA Guidance;
"Knowledge and Skills Framework"	means an element of the career and pay progressions strand of the NHS pay system known as "Agenda for Change". Agenda for Change is a 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. The three core elements that make up Agenda for Change are: (i) job evaluation; (ii) harmonised terms and conditions, and (iii) the Knowledge and Skills Framework;
"Law"	means: (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; (v) National Standards; and (vi) any applicable code,

	in each case in force in England and Wales;
"Legal Guardian"	means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs;
"Lessons Learned"	means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider's provision of the Services;
"Local Authority"	means a county council in England, a district council in England or a London borough council;
"Local Commissioning Plans"	means the documents detailing the plans of the Commissioners to commission Services prepared in accordance with the principles of the NHS Operating Framework and Commissioning Guidance and identified at Section C Part 10;
"Local Counter Fraud Specialist" or "LCFS"	means the accredited local counter-fraud specialist appointed by the Commissioner or the Provider (as appropriate);
"Local Involvement Network" or "LiNks"	means an entity established pursuant to contractual arrangements made by a local authority under section 221(1) of the Local Government and Public Involvement in Health Act 2007, the function of which is to carry on in such local authority's area the activities specified in section 221(2) of the Local Government and Public Involvement in Health Act 2007 (or any successor body);
"Local Security Management Specialist"	means the accredited local security management specialist appointed by the Commissioner or the Provider (as appropriate);
"Longstop Date"	means the date referred to in the Particulars;
"Losses"	means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
"Major Incident"	means an event or occurrence which is designated as such by Category 1 Responders (as designated by the Civil Contingencies Act 2004) or by the Major Incident Plan;
"Major Incident Plan"	means the plan implemented in each local authority area in accordance with the Civil Contingencies Act 2004 to plan for and co-ordinate responses to civil emergencies;
"Mandatory Goods and Services"	means goods and/or services classified as protected or mandatory under the Provider's Terms of Authorisation;
"Market Forces Factor"	means the nationally-calculated index applied to National Tariff locally as published with the PbR Rules;
"Material Sub-contract"	means any sub-contract entered into between the Provider and a Material Sub-contractor under which such Material Sub-contractor is obliged to provide part of the Pathway including the sub-contracts set out in Section C Part 5.1 (*Material Sub-contracts*);

"Material Sub-contractor"	means any one or all of the sub-contractors listed in Section C Part 5.2 (*Material Sub-Contractors*);
"Material Sub-contractor Change in Control"	has the meaning given to it in Clause 63.1.2;
"Mixed Sex Associated Breaches"	means where: (i) Service Users have to share mixed bathing and/or toilet facilities unless they need specialised equipment such as hoists or specialist baths; or (ii) Service Users have to pass through opposite sex areas to reach their own bathroom facilities; or (iii) Women service users in Mental Health hospitals do not have access to same sex lounge facilities;
"Monitor"	means the public office established under the Health and Social Care (Community Health and Standards) Act 2003 with responsibility for authorising NHS Foundation Trusts and accountable to Parliament, and continuing under section 31 of the 2006 Act, and any successor body or bodies from time to time, as appropriate;
"MRSA"	means meticillin-resistant staphylococcus aureus;
"National Audit Office"	means the independent office established under 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" or "NCAPOP"	means 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;
"National Information Governance Board for Health and Social Care" or "NIGB"	means the body established under the 2008 Act which supports improvements in information governance practice, monitors information governance trends in the NHS and adult Social Care and administers applications under section 251 of the 2006 Act. The NIGB reports annually to the Secretary of State and is custodian of Care Record Guarantees for Health and Social Care for England. NIGB. Its website is www.nigb.nhs.uk;
"National Institute for Health and Clinical Excellence" or **"NICE"**	means the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body);
"National Standards"	means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time;
"National Tariff"	means the list of prices published from time to time by the Department of Health and applied in line with Department of Health guidance relating to national tariff construction and coding, charging and recording methodologies, in particular the PbR Rules and the Operation of Secondary Uses Services (SUS) to support Payment by

	Results, each as amended, re-issued or replaced from time to time;
"National Variation"	means a Variation reasonably required by a Party to reflect changes the Department of Health makes to the mandatory elements, including those mandatory elements to be locally defined, of the NHS standard contract relevant to the Services from time to time reflecting the NHS Operating Framework and/or commissioning guidance;
"Nationally Specified Events"	means events that are set out in Section B Part 8.2;
"Nationally Specified Events Threshold"	means any threshold set against a Nationally Specified Event as set out in Section B Part 8.2;
"Nearest Relative"	means the definition in the 1983 Act;
"Negotiation Period"	has the meaning given to it in Clause 53.1;
"Never Event"	means events or occurrences which should never occur in delivering the Services as set out in Section B Part 8.3 as revised, re-issued or replaced by Guidance from time to time;
"Never Event Consequence"	means the sum calculated in accordance with Section B Part 8.3;
"New Party"	has the meaning given to it in Clause 51.7;
"NHS"	means the National Health Service in England;
"NHS Body"	means a health service body as defined in section 9 of the 2006 Act;
"NHS Business Services Authority"	means the Special Health Authority established pursuant to the NHS Business Services Authority (Establishment and Constitution Order) 2005 SI 2414/2005, and any successor or replacement body carrying out its functions;
"NHS Care Records Guarantee"	means the document setting out the rules that govern information held in the NHS Care Records Service, which is reviewed at least annually by the National Information Governance Board for Health and Social Care;
"NHS Care Records Service"	means the electronic patient record management service to enable authorised healthcare professionals to access an individual patient's integrated electronic care record at any time from any relevant healthcare premises and whose website is www.nhscarerecords.nhs.uk;
"NHS Classifications Service"	means the NHS resource responsible for the delivery of national clinical classifications standards and guidance for the NHS clinical coding profession;
"NHS Connecting for Health"	means the department within the Department of Health Informatics Directorate responsible for the maintenance and development of the NHS national network infrastructure and other contracted information services;
"NHS Constitution"	means the constitution for the NHS in England set out in Law and/or Guidance from time to time 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;

"NHS Constitution Handbook"	means the Handbook To The NHS Constitution published on 21 January 2009 by the Department of Health, Gateway reference 11191, as revised, reissued or replaced from time to time;
"NHS Data Model and Dictionary"	means the reference source for information standards to support healthcare activities within the NHS in England;
"NHS Employment Check Standards"	means the documents which set out the pre-appointment checks that are required by law, those that are mandated by Department of Health policy, and those that are required for access to the NHS Care Record Service and include, without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
"NHS Foundation Trust"	means an NHS foundation trust as defined in section 30 of the 2006 Act;
"NHS Operating Framework"	means the national operating framework for the NHS published by the Department of Health which details key deliverables and priorities for the NHS and any revisions, amendments or other variations to the operating framework published from time to time;
"NHS Plan Cancelled Operations Guarantee"	means where an NHS patient's Elective Care procedure is cancelled by an NHS provider for non-clinical reasons following the patient's admission, the provider must either offer another binding date for such procedure within 28 calendar days or fund the patient's treatment by such alternative provider and at such a time as the patient may choose;
"**NHS Protect Guidance**"	means any guidance issued from time to time by NHS Protect pursuant to the NHS Business Authority Directions (Awdurdod Gwasanaethau Busnes y GIG) 2006 available at www.nhsbsa.nhs.uk/Protect;
"NHS Trust"	means a body established under section 25 of the 2006 Act;
"Non-Contract Activity"	means any care provided to an NHS service user who is not the responsibility of any Commissioner under this Agreement;
"Non-elective Care"	means: (i) Critical Care, whether or not provided with Emergency Care; (ii) Emergency Care; and (iii) Unscheduled Care, whether or not it is also Emergency Care;
"Non-Tariff Price"	has the meaning given to it in Clause 7.2.2;
"Operational Day"	means a day other than a Saturday, Sunday or bank holiday in England;
"Order"	means an order made by the Secretary of State for Health pursuant to section 53 or section 54 of the 2006 Act;

"Other Clinical Arrangement" means any arrangement, to which the Secretary of State is a party under which the Provider provides clinical services to any Other NHS Party;

"Other NHS Party" means the Secretary of State, any Primary Care Trust or any other NHS Body, and which may or not be a Commissioner;

"Other Party" has the meaning given to it in Clause 47.4;

"Other Regulatory Body" means any body other than CQC exercising similar regulatory functions to the CQC;

"Package of Care" means any assessment, treatment, support, accommodation or other elements of care to be provided under the Service and relating to a referral or an emergency presentation;

"Particulars" means Section A of the Agreement;

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

"Parties in Dispute" means the Co-ordinating Commissioner and/or those of its Associates directly concerned in the Dispute, as one Party in Dispute, and the Provider, as the other;

"Partnership Agreement" means 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;

"PAS" means a patient administration system;

"Pathway" means an evidence-based plan of goals and key elements of care for a Service User that facilitates the communication, co-ordination of roles and sequencing of the activities of a multi-disciplinary care team, Service Users, Carers and Legal Guardians, the aim of which is to enhance quality of care by improving Service User outcomes, promoting Service User safety, increasing Service User satisfaction and optimising the use of resources;

"Patient Choice" means the commitment to give service users choice in Elective Care which requires that all patients who require a referral for Elective Care from their GP or primary care professional for a first consultant-led outpatient appointment shall be able:

(i) to choose to be treated by any provider that meets relevant eligibility criteria;

(ii) to choose the time and date for their booked appointment, at the time they are referred; and

(iii) to choose a named consultant-led team;

"Patient Choice Guidance" means any guidance issued by the Department of Health or directions or determinations relating to Patient Choice as issued, revised, re-issued or replaced from time to time;

"Patient Safety Incident" means any unintended or unexpected incident which could have or did lead to harm to one or more Service Users;

"Payment by Results" or "PbR"	means the rules and core principles of the NHS financial system;
"PbR Data Assurance Framework Audit"	means the Audit Commission's independent, targeted, external data quality audit programme covering the data quality underpinning the payments made by all Primary Care Trusts to NHS Trusts and NHS Foundation Trusts;
"PbR Rules"	means: (i) the Code of Conduct for Payment by Results; and/or (ii) the Department of Health guidance supporting the operation of Payment by Results in 2012/13, either as revised, re-issued or replaced from time to time;
"Personal Data"	has the meaning set out in the DPA;
"Place of Safety"	means a place of safety as defined under section 135 of the 1983 Act;
"Post Reconciliation Inclusion Date"	means the date by which the Co-ordinating Commissioner and the Provider shall have resolved any issues relating to the data submission for the month in question, such date being specified in the PbR Rules;
"Prices"	has the meaning given to it in Clause 7.2;
"Primary Care Trust" or "PCT"	means a primary care trust established by the Secretary of State in accordance with section 16A of the National Health Service Act 1977 and continuing in existence under section 18 of the 2006 Act;
"Principles and Rules for Cooperation and Competition"	means the rules of procedure published from time to time by the Department of Health, relating to the commissioning and provision of NHS services, to support cooperation and competition in the interests of patients and taxpayers in relation to: (i) commissioning and procurement; (ii) cooperation and collusion; (iii) conduct of individual organisations; (iv) mergers and vertical integration;
"Principles of Good Employment Practice"	means the guidance note issued by the Cabinet Office in December 2010 titled "SUPPLIER INFORMATION NOTE: WITHDRAWAL OF TWO-TIER CODE" including Annex A of that guidance note setting out a set of voluntary principles of good employment practice, as amended, superseded or otherwise from time to time;
"Prior Approval"	means 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 Scheme"	means a scheme under which the Responsible Commissioner gives

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;

"Professional Letter" means the letter issued by the Chief Nursing Officer and Deputy NHS Chief Executive, PL/CNO/2010/3 as revised, re-issued or replaced from time to time;

"Prohibited Acts" has the meaning given to it in Clause 65.1;

"Proposer" has the meaning given it in Clause 52.13;

"Protected Asset" means an asset classified as protected under the Provider's Terms of Authorisation;

"Provider Change in Control" has the meaning given to it in Clause 63.1.1;

"Provider Insolvency Event of Default" means the occurrence of any of the following events in respect of the Provider:

(i) the Provider is, or is deemed for the purposes of any law to be, unable to pay its debts or insolvent;

(ii) the Provider admits its inability to pay its debts as they fall due;

(iii) the value of the Provider's assets is less than its liabilities (taking into account contingent and prospective liabilities);

(iv) the Provider suspends making payments on any of its debts or announces an intention to do so;

(v) by reason of actual or anticipated financial difficulties, the Provider commences 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 IPR" means any IPR owned by or licensed to the Provider (other than by any Commissioner) that will be used by the Provider in the delivery of the Services, as set out in Section C Part 8.2, including Improvements;

"Provider's Care" means any time, prior to the transfer or discharge of, and any discontinuance of Services to, a Service User during which it can reasonably be concluded that the Service User remains under the clinical care of the Provider, which shall include, without limitation, the period of any telephone advice given, whether directly or indirectly, to that Service User or Provider;

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

"Provisions relating to Withholding and/or Retention of Payment" means the provisions in this Agreement relating to withholding and/or retention of payment as set out in Clauses 39.12, 39.13, 39.14, 43.4, 44.5, 44.6, 44.7, 44.8, 47.1, 47.18, 47.22, 47.24, 47.26 and 47.27;

"Public Authority" means as defined in section 3 of the FOIA which includes NHS Trusts and NHS Foundation Trusts;

"Public Company" means a company which:

(i) has shares that can be purchased by the public;

(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;

"QIPP Plan" means the local and regional quality, innovation, productivity and prevention plan(s) prepared to meet the challenge of driving quality improvements;

"Quality Accounts" has the meaning described in the 2009 Act;

"Quality Incentive Payment" means a payment due to the Provider for having met the goals set out in a Quality Incentive Scheme;

"Quality Incentive Scheme" means any performance incentive scheme set out in Section B Part 9;

"Quality Incentive Scheme Indicator" means an indicator or measure of the Provider's performance in relation to a Quality Incentive Scheme, as may be set out in Section

B Part 9;

"Quality Requirements" means the quality requirements set out in the table at Section B Part 8.1 (*Quality Requirements*) as may be amended by the Parties in accordance with this Agreement or with the recommendations or requirements of NICE;

"Quarter" means each 3-month period commencing on the Services Commencement Date and **"Quarterly"** shall be construed accordingly;

"RAP Failure to Agree Notice" has the meaning given to it in Clause 47.17;

"Receiving Party" has the meaning given to it in Clause 59.1;

"Recipient" has the meaning given it in Clause 52.14;

"Reconciliation Point" means the date 30 calendar days after the end of each calendar month during the term of this Agreement, on which the data for such calender month is considered final;

"Referrer" means:

(i) the authorised Healthcare Professional who is responsible for the referral of a Service User to the Provider;

(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; and

(iii) any individual Service User who presents directly to the Provider for assessment and/or treatment;

"Remedial Action Plan" means a plan to rectify a breach of or performance failure under this Agreement, including any breach of the Indicative Activity Plan, specifying targets and timescales within which such targets shall be achieved;

"Responsible Commissioner" means the Service User's responsible Commissioner as determined in accordance with the Law and applicable Guidance (including without limitation 'Who Pays? Establishing the Responsible Commissioner', Gateway reference 8448, as amended from time to time);

"Restoration Notice" means a notice in writing to restore a Service or Services given under Clause 55.4;

"Restricted Patient" means a Service User who has been made subject to a compulsion order and a restriction order by the court and as defined in section 79 of the 1983 Act;

"Restricted Person" means:

(i) any person, other than an Institutional Investor, 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"	means a review carried out under Clause 46 (*Review*);
"Review Record"	has the meaning given to it in Clause 46.3;
"Risk Share Agreement"	means an agreement between the Provider and the Commissioner, relating to mental health and learning disability services, only where the Parties share the costs of over and/or under performance on specified Services to an agreed proportion;
"Safeguarding Policies"	means the Provider's written policies, as amended from time to time, for safeguarding children and adults, as appended in Section C Part 7.2;
"Same Sex Accommodation Requirements"	means the requirements of the Department of Health to eliminate mixed sex accommodation as set out in Guidance and the Professional Letter as revised, re-issued or replaced from time to time;
"Schedule"	means schedule 1 to this Agreement;
"Screening Programmes"	means co-ordinated national and/or local NHS activity that aims to identify early indications of particular conditions in patients;
"Second Exception Report"	has the meaning given to it in Clause 47.21;
"Secretary of State"	means the Secretary of State for Health;
"Security"	means Shares, Debt Securities, units in a collective investment scheme (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"	means the Provider's nominated person, being an executive or senior manager on the board of the Provider, whose role is to take ownership of the organisation's information risk policy, act as champion for information risk on the board of the Provider and provide written advice to the accounting officer on the content of the organisation's statement of internal control in regard to information risk;
"Serious Incident"	means an incident or accident or near-miss where a patient (whether or not a Service User), member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Provider's Premises or where the actions of the Provider, the Staff or the Co-ordinating Commissioner are likely to be of significant public concern;
"Service Commencement Date"	means the date the Services actually commence and shall be either the Expected Service Commencement Date or the Delayed Service Commencement Date whichever is applicable;

"Service Development and Improvement Plan" or "SDIP"	means the agreed plan setting out improvements to be made by the Provider to the Services and/or Services Environment, in particular without limitation as regards to, the Provider's contribution towards the local and regional QIPP Plan, quality, Service User experience; productivity, efficiency, priority areas, service integration, as appended at Section B Part 11;
"Service Quality Performance Report"	has the meaning given to it in Clause 45.1;
"Service Specifications"	means each of the service specifications defined by the Commissioners and set out in Section B Part 1 (*Services Specifications*);
"Service User"	means a patient or service user of a Commissioner or any other patient, client or customer who is referred or presents to the Provider or otherwise receives Services under this Agreement;
"Service User Consent Policy"	has the meaning given to it in Clause 26.1;
"Service User Health Record"	means a record which consists of information relating to the particular physical or mental health or condition of a Service User, (whether in electronic form or otherwise);
"Service Variation"	means a Variation reasonably requested by a Party that relates to any Service which reflects: (i) the assessment by a Commissioner/Commissioners of Pathway needs, the availability of alternative providers and demand for Services; and/or (ii) the joint assessment of the Provider and a Commissioner of the quality and clinical viability of the relevant Service/s 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(s);
"Services"	means the services as set out in each of, or, as the context admits, all of the Service Specifications, provided or to be provided by the Provider pursuant to and in accordance with this Agreement;
"Services Environment"	means the rooms, theatres, wards, treatment bays, clinics or other physical location, space, area, accommodation or such 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;
"Shared Care Protocols"	means 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;
"Shares"	has the meaning given to the term in section 540 of the Companies Act 2006, including preference shares;

"Sleeping Accommodation"	includes any areas where patients are admitted and cared for on beds or trolleys, even where patients do not stay overnight, all admissions and assessment units (including clinical decision units) and day surgery and endoscopy units. It does not include areas where patients have not been admitted, such as accident and emergency cubicles;
"Sleeping Accommodation Breach"	means an unjustified episode of mixed Sleeping Accommodation as set out in Appendix A of the Professional Letter;
"Small Provider"	means a provider with fifty or fewer full time equivalent employees whose Expected Annual Contract Value under this Agreement is £130,000 or less;
"Specialised Commissioning Group"	means the group established to co-ordinate the commissioning of specialised healthcare services on behalf of the PCTs located within the boundaries of an SHA;
"Staff"	means all persons (whether clinical or non-clinical) employed or engaged by the Provider (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;
"Staff Surveys"	means, where the Provider is an NHS Foundation Trust, NHS Trust or PCT the National NHS Staff Surveys and where the Provider is not an NHS Foundation Trust, NHS Trust or PCT staff experience surveys as agreed between the Parties pursuant to Clause 23.6;
"Standard Disclosure"	means a disclosure of information which contains details of spent convictions, unspent convictions, cautions, reprimands, final warnings, information held by the ISA (for positions working with vulnerable children and adults), as checked against the Police National Computer (PNC), disclosed in accordance with the CRB Code of Practice;
"Strategic Health Authority" or "SHA"	means an authority established under section 8 of the National Health Service Act 1977 and continuing in existence under section 13 of the 2006 Act;
"SUS"	means the "Secondary Uses Services", being the management and information reporting service of the NHS Care Records Service;
"Suspension Events"	means any of the events set out in Clause 55.1;
"Suspension Notice"	means a notice in writing to suspend a Service or Services given under Clause 55.3;
"Table of Never Events"	means the table set out at Annex 1 of the guidance titled "The 'never events list' 2011/12" or such updated, amended or replaced guidance or list;
"Terms of Authorisation"	means, where the Provider is an NHS Foundation Trust, the terms under which the Provider is authorised to operate as an NHS Foundation Trust by Monitor, as amended from time to time;
"Total Acute Services Contract Year Revenue"	means for each Contract Year all payments made to the Provider pursuant to Clause 7 of the Core Legal Clauses (Prices and

	Payment) for acute services and excluding Quality Incentive Payments;
"Transaction Records"	has the meaning given to it in Clause 54.5;
"Transfer of and Discharge from Care Protocols"	means the protocols described at Section C Part 7.1 (*Transfer of and Discharge from Care Protocols*);
"Transfer of Care"	means 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"	means the transition arrangements agreed between the Parties set out in Section C Part 3;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"UNIFY2"	means the Department of Health electronic system for collecting, storing and retrieving activity reports and performance data;
"Unscheduled Care"	means healthcare or treatment provided to a Service User without prior schedule or referral;
"Variable Sections"	means any of the following parts or any part of them that may be varied by the Parties in accordance with Clause 52.2.1 (*Variations*):

(i) Section A - The Particulars - local insertions only;
(ii) Section B Part 1 (*Service Specifications*) - content and headings;
(iii) Section B Part 2 (*Essential Services*);
(iv) Section B Part 3 (*Indicative Activity Plans*);
(v) Section B Part 4 (*Activity Planning Assumptions)*;
(vi) Section B Part 5 (*Activity Management Plan);*
(vii) Section B Part 6 (*Non-Tariff Prices and Variations to Tariff Prices*) - subject to Clause 7 and Clause 52.2.1;
(viii) Section B Part 7 (*Expected Annual Contract Values*);
(ix) Section B Part 8 (*Quality)* - locally agreed insertions only;
(x) Section B Part 9.2 (*Commissioning for Quality and Innovation*) - locally agreed insertions only;
(xi) Section B Part 9.3 (*Locally Agreed Incentive Schemes*);
(xii) Section B Part 10 (*Eliminating Mixed Sex Accommodation Plan*);
(xiii) Section B Part 11 (*Service Development and Improvement Plan*);
(xiv) Section B Part 12 (*Service User, Carer and Staff Surveys*);
(xv) Section B Part 13 (*Clinical Networks and Screening Programmes)*;
(xvi) Section B Part 14.2 (*National Requirements Reported Locally)* – locally defined elements only;
(xvii) Section B Part 14.3 (*Local Requirements Reported Locally)*;
(xviii) Section B Part 14.4 (*Data Quality Improvement Plan)* - locally agreed insertions only;
(xix) Section C Part 1 (*Conditions Precedent*) - locally agreed insertions only;
(xx) Section C Part 2 (*Documents To Be Delivered By The Co-ordinating Commissioner*);
(xxi) Section C Part 3 (*Transition Arrangements*);
(xxii) Section C Part 4 (*Documents Relied On*);

(xxiii) Section C Part 5 (*Provider's Material Sub-contractors*);
(xxiv) Section C Part 7.1 (*Transfer of and Discharge from Care Protocols*);
(xxv) Section C Part 7.2 *(Safeguarding Policies)*;
(xxvi) Section C Part 7.3 (*Incidents Requiring Reporting Procedure*);
(xxvii) Section C Part 7.4 (*Emergency and Crisis Care Procedure*);
(xxviii) Section C Part 8 (*Intellectual Property*);
(xxix) Section C Part 9 (*Consortium Agreement)*;
(xxx) Section C Part 10 (*Local Commissioning Plans)*;
(xxxi) Section C Part 11 (*Exit Arrangements*);
(xxxii) Section C Part 12 (*Social Care Provisions*);
(xxxiii) Section D Part 1 (*Recorded Variations)*;
(xxxiv) Section D Part 2 (*Notices to Aggregate/Disaggregate Payments)*;
(xxxv) Section D Part 3 (*Disputes)*;

"Variation" means an addition, deletion or amendment to the provisions of this Agreement agreed to be made by the Parties in accordance with Clause 52 (*Variations*) which may be a Service Variation, a National Variation, or any other variation;

"Variation Proposal" or "VP" has the meaning given it in Clause 52.13;

"Variations to Tariff Prices" has the meaning given to it in Clause 7.2.1.2;

"VAT" means 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; and

"Vehicles" means any vehicle whether emergency, aircraft or other transport vehicle to be used by the Provider in providing the Services.