

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

40. SERVICE STANDARDS .....	E27
41. MANAGING ACTIVITY AND REFERRALS .....	E28
42. WAITING TIMES .....	E31
43. 18 WEEKS REFERRAL-TO-TREATMENT STANDARD FOR CONSULTANT-LED SERVICES AND FINANCIAL ADJUSTMENTS .....	E31
44. FINANCIAL ADJUSTMENTS FOR PERFORMANCE IN REDUCING CLOSTRIDIUM DIFFICILE .....	E32
45. SERVICE QUALITY REVIEW .....	E33
46. REVIEW .....	E33
47. CONTRACT MANAGEMENT .....	E34
48. COMMISSIONER AND REPRESENTATIVES .....	E38
49. BUSINESS CONTINUITY .....	E39
50. LIABILITY AND INDEMNITY .....	E39
51. ASSIGNMENT AND SUB-CONTRACTING .....	E40
52. VARIATIONS .....	E41
53. DISPUTE RESOLUTION .....	E44
54. GOVERNANCE, TRANSACTION RECORDS AND AUDIT .....	E46
55. SUSPENSION .....	E48
56. TERMINATION .....	E50
57. CONSEQUENCE OF EXPIRY OR TERMINATION .....	E54
58. PROVISIONS SURVIVING TERMINATION .....	E55
59. CONFIDENTIAL INFORMATION OF THE PARTIES .....	E56
60. DATA PROTECTION, FREEDOM OF INFORMATION AND TRANSPARENCY .....	E57
61. NHS BRANDING, MARKETING AND PROMOTION .....	E59
62. INTELLECTUAL PROPERTY .....	E59
63. CHANGE IN CONTROL .....	E60
64. WARRANTIES .....	E62
65. PROHIBITED ACTS .....	E63
66. CONFLICTS OF INTEREST .....	E64
67. FORCE MAJEURE .....	E64
68. THIRD PARTY RIGHTS .....	E65
69. ENTIRE AGREEMENT .....	E65
70. SEVERABILITY .....	E66
71. WAIVER .....	E66
72. REMEDIES .....	E66
73. EXCLUSION OF PARTNERSHIP .....	E66
74. NON-SOLICITATION .....	E66
75. NOTICES .....	E67
76. COMPLIANCE WITH THE LAW .....	E67



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

in Dispute.

- 53.12 The costs of any independent binding pendulum adjudication under this Clause 53 will be borne by the unsuccessful Party in Dispute.
- 53.13 Unless this Agreement shall have been repudiated or terminated and notwithstanding that a Dispute remains unresolved, the Parties in Dispute shall continue to carry out their respective obligations in accordance with this Agreement and its Variations recorded in Section D Part 1 (*Recorded Variations*). All agreements and decisions resulting from dispute resolutions shall be recorded in Section D Part 3.1 (*Recorded Dispute Resolutions*).

**Disputes between Different Divisions of Same NHS Body**

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

**54. GOVERNANCE, TRANSACTION RECORDS AND AUDIT**

- 54.1 The Provider shall comply with all reasonable written requests made by Monitor, CQC, the National Audit Office, the Audit Commission or its appointed auditors, any Authorised Person or the authorised representatives of Local Involvement Networks for entry to the Provider's Premises and/or the Services Environment and/or the premises of any sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services.
- 54.2 Subject to Law, an Authorised Person may enter the Provider's Premises and/or the Services Environment and/or the premises of any sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. During such visits, subject to Law, Good Clinical Practice and Good Health and/or Social Care Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider shall not restrict access and shall give all reasonable assistance and provide all reasonable facilities.
- 54.3 Within 10 Operational Days of the Co-ordinating Commissioner's reasonable request, the Provider shall send the Co-ordinating Commissioner the results of any audit, evaluation, inspection, investigation or research in relation to the Services, the Services Environment or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- 54.4 Subject to compliance with the Law and Good Clinical Practice and Good Health and/or Social Care Practice or unless otherwise agreed with the Co-ordinating Commissioner, the Parties shall implement all relevant recommendations:
- 54.4.1 in any report by CQC or Monitor;
  - 54.4.2 agreed with the National Audit Office or the Audit Commission following any audit;
  - 54.4.3 of any appropriate clinical audit; and
  - 54.4.4 that are otherwise agreed by the Provider and the Co-ordinating

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

Commissioner to be implemented.

- 54.5 The Parties shall maintain complete and accurate accounts and transaction records of all payments, receipts and financial and other information relevant to the provision of the Services ("Transaction Records").
- 54.6 The Co-ordinating Commissioner and the Provider shall each have the right to appoint an independent third party auditor ("Auditor") who:
- 54.6.1 for the Co-ordinating Commissioner, may audit the Provider's coding and units of measurement in relation to the Prices or any other matters in respect of which the Co-ordinating Commissioner appoints an Auditor; and
- 54.6.2 for the Provider, may audit payment of the Expected Annual Contract Values, any non-payment made by a Commissioner, matters relating to the National Tariff and any other matters in respect of which the Provider appoints an Auditor,
- and subject to any applicable Service User consent requirements, the Party being audited shall allow the Auditor a right of reasonable access to (and the right to take copies of) the Transaction Records, books of account and other sources of relevant information, and any Confidential Information so disclosed shall be treated in accordance with Clause 59 (*Confidential Information of the Parties*).
- 54.7 In relation only to a Co-ordinating Commissioner required audit of Non-Tariff Prices and the Provider's compliance with Clause 7.7, the Provider shall provide the Auditor with particulars of its costs (including the costs of sub-contractors and suppliers) and permit the costs to be verified by inspection of accounts and other documents and records, and any Confidential Information so disclosed shall be treated in accordance with Clause 59 (*Confidential Information of the Parties*). If the Auditor concludes that the Provider has overcharged or undercharged, the Provider shall not be required to reimburse any overcharge and the Commissioners shall not be required to pay any undercharge for the relevant Contract Year, but the Parties may use the Auditor's report in agreeing Non-Tariff Prices for future Contract Years. The cost of the audit shall be borne by the Co-ordinating Commissioner.
- 54.8 Except in the case of an audit of Non-Tariff Prices pursuant to Clause 54.7, if the Auditor concludes that the Provider has overcharged, the Provider shall, within 10 Operational Days of receiving written notice of the overcharge, reimburse the overcharged Commissioner the amount of the overcharge and shall pay the reasonable costs of the audit.
- 54.9 Except in the case of an audit of Non-Tariff Prices pursuant to Clause 54.7, if the Auditor concludes that the Provider has undercharged, the undercharged Commissioner shall, within 10 Operational Days of receiving notice of the undercharge, pay to the Provider the amount of the undercharge and shall pay the reasonable costs of the audit.
- 54.10 Each Commissioner shall on request provide to the Provider the results of any annual Clinical Coding Audit relating to the Provider, and for the avoidance of doubt the provisions of Clauses 54.8 and 54.9 shall not apply in respect of any such Clinical Coding Audit.
- 54.11 If the Auditor concludes that the Provider has charged the correct amount, the costs of the audit shall be borne by the appointing Party.



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

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

**59. CONFIDENTIAL INFORMATION OF THE PARTIES**

- 59.1 Other than as allowed in this Agreement, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.
- 59.2 Subject to Clauses 59.3 and 59.4, the Receiving Party agrees:
- 59.2.1 to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
  - 59.2.2 not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
  - 59.2.3 to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- 59.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:
- 59.3.1 in connection with any dispute resolution under Clause 53 (*Dispute Resolution*);
  - 59.3.2 in connection with any litigation between the Parties;
  - 59.3.3 to comply with the Law;
  - 59.3.4 to CQC, Other Regulatory Body and/or to Monitor as required;
  - 59.3.5 to its staff, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in Clause 59.2;
  - 59.3.6 to NHS Bodies for the purpose of carrying out their duties; and
  - 59.3.7 as permitted under or as may be required to give effect to Clause 47 (*Contract Management*).
- 59.4 The obligations in Clauses 59.1 and 59.2 shall not apply to any Confidential Information which:
- 59.4.1 is in or comes into the public domain other than by breach of this Agreement;
  - 59.4.2 the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or

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

- 59.4.3 the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- 59.5 Subject to Clause 64.1.3 and Clause 64.2.3 (*Warranties*), the Disclosing Party does not warrant the accuracy or completeness of the Confidential Information.
- 59.6 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this Clause 59 (*Confidential Information of the Parties*).
- 59.7 The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause 59 (*Confidential Information of the Parties*) by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Clause 59 (*Confidential Information of the Parties*).
- 59.8 This Clause 59 (*Confidential Information of the Parties*) shall survive the expiry or the termination of this Agreement for any reason, for a period of 5 years.
- 59.9 This Clause 59 (*Confidential Information of the Parties*) shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

**60. DATA PROTECTION, FREEDOM OF INFORMATION AND TRANSPARENCY**

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

**Data Protection**

- 60.2 The Provider shall achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit applicable to it. Where the Provider has not achieved level 2 performance by the Service Commencement Date, the Co-ordinating Commissioner may, in its sole discretion, agree a plan with the Provider to enable the Provider to achieve level 2 performance within a reasonable time.
- 60.3 To the extent that the Provider is acting as a Data Processor on behalf of a Commissioner, the Provider shall, in particular, but without limitation:
- 60.3.1 only process such Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by the Commissioner under this Agreement;
- 60.3.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements in Clause 60.4.3 below, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;
- 60.3.3 take reasonable steps to ensure the reliability of Staff who will have access to such Personal Data, and ensure that such Staff are aware of and trained in the policies and procedures identified in Clauses 60.4.4, 60.4.5 and 60.4.6 below; and



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

- 60.3.4 not cause or allow such Personal Data to be transferred outside the European Economic Area without the prior consent of the relevant Commissioner.
- 60.4 The Provider and each Commissioner shall ensure that Personal Data is safeguarded at all times in accordance with the Law, which shall include without limitation obligations to:
- 60.4.1 perform an annual information governance self-assessment using the NHS information governance toolkit;
  - 60.4.2 have an information governance lead able to communicate with the Provider's board, who will take the lead for information governance and from whom the Provider's board shall receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
  - 60.4.3 (where transferred electronically) only transfer data (i) where this is essential having regard to the purpose for which the transfer is conducted; and (ii) that is encrypted to the higher of the international data encryption standards for healthcare and the National Standards (this includes, but is not limited to, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes);
  - 60.4.4 have policies which are rigorously applied that describe individual personal responsibilities for handling Personal Data;
  - 60.4.5 have a policy that allows it to perform its obligations under the NHS Care Records Guarantee;
  - 60.4.6 have agreed protocols for sharing Personal Data with other NHS organisations and (where appropriate) with non-NHS organisations; and
  - 60.4.7 where appropriate have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of such recordings.

**Freedom of Information and Transparency**

- 60.5 Where the Provider is not a Public Authority, the Provider acknowledges that the Commissioners are subject to the requirements of the FOIA and shall assist and co-operate with each Commissioner to enable the Commissioner to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:
- 60.5.1 that this Agreement and any other recorded information held by the Provider on the Commissioners' behalf for the purposes of this Agreement are subject to the obligations and commitments of the Commissioners under the FOIA;
  - 60.5.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Commissioner to whom the request is addressed;
  - 60.5.3 that where the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the relevant Commissioner to whom the request is addressed) and will promptly (and in any event within 2 Operational Days) transfer the request to the relevant

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

Commissioner;

- 60.5.4 that the Commissioners, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Agreement either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
- 60.5.5 to assist the Commissioners in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Commissioner within 5 Operational Days of such request and without charge.
- 60.6 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.
- 60.7 Notwithstanding any other term of this Agreement, the Provider hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to the Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 60.8 In preparing a copy of this Agreement for publication pursuant to Clause 60.7 the Commissioners may consult with the Provider to inform decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Commissioners' absolute discretion.
- 60.9 The Provider shall assist and cooperate with the Commissioners to enable the Commissioners to publish this Agreement.
- 61. NHS BRANDING, MARKETING AND PROMOTION**
- 61.1 The Provider shall comply with the applicable NHS brand policy and guidelines, as revised, updated or re-issued from time to time by the Department of Health, and which are currently accessible at [REDACTED] (or such replacement website as is made available from time to time). In addition, where appropriate to the Services the Provider shall comply with the applicable local authority brand guidance and guidelines.
- 62. INTELLECTUAL PROPERTY**
- 62.1 Except as set out expressly in this Agreement no Party shall acquire the IPR of any other Party.
- 62.2 The Provider now grants the Commissioners a fully paid up non-exclusive licence to use Provider IPR for the duration of this Agreement for the purposes of the exercise of their functions and obtaining the full benefit of the Services which shall include the dissemination of best practice within the NHS.
- 62.3 The Commissioners now grant the Provider a fully paid up non-exclusive licence to use Commissioner IPR for the duration of this Agreement for the sole purpose of providing the Services.
- 62.4 Where Provider IPR is software the Provider shall enter into an Escrow Arrangement