

**2012/13 NHS STANDARD CONTRACT
FOR ACUTE, AMBULANCE, COMMUNITY AND MENTAL HEALTH
AND LEARNING DISABILITY SERVICES
(BILATERAL)**

**SECTION E
CORE LEGAL CLAUSES AND DEFINITIONS**

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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 Party.

2. CONDITIONS PRECEDENT

2.1 The Provider shall deliver to the 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 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 COMMISSIONER

3.1 The 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 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 each other to facilitate the delivery of the Services on the Service Commencement Date;

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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 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 Commissioner and the Provider;

6.1.7 comply with the recommendations from time to time contained in guidance

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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 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 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 Commissioner 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), the Commissioner shall pay the Provider in accordance with the PbR Rules, to the extent

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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 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 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 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 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 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 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 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.

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- 7.9 If the 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 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, the 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 the 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 Commissioner shall provide a separate reconciliation account 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 Commissioner under Clause 39 (*Information Requirements*) and Section B Part 14 (*Reporting and Information Management*) and sent by the 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 Commissioner to the Provider or by the Provider to the 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 Commissioner agree in writing) after the Service Commencement Date the Commissioner shall pay to the Provider

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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 the 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 the Commissioner in respect of those Services, or such part of Services provided to the 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 Commissioner shall provide a separate reconciliation account 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 Commissioner under Clause 39 (*Information Requirements*) and Section B Part 14 (*Reporting and Information Management*); and

7.17.2 sent by the 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 Commissioner shall provide a reconciliation account 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 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 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.

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- 7.20 The 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 Commissioner to the Provider or by the Provider to the 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.
- 7.25 NOT USED

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 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 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 Commissioner 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:

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- 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 the other 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 Commissioner, the Provider will use its reasonable endeavours to assist with the development of the National Tariff.

Quality Incentive Payments

- 7.35 The Commissioner 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 Commissioner or the 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

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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 Commissioner in relation to the Services and shall co-operate with any surveys that the Commissioner 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

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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 Commissioner the involvement of Service Users and Carers in the development of Services and shall provide to the Commissioner such evidence on the 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 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 Commissioner 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 Commissioner shall use its 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 Commissioner 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 Commissioner who shall be responsible for making an assessment to determine what remedial steps are required to be taken.

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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 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.

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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 Commissioner, the Essential Services.
- 16.2 The Provider shall have and at all times maintain an up-to-date plan agreed with the Commissioner to ensure the continual availability to the Commissioner 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 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 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 Commissioner 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 Commissioner;
- 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

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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 Commissioner 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 Commissioner 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 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 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 Commissioner any information, in addition to that required under Clause 39 (*Information Requirements*) and Section B Part 14 (*Reporting and Information Management*), that the Commissioner may reasonably require to:
- 19.5.1 monitor the equity of access to the Services; and
 - 19.5.2 fulfil its obligations under the Law.

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19.6 The Commissioner 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);

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- 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 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 Commissioner and the Referrer, (or in the case of ambulance services the Provider, the 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 Commissioner and where applicable the Referrer that it will discontinue the provision of care to that Service User, and the 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 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.

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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 Commissioner, the Provider shall as soon as practicable and by no later than 20 Operational Days of receipt of such written request, provide the 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.

