

2015/16 NHS Standard Contract

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•General Conditions

1: Particulars

- Sets out the contracting parties
- Includes schedules with locally-agreed detail
- Tables (pages 9-13): key contract information – dictates content of Schedules and Service Conditions
- Key areas for local completion – Service Specification; IAP; Local Prices; Expected Annual Contract Value; Local Quality Requirements; CQUIN and Reporting requirements

Schedule 1 - Service Commencement and Contract Term GC 2, 3 and 4	Schedule
<ul style="list-style-type: none"> • Effective date - start date of contract • Expected & actual Service Commencement Date • Contract term • options to extend <ul style="list-style-type: none"> • can only extend once for maximum of 2 years • must be competitive procurement • period of possible extension clear from outset • Conditions Precedent • Commissioner Documents • Expiry date 	<p>1C</p> <p>1A 1B</p>

1: Particulars

Schedule 2 - Services	Schedule
<ul style="list-style-type: none"> • Importance of Service categories • Importance of Service Specifications • IAP/APAs • Other Local Agreements, Policies and Procedures • Transition Arrangements – way in • Exit Arrangements –way out • Transfer/ Discharge protocols • Safeguarding / Mental Capacity Act Policies 	<p>2A 2B & 2C 2G 2H 2I 2J 2K</p>
Schedule 3 – Payment SC 36	
<ul style="list-style-type: none"> • National Prices • Local Prices • Local Variations • Local Modifications • Distinctions in payment approach between <ul style="list-style-type: none"> • Expected Annual Contract Value agreed/ zero value • Small Provider /Other Provider • SUS applies /SUS does not apply 	<p>3A 3B 3C 3F</p>

1: Particulars

Schedule 4 – Quality Requirements SC3, SC37		Schedule
<ul style="list-style-type: none"> • Operational Standards • National Quality Requirements • Local Quality Requirements • Never Events • CQUIN/ CQUIN Variations • Local Incentive Scheme • C Diff 		4A 4B 4C 4D 4E & 4H 4F 4G
Schedule 5 – Governance	Reference	Schedule
<ul style="list-style-type: none"> • Documents Relied On • Material Sub-contracts • IPR • Commissioner roles and responsibilities • Nominated mediation body • IG Lead/Caldicott Guardian/SIRO • Accountable Emergency Officer • Safeguarding Lead/Prevent Lead • Partnership Agreements (s75 arrangements) 	GC25, GC30.2 GC12 GC22 GC14.4 GC21.3 SC30.1 SC32.2 GC7	5A 5B1 & B2 5C 5D 5E

1: Particulars

Schedule 6 – Contract Management, Reporting and Information Requirements	Reference	Schedule
<ul style="list-style-type: none"> • Addresses for service of notices • Review Meetings • Recorded Variations • Commissioner /Provider Representatives • Reporting Requirements – national/local • DQIP • Incidents Requiring Reporting Procedure • SDIP • Surveys 	<p>GC36</p> <p>GC10</p> <p>SC28</p> <p>SC33</p> <p>SC20</p>	<p>6A</p> <p>6B</p> <p>6C</p> <p>6D</p> <p>6E</p> <p>6F</p>
Schedule 7 – Pensions	Reference	Schedule
<ul style="list-style-type: none"> • NHS England and DH Guidance • Legal Advice 		<p>7</p>

Contract signature

- All parties **must** sign
- Signatories must be duly authorised
- Cut and paste electronic signatures not acceptable – can use scanned copy of physical signature

2: Service Conditions

- Set out national terms that apply where specific services are being commissioned
- Conditions will apply to all or only some Services as indicated using the following abbreviations:

All Services	All	End of Life Care Services	ELC
Accident and Emergency Services	A+E	Mental Health and Learning Disability Services	MH
Acute Services	A	Mental Health and Learning Disability Secure Services	MHSS
Ambulance Services	AM	NHS 111 Services	111
Cancer Services	CR	Patient Transport Services	PT
Continuing Healthcare Services	CHC	Radiotherapy Services	R
Pharmacy Delivered Community Services	Ph	Surgical Services in Community Setting	S
Community Services	CS	Urgent care/Walk-in Centre Services/ Minor Injuries Unit	U
Diagnostic, Screening and/or Pathology Services	D		

2: Service Conditions

PROVISION OF SERVICES		
SC1	<p>Compliance with the Law and the NHS Constitution</p> <ul style="list-style-type: none"> must comply with terms of contract; Law and Good Practice and have regard to NHS Constitution and Armed Forces Covenant 	All
SC2	<p>Regulatory Requirements</p> <ul style="list-style-type: none"> must comply with all standards and recommendations of Regulatory and Supervisory bodies; audit; Serious Incident or Patient Safety Incident reports; NICE; Local Healthwatch and meet legal requirements for Quality Accounts 	All
SC3	<p>Service Standards</p> <ul style="list-style-type: none"> must not breach thresholds for Operational Standards; National and Local Quality Requirements; ensure Never Events do not occur, and meet National Standards and outcome measures 	All
3.2	<ul style="list-style-type: none"> excuses failure if due to act or omission of Commissioner but not if primarily due to increased Referrals 	
3.3	<ul style="list-style-type: none"> if failure occurs, provisions of SC36.46 and SC 36.47 will apply and Commissioner can: <ul style="list-style-type: none"> issue Contract Performance Notice (GC9.4) remove service users 	All Not AM, 111
3.4	<ul style="list-style-type: none"> Provider must continually review and evaluate and implement Lessons Learned 	All
3.5	<ul style="list-style-type: none"> Provider must measure performance using NHS Safety Thermometers to continually improve performance 	All Not AM, Ph, CS, D,111, PT, S, U
3.6	<ul style="list-style-type: none"> Provider must co-operate in any re-referral of Service User to another Provider 	All
3.7	<ul style="list-style-type: none"> if Service User admitted for acute Elective Care and Provider cancels operation after admission for non-clinical reasons terms of NHS Constitution cancelled operations pledge applies 	A
3.8	<ul style="list-style-type: none"> Provider must notify Commissioner of name, address and position of the Nominated Individual responsible for managing the Service 	All

2: Service Conditions

<p>SC4</p>	<p>Co-operation</p> <ul style="list-style-type: none"> • Must co-operate fully with all parties to ensure consistently high standard of care and co-ordinated and integrated delivery of service across all pathways 	<p>All</p>
<p>SC5 5.2</p>	<p>Commissioner Requested Services/Essential Services</p> <ul style="list-style-type: none"> • must comply with CRS Guidance for any services so designated • must maintain ability to provide Essential Services • must have up to date Essential Services Continuity Plans to be implemented in event of interruption or suspension of services or expiry/termination of contract 	<p>All Essential Services</p>
<p>SC6 6.1 6.2 6.3 6.4 6.5 6.5A 6.6</p>	<p>Choice, Referral and Booking</p> <ul style="list-style-type: none"> • must comply with E-Referral Guidance and Guidance issued by DH, NHSE and Monitor regarding patients' rights to choice of provider and/or consultant • must publish all relevant services, ensure they are Directly Bookable; ensure sufficient appointment slots, ensure GP Referrals are through NHS E-Referral Service and offer clinical advice to GPs on potential referrals through NHS E-Referral Service • must promote services through NHS Choices Website • If 18 week RTT applies must ensure first outpatient appointment letter includes 18 week information • Subject to SC7 Provider must: <ul style="list-style-type: none"> • accept any Referral of a Service user made under referral processes or Pathways or legal right to choice • accept any clinically appropriate referral where Responsible Commissioner (CCG or NHSE) is not party to contract where necessary under legal right to choice (NHS Choice Framework) • parties must comply with LD Guidance in making and accepting Referrals • Contract does not entitle Provider to accept referrals from individuals whose Responsible Commissioner is not party to this contract except under their legal right to choice 	<p>All except AM, ELC, Ph, MHSS, PT, A,MH,CS, D 18 Weeks All MH,MHSS All</p>

2: Service Conditions

SC7	Withholding and/or Discontinuation of Service	
7.1	<ul style="list-style-type: none"> nothing in SC7 allows Provider not to provide or to stop providing Service if contrary to Law 	All
7.2	<ul style="list-style-type: none"> Provider will not be required to provide or continue to provide service to a Service User: <ul style="list-style-type: none"> who is unsuitable to receive service; has no valid consent; is violent/ abusive; where their environment poses risk to staff where instructed not to by emergency services 	All Not 111 All Not 111 All
7.3	<ul style="list-style-type: none"> if 7.2 used must explain and confirm in writing (2 days); advise complaints procedure; inform Referrer and agree continued provision of service 	
7.4	<ul style="list-style-type: none"> details specific action in event of non-agreement on continued provision of service 	
7.5	<ul style="list-style-type: none"> if service is stopped under 7.2 and 7.3 complied with, payment must be made under SC36 (Payment Terms) for service prior to discontinuance 	All

2: Service Conditions

SC8	Unmet Needs <ul style="list-style-type: none"> if Provider considers a Service User(s) has an unmet health or social care need must notify Commissioner who will determine action to be taken if Provider considers a Service User has immediate need for treatment within scope of services must provide treatment and notify GP if Provider considers a Service User has immediate need for treatment outside scope of services must notify GP and co-operate with Referrer to secure the required treatment unless Prior Approval Scheme applies, Provider must not carry out non-urgent or routine treatment unrelated to original Referral without agreement of GP 	<p>All</p> <p>All except 111</p>
SC9	Consent <ul style="list-style-type: none"> requirement for Service User consent policy 	<p>All</p>
SC10	Personalised Care Planning and Shared Decision Making <ul style="list-style-type: none"> Provider must employ Shared Decision-making in planning and reviewing a Service Users care or treatment Personalised Care Plans must be developed and agreed with Service User who must have a copy Personalised Care Plan must be evaluated, reviewed with Service User and audited must comply with Care Programme Approach in providing services 	<p>All</p> <p>All except AM, A+E, D, 111,Ph,PT,U</p> <p>MH, MHSS</p>
SC11	Transfer of and Discharge from Care <ul style="list-style-type: none"> must comply with Transfer of and Discharge from Care Protocols; Guidance and 2014 Act 1983 Act and 1983 Act Code LD Guidance must liaise with relevant parties and agree Care Transfer Plan to be implemented Issue Discharge Summary to Service User at time of discharge and to GP (within 24 hours) By 8 am on the day following discharge/ transfer must send Post Event Message to Service Users GP and any third party provider If any correspondence relating to Service Users care differs from Discharge Summary must be copied to Service user 	<p>All</p> <p>MH, MHSS</p> <p>All except 111,Ph, PT</p> <p>111</p> <p>Not 111,Ph,PT</p>

2: Service Conditions

SC12	<p>Service User, Public and Staff Involvement</p> <ul style="list-style-type: none"> • must involve Service Users and evidence involvement • must carry out surveys in accordance with Schedule 6F and report on results 	All
SC13	<p>Equity of Access, Equality and Non-Discrimination</p> <ul style="list-style-type: none"> • must not discriminate between or against service users on grounds of age, sex, race, religion or belief etc and offer assistance where communication difficulties exist • must comply with s.149 Equality Act 2010 and s.6 HRA 1998 and produce plans and evidence of compliance • must implement EDS2 (NHS Trusts/FTs) and National Workforce Race Equality Standard and submit annual report 	All (not small providers)
SC14	<p>Pastoral, Spiritual and Cultural Care</p> <ul style="list-style-type: none"> • must take account of spiritual, religious and cultural needs of Service Users 	All
SC15	<p>Places of Safety</p> <ul style="list-style-type: none"> • must comply with Law and Guidance and agree on identification 	A, A&E, MH, MHSS
SC16	<p>Complaints</p> <ul style="list-style-type: none"> • Commissioner and Provider must have Complaints Procedure and ensure Service Users are aware of it including information on legal rights; access to independent support and role of Health Service Ombudsman 	All

2: Service Conditions

SC17	<p>Services Environment and Equipment</p> <ul style="list-style-type: none"> • must ensure Services Environment and Equipment comply with requirements of Fundamental Standards of Care • must provide all equipment at own cost unless specified in contract • must ensure all staff and Service Users trained and competent in use of equipment 	All
SC18	<p>Sustainable Development</p> <ul style="list-style-type: none"> • must minimise adverse impact on environment • must maintain sustainable development plan in line with NHS guidance and demonstrate progress on climate change adaption and carbon reduction management • must have due regard to impact of expenditure on community as in Public Services (Social Value) act 2012 	All Not small providers All
SC19	<p>Food Standards</p> <ul style="list-style-type: none"> • must develop and maintain a food and drink strategy in accordance with Hospital Food Standards Report • must comply with Food Standards Guidance 	A, MH,MHSS All

2: Service Conditions

RECORDS AND REPORTING		
SC20	<p>Service Development and Improvement Plan</p> <ul style="list-style-type: none"> • must agree an SDIP where required • parties may agree an SDIP at any time • must comply with SDIP and report performance – Schedule 6B 	All
SC21	<p>Antimicrobial Resistance and Healthcare Associated Infections</p> <ul style="list-style-type: none"> • must comply with Code of Practice on Prevention and Control of Infections • must ensure all laboratory services comply with UK Standard Methods for Investigation • must have HCAI plan for each Contract Year reflecting local and national priorities 	All except 111
SC22	<p>Venous Thromboembolism</p> <ul style="list-style-type: none"> • must comply with Guidance (including NICE) • analyse cases acquired in hospital and perform audit of risk if required • report analysis and audit on request 	A
SC23	<p>Service User Health Records</p> <ul style="list-style-type: none"> • Provider must retain records for all Service Users for required period before securely destroying • must transfer record at commissioners request or on end of contract • Provider must give each Service User full and accurate information regarding treatment evidenced by Service User Health Record • NHS Number to be included on Health Record • Subject to GC21 Provider must ensure staff giving urgent care can view Service User information from GP records via Summary Care Records Service or local system • Provider must ensure IT systems accord with Open API Policy and comply with ISB0160 in relation to clinical risk management 	<p>All</p> <p>Except 111, PT</p> <p>All</p>

2: Service Conditions

<p>SC24</p>	<p>NHS Counter-Fraud and Security Management</p> <ul style="list-style-type: none"> • must have security management and counter-fraud arrangements in place • within 1 month of Service start, Provider must complete an organisation crime profile in accordance with NHS Protect Guidance and take action to meet the standards set at the level indicated in the profile • if requested provider must allow review of their security management and counter-fraud arrangements and implement modifications if required • if Provider becomes aware of any suspected/ actual bribery, corruption or fraud involving Service User or public funds must report to NHS Local Counter Fraud Specialist and NHS Protect • if Provider becomes aware of any suspected or actual security incident or breach involving Staff or NHS Resources must report to NHS Local Security Management Specialist and NHS Protect • on request of DH, NHS England, NHS Protect or Commissioner, Provider must (within 5 days) allow access to all property, premises, information and staff relevant to investigation of any cases of fraud, bribery or corruption or security incidents or breaches 	<p>All (not small providers)</p> <p>All</p>
<p>SC25</p>	<p>Procedures and Protocols</p> <ul style="list-style-type: none"> • copies of policies, procedures or protocols to be made available within 5 days if requested • must notify any material changes to items disclosed under this condition • must comply with any Other Local Agreements, Policies and Procedures 	<p>All</p>
<p>SC26</p>	<p>Clinical Networks, National Audit Programmes and Approved Research Studies</p> <ul style="list-style-type: none"> • Provider must participate in Clinical Networks and programmes listed in Schedule 2F • participate in national clinical audits within NCAPOP relevant to the Services • make national clinical audit data available for publication • Provider must adhere to all protocols under those programmes and audits • must put arrangements in place to facilitate recruitment of Service Users and staff into Approved Research Studies (which must have regard to NHS Treatment Costs Guidance) 	<p>All except Ph, PT</p> <p>All</p>

2: Service Conditions

<p>SC27</p>	<p>Formulary</p> <ul style="list-style-type: none"> • Provider must publish Formulary and ensure it reflects all relevant positive NICE Technology Appraisals • make available all relevant treatments recommended in positive NICE Technology Appraisals 	<p>A, MH, MHSS, CR, R</p>
<p>SC28</p> <p>28.2</p>	<p>Information Requirements</p> <ul style="list-style-type: none"> • Parties agree on necessity of complete and accurate data • Provider must: <ul style="list-style-type: none"> • provide information specified in this condition as detailed in relevant guidance and set out in Schedule 6B (Reporting Requirements) • conform to all NHS Information Standards Notices • comply with Guidance issued by NHSE and HSCIC in relation to protection of patient identifiable data • use Service User’s verified NHS Number as primary identifier • Commissioner may request additional information but must act reasonably and not require Provider to supply information locally where centrally submitted or provide information in a different format <p><u>Counting and Coding of Activity</u></p> <ul style="list-style-type: none"> • Provider must ensure any dataset provided contains ODS code • Parties must comply with clinical coding NHS Guidance and definitions of Activity • either party may propose a change of practice in counting and coding of Activity – party proposing change must give six months notice before proposed date of implementation and party receiving notice of change may not unreasonably withhold or delay agreement • any change of practice agreed must be implemented on 1 April of following Contract Year unless a different date is agreed or a specific date is mandated • where any change impacts on the Actual Annual Value of Services, parties must adjust the relevant Prices payable in accordance with the National Tariff to ensure the impact is rendered neutral for the remainder of the Contract Year or Contract Year following the change 	<p>All</p>

2: Service Conditions

SC28	Information Requirements continued	
28.12	<p><u>Aggregation and disaggregation of information</u></p> <ul style="list-style-type: none"> information provided under SC 28 and Schedule 6B for the purposes of SC36 (Payment Terms) must be provided to the Co-ordinating Commissioner in aggregate form and directly to each Commissioner in disaggregated form relating to its own use of Services 	All
28.13	<p><u>SUS</u></p> <ul style="list-style-type: none"> Provider must submit commissioning data sets to SUS in accordance with SUS guidance. If there is a failure or interruption in availability of SUS, Provider must comply with Guidance from NHSE/ HSCIC 	All
28.14	<p><u>Information Breaches</u></p> <ul style="list-style-type: none"> if Commissioner becomes aware of an Information Breach must notify Provider advising nature of the breach and how much they intend to withhold if the breach is not rectified within 5 days 	All
28.15	<ul style="list-style-type: none"> if breach is not rectified within 5 days Commissioners can withhold up to 1% of the Actual Monthly Value in respect of the current month and every month until breach is rectified 	
28.16	<ul style="list-style-type: none"> Commissioners must continue to withhold any sums until breach is rectified and must then pay the withheld sums within 10 days 	
28.17	<ul style="list-style-type: none"> if Provider proves that any sums were withheld without justification Commissioner must repay those sums together with interest 	
28.18	<ul style="list-style-type: none"> any withheld sums may be permanently retained if provider fails to satisfactorily rectify breach by earliest of: <ul style="list-style-type: none"> 3 months of breach being notified termination of Contract expiry date 	

2: Service Conditions

SC28	Information Requirements continued <u>Data Quality Improvement Plan (DQIP)</u> <ul style="list-style-type: none">both parties may at any time agree a DQIP (Schedule 6C) setting out milestones to be met and any financial sanctions for failure to meet those milestones which must not exceed those that could be withheld under SC28.15.if a DQIP with financial sanctions is agreed in relation to any Information Breach Commissioners may not withhold sums under SC28.15 in respect of the same breachif an Information Breach relates to the National Requirements Reported Centrally the parties must not by means of a DQIP agree the delay or foregoing of any retention under SC28.15 to which the Commissioners would be entitled	All
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2: Service Conditions

MANAGING ACTIVITY AND REFERRALS

MANAGING ACTIVITY AND REFERRALS		
SC29	Managing Activity and Referrals	
	<ul style="list-style-type: none"> Commissioners and Provider must each monitor and manage Activity and Referrals for the Services in accordance with this condition and the National Tariff Parties must not agree any action contrary to NHS Choice Framework or restrict Service Users legal rights to choice 	All
29.3	<ul style="list-style-type: none"> Commissioners must: <ul style="list-style-type: none"> adhere to Referral processes or clinical thresholds set out in Service Specifications, Pathways or Prior Approval Schemes or otherwise agreed manage Referral levels in accordance with Activity Planning Assumptions; and notify Provider promptly of any anticipated changes in Referral numbers 	All except 111
29.4	<ul style="list-style-type: none"> Provider must: <ul style="list-style-type: none"> adhere to Referral and treatment protocols agreed between the Parties; manage Activity in accordance with Referral processes or clinical thresholds set out in Services Specifications, Pathways or Prior Approval Schemes and in accordance with Activity Planning Assumptions; and comply with reasonable requests of Commissioner to assist in managing referrals 	All & 111
29.5	<p><u>Indicative Activity Plan (IAP)</u></p> <ul style="list-style-type: none"> before start of each contract year parties must agree IAP specifying threshold for each activity comprising the aggregated IAPs of all the Commissioners 	IAP
29.7	<p><u>Activity Planning Assumptions (APA)</u></p> <ul style="list-style-type: none"> before start of each contract year Commissioner must notify Provider of any APA for that year specifying a threshold for each assumption with which provider must comply 	APA

2: Service Conditions

SC29	Managing Activity and Referrals continued	
29.8	<p><u>Early Warning</u></p> <ul style="list-style-type: none"> each party must notify the other within 3 days of any unexpected Referrals and/ or Activity in relation to any Commissioner specifying nature and likely cause 	All
	<p><u>Reporting and Monitoring Activity</u></p>	
29.10	<ul style="list-style-type: none"> Provider must submit Activity and Finance Report to Co-ordinating Commissioner as per Schedule 6B (Reporting Requirements) 	All
29.11A	<ul style="list-style-type: none"> Co-ordinating Commissioner and Provider will monitor actual Activity reported in each Activity and Finance Report for each Commissioner against: <ul style="list-style-type: none"> thresholds set out in IAP; and thresholds set out in APA 	IAP & APA or IAP only
29.11B	<ul style="list-style-type: none"> Co-ordinating Commissioner and Provider will monitor actual Activity reported in each Activity and Finance Report for each Commissioner against the thresholds set out in the APA and any previous Activity and Finance Reports 	APA but no IAP
29.11C	<ul style="list-style-type: none"> Co-ordinating Commissioner and Provider will monitor actual Activity reported in each Activity and Finance Report for each Commissioner against any previous Activity and Finance Reports 	No IAP No APA

2: Service Conditions

SC29	Managing Activity and Referrals continued	
<p>29.12</p> <p>29.13</p> <p>29.14</p>	<p><u>Activity Management Meeting</u> Following:</p> <ul style="list-style-type: none"> • notification by either party of any unexpected or unusual patterns of Referrals and /or Activity under SC 29.8 & 29.9; or • submission of any Activity and Finance Report in accordance with SC29.10 indicating variances against IAP thresholds and/or breaches of thresholds in APA, • submission of any Activity and Finance Report in accordance with SC29.10 indicating breaches of thresholds in APA, • submission of any Activity and Finance Report in accordance with SC29.10 indicating unexpected or unusual patterns of referrals and/or Activity <p>29.13</p> <ul style="list-style-type: none"> • parties must meet to discuss any Activity Query Notice (AQN) within 10 days of issue <p>29.14</p> <ul style="list-style-type: none"> • at the Activity Management Meeting parties must consider patterns of Referrals, Activity and Service Users legal right to choice and agree either: <ul style="list-style-type: none"> • that AQN is withdrawn • To hold a Utilisation Meeting (SC29.15 will apply) • To conduct Joint Activity Review (SC29.16- 29.20 will apply) 	<p>All</p> <p>IAP & APA or IAP only</p> <p>APA but no IAP</p> <p>No IAP No APA</p> <p>All</p>
29.15	<p><u>Utilisation Review Meeting</u></p> <ul style="list-style-type: none"> • meeting must take place within 10 days and parties must discuss and agree a Utilisation Improvement Plan and/or update any previously agreed Utilisation Plan 	All

2: Service Conditions

SC29	Managing Activity and Referrals continued	
	<u>Joint Activity Review</u>	
29.16	<ul style="list-style-type: none"> review must take place within 10 days and parties must discuss the causes of the unexpected or unusual pattern of Referrals and/or Activity and if required agree an Activity Management Plan 	All
29.17	<ul style="list-style-type: none"> no plan should be agreed in respect of unusual referrals or Activity wholly due to Service users legal right to choice 	
29.18	<ul style="list-style-type: none"> if parties fail to agree an Activity Management Plan must issue a joint notice to that effect to Governing Body and if agreement still not met after a further 10 days either party may refer the matter to Dispute Resolution. 	All
29.19	<ul style="list-style-type: none"> parties must implement any Activity plan agreed under SC29.16 to SC29.18 and there may be consequences if any party breaches the terms therein 	All
	<u>Prior Approval Scheme (PAS)</u>	All
29.21	<ul style="list-style-type: none"> before start of each contract year Commissioner must notify Provider of terms of any PAS which may include details of the information to be provided about service users 	
29.22	<ul style="list-style-type: none"> Provider must manage Referrals in accordance with terms of PAS and if fails to do Commissioners will not be liable to pay 	All except AM, ELC, 111, PT
29.23	<ul style="list-style-type: none"> If a PAS imposes any obligation on a Provider contrary to NHS Choice Framework that obligation will have no contractual effect; the PAS must be amended accordingly and Commissioner will be liable to pay if that amended service is provided 	
29.24	<ul style="list-style-type: none"> at any time during contract year Commissioner may (with not less than 1 months notice) notify Provider of any new /replacement PAS or amendment to existing PAS which Provider must implement by date set out in the notice and apply to Referrals made after that date 	
29.25	<ul style="list-style-type: none"> If 18 weeks RTT is at risk for any Activity covered by PAS, Commissioner may require Provider to specify a revised pathway to mitigate that risk 	
29.26	<ul style="list-style-type: none"> If Provider requests Prior Approval under PAS Commissioner must respond within time specified or Prior Approval will be deemed to have been given 	
29.27	<ul style="list-style-type: none"> At providers request in case of urgent clinical need or risk to patient safety Commissioner must grant retrospective Prior Approval 	

2: Service Conditions

EMERGENCIES AND INCIDENTS

EMERGENCIES AND INCIDENTS		
SC30	Emergency Preparedness, Resilience and Response	
	<ul style="list-style-type: none"> Provider must comply with EPRR Guidance and identify and have in place an Accountable Emergency Officer 	All
	<ul style="list-style-type: none"> Provider must have evacuation plans for relocation of Service Users to alternative secure premises 	MHSS
30.3	<ul style="list-style-type: none"> Provider must have in place and maintain adequate facilities including an Incident Co-ordination Centre to manage a Significant Incident or Emergency in accordance with NHS England Emergency Planning Framework 	All (not small Providers, CHC, D, ELC, Ph)
30.4	<ul style="list-style-type: none"> If there is a Significant Incident or Emergency: <ul style="list-style-type: none"> parties must comply with respective Incident Response Plans each party must assist others to respond Provider must comply with its Business Continuity Plan 	All
30.5	<ul style="list-style-type: none"> Provider must notify Commissioner within 5 days following activation of its Incident Response Plan; any risk or disruption to CRS or Essential Services and /or activation of its Business Continuity Plan 	All
30.7	<ul style="list-style-type: none"> Provider must when requested assist in response to any national, regional or local public health emergency or incident 	All

2: Service Conditions

SC30	Emergency Preparedness, Resilience and Response continued	
30.8	<ul style="list-style-type: none"> If Provider is sub-contracting Service must ensure its Incident Response Plan and Business Continuity Plan make provision for this and that any Material Sub-Contractor complies with EPRR Guidance 	All
30.9	<ul style="list-style-type: none"> right of any Commissioner to withhold sums under GC9 or suspend service under GC16 will not apply if this right results from Provider complying with this condition SC30. 	All
30.10	<ul style="list-style-type: none"> Provider must try to minimise effect of a Significant Incident or Emergency and continue provision of Elective and Non-Elective care. If Service User is receiving treatment at time of Incident or is admitted afterwards Provider must not discharge or transfer unless clinically appropriate 	A
30.11	<ul style="list-style-type: none"> if demand for Non-Elective Care increases as a result of the Incident reducing ability to provide Elective Care this can be suspended or reduced – must be confirmed to Commissioner in writing every 2 days 	A
30.12	<ul style="list-style-type: none"> During any suspension or reduction of Elective Care GC16 does not apply; Commissioners if requested should try to avoid any new referrals and Provider may change waiting lists; and Provider should continue to provide Non-Elective Care subject to transfer of Service User if in their best interests 	A
30.18	<ul style="list-style-type: none"> If (despite provider complying with SC30) there are transfers, postponements and cancellations, Provider must notify Commissioners of: <ul style="list-style-type: none"> identity of each Service User transferred and the alternative provider identity of each Service User likely to be transferred with probable date and identity of alternative provider cancellations and postponements of admission dates cancellations and postponements of out-patient appointments other changes in Provider’s list 	A
30.14	<ul style="list-style-type: none"> Provider must fully restore availability of Elective Care as soon as possible after effects of the Incident have ceased. 	A

2: Service Conditions

SC31	Force Majeure: Service-specific provisions <ul style="list-style-type: none">• nothing in this Contract relieves Provider from responsibilities to provide the service if the services required relate to an Event of Force Majeure• does not prevent Provider relying on GC28 if a subsequent separate Event of Force Majeure prevents the provider from delivering those services• if Provider is affected party must ensure all Service Users held securely remain in secure detention• any failure or interruption of National Telephony Service will be considered an event beyond Provider's control for purposes of GC 28 (Force Majeure)	AM,111 AM'111 MHSS 111
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2: Service Conditions

SAFETY AND SAFEGUARDING

SC32

Safeguarding, Mental Capacity and Prevent

- Provider must ensure Service Users are protected from abuse and improper treatment
- Provider must nominate a Safeguarding Lead and a named professional for safeguarding children; a Mental Capacity and Deprivation of Liberty Lead; and a Prevent Lead and ensure Commissioner knows identities
- Provider must comply with requirements for safeguarding of children and adults, including deprivation of liberty safeguards set out in 2014 Act and associated guidance; 2014 Regulations; 1989 Act and 2004 Act and associated Guidance; 2005 Act and associated Guidance; and Safeguarding Guidance
- Provider has adopted and must comply with the Safeguarding Policies and MCA Policies
- Provider must implement safeguarding and MCA training for all staff and undertake annual audit of completion of training and compliance with legislation and guidance
- within 10 days of Commissioner's written request Provider must evidence it is addressing any safeguarding concerns raised
- if requested Provider must participate in development of safeguarding quality indicators or plan
- Provider must co-operate with third party providers of social care services in implementation of Child Protection Information Sharing Project
- Provider must (and to extent applicable and agreed small providers must) comply with Government Prevent Strategy (GPS) and Prevent Guidance and Toolkit; including raising awareness of GPS and delivery of WRAP for staff and volunteers

All

A+E,
A,AM,U
All (nb for
small
Providers)

2: Service Conditions

SC33	Incidents Requiring reporting <ul style="list-style-type: none">• Provider must comply with arrangements for notification of deaths and other incidents to CQC and other relevant bodies in connection with Serious Incidents or their prevention• Provider must comply with NHS Serious Incident Framework and Never Events Policy Framework• Parties must comply with obligations in relation to deaths and other incidents under Schedule 6D (Incidents Requiring Reporting Procedure) and 6B (Reporting Requirements)• any notifications given to Regulatory Bodies concerning a Service User must be copied to Commissioner as in Schedule 6D and 6B• Commissioners may use any information provided under SC 33 and Schedule 6D and 6B in any report to Regulatory Bodies concerning Serious Incidents provided they notify Provider	All
SC34	Care of Dying People and Death of a Service User <ul style="list-style-type: none">• Provider must have regard to Guidance on Care of Dying People• must maintain and operate Death of a Service User Policy	All

2: Service Conditions

SC35	Duty of Candour	
35.2	<p>If a Notifiable Safety Incident occurs Provider must:</p> <ul style="list-style-type: none"> • notify Relevant Person and provide support • report incident to Local Risk Management Systems in accordance with Guidance • conduct full investigation 	All
35.3	<ul style="list-style-type: none"> • notification in 35.2 must be given in person; provide a true account of all known facts at that time; advise on further enquiries and investigations, include an Apology; Provider must keep a written record 	
35.4	<ul style="list-style-type: none"> • notification must be followed by further written notifications containing information provided; details of any enquiries to be undertaken; details of any enquiries carried out and their findings; any steps taken to prevent recurrence of incident and an Apology • If Relevant Person cannot be contacted or declines to speak to Provider notification not required but written record must be kept of contact attempts • Provider must keep copy of all correspondence with Relevant person and full written records of any meeting or contact 	
35.7	<ul style="list-style-type: none"> • within 10 days of conclusion of investigation provide Relevant Person with copy of report. If Notifiable Safety Incident was a Serious Incident, Commissioner must comply with procedures for quality assurance and closure of investigation; Relevant Person must be informed that investigation report may be subject to amendment by Commissioner and if substantial change is required relevant Person will be supplied with final amended copy 	
35.9	<ul style="list-style-type: none"> • if Provider receives complaint from a Relevant Person; Commissioner; Local Healthwatch or any Healthcare Professional relating to a failure to disclose a Notifiable Safety Incident, Provider must notify Commissioner in writing 	
35.10	<ul style="list-style-type: none"> • if Provider fails to comply with this SC35 Commissioner may: <ul style="list-style-type: none"> • notify CQC of failure; • require Provider to give Relevant Person formal written apology and explanation • require Provider to publish details of failure on website • any action as above will be in addition to any consequence applied under Schedule 4 (Quality Requirements) 	

2: Service Conditions

PAYMENT TERMS

SC36	Payment Terms	
36.1	<p><u>Payment Principles</u></p> <ul style="list-style-type: none"> • each Commissioner must pay Provider in accordance with National Tariff for all services delivered under this contract. • Provider will be entitled to be paid for Services delivered during any Significant Incident or Emergency (except as agreed under SC30) and any event of Force Majeure (except as agreed under SC28) 	All Providers
36.3	<p><u>Prices</u></p> <p>Prices payable will be:</p> <ul style="list-style-type: none"> • where National Tariff specifies a price: <ul style="list-style-type: none"> • the National Price; • the National Price as modified by a Local variation; • subject to SC36.16 to 36.20 (Local Modifications) the National Price as modified by a Local Modification approved by Monitor • where National Tariff does not specify a price: <ul style="list-style-type: none"> • the Local Price 	All Providers

2: Service Conditions

SC36	Payment Terms continued	
	<p><u>Local Prices</u></p> <ul style="list-style-type: none"> 36.4 • Co-ordinating Commissioner and Provider may agree a Local Price - where agreed for more than one contract year the mechanism by which Local Price is to be adjusted should be documented in Schedule 3A – any adjustment must have regard to efficiency and uplift factors set out in National Tariff 36.5 • any Local Price must follow rules set out in National Tariff 36.6 • must apply annually any adjustment mechanism agreed, where none agreed must review and agree before start of each Contract Year the Local Price to apply to the following year 36.7 • if fail to review or agree two months before the start of the Contract Year or adjustment is disputed, either party may refer to Dispute Resolution and then mediation 36.8 • If after mediation no agreement reached either party can within 10 days terminate Service with 6 months notice 36.9 • If Local Price not agreed before start of a Contract Year then it will be that applying to previous Contract Year adjusted by efficiency and uplift factors 36.10 • All Local Prices and any annual adjustment to be recorded in Schedule 3A. Where parties have agreed to depart from applicable national currency must be submitted to Monitor <p><u>Local Variations</u></p> <ul style="list-style-type: none"> 36.11 • parties may agree a Local Variation which must follow rules set out in National Tariff 36.13 • if agreed Local Variation is for less than duration of Contract, relevant Price must be reviewed before expiry of last Contract Year to which Local Variation applies 36.14 • if fail to review or agree any Local Variation to apply to following Contract Year, Price payable will be National Price 36.15 • must record each Local Variation in Schedule 3B and submit to Monitor 	<p>All Providers</p>
		<p>All Providers</p>

2: Service Conditions

SC36	<p>Payment Terms continued</p> <p><u>Local Modifications</u></p> <p>36.16 • parties may agree (or Monitor determine) a Local Modification in accordance with National Tariff</p> <p>36.17 • any Local Modification must be submitted to Monitor for approval. If approved Price will be National Price modified by the approved Local Modification and effective date and duration will be specified in Monitor’s notice of approval. Pending approval can use proposed modified price.</p> <p>36.18 • if parties fail to agree Local Modification, Provider may ask Monitor to determine. Price payable will be National Price modified by the Local Modification specified in Monitor’s notice of decision and effective date and duration will be as specified in that notice. Pending decision Price will be National Price subject to any Local Variation agreed</p> <p>36.19 • if Monitor refuses proposed Local Modification Price payable will be National Price (subject to any Local Variation agreed) and parties must agree an appropriate mechanism to revert to this Price</p> <p>36.20 • each Local Modification agreement and application for determination must be submitted to Monitor as per S124/125 of 2012 Act and National Tariff and recorded in Schedule 3C.</p> <p><u>Marginal Rate Emergency Rule</u></p> <p>36.21 • baseline value for emergency admissions must be agreed and recorded in Schedule 3D in accordance with national Tariff</p>	<p>All Providers</p> <p>A</p>
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2: Service Conditions

SC36	Payment Terms continued <u>Emergency Readmission Within 30 days</u> 36.22 • the threshold above which readmissions will not be reimbursed, and the amount that will not be paid for any readmission above that threshold must be recorded in Schedule 3E <u>Aggregation and Disaggregation of Payments</u> 36.23 • Co-ordinating Commissioner may make or receive all payments due in aggregate amounts for itself and each Commissioner giving 20 days notice in writing to Provider. Notices to aggregate or reinstate separate payments may be repeated or withdrawn from time to time but must be recorded in Schedule 3G.	A All providers
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2: Service Conditions

SMALL PROVIDERS		
SC36	<p>Payment to Small Providers where the Parties have agreed an Expected Annual Contract Value (EACV)</p>	
36.24 36.25	<ul style="list-style-type: none"> each Commissioner must make payments on account as per SC36.25 or 36.26 and 36.27 10 days before start of each Quarter, Provider must invoice each Commissioner for one quarter of individual EACV for the Commissioner to be paid on first day of each Quarter on/ after Service Commencement Date 	Small Providers - EACV agreed
36.26 36.27	<ul style="list-style-type: none"> if SDC is not 1 April payments will be as set out in Schedule 3H If Expiry Date is not 31 March payments will be as set out in Schedule 3H 	
36.28	<ul style="list-style-type: none"> within 25 days after end of Quarter Provider must send reconciliation account to each Commissioner detailing Prices for all Services delivered in that Quarter excepting in relation to Block Arrangements 	
36.30 36.31	<ul style="list-style-type: none"> each Commissioner must either agree or wholly/ partially contest the reconciliation account Agreement will trigger a reconciliation payment and Provider must issue invoice (credit note) within 5 days for payment within 10 days 	
	<p>Payment to Small Providers where the Parties have not agreed an Expected Annual Contract Value (EACV) in relation to any Services</p>	
36.32	<ul style="list-style-type: none"> Provider must invoice each Commissioner within 15 days of end of month for Services provided in that month to be paid within 10 days (subject to SC36.54 Contested Payments) 	Small Providers - EACV not agreed

2: Service Conditions

OTHER PROVIDERS		
<p>SC36</p> <p>36.33 36.34</p>	<p>Payment where the Parties have agreed an Expected Annual Contract Value (EACV)</p> <ul style="list-style-type: none"> • each Commissioner must make payments on account as per SC36.34 or 36.35 and 36.36 • before first day of each month, Provider must invoice each Commissioner for twelfth of individual EACV for the Commissioner to be paid on 15th day of each month (or as agreed) after Service Commencement Date <ul style="list-style-type: none"> • if SDC is not 1 April payments will be as set out in Schedule 3H • If Expiry Date is not 31 March payments will be as set out in Schedule 3H 	<p>Other Providers - EACV agreed</p>
<p>36.37</p>	<p>Reconciliation where the Parties have agreed an Expected Annual Contract Value (EACV) and SUS applies to some or all of the Services</p> <ul style="list-style-type: none"> • by the First Reconciliation Date for the month to which it relates Provider must provide separate reconciliation account for each Commissioner for each month showing the sum equal to the Prices for all Services delivered in that month. Must be based on information submitted under SC28 • each Commissioner must raise any data validation queries for provider to answer • Provider must send final reconciliation account for each month 5 days after Final Reconciliation Date for that month. Final account must be either agreed or contested under SC36.54. 	<p>Other Providers - EACV agreed; SUS applies</p>
<p>36.40</p>	<p>Reconciliation for Services where Parties have agreed an Expected Annual Contract Value (EACV) and SUS does not apply to any of the Services</p> <ul style="list-style-type: none"> • Provider must provide separate reconciliation account for each Commissioner for each month showing the sum equal to the Prices for all Services delivered in that month. Must be based on information submitted under SC28 and sent 20 days after end of month to which it relates • account must be either agreed or contested under SC36.54 	<p>Other Providers - EACV agreed; SUS does not apply</p>

2: Service Conditions

<p>SC36</p>	<p>Other aspects of reconciliation for all Prices where the Parties have agreed an Expected Annual Contract Value (EAV)</p>	
<p>36.42</p>	<ul style="list-style-type: none"> No reconciliation in relation to Block Arrangements each Commissioner’s agreement of a reconciliation account will trigger a reconciliation payment and Provider must supply invoice (credit note) within 5 days for payment within 10 days 	<p>Other Providers - EACV agreed</p>
	<p>Payment where the Parties have not agreed an Expected Annual Contract Value (EACV) for any Services and SUS applies to some or all of the Services</p>	
<p>36.44</p>	<ul style="list-style-type: none"> Provider must issue monthly invoice by Final Reconciliation Date for end of that month to each Commissioner in respect of Services provided in that month. Invoice to be paid within 10 days 	<p>Other Providers - EACV not agreed; SUS applies</p>
	<p>Payment where the Parties have not agreed an Expected Annual Contract Value (EACV) for any Services and SUS does not apply to any of the Services</p>	
<p>36.45</p>	<ul style="list-style-type: none"> Provider must issue monthly invoice within 20 days after the end of each month to each Commissioner in respect of Services provided in that month. Invoice to be paid within 10 days 	<p>Other Providers - EACV not agreed; SUS does not apply</p>

2: Service Conditions

GENERAL PROVISIONS		
SC36 36.46	<p><u>Operational Standards, National Quality Requirements and Local Quality Requirements</u></p> <ul style="list-style-type: none"> • if thresholds breached Provider must repay (or Commissioner must deduct from Payments due) relevant sums under Schedules 4A, 4B and 4C. • must not exceed 2.5% of Actual Quarterly Value 	All
36.47	<p><u>Never Events</u></p> <ul style="list-style-type: none"> • If Never Event occurs Commissioner must apply Never Event Consequence under Schedule 4D 	All
36.48	<p><u>Statutory and Other Charges</u></p> <ul style="list-style-type: none"> • Provider must administer all statutory benefits due to Service User and Commissioner must reimburse Provider within 20 days following invoice any monies correctly paid 	All except 111
36.49	<ul style="list-style-type: none"> • Provider must administer all statutory charges which Service User is liable to pay for Service and account to commissioner for those charges. 	All
36.50	<ul style="list-style-type: none"> • Provider must comply with Overseas Visitor Charging Regulations and Guidance including identification and collection of charges and reporting of unpaid NHS debts for Services provided to non-EEA national Chargeable Visitors to DH • If Provider fails to identify a Chargeable Overseas Visitor (COV) or recover charges from them, no Commissioner will be liable to pay Provider for the Services delivered • each Responsible Commissioner must pay the appropriate contribution on account for Services delivered under the Contract to a COV • Provider must refund any such contribution on account if charges are collected from a COV • Provider must fully utilise existing mechanisms to increase rates of recovery of costs of Services provided to overseas visitors insured by another EEA state including EEA reporting portal for EHIC and S2 activity • each Responsible Commissioner must pay the Provider for Services delivered to any overseas visitor which have been reported through the EEA reporting portal 	All

2: Service Conditions

SC36		
36.51	<ul style="list-style-type: none"> Provider must not provide or offer a Service User any clinical or medical services for which charges would be payable by the Service user except in accordance with this Contract 	All
36.52	<p><u>Patient Pocket Money</u></p> <ul style="list-style-type: none"> Provider must administer and pay all pocket monies due to Service User and Commissioner must reimburse Provider within 20 days following invoice any monies correctly paid 	MH,MHSS
36.53	<p><u>VAT</u></p> <ul style="list-style-type: none"> Payment is exclusive of VAT which Commissioner will be liable to pay on receipt of valid tax invoice 	All
36.54	<p><u>Contested Payments</u></p> <p>If a Party contests all (or part) of any payment:</p> <ul style="list-style-type: none"> contesting party must within 5 days of receiving reconciliation account (SC 36.28,36.37 or 36.40) or final reconciliation account (SC36.44) or an invoice (SC36.32 or 36.45) notify other party giving reasons and details of elements contested; and any uncontested amount must be paid from whom it is due; and if matter unresolved within 20 days contesting party must refer to Dispute Resolution following resolution of the dispute, Provider must issue invoice or credit note and make any payment due together with interest calculated 	All
36.55	<p><u>Interest on Late Payments</u></p> <ul style="list-style-type: none"> each party is entitled to receive Interest from day following date payment due up to and including date of payment 	All
36.56	<p><u>Set Off</u></p> <ul style="list-style-type: none"> where any sum is due following resolution party due to be paid may deduct it from any amount it is due to pay the other provided 5 days notice has been 	All
36.57	<p><u>Invoice Validation</u></p> <ul style="list-style-type: none"> Parties must comply with guidance in use of data in invoices 	All

2: Service Conditions

QUALITY REQUIREMENTS AND INCENTIVE SCHEMES		
SC37	Local Quality Requirements and Quality Incentive Scheme	All
37.1	<ul style="list-style-type: none"> parties must comply with legal duty to improve quality of clinical and /or care services as set out in National Standards 	
37.3	<ul style="list-style-type: none"> before start of each Contract Year, Commissioner and Provider will agree the Local Quality Requirements (LQR) and Quality Incentive Scheme Indicators (QISI) to apply for that year which should not be lower than those for the previous year and will be effected by means of a Service Variation. 	
37.4	<ul style="list-style-type: none"> If LQR and QISI cannot be agreed, parties must refer the matter to Dispute Resolution 	
37.5	<ul style="list-style-type: none"> QISI apply in addition to and not in substitution for LQR 	
SC38	Commissioning for Quality and Innovation (CQUIN)	
38.1	<ul style="list-style-type: none"> where required by CQUIN Guidance, parties must implement a performance incentive scheme for each contract year 	
38.2	<ul style="list-style-type: none"> if the Provider has satisfied a CQUIN Indicator a CQUIN payment will be made in accordance with CQUIN Table 1 	
38.3	<p><u>Payment on Account</u></p> <ul style="list-style-type: none"> Before the start of each Contract Year Commissioner and Provider may agree a schedule of payments on account in expectation of Provider meeting CQUIN Indicators (CQUIN Table 2) 	

2: Service Conditions

SC38	Commissioning for Quality and Innovation (CQUIN) continued <u>CQUIN Performance Report</u> 38.5 • Provider must submit CQUIN Performance Report • report is reviewed and discussed with each Commissioner • if Commissioner wishes to query report must serve CQUIN Query Notice within 10 days 38.8 • Provider must respond to CQUIN Query Notice within 10 days either by: <ul style="list-style-type: none">• submitting a revised CQUIN Performance report or• referring the matter to dispute Resolution 38.9 • if Provider submits revised CQUIN Performance Report Commissioner must within 10 days either <ul style="list-style-type: none">• accept revised Report; or• refer matter to Dispute Resolution	All
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2: Service Conditions

SC38	Commissioning for Quality and Innovation (CQUIN) continued	
38.11	<p><u>Reconciliation</u></p> <ul style="list-style-type: none"> • within 20 days following later of, end of Contract Year and resolution of all CQUIN Performance Reports, Provider must submit CQUIN Reconciliation Account • if payment is made before final reconciliation account is agreed and the Actual Annual Value differs from the value against which the CQUIN Payment was calculated, Provider must within 10 days send reconciliation statement showing what CQUIN payment should have been 	All
38.12	<ul style="list-style-type: none"> • within 5 days of receipt of CQUIN Reconciliation Account or reconciliation statement Co-ordinating Commissioner must either agree or contest it: 	
38.13	<ul style="list-style-type: none"> <ul style="list-style-type: none"> • if agreed will trigger reconciliation payment – Provider must invoice each Commissioner within 5 days of agreement and payment to be made within 10 days of receipt of invoice 	
38.14	<ul style="list-style-type: none"> <ul style="list-style-type: none"> • if contested Co-ordinating Commissioner must within 5 days notify Provider setting out reasons for contesting and identifying which elements are contested and which are not. Any uncontested payment must be paid and if the matter is not resolved within 20 days either party may refer the matter to Dispute Resolution. Following resolution of any dispute Provider must invoice for any agreed amount and payment due must be paid together with interest calculated in accordance with SC 36.55 	
38.15	<p><u>Variations to National CQUINs</u></p> <ul style="list-style-type: none"> • Co-ordinating commissioner and Provider may agree to vary or disapply any National CQUIN. Any such: • may be agreed for one or more contract years or duration of Contract • must apply in respect of all Commissioners • must be recorded in Schedule 4 (CQUIN Variations) and submitted to NHS England 	All

3: General Conditions

- Set out national terms that apply in all contracts

GC1	Definitions and Interpretation <ul style="list-style-type: none">• If contract terms conflict, resolution must be in following order of priority:<ul style="list-style-type: none">• General Conditions• Special Conditions• Particulars
GC2	Effective Date and Duration <ul style="list-style-type: none">• Contract starts on Effective Date and ends on Expiry Date unless terminated earlier under GC17
GC3	Service Commencement <ul style="list-style-type: none">• Begin delivery of Service on later of<ul style="list-style-type: none">• Expected Service Commencement Date; and• day after date all Conditions Precedent are satisfied
GC4	Transition Period <ul style="list-style-type: none">• By Expected Service Commencement Date: Conditions Precedent to be satisfied and all Commissioner Documents received• Transition Arrangements – Schedule 2H• Any changes to Conditions Precedent must be notified within 5 days of change being known

3: General Conditions

GC5

Staff

General

- 5.2 • ensure sufficient numbers and skill mix of staff to provide service at all times and undertake detailed review of staffing requirements every 6 months. Report on outcome and implement lessons learned.
- 5.3 • ensure staff appropriately qualified, registered, indemnified; carry ID and aware of equality rights
- 5.4 • ensure all staff receive proper and sufficient CPD, training and instruction and keep records
- 5.6 • must liaise with Local Education & Training Boards and Health Education England to understand and plan workforce requirements and education and training needs
- 5.7 • ensure data relating to staff membership of NHS pension scheme is provided and kept up to date
- 5.8 • ensure code in place to allow staff to raise concerns about service and ensure they are not prevented or inhibited from making any such disclosure
- 5.9 • Staff Surveys must comply with SC12 (Service User Involvement) and Schedule 6F (Surveys)

Pre-employment Checks

- 5.10 • must comply with NHS Employment Check Standards and DBS requirements
- 5.11 • may employ pending receipt of DBS check with agreement of Commissioner

TUPE

- 5.12 • must comply with TUPE and COSOP and indemnify Commissioners against loss resulting from:
 - failure by Provider / sub contractor to comply with obligations under TUPE and or COSOP;
 - any claim by any person that proposed/ actual changes to working conditions are detrimental
 - any claim by any person in relation to breach of contract arising from changes
- 5.13 • Provider must supply anonymised details of staff subject to TUPE within 20 days of Commissioner's written intention to tender service and indemnify against losses from inaccurate information provided
- 5.14 • Provider must not in last 3 months of contract make material changes to staff numbers employed; staff remuneration; relocate or reassign staff without agreement of Commissioner
- 5.15 • on end of contract Provider must indemnify Commissioners against losses arising after expiry of the contract from failure by Provider/ sub contractor in connection with transfer of staff under TUPE
- 5.16 • Commissioners must ensure any new Provider indemnifies them against losses arising from failure of new Provider to comply with TUPE and/ or COSOP

3: General Conditions

GC5	Staff continued
5.17	<p><u>Employment or Engagement following NHS Redundancy</u></p> <p>If intending to employ an individual (unless for 15 days or less in any 90 day period) Provider must:</p> <ul style="list-style-type: none">• check whether individual has within the previous 12 months received a contractual redundancy payment from an NHS Employer from a post as a Very Senior Manager; and if so<ul style="list-style-type: none">• require individual to identify that employer• require individual to notify that employer of their conditional offer of employment• require individual to either (a) make arrangements with that employer to repay redundancy payment, or (b) agree to repay by instalments via salary deduction and include in their terms and conditions the provisions set out in GC 5.17.6• not make any offer of employment until receiving confirmation that agreement is in place for repayment either by (a) or (b)
5.17.6	<ul style="list-style-type: none">• Wording for agreement and calculation for repayment of proportion of Redundancy payment to be included in individual's terms and conditions of Employment Contract
5.18	<ul style="list-style-type: none">• Provider must not make arrangements with any individual such that the effect or intent is to circumvent GC 5.17
5.19	<ul style="list-style-type: none">• If Provider fails to comply with GC 17 or GC 18, they must repay the Redundancy Payment or the proportion of it which the individual would have had to repay.

3: General Conditions

GC6	Not used
GC7	Partnership Arrangements
7.1	<u>Provider Partnership Arrangements</u> <ul style="list-style-type: none">• any variation or termination must be notified to Commissioner within 5 days• copies of Agreements and relevant documents must be supplied within 10 days of request
7.4	<u>Commissioner Partnership Arrangements</u> <ul style="list-style-type: none">• any variation or termination must be notified to Provider within 5 days• copies of Agreements and relevant documents must be supplied within 10 days of request
GC8	Review
8.1	Review meetings to be held at intervals prescribed in the Particulars to discuss: <ul style="list-style-type: none">• Service Quality Performance Reports; performance of parties; levels of Activity, Referrals and utilisation; any variations; Price etc.
8.2	<ul style="list-style-type: none">• Review Record must be made of the meeting and signed by both parties
8.3	<ul style="list-style-type: none">• Any dispute not shown in Review record or not referred to Dispute Resolution within 10 days of Review record being signed will be deemed withdrawn
8.4	<ul style="list-style-type: none">• in an urgent situation where something requires immediate resolution either party can give notice requiring a review meeting outside of those scheduled – meeting to be held within 5 days of notice

3: General Conditions

GC9

Contract Management

- 9.1
- If parties have previously agreed on consequences should the Provider fail to meet a Quality Requirement then the Commissioner can take action without issuing a Contract Performance Notice (CPN)
- 9.3
- GC 9.16, 9.20, 9.21, 9.23 and 9.24 do not apply if failure to agree or comply with Remedial Action Plan (RAP) is due to Commissioner error or unreasonableness.
- 9.4
- Contract Performance Notice
- Either party may issue a CPN to the other
- 9.6
- Contract Management Meeting
- Parties must meet within 10 days of CPN
 - must agree either to withdraw CPN or implement an Immediate Action Plan (IAP) or Remedial Action Plan (RAP)
 - If cannot agree a course of action must conduct Joint Investigation (JI)
- 9.8
- Joint Investigation
- Parties must agree terms of reference; timescale (not to exceed 2 months) and appropriate representatives to conduct JI
 - parties may agree an Immediate Action Plan (IAP) to be implemented at same time as JI
 - on completion of JI must produce and agree JI report which must recommend either to withdraw CPN or agree and implement RAP
- Remedial Action Plan
- 9.11
- If RAP to be implemented parties must agree contents within 5 days of meeting
- 9.12
- RAP must set out;
 - actions required, which Party is to complete the action and date for completion
 - improvements in outcomes required; the date by which the improvement must be achieved and for how long it must be maintained
 - any agreed financial sanctions or other consequences of failure (any financial sanctions must not exceed in aggregate 10% of the Actual Monthly Value in any month in respect of any RAP)
- 9.13
- any RAP agreed in final contract year can specify dates for completion of action or continuing improvement falling after the Expiry Date for inclusion in SDIP under subsequent contract
- 9.14
- parties must record progress against RAP and review on ongoing basis

3: General Conditions

Withholding Payment for Failure to Agree Remedial Action Plan

- 9.15 • if either party fails to attend a Contract Management Meeting within 20 days of CPN or parties have not agreed RAP within 5 days they must jointly notify their Governing Bodies
- 9.16 • if 10 days after notifying Governing Bodies parties still cannot agree RAP (due to failure by Provider) Commissioner can withhold up to 2% of Actual Monthly Value for each further month RAP not agreed
- 9.17 • payment of any withheld sums must be made within 10 days of RAP being agreed without interest unless GC 9.23 applies

Implementation and Breach of Remedial Action Plan

- 9.18 • if agreed actions completed and improvements achieved must note in next review that RAP completed
- 9.19 • If either party fails to complete an action or deliver the required improvements under the RAP then the agreed financial or other sanctions may be applied

Exception Report

- 9.20 • if a party fails to complete an action or deliver the required improvements under the by RAP and does not remedy the failure within 5 days the other party can issue Exception Report to Chief Executive; Governing Body and/ or Regulatory Body

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

If Provider fails to complete an action or deliver the required improvement:

- 9.21.1 • Commissioner can withhold, in respect of each action not completed or improvement not met, up to 2% of Actual Monthly Value, from date of Exception Report and for each month after, subject to maximum monthly withholding of 10% of the Actual Monthly Value in relation to each RAP; and
- 9.21.2 • payment of any withheld sums must be made within 10 days of breach of RAP being rectified without interest unless GC 9.23 applies

3: General Conditions

9.22	<p><u>Retention of Sums Withheld for Breach of Remedial Action Plan</u></p> <ul style="list-style-type: none">if 20 days after issue of Exception Report, the Provider remains in breach of RAP, Commissioner may recommend permanently retaining any sums withheld under GC 9.19 or GC 9.21.1
9.23	<p><u>Unjustified Withholding or Retention of Payment</u></p> <ul style="list-style-type: none">If payments withheld under GC 9.16; 9.19 or 9.21.1 and, within 20 days, Provider evidences the sums withheld unjustifiably Commissioners must pay within 10 days of receiving proof together with interest
9.24 9.25	<p><u>Retention of Sums Withheld on Expiry or Termination of this Contract</u></p> <ul style="list-style-type: none">if Provider does not agree RAP within 6 months following expiry of time period in GC 9.11 or before contract expires, Commissioner may recommend permanent retention of any sums withheld under GC 9.16if Provider does not rectify a breach of RAP before contract expires Commissioner may recommend permanent retention of any sums withheld under GC 9.19 or GC 9.21.1

3: General Conditions

GC10	Co-ordinating Commissioner and Representatives <ul style="list-style-type: none">• appointment of Co-ordinating Commissioner whose function set out in Schedule 5D Commissioner Roles and Responsibilities• Co-ordinating Commissioner acts for itself and as agent for the Commissioners but sums payable to Provider are attributed to relevant Commissioner• Commissioner and Provider representatives are points of contact for day to day communications
GC11 11.1 & 11.2 11.3 11.5 11.7 11.8 11.9 11.10 11.11	Liability and Indemnity <ul style="list-style-type: none">• each party will be liable to and must indemnify the other against any loss or damage to property; any injury to any person; and any losses arising from the other party's negligence or breach of contract except where such loss has been caused by any act or omission by the other party, their staff or agents.• Provider (and sub-contractors) must have Indemnity for employers' liability; clinical negligence; public liability and professional negligence and must produce these within 5 days of any request• Provider must make up any shortfall if indemnity arrangements do not cover full settlement of claim• at end of contract Provider must ensure that any ongoing liability for negligence to any service user under the contract will continue to be covered by indemnity arrangements for 21 years following expiry of the contract or until liability ceases• unless agreed in writing Provider will not require any Service User to sign any waiver of Providers liability unless required by medical research procedures for which service user has given consent• no exclusion or limit to liability of either party for death or personal injury caused by negligence, fraud or misrepresentation• No right to claim damages for breach of Contract under indemnity for Indirect losses• Each party must take reasonable steps to minimise and mitigate any losses for which one Party is entitled to be indemnified or to bring a claim against the other

3: General Conditions

GC12

Assignment and Sub-contracting

Obligations relating to the Provider

- 12.1
 - must not assign, delegate, sub-contract, transfer, charge or dispose of any duties under the contract without prior written approval from Commissioner
 - Commissioner can designate any approved sub-contracting arrangement as a Mandatory Material Sub-Contract (MMSC) or Permitted Material Sub-Contract (PMSC)
 - Provider must enter each MMSC/ (PMSC) with the relevant Mandatory Material Sub-Contractor / (Permitted Material Sub-Contractor)
- 12.5
 - Provider must not without prior written approval from Commissioner:
 - terminate a MMSC or PMSC
 - change terms of MMSC or PMSC
 - replace a sub-contractor under a MMSC or PMSC
 - enter a new MMSC or PMSC with an existing sub-contractor
 - Schedule 5 B1 and B2 to be updated
- 12.6
 - If Provider enters sub-contract must
 - specify Provider will pay sub-contractor within 30 days of valid invoice being received
 - ensure sub-contractor does not further sub-contract without Commissioner approval
- 12.7
 - Sub-contracting does not relieve Provider of duties under the contract - responsible and liable for performance of sub-contractors as though their own
- 12.9
 - Provider remains responsible and liable for any third party assigned by Provider unless:
 - prior written approval given by Commissioner under GC 12; and
 - third party has accepted terms of assignment so they are liable to Commissioners for their acts or omissions

3: General Conditions

GC12	Assignment and Sub-contracting continued
	<u>Obligations relating to the Commissioner</u>
12.10	<ul style="list-style-type: none">• may not transfer or assign except to NHS England; CCG; Local Authority following Partnership Agreement or otherwise with written approval from Provider• may delegate or sub-contract (subject to GC12.10) without approval of Provider• Sub-contracting does not relieve Commissioner of duties under the contract - responsible and liable for performance of sub-contractors as though their own
	<u>Replacement of Sub-contractors</u>
12.13	<ul style="list-style-type: none">• if any Suspension or Provider Default Event occurs, caused by a sub-contractor - Commissioner may on written notice require Provider to replace sub-contractor within 5 days or other reasonable period and Provider must comply• notwithstanding GC 20 (Confidential Information of the Parties) a Commissioner assigning or sub-contracting this contract may disclose information relating to the contract or the Provider
	<u>Tender Documentation, Publication of Contracts and E-Procurement</u>
12.15	<ul style="list-style-type: none">• Provider must comply with Transparency and E-Procurement Guidance if applicable
	<u>General provisions</u>
12.17	<ul style="list-style-type: none">• Contract binds and benefits Provider, each Commissioner and their respective successors and permitted transferees and assigns

3: General Conditions

GC13	Variations
13.1	<ul style="list-style-type: none">contract can only be changed in accordance with this condition
13.2	<ul style="list-style-type: none">Parties may agree to vary any of the Variable Elements; a non-Variable Element cannot be changed except to implement a National Variation.
13.3	<ul style="list-style-type: none">variations can be made by a Variation Agreement, signed by both parties and recorded in Schedule 6A (Recorded Variations)
13.4 & 7	<ul style="list-style-type: none">party wishing to vary must serve a draft Variation Agreement setting out variation and proposed date to take effect
13.6	<ul style="list-style-type: none">proposer must take account of impact of variation on other services especially CRS or Essential Services
13.8 & 9	<ul style="list-style-type: none">response to draft Variation Agreement to be made within 10 days in writing advising whether proposal is accepted and/ or any concerns. If required parties must meet within 10 days of response to discuss and try to agree
13.10	<ul style="list-style-type: none">within 10 days of any meeting (in 13.9 above) Recipient must serve written notice on Proposer confirming either:<ul style="list-style-type: none">acceptance of the draft Variation Agreement (subject to any amendments agreed by the parties); orrefusal to accept the draft Variation Agreement and the grounds for so doing
13.11	<ul style="list-style-type: none">if variation will change Expected Annual Contract Value and /or price parties must agree change in accordance with National Tariff
13.12	<ul style="list-style-type: none">if Variation has cost implication for Commissioner Provider must:<ul style="list-style-type: none">provide full cost and benefit analysis;Commissioner can refuse or withdraw proposed Variation;Commissioners will have no liability for costs arising from Variation if Provider implements it
13.13	<ul style="list-style-type: none">if (after following GC13.2 to 13.12) Provider refuses to accept National Variation, Commissioner may terminate contract giving 3 months written notice, following issue of notice that National Variation is refused

3: General Conditions

GC13	Variations continued
13.14	<ul style="list-style-type: none">• if (after following GC13.2 to 13.12) Provider refuses to accept a Service Variation, Commissioner may terminate affected service giving 3 months written notice (or 6 months if will adversely affect staff) following issue of notice that Service Variation is refused or not accepted.
13.15	<ul style="list-style-type: none">• Right of Commissioner to terminate a Service under GC13.14 will not apply if:<ul style="list-style-type: none">• proposed variation is substantially a change to the price agreed under the contract without material change to the Service or• proposal does not meet requirements of a Service Variation
13.16	<ul style="list-style-type: none">• if parties fail to agree a proposed variation which is neither a National or Service variation, the Proposer must withdraw the draft Variation Agreement
13.17	<ul style="list-style-type: none">• where an agreed Service variation involves the withdrawal of a service and:<ul style="list-style-type: none">• the Provider withdraws the service before the agreed date the Provider will be liable to the Commissioners for costs and losses attributable to the early withdrawal; or• a commissioner stops commissioning the service before the agreed date the Commissioner will be liable to the Provider for costs and losses directly attributable to the early end to commissioning

3: General Conditions

GC14

Dispute Resolution

- 14.1
- GC 14.2 to 14.21 do not apply if a party seeks an injunction relating to a matter arising under GC 20 (Confidential Information of the Parties)
- 14.2
- Escalated Negotiation
- in event of dispute, parties must attempt to settle by one party making a written offer to negotiate. During Negotiation Period parties must be represented by:
 - a senior person who preferably has not had direct involvement in matter for the first 10 days and
 - for the last 5 days by Chief Executive, Director or member of Governing Body
 - where practicable persons above should not be the same individual
- 14.4
- Mediation
- if cannot settle dispute by negotiation, must within 5 days of end of Negotiation Period submit dispute to:
 - mediation by NHSTDA and NHS England where Commissioners are CCGs and/or NHS England and Provider is NHS Trust; or
 - mediation by CEDR or other agreed body in all other cases
- 14.7
- Expert Determination
- if cannot settle dispute by mediation, must be referred to expert determination by one party giving written notice to the other parties. The Expert Determination Notice (EDN) must detail the issues, the expertise required and the solution sought.
- 14.8
- if parties have agreed on an expert who has confirmed willing to act then that expert shall be appointed
- 14.9
- where parties have not agreed on an expert any party may apply to CEDR to appoint an expert.
- 14.10
- party serving EDN must send the Expert and other disputing parties a statement of its case including copy EDN, contract and evidence within 5 days of expert being appointed
- 14.11
- all other parties not serving the EDN must reply to expert and other parties within 5 days of receiving the statement of the case giving details of what is agreed and what is disputed and reasons why

3: General Conditions

GC14 14.12 14.17 14.18	Dispute Resolution continued <ul style="list-style-type: none">• Expert must report in writing to all parties within 30 days after receiving the statement of case• parties have 5 days to request minor amendments or clarify ambiguity and Expert has 5 days to correct• parties must pay own costs and share costs of Expert• decision of Expert is final and binding• If a party in dispute does not abide by Expert's decision the other parties may apply to Court to enforce it
15.2 15.5 15.6 15.7	GC15 Governance, Transaction Records and Audit <ul style="list-style-type: none">• Provider must comply with all reasonable requests of Regulatory Bodies, Appointed Auditors or Authorised Persons for entry to their premises and /or sub-contractors premises (with or without notice) for audit or inspection purposes• Provider must send results of any audit, evaluation or inspection within 10 days of Commissioner requesting it• Parties must respond to and implement any recommendations:<ul style="list-style-type: none">• made in any report by Regulatory or Supervisory Body;• agreed with National Audit Office, Audit Commission following any audit;• of any clinical audit; and• otherwise agreed by the parties• Parties must keep accurate Transaction Records• Provider must:<ul style="list-style-type: none">• implement programme of clinical audit of the Services• implement audit of accuracy of recording and coding of clinical activity; and• provide Commissioner with findings of these audits

3: General Conditions

GC15	Governance, Transaction Records and Audit continued
15.8	<ul style="list-style-type: none">• Commissioner may at any time appoint an Auditor to audit:<ul style="list-style-type: none">• quality and outcomes of any Service• Provider's recording and coding of clinical activity• Provider's calculation of reconciliation accounts under SC 36 (Payment terms)• Provider's recording of performance and calculation of reconciliation accounts in relation to Quality Incentive Scheme Indicators• Provider's recording of performance in respect of Quality requirements• Provider's compliance with Other Local Agreements, Policies and Procedures, and/or any Prior Approval Schemes and/or Service Specifications• basis of any Local Prices, taking account of actual costs incurred by provider• pass-through costs on high cost drugs, devices and procedures• identification of and collection of charges from Chargeable Overseas Visitors
15.10	<ul style="list-style-type: none">• in respect of any audit carried out under GC15.8 Commissioner must share Auditor's report with Provider and Provider must take appropriate action if deficiencies are identified in the Service
15.11	<ul style="list-style-type: none">• In respect of any audit carried out under 15.8 as a result of Commissioner contesting a payment under SC 36.54 (Payment Terms – Contested Payments):<ul style="list-style-type: none">• if Auditor identifies net overcharging by Provider, they must immediately issue a credit note and pay the overcharge within 10 days (and Auditor's costs)• if Auditor identifies, that as a result of Provider's clinical practice which is not in accordance with Other Local Agreements, Policies and Procedures, Prior Approval Schemes or Service Specifications, charges are higher than should be the case, Provider must immediately issue a credit note and pay the excess charges within 10 days (and Auditor's costs)• if Auditor identifies a net undercharging by the Provider for completed Activity, Provider must immediately issue an invoice and Commissioner must pay the undercharge within 10 days

3: General Conditions

GC15	Governance, Transaction Records and Audit continued
15.12	<ul style="list-style-type: none">• In respect of any audit carried out under 15.8 other than as a result of Commissioner contesting a payment under SC 36.54 (Payment Terms – Contested Payments) where Auditor finds material inaccuracies in Provider’s recording, coding or calculations:<ul style="list-style-type: none">• Parties must agree and Provider implement any action plan to prevent future inaccuracies• unless resulting from Provider fraud or negligence, there will be no retrospective adjustment to payments already made• Provider must pay reasonable costs of Auditor within 10 days
15.13	<ul style="list-style-type: none">• In respect of any audit carried out under 15.8 on the basis of Local Prices:<ul style="list-style-type: none">• Provider must supply Auditor with details of its costs (and those of any sub-contractors and suppliers) and allow them to be verified• Audit will not adjust Local Prices for the relevant contract year but may be used in agreeing Local Prices for future years

3: General Conditions

GC16

Suspension

16.1

If a Suspension Event occurs the Commissioner

- may require Provider to immediately suspend the affected Service until Commissioner is satisfied that it can provide Service to required standard
- must notify Regulatory or Supervisory Body
- once Commissioner is satisfied the Service can be provided to required standard may request Provider to restore suspended service
- Provider must comply with any steps Commissioner has specified to remedy the Suspension Event

16.4

Consequence of Suspension

- During suspension of service Provider cannot claim or receive payment except for
 - all or part of suspended service delivered before suspension took effect and/or
 - all or part of suspended service which provider continues to deliver
- unless suspension results from Event of Force Majeure Provider will indemnify Commissioners in respect of losses suffered
- parties must minimise inconvenience caused to Service Users by suspension
- during suspension of Service, Commissioners must ensure no further Service Users are referred
- during suspension of Service Provider must:
 - not accept any further referrals of Service Users requiring the suspended Service
 - at own cost co-operate with Commissioners and any interim or successor Provider to ensure continuity of service offering all assistance, information and documentation required
 - ensure there is no interruption in availability of CRS or Essential Services
 - if necessary agree a transition plan with Commissioner and any interim or successor Provider

3: General Conditions

GC17

Termination

Termination: No Fault

- 17.1 • either party can terminate at any time by mutual agreement
- 17.2 • either party may terminate by giving written notice of not less than the Notice Period and expiring no earlier than the Earliest Termination Date
- 17.4 • Commissioner may terminate by giving not less than 3 months written notice where Provider has refused to accept a National Variation (GC 13.13)
- 17.5 • Commissioner may by giving written notice terminate Service affected where Provider has refused to accept a Service Variation (GC 13.14)
- 17.6 • either party may by giving written notice terminate Service affected where cannot agree Local Price for following contract year (SC 36.8)
- 17.7 • either party may by giving written notice terminate contract or Service affected immediately in the Event of Force Majeure persisting for more than 20 days without agreement on alternative arrangements
- 17.8 • Commissioner may terminate by giving not less than 3 months written notice if substantial modification has occurred requiring new procurement procedures or the contract should not have been awarded under the Public Contract Regulations.

Termination: Commissioner Default

- 17.9 Provider may terminate with immediate effect by written notice:
 - subject to any express provision in contract to the contrary (including Withholding and Retention of Payment Provisions) and provided Provider has complied with SC 36 (Payment Terms) if at any time the aggregate undisputed amount due to Provider exceeds:
 - 25% of Expected Annual Contract Value (EACV); or
 - 3 times average monthly income to Provider (where there is no EACV or EACV is zero) and full payment is not made within 20 days
 - if any Commissioner is in persistent breach of its obligations resulting in adverse effect on Provider's ability to provide Service and Commissioner fails to remedy breach within 40 days of written notice identifying the breach
 - if any Commissioner breaches GC 12.10 (Assignment and Sub-Contracting)

3: General Conditions

GC17

Termination

Termination: Provider Default

17.10

Commissioner may terminate with immediate effect by written notice if:

- any Condition Precedent is not met by the Longstop Date
- Provider ceases to carry on its business
- Provider Insolvency Event occurs
- Provider in persistent breach of Quality requirements or regulatory compliance standards
- 2 or more Exception Reports are issued to Provider under GC 9.19 within 6 month period which are not disputed or upheld under Dispute Resolution
- Provider not comply with GC 24.2 or 24.5 (Change in Control) and fails to remedy breach within 20 days
- there is:
 - a provider Change in Control where after 30 days Commissioner considers this to adversely effect Provider's ability to provide Service
 - breach of GC 24.9.1 (Change in Control)
 - breach of GC 24.9.2 (Change in Control) and Provider has not replaced Material Sub-Contractor within period specified in GC 24.10
 - a Material Sub-Contractor Change in Control and Provider has not replaced them within period specified in GC 24.8.3
- the Provider fails to obtain, or loses any consent, or has any consent varied or restricted and Commissioner considers this to have adverse effect on provision of Service
- Provider fails to comply with GC 23 (NHS Branding, Marketing and Promotion)
- Provider has breached obligations under SC1, (Compliance with Law and NHS Constitution) and has not remedied breach within 40 days
- Provider has breached terms of GC 26 (Prohibited Acts)
- Monitor's Licence for the Provider or any Material Sub-Contractor is revoked, varied or restricted
- Provider breaches terms of GC12 (Assignment and Sub-Contracting)
- NHS Business Services Authority considers Provider or any Sub-Contractor has failed to comply with obligations under NHS Pension Scheme
- becomes apparent Provider should have been excluded from the procurement process

3: General Conditions

<p>GC18</p> <p>18.2</p> <p>18.4</p> <p>18.4.1</p> <p>18.4.2</p> <p>18.5</p> <p>18.6</p> <p>18.7</p> <p>18.8</p>	<p>Consequence of Expiry or Termination</p> <ul style="list-style-type: none">• If termination results from GC 17.4 or 17.10 and Commissioner procures service from an alternative provider at a greater cost than would have been payable, the Commissioner (acting reasonably) will be entitled to recover from the Provider the excess cost for 6 months following termination• on or pending expiry or termination, Commissioner, Provider and any successor Provider will agree a Succession Plan.• for a reasonable time before and after expiry or termination Provider must:<ul style="list-style-type: none">• co-operate fully with Commissioner and any successor provider to ensure continuity of service• at reasonable cost and request of Commissioner provide all reasonable assistance and information, to any successor provider; deliver to Commissioner all documentation, operating manuals etc and use all reasonable efforts to obtain consent of third parties associated with the terminated Services• on expiry or termination Parties must:<ul style="list-style-type: none">• implement and comply with Succession Plan• minimise any inconvenience to service users resulting from expiry or termination• each Commissioner must pay the Provider pro rata in accordance with SC 36 (Payment Terms) for any Services properly delivered after expiry or termination.• on expiry or termination:<ul style="list-style-type: none">• Commissioners must ensure no further Service Users requiring the Service are referred• Provider must stop accepting any referrals to expired or terminated Service• Subject to arrangements under 18.4 and 18.5 Provider must cease treatment of Service Users and arrange for their transfer or discharge• if termination is immediately effective and the Provider is unable or not permitted to continue Service, must co-operate with Commissioner to ensure any affected Service is commissioned without delay from an alternative Provider and there is no interruption of any CRS or Essential Services• on expiry or termination any arrangements set out in Schedule 2 Part I (Exit Arrangements) will apply
<p>GC19</p>	<p>Provisions Surviving Termination</p> <ul style="list-style-type: none">• any rights, duties or obligations expressed to survive expiry or termination, together with all indemnities will continue after expiry or termination, subject to any time limitations set out in the Contract.

3: General Conditions

GC20	Confidential Information of the Parties
20.1	<ul style="list-style-type: none">except as otherwise provided Confidential Information (CI) is owned by the Disclosing Party (DP) and the Receiving Party (RP) has no right to use it.
20.2	<ul style="list-style-type: none">RP agrees (subject to 20.3 and 20.4) only to use CI:<ul style="list-style-type: none">to perform the contract;not to disclose it to a third party andto maintain the confidentiality of the information and return it on request
20.3	<ul style="list-style-type: none">RP may disclose CI:<ul style="list-style-type: none">in connection with any Dispute Resolution or litigation between the Parties;to comply with Law;to any Regulatory Body;to its staff;to NHS Bodies;as permitted under GC 9 (Contract Management) and SC 24 (NHS Counter-Fraud and Security Management) andas expressly permitted under this Contract.
20.4	<ul style="list-style-type: none">obligations in 20.1 and 20.2 will not apply to CI which is in public domain other than by breach of this contract; or where the RP shows it was in its possession prior to receiving it from the DP or RP obtained it from a source other than the DP without breaching confidentiality obligationsDP does not warrant the accuracy or completeness of the CIRP must indemnify DP against losses suffered as a result of any breach of this conditionparties acknowledge that damages would not be an adequate remedy of any breach of this condition by RP, and in addition to any right to damages, DP can seek injunction, specific performance and other equitable relief for any breachthis condition lasts for 5 years after the end of this contractthis condition does not limit provisions of Public Interest Disclosure Act 1998.

3: General Conditions

GC21

Patient Confidentiality, Data Protection, Freedom of Information and Transparency

Information Governance – General Responsibilities

- parties acknowledge their respective obligations under FOIA, DPA and HRA
- Provider must complete annual information governance assessment using NHS Information Governance Toolkit and must achieve minimum level 2 performance against all requirements
- Provider must nominate Information Governance Lead; Caldicott Guardian and Senior Information Risk Owner (SIRO), each of whom must be on Provider's Governing Body and keep Commissioner, NHS England and HSCIC informed of identities of these officers
- Provider must adopt and implement recommendations of Caldicott Information Governance Review and Response to Caldicott
- Provider must annually audit its practices regarding data sharing as in NICE Clinical Guideline 138
- Provider must ensure NHS Information Governance Toolkit submission is audited, report results to Commissioner and publish report
- Provider must report and publish any Data Breach and any Information Governance Breach in accordance with IG Guidance for Serious Incidents
- Provider must have communications strategy and implementation plan to ensure Service Users can access information specified in paragraph 2(3) Part II Schedule 1 DPA.

The Provider as a Data Controller

21.9

- Parties acknowledge that
 - in relation to Personal Data processed by provider to deliver Service, Provider is sole Data Controller
 - In relation to Personal Data required by Commissioner for quality assurance and contract management, Commissioner and Provider will be joint Data Controllers
- Provider must ensure all Personal Data is processed in compliance with DPA

3: General Conditions

21.11

Data Protection, Freedom of Information and Transparency continued

- Providers obligations for Personal Data include publishing policies:
 - relating to confidentiality, data protection and information disclosures
 - for staff responsibilities for handling personal data
 - for Providers obligations under NHS Care Records Guarantee
 - governing disclosure of Personal Data
 - for recording telephone calls or telehealth consultations including retention and disposal
- where information required for quality management Provider must provide anonymised/ aggregated data and not disclose Personal data without written consent
- Provider must (unless lawfully justify not) disclose confidential patient information to Commissioner under s251 Regulations

21.14

Responsibilities when engaging Sub-Contractors

- If Provider requires sub-contractor to process Personal Data must:
 - require them to provide sufficient guarantees of technical and security measures governing data processing and
 - ensure sub-contractor only processes data in accordance with provider's instructions; complies with equivalent to Seventh Data Protection Principle; allows audit and inspection of data handling systems and imposes same on its own sub-contractors

21.15

The Provider as a Data Processor

- If Provider acts as Data processor must process Personal Data:
 - only in performance of contract and in accordance with instructions of Commissioner;
 - take measures against unauthorised processing and accidental loss/ damage to such data;
 - take steps to ensure adequate training and reliability of staff and
 - not allow Personal Data to be transferred outside European Economic Area without prior consent of Commissioner

3: General Conditions

21.16	<p>Data Protection, Freedom of Information and Transparency continued</p> <p><u>Freedom of Information and Transparency</u></p> <ul style="list-style-type: none">• Under Commissioners obligations under FOIA Provider agrees:<ul style="list-style-type: none">• Information held by them for purposes of this contract are subject to FOIA and Commissioner will decide whether exemption applies• where Provider receives FOIA request, and is subject to FOIA itself, it will liaise with Commissioner over proposed response, and provide copy of request and response to Commissioner within 2 days• where Provider receives FOIA request, and is not subject to FOIA itself, it will not respond and transfer request to Commissioner within 2 days• Commissioner may disclose information concerning Provider without consultation• to assist Commissioners in responding to any FOIA request and provide any requested information within 5 days without charge• Parties acknowledge that (except for any information exempt from disclosure under FOIA) Contract is not Confidential Information and can be published (subject to redaction of information exempt under FOIA). Commissioner may consult with provider but has final decision on redactions.• Provider must assist and co-operate with Commissioners to enable publication of Contract
GC22	<p>Intellectual Property</p> <ul style="list-style-type: none">• except where set out in this contract no party will acquire the IPR of any other party• each party grants the other licence to use each others IPR for purposes of this contract• if either party acquires rights in any Improvement must notify the owner of the IPR and assign all rights to Improvement without charge• Provider must disclose information concerning development of Best Practice IPR and grant Commissioners licence to use it for teaching, training and research

3: General Conditions

GC23	NHS Branding, Marketing and Promotion <ul style="list-style-type: none">• must comply with applicable Branding Guidance
GC24 24.3 24.5 24.6 24.7	Change in Control <ul style="list-style-type: none">• applies to any Provider or Material Sub-Contractor (MSC) Change in Control but not where it is a Public Company.• Provider must notify commissioner within 5 days and submit completed Change in Control Notification (CCN)• if Provider intends further changes these will only be effective when a variation is made under GC 13• Provider must specify any change likely to adversely affect ability to provide services – failure to do so means Provider cannot propose a Variation in this respect within 6 months of CCN unless Commissioner agrees.• If (subject to GC 24.3) provider does not specify in CCN its intention to dispose of Provider’s premises as a result of the Change in Control then unless Commissioner agrees Provider must:<ul style="list-style-type: none">• ensure no such disposal if this would adversely effect ability to provide services• continue providing services from the Provider’s premisesfor at least 12 months following CCN. [Does not apply to change of control where assignment is by way of security consequent to a financing or re-financing transaction]• Provider (& any MSC) must provide any information reasonably required by Commissioner relating to the Change in Control within 20 days of CCN• Provider should ensure that any contract with MSC includes provision for MSC to inform Provider of any change in control within 5 days

3: General Conditions

GC24	Change in Control continued
	If
24.8	<ul style="list-style-type: none">• there is a MSC Change in Control; and• Commissioner concludes this will adversely effect services, then
	<ul style="list-style-type: none">• Commissioner may require Provider to replace MSC within 10 days (or other reasonable period to ensure service)• the Provider must replace MSC within the specified period above; and• GC12 will apply to replacement sub-contractor and Schedule 5 B will be amended
24.9.1	<ul style="list-style-type: none">• a Restricted person must not hold 5% or more of the total value of any security in Provider; Provider's Holding Company or any subsidiaries
24.9.2	<ul style="list-style-type: none">• a Restricted person must not hold 5% or more of the total value of any security in a MSC; MSC's Holding Company or any subsidiaries
24.10	<ul style="list-style-type: none">• if the Provider breaches GC 24.9.2 the Commissioner may require Provider to replace MSC within 5 days or other reasonable period to ensure service and• the Provider must replace MSC within the specified period above
24.11	<ul style="list-style-type: none">• there is nothing to prevent Provider discussing a proposed change in control with Commissioner before it occurs. If so all information disclosed will be Confidential Information for purposes of GC 20• to any reasonable extent parties must co-operate in public announcements arising from a Change in Control

3: General Conditions

GC25	Warranties <p>Both Provider and each Commissioner warrants to the other that :</p> <ul style="list-style-type: none">• it has authority to enter into the contract• execution of the Contract does not conflict with its Constitution, Law or other binding agreements• documents listed in Schedule 5A (Documents Relied On) are complete and accurate• it can permit disclosure and use of Confidential Information for the contract• It is not aware of any matter likely to have an adverse effect on its ability to perform the contract <p>In addition Provider warrants to each Commissioner that :</p> <ul style="list-style-type: none">• any Material Sub-Contractor has Indemnity Arrangements and Consents and will deliver service in accordance with Providers' obligations• all information supplied during award procedure is accurate and they are unaware of any facts which if disclosed would have an adverse effect on decision to contract with them• They have notified Commissioner of any occasions of Tax Non-compliance
GC26	Prohibited Acts <ul style="list-style-type: none">• Provider must not commit any Prohibited Act• If they do Commissioner can:<ul style="list-style-type: none">• terminate contract and recover losses• recover from the Provider the amount of any gift or commission concerned;• recover from Provider any loss resulting
GC27	Conflicts of Interest <ul style="list-style-type: none">• any conflict of interest likely to have an adverse effect must be declared to the other Party without delay
GC28 28.2 28.3 28.5	Force Majeure <ul style="list-style-type: none">• must be read with SC31 (Force Majeure: Service –specific provisions)• if Force Majeure occurs affected Party must:<ul style="list-style-type: none">• take all steps to mitigate effect• resume performance as soon as possible• make all effort to remedy failure to perform contract• affected party must serve initial notice of event followed by further more detailed notice within 5 days• If GC 28.2 and 28.3 met Affected party is relieved from liability• Commissioners cannot withhold or retain payment if non-performance is due to Force Majeure event

3: General Conditions

GC29	Third Party Rights <ul style="list-style-type: none">• a person not party to the contract has no right to enforce or benefit from the contract; but to the extent that it applies in their favour, it may be enforced by: staff (if matter arises under GC5 – excepting 5.2, 5.3.2 and GC 5.17 to 5.19); Secretary of State; NHS England; NHSTDA; CCG or Local Authority; CQC; Monitor; NHS Protect; National Audit Office; Audit Commission; NHS Business Services Authority; Local Healthwatch under GC 15.2; previous Provider of Service under GC 5.12; new Provider of Service under GC 5.15; relevant NHS Employer under GC5.17 to 5.19• Subject to GC 13.2.2 (Variations) the rights of the Parties to terminate, rescind or vary the contract are not subject to consent from anyone not party to the contract
GC30	Entire Contract <ul style="list-style-type: none">• contract constitutes entire agreement between Parties and supersedes any previous agreement• each party agrees that in entering into the contract it does not rely upon any statement or any person other than set out in the contract as a warranty, or in any document agreed and listed in Schedule 5A (Documents Relied On)
GC31	Severability <ul style="list-style-type: none">• if any part of contract is declared invalid it shall be severed from the contract
GC32	Waiver <ul style="list-style-type: none">• any delay in exercising any right under this contract will not waive that right or affect ability to later do so
GC33	Remedies <ul style="list-style-type: none">• unless stated no remedy in this contract is exclusive of other remedies existing in law

3: General Conditions

GC 34	Exclusion of Partnership <ul style="list-style-type: none">nothing in this contract will create a partnership; joint venture; employer and employee relationship or principal and agent between any Commissioner and Provider
GC35	Non-Solicitation <ul style="list-style-type: none">during life of contract neither party may solicit any medical, clinical or nursing staff employed by the other without consentno breach of this condition if:<ul style="list-style-type: none">employment by the other party occurs following advertised job vacancy
GC36	Notices <ul style="list-style-type: none">any notices must be in writing and served by hand, post or e-mail<ul style="list-style-type: none">notices by post effective upon earlier of actual receipt or 5 days after mailingnotices by hand effective upon deliverynotices by e-mail effective when sent but only if non-delivery message not received
GC37	Costs and Expenses <ul style="list-style-type: none">each party is responsible for own costs of preparation of Contract
GC38	Counterparts <ul style="list-style-type: none">Contract may be executed in any number of counterparts but which together constitute one agreement binding all parties
GC39	Governing Law and Jurisdiction <ul style="list-style-type: none">Subject to English law