

## SCHEDULE - DEFINITIONS AND INTERPRETATION

1. The headings in this Agreement shall not affect its interpretation.
2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
4. In the event and to the extent only of any conflict between the provisions of any Part, the provisions of Part 3 shall prevail.
5. References to any body, organisation or office shall include reference to its applicable successor from time to time.
6. Any references to this Agreement or any other documents includes reference to this Agreement and its recitals, Parts, Sections and Schedules or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.
7. Use of the singular includes the plural and vice versa.
8. The following terms shall have the following meanings:

<b>“Activity Plan”</b>	means any relevant activity plan specific to a Service that may be agreed between the Parties from time to time and set out in the relevant Specification.
<b>“Agreement”</b>	means this agreement between the Commissioner and the Provider;
<b>“Authorisation”</b>	means an authorisation by Monitor issued pursuant to section 56 of the 2006 Act;
<b>“Authorised Person”</b>	means the Commissioner or any body or person concerned with the treatment or care of a Service User approved by the Commissioner;
<b>“Best Practice IPR”</b>	means any IPR developed by the Provider (including Improvements) in connection with or as a result of the Services that the Commissioner might reasonably be able to use within its organisation for teaching and training of best health or social care practice;
<b>“Block Arrangement”</b>	means an arrangement described in the Specifications as such, where an overall fixed price is agreed which is not varied due to any changes in activity levels;
<b>“Business Continuity Plan”</b>	means the Provider’s plan referred to in clause 3.3.3 relating to continuity of all of the Services, as agreed with the Commissioner and as may be amended from time to time, which for the avoidance of doubt shall include a plan in relation to the ongoing provision of the Services Environment and the Equipment or equivalent replacements thereof;
<b>“Caldicott Guardian”</b>	means the senior professional responsible for safeguarding the confidentiality of Service User information;

<b>“Care Plan”</b>	means a plan to deliver Services that are appropriate to the needs of the Service User and that pays proper attention to the Service User’s culture, ethnicity, gender, age and sexuality and takes account of the needs of any children and Carers;
<b>“Care Manager”</b>	means an employee of Adult Social Care who is responsible for assessment of Service Users, and identification of service need as recorded in the Care Plan;
<b>“Care Professional”</b>	means a person qualified in a social care related profession;
<b>“Carer”</b>	means the person responsible for the day-to-day care of a Service User;
<b>“CEDR”</b>	means the Centre for Effective Dispute Resolution;
<b>“Charity Commission”</b>	means the body corporate known as the Charity Commission for England and Wales, established by the Charities Act 1993;
<b>“Commissioner IPR”</b>	means any IPR owned by or licensed to the Commissioner which is relevant and necessary to the performance of the Services by the Provider, including without limitation the IPR set out in Schedule 14 Part 2, including Improvements;
<b>“Competent Body”</b>	means any body that has authority to issue standards or recommendations with which the Parties must comply;
<b>“Conditions Precedent”</b>	means the conditions precedent to service delivery referred to in Part 2 and set out in paragraph 3;
<b>“Confidential Information”</b>	means any information or data in whatever form disclosed, which by its nature is confidential or which the Disclosing Party acting reasonably states in writing to the Receiving Party is to be regarded as confidential, or which the Disclosing Party acting reasonably has marked ‘confidential’ (including, without limitation, financial information, or marketing or development or work force plans and information, and information relating to services or products) but which is not Service User Records or information relating to a particular Service User, or Personal Data, or information which is disclosed in accordance with clause 15 of Part 3 pursuant to an FOIA request;
<b>“Consent”</b>	means: (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or (ii) any necessary consent or agreement from any third party needed either for the performance of the Provider’s obligations under this Agreement or for the provision by the Provider of the Services in accordance with this Agreement, including any registration with Monitor or the Regulator;
<b>“Contract Query”</b>	means a query in writing issued under clause 23.3 of Part 3 ( <i>Performance Management</i> );
<b>“CQC”</b>	means the Care Quality Commission
<b>“CRC Position”</b>	means any position in relation to which Standard Disclosure is permitted in accordance with section 113 of the Police Act 1997;
<b>“Data Processor”</b>	has the meaning set out in the DPA;

<b>“Data Subject”</b>	has the meaning set out in the DPA;
<b>“Debt Securities”</b>	means debentures, debenture or loan stock, bonds and notes, whether secured or unsecured;
<b>“Default Interest Rate”</b>	means LIBOR plus 2% per annum, and <b>“LIBOR”</b> means the London Interbank Offered Rate for six months sterling deposits in the London market;
<b>“Department of Health”</b>	means the Department of Health in England of HM Government;
<b>“Disclosing Party”</b>	has the meaning given to it in clause 15.1 of Part 3
<b>“Dispute”</b>	means a dispute between the Parties arising out of or in connection with this Agreement;
<b>“DPA”</b>	means the Data Protection Act 1998;
<b>“ECR Position”</b>	means any position in relation to which Enhanced Disclosure is permitted in accordance with section 115 of the Police Act 1997;
<b>“Effective Date”</b>	has the meaning given to it in Part 2;
<b>“Emergency Response Plan”</b>	means each Party’s operational plan to respond to Major Incidents in accordance with the requirements of any relevant Major Incident Plans;
<b>“Enhanced Disclosure”</b>	has the meaning given to it in the Code of Practice on Disclosure;
<b>“Equipment”</b>	means anything save for the Provider’s Premises, the Services Environment and the Staff that the Provider may use in the delivery of the Services (including, without limitation, vehicles);
<b>“Essential Services”</b>	means those Services which are identified by the Commissioner as being required;
<b>“Essential Services Continuity Plan”</b>	has the meaning given to it in clause 3.3.2 of Part 3;
<b>“Event of Force Majeure”</b>	means an event or circumstance which is beyond the reasonable control of the Party claiming relief under clause 32 ( <i>Force Majeure</i> ), including without limitation war, civil war, armed conflict or terrorism, strikes or lock outs, riot, fire, flood or earthquake, and which directly causes that Party to be unable to comply with all or a material part of its obligations under this Agreement, but excluding Major Incidents;
<b>“Expiry Date”</b>	has the meaning given to it in paragraph 4.2 of Part 2 ( <i>The Agreement</i> )
<b>“FOIA”</b>	means the Freedom of Information Act 2000;
<b>“Framework agreement”</b>	means the umbrella agreement pursuant to which individual service contracts will be drawn down and signed.
<b>“Good Health and Social Care Practice”</b>	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced provider and a person engaged in the provision of services the same

	as or similar to the Services at the time the Services are provided;
<b>“GP”</b>	means a general medical practitioner or general dental practitioner registered on a performers list of a Primary Care Trust in England;
<b>“Guidance”</b>	means any applicable health or social care guidance, direction or determination which the Commissioner and/or the Provider has a duty to have regard to, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by the Commissioner and/or the Department of Health;
<b>“HM Government”</b>	means the government of the United Kingdom of Great Britain and Northern Ireland;
<b>“Healthcare Professional”</b>	means a person qualified in a healthcare related profession;
<b>“Holding Company”</b>	has the definition given to it in section 1159 of the Companies Act 2006;
<b>“IM&amp;T”</b>	means information management and technology, and is used to describe any system or process used in connection with informatics, whether electronic or not;
<b>“Improvement”</b>	means any improvement, enhancement or modification to the Provider IPR which cannot be used independently of the Provider IPR or any improvement, enhancement or modification to the Commissioner IPR which can not be used independently of the Commissioner IPR;
<b>“Indirect Losses”</b>	means loss of profits (other than profits directly and solely attributable to provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;
<b>“IPR”</b>	means inventions, copyright, patents, database rights, trade marks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for all such rights;
<b>“Issuing Party”</b>	has the meaning given to it in clause 23.3 of Part 3
<b>“Joint Statement on Access to Skills, Trade Unions and Advice in Government Contracting”</b>	means the joint statement launched by the Cabinet Office, to improve the quality of services delivered under Government contracts, by raising the skills of service providers’, employees and by helping to ensure fair treatment;
<b>“Law”</b>	means: <ol style="list-style-type: none"> <li>1. any applicable statute or proclamation or any delegated or subordinate legislation or regulation;</li> <li>2. any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>3. any applicable judgment of a relevant court of law which is a binding precedent in England;</li> <li>4. Guidance;</li> <li>5. National Standards; and</li> <li>6. any applicable code, including without limitation the Cabinet</li> </ol>

Office Code,

in each case in force in England;

<b>“Lessons Learned”</b>	means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider’s provision of the Services;
<b>“Local Authority”</b>	means a county council in England, a district council in England or a London borough council;
<b>“Longstop Date”</b>	has the meaning set out in paragraph 5 of Part 2 ( <i>The Agreement</i> )
<b>“Losses”</b>	means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
<b>“Major Incident”</b>	means an event or occurrence which is designated as such by Category 1 Responders (as designated by the Civil Contingencies Act 2004) or by the Major Incident Plan;
<b>“Major Incident Plan”</b>	means the plan implemented in each Local Authority area in accordance with the Civil Contingencies Act 2004 to plan for and co-ordinate responses to civil emergencies;
<b>“Mandatory Goods and Services”</b>	means goods and/or services classified as protected or mandatory under the Provider’s Terms of Authorisation;
<b>“Material Sub-contract”</b>	means any sub-contract entered into between the Provider and a Material Sub-contractor under which such Material Sub-contractor is obliged to provide part of the Pathway;
<b>“Material Sub-contractor Change in Control”</b>	has the meaning given to it in clause 39.1.1 of Part 3;
<b>“NHS”</b>	means the National Health Service in England;
<b>“National Audit Office”</b>	means the independent office established under the National Audit Act 1983 which conducts financial audits and reports to Parliament on the spending of public money and any successor body;
<b>“National Standards”</b>	means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time;
<b>“Negotiation Period”</b>	has the meaning given to it in clause 20.1 of Part 3;
<b>“Operational Day”</b>	means a day other than a Saturday, Sunday or bank holiday in England;
<b>“Other Party”</b>	means the Party receiving the Performance Notice issued under clause 23 ( <i>Performance Management</i> ) of Part 3;
<b>“Package of Care”</b>	means any assessment, treatment, nutrition, support, accommodation or other elements of care to be provided under the Service and relating to a referral or an emergency presentation;
<b>“Parties”</b>	means the Commissioner and the Provider, or such of them as the context requires, and <b>“Party”</b> means any one of them;

<b>“Parties in Dispute”</b>	means the Commissioner as one Party in Dispute, and the Provider as the other;
<b>“Partnership Agreement”</b>	means an arrangement between a Local Authority and an NHS Body made under section 75 of the 2006 Act for the provision of combined health or social services and/or under section 10 of the Children Act 2004 to promote co-operation with a view to improving the well-being of children;
<b>“Pathway”</b>	means an evidence based plan of goals and key elements of care for a Service User that facilitates the communication, co-ordination of roles and sequencing of the activities of a multidisciplinary care team, Service Users and Carers, the aim of which is to enhance the quality of care by improving Service User outcomes, promoting Service User safety, increasing Service User satisfaction and optimising the use of resources;
<b>“Performance Management Meeting”</b>	means a meeting between the Parties in respect of a Performance Notice issued under clause 23 ( <i>Performance Management</i> ) of Part 3;
<b>"Performance Notice"</b>	means a notice in writing given under clause 23.3 ( <i>Performance Management</i> ) of Part 3
<b>"Personal Data"</b>	has the meaning set out in the DPA;
<b>“Primary Care Trust” or “PCT”</b>	means a primary care trust established by the Secretary of State in accordance with section 16A of the National Health Service Act 1977 and continuing in existence under section 18 of the 2006 Act;
<b>“Prohibited Acts”</b>	has the meaning given to it in clause 28 ( <i>Prohibited Acts</i> ) of Part 3;
<b>“Provider Change in Control”</b>	has the meaning given to it in clause 39.1 of Part 3;
<b>“Provider Insolvency Event of Default”</b>	means the occurrence of any of the following events in respect of the Provider: <ol style="list-style-type: none"> <li>1. the Provider is, or is deemed for the purposes of any law to be, unable to pay its debts or insolvent;</li> <li>2. the Provider admits its inability to pay its debts as they fall due;</li> <li>3. the value of the Provider's assets is less than its liabilities (taking into account contingent and prospective liabilities);</li> <li>4. the Provider suspends making payments on any of its debts or announces an intention to do so;</li> <li>5. by reason of actual or anticipated financial difficulties, the Provider commences negotiations with creditors generally with a view to rescheduling any of its indebtedness;</li> <li>6. a moratorium is declared in respect of any of the Provider's indebtedness;</li> <li>7. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Provider;</li> <li>8. a composition, assignment or arrangement with any creditor of any member of the Provider;</li> <li>9. the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Provider</li> </ol>

- or any of its assets;
10. a resolution of the Provider or its directors is passed to petition or apply for the Provider's winding up or administration;
  11. the Provider's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court or otherwise); or
  12. if the Provider suffers any event analogous to the events set out in 1 to 11 of this definition in any jurisdiction in which it is incorporated or resident;

<b>"Provider IPR"</b>	means any IPR owned by or licensed to the Provider (other than by the Commissioner) that will be used by the Provider in the delivery of the Services, including Improvements;
<b>"Provider's Premises"</b>	means premises controlled or used by the Provider for any purposes connected with the provision of the Services;
<b>"Provisional Action Plan"</b>	means an interim plan to rectify a breach of or performance deficiency under this Agreement, specifying targets and timescales within which such targets shall be achieved whilst a Joint Investigation into the performance deficiency is completed;
<b>"Public Company"</b>	means a company which: <ol style="list-style-type: none"> <li>(i) has shares that can be purchased by the public;</li> <li>(ii) has an authorised share capital of at least £50,000 with each of the company's shares being paid up at least as to one quarter of the nominal value of the share and the whole of any premium on it; and</li> <li>(iii) has securities listed on a stock exchange in any jurisdiction;</li> </ol>
<b>"Quality Accounts"</b>	has the meaning described in the Health Act 2009;
<b>"Quarter"</b>	means each 3-month period commencing on the Service Commencement Date and <b>"Quarterly"</b> shall be construed accordingly;
<b>"Receiving Party"</b>	has the meaning given to it in clause 15.1 of Part 3;
<b>"Regulator"</b>	means the Care Quality Commission established under the Health and Social Care Act 2008;
<b>"Remedial Action Plan"</b>	means a plan to rectify a breach of or performance failure under this Agreement, including any breach of the Activity Plan, specifying targets and timescales within which such targets shall be achieved;
<b>"Review"</b>	means a review carried out under clause 7 ( <i>Service Quality</i> ) of Part 3;
<b>"Respite Care"</b>	These are short period of care, usually for two weeks, up to a limit of 12 weeks per year. Their function is to allow the Service User to remain at home in the longer term by allowing a period of respite to the normal carer.
<b>"Safeguarding Policy"</b>	has the meaning given to it in clause 5 of Part 3;
<b>"Senior Information Risk Owner"</b>	means the nominated person, who is an executive or senior manager on the board of the Provider, whose role is to take ownership of the organisation's information risk policy, act as champion for information

	risk on the board of the Provider and provide written advice to the accounting officer on the content of the organisation's statement of internal control in regard to information risk;
<b>“Service Commencement Date”</b>	has the meaning given to it in Part 2 ( <i>The Agreement</i> )
<b>“Service Quality Performance Report”</b>	has the meaning given to it in clause 24 of Part 3;
<b>"Service User"</b>	means a Service User, service user, client or customer of the Commissioner or any Service User, service user, client or customer who is referred or presented to the Provider or otherwise receives Services under this Agreement;
<b>Service User's Referrer</b>	means Care Manager or Social Worker who referred the Service User to the home
<b>"Service Variation"</b>	means a Variation reasonably requested by a Party that relates to any Service/s and which reflects: (a) the assessment by the Commissioner of Pathway needs, the availability of alternative providers and demand for services; (b) the joint assessment by the Provider and the Commissioner of the quality and clinical viability of the Service/s and the Services Environment; and/or (c) the likely impact of any transformational need and/or reconfiguration of care pathway that might affect the Service/s;
<b>"Services"</b>	means the services as set out in each of, or, as the context admits, all of the Specifications, provided or to be provided by the Provider pursuant to and in accordance with this Agreement;
<b>"Services Environment"</b>	means the rooms or other physical location, space, area, accommodation or such other place as may be used or controlled by the Provider from time to time in which the Services are provided, excluding domiciliary care settings, Local Authority premises, schools and premises controlled by the Commissioner;
<b>"Specifications"</b>	means the specifications set out in Part 4 ( <i>Specification</i> );
<b>"Staff"</b>	means all persons (whether clinical or non-clinical) employed or engaged by the Provider (including volunteers, agency, locums casual or seconded personnel) in the provision of the Services or any activity related to, or connected with the provision of the Services, including Consultants;
<b>“Support Plan”</b>	The individual agreement made with the Service User, Council and Service Provider. It encompasses the conditions contained within the overall contract and sets out how the Customer's <u>total</u> support needs will best be met.
<b>“Suspension Event”</b>	has the meaning as set out in clause 25.1 of Part 3 and each event is a Suspension Event or together the Suspension Events;
<b>“Suspension Notice”</b>	means a notice in writing to suspend a Service or Services given under clause 25.1;
<b>“Third Party Top-ups”</b>	This is an amount above the fixed price, which is paid by another person/people known as a Third Party (but who cannot be the resident). It enables the resident to choose to receive care in a home charging more than the Purchaser's fixed price. However, the

Purchaser must agree to these arrangements, as it is liable for the top-up should the Third Party not pay it. It must be recorded on the Purchase Order and a separate agreement made between the Purchaser and the Third Party before admission.

**“TUPE”**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**“VAT”**

means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

**“Vetting and Barring Scheme”**

means the scheme introduced under the Safeguarding Vulnerable Groups Act 2006, which requires, from 1 November 2010, any individual who wants to work or volunteer with children or vulnerable adults in Regulated Activity (as defined in the Safeguarding Vulnerable Groups Act 2006) to be registered with the Independent Safeguarding Authority prior to commencement of any such regulated activity.

