

**NUFFIELD HEALTH**

**SUPPLY OF SERVICES AGREEMENT**



## CONTENTS

---

### CLAUSE

1.	Interpretation .....	2
2.	Commencement .....	8
3.	The Services .....	8
4.	Standard of Services .....	11
5.	Contract management .....	15
6.	Fees .....	15
7.	Inspection and audit rights .....	19
8.	Variation .....	20
9.	Confidentiality .....	21
10.	Data Protection .....	22
11.	Insurance .....	23
12.	Indemnity .....	23
13.	Termination .....	24
14.	Announcements .....	27
15.	Intellectual Property .....	28
16.	Assignment and sub-contracting .....	30
17.	Status .....	30
18.	Notices .....	31
19.	Further assurance .....	32
20.	Waiver .....	32
21.	Entire agreement .....	33
22.	Rights of third parties .....	33
23.	Invalidity .....	34
24.	Costs .....	34
25.	Execution of Agreement .....	34
26.	Governing law and jurisdiction .....	34

### SCHEDULES

Schedule 1: The Services

## PARTIES

- (1) NUFFIELD HEALTH, a company limited by guarantee and a charity incorporated and registered in England and Wales with company number 576970 whose registered office is at Epsom Gateway, Ashley Avenue, Epsom, Surrey KT18 5AL (“NH”); and
- (2) The Party whose particulars are located within the automated application form to become part of Fusion (as hereinafter defined) (“Contractor”).

## AGREED TERMS

### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Business Day:** a day (other than a Saturday or a Sunday) on which banks are open for business in the City of London for the transaction of normal banking business.

**Clinical Governance Team:** a team of designated, specialist physiotherapists who deal with any aspect of the patient journey, including (but not limited to) clinical reporting, notes and complaint handling.

**Clinical Notes:** all aspects of a patient’s treatment records for the specified episode of care. This will include (but is not limited to) clinical records, consent forms, exercises, leaflets, images, reports or any other associated details.

**Change:** any change to the Services, the introduction of a new service or a change (other than in accordance with the adjustment provisions of clause 6.2) to the Fees or any other change to any of the terms and conditions of this agreement.

**Complaint:** the quality of service provided by the Contractor being perceived as sub-standard by the patient, referring party or any other relevant stakeholder involved in the specified episode of care.

**Confidential Information:** any information which is disclosed to the Contractor by NH pursuant to or in connection with, this agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential) or which otherwise comes into the hands of the Contractor in relation to NH, any member of NH’s Group or the Patients.

**Consent:** any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of the Services and/or any necessary consent or agreement from any third party needed either for the performance of the Contractor's obligations under this agreement or for the provision by the Contractor of the Services in accordance with this agreement.

**Contractor's Representative:** any employee of the Contractor notified in writing by the Contractor to NH from time to time, being the Contractor's representative, having specific responsibility for liaison with NH in relation to the performance of this agreement.

**Contract Year:** the 12-month period following the Effective Date and each succeeding 12-month period.

**Control:** has the meaning set out in section 840 Income and Corporation Taxes Act 1988.

**Data Protection Legislation:** the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Defaulting Party:** has the meaning set out in clause 13.3.

**Discharge Report:** the form completed online by the Physiotherapist following the Patient's final assessment or Treatment Session.

**DNA:** an Initial Assessment or Treatment Session that the Patient did not attend.

**Effective Date:** the date the parties electronically sign this agreement in accordance with clause 26.4.

**Email:** Automated or manual emails sent by the NH IT system, or NH staff, pertaining to any stage in the patient journey or clinical process.

**Equipment:** anything, save for the Premises, the Services Environment and the Staff that the Contractor may use in the delivery of the Services.

**Fees:** the agreed prices payable by NH to the Contractor per Initial Assessment or per Treatment Session in accordance with clause 6.

**Fusion:** the extended network of sub-contracted physiotherapy practices created by NH.

**Fusion Helpline Number:** 0300 123 9201 or such other telephone number as NH may specify from time to time.

**Fusion Email Address:** [fusion@nuffieldhealth.com](mailto:fusion@nuffieldhealth.com), [Finance.Fusionquery@nuffieldhealth.com](mailto:Finance.Fusionquery@nuffieldhealth.com), [DNA.Fusion@nuffieldhealth.com](mailto:DNA.Fusion@nuffieldhealth.com) or such other email address as NH may specify from time to time.

**Good Practice:** using standards, practices, methods and procedures conforming to the Law and which are appropriate, exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced physiotherapist engaged in the provision of services the same as or similar to the Services, at the time the Services are provided.

**Hydrotherapy:** A session of one-to-one Treatment performed at the discretion of a suitably qualified physiotherapist within a water-based facility specifically for rehabilitation (a hydrotherapy pool) – lasting thirty minutes.

**Initial Assessment:** the initial assessment, lasting for 45 minutes of a Patient's clinical condition and their clinical need (if any) for Treatment.

**Initial Report:** the report completed online by the treating Physiotherapist following the Patient's Initial Assessment, the content of which is determined by the treating practitioner.

**Intellectual Property:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names (including, without limitation, the names "Nuffield" and "Fusion"), rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world owned by or licensed to NH or any other member of NH's Group.

**Law:** any applicable statute or proclamation or any delegated or subordinate legislation or regulation, any enforceable community rights within the meaning of Section 2(1) European Communities Act 1972 and any applicable judgment of a relevant court of law which is a binding precedent in England and Wales and/or (if different) in the country in which the Services are provided, in each case in force in England & Wales and/or (if different) in the country in which the Services are provided,.

**Losses:** 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.

**NH Evidence Based and Consensus-Lead Pathways:** the clinical pathways (notified to the Contractor and linked at the end of this paragraph) devised by NH to facilitate consistent delivery of physiotherapy treatment, including treatment modalities that should be followed for all Patients unless contraindicated.

[http://62.128.137.15/Nuffield\\_Extranet/](http://62.128.137.15/Nuffield_Extranet/)

Username: Physio, Password: Fusion.

**NH's Group:** NH, its subsidiaries and subsidiary undertakings, any holding company of NH and all other subsidiaries and subsidiary undertakings of any such holding company from time to time.

**NH's Representative:** any employee of NH notified in writing by NH to the Contractor from time to time, being NH's representative having specific responsibility for liaison with the Contractor in relation to the performance of this agreement.

**Non-Defaulting Party:** has the meaning set out in clause 13.3.

**Patient:** a person requiring Initial Assessment and/or Treatment who is referred to the Contractor by NH from time to time.

**Patient Authority Form:** the form provided by NH to the Contractor which each Patient signs to allow the release of clinical information to NH to facilitate their case management.

**Physiotherapist:** a physiotherapist who is engaged by the Practice from time to time (whether as an employee or in some other capacity) to provide the Services or any part of them.

**Practice:** the physiotherapy practice operated by the Contractor at the Premises.

**Premises:** the premises of the Practice approved in writing by NH on which the Services are performed and any other premises which, during the term of this agreement become owned, part owned, managed or operated by the Contractor and which, with the written agreement of NH, is designated as Premises.

**Reports:** the Initial Report, the Request for Additional Treatment Report and the Discharge Report.

**Representative:** NH's Representative or (as the case may be) the Contractor's Representative.

**Request:** the request for Services made by NH to the Practice by telephone through NH's Central Booking Office from time to time for the provision of an Initial Assessment and/or Treatment to a Patient.

**Request for Additional Treatment Report or RFAT:** the online form completed by the treating Physiotherapist to request authorisation of further Treatment Sessions, or the manual email form in the event of a secondary request.

**Review Date:** the second anniversary of the Effective Date and at intervals of two years thereafter.

**Services:** the facilities and services referred to in Schedule 1.

**Services Environment:** the treatment rooms, clinics or other physical location, space area and accommodation used and/or controlled by the Contractor from time to time in which the Services are provided (which may include the Patient's residence).

**SOS Report:** the online 'Save One Session' form completed by the treating Physiotherapist following when a patient is awaiting results of further investigations and is not deemed suitable to be treated with Physiotherapy and/or pending the outcome of a period of self-management deemed appropriate by the Physiotherapist, prior to the patient being formally discharged (being a period of no longer than 28 calendar days).

**Staff:** all persons (whether clinical or non-clinical) employed or engaged by the Practice (including Physiotherapists, and volunteers, agencies, locums, casual or seconded personnel) in the provision of the Services or any activity relating to or connected with the provision of the Services.

**Supervised/Supervision:** working as part of a team with a regular peer review structure/identifiable line management.

**Treatment:** physiotherapy treatment.

**Treatment Session:** a session of Treatment, lasting thirty minutes;

**Working Hours:** 8.00 a.m. to 5.00 p.m. on a Working Day. (Working Day: a Business Day on which the Practice is open).

**Worklist:** the online web-portal – found at [www.fusion.nuffieldhealth.com](http://www.fusion.nuffieldhealth.com) – specified by NH. A repository for referrals, clinical reporting and invoicing for services rendered.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- 1.5 Words in the singular shall include the plural and vice versa and words importing one gender (including any neuter gender) include the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes but not email.
- 1.8 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.9 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.10 References to clauses and schedules are to the clauses of and schedules to this agreement.

1.11 Where any reference is made to a Patient giving the Practice notice expressed in terms of hours, such as 24 hours' notice, in calculating this period any day throughout which the Practice is closed shall be ignored. Thus, for example if a Patient is to give the Practice 24 hours' notice of the cancellation of an appointment scheduled for 3 pm on a Monday and the Practice is open on the immediately preceding Saturday but not the Sunday, the notice must be received by no later than 3 pm on the Saturday.

## **2. COMMENCEMENT**

2.1 Subject to clause 7.6, the Contractor shall, as from the Effective Date, provide and continue to provide the Services to the Patients unless this agreement is terminated in accordance with the provisions herein.

2.2 This agreement is not an exclusive arrangement between the parties and NH shall be entitled to obtain services similar to the Services from other physiotherapy practices or practitioners.

2.3 No warranty or other assurance is given by NH to the Contractor, as to the number of Patients who will or may be referred to the Contractor by NH during the term of this agreement or any part of the term.

## **3. THE SERVICES**

3.1 Subject to the provisions of clause 3.2, the Contractor agrees that following a Request, the Practice shall provide an Initial Assessment or Treatment for a Patient within two Working Days of the date of the Request, on and subject to the terms and conditions set out in this agreement.

3.2 The Contractor agrees that where a Request is made, the Practice will be deemed to have accepted the Request and will provide the Initial Assessment or Treatment requested unless NH is notified, by the Contractor, using the Fusion Helpline Number within one Business Day of the date of the Request that the Practice declines the Request. The Practice shall however use its best endeavours to accept the Request.

3.3 NH's Central Booking Office will transfer the Patient telephone call to the Practice, or in the event of the Central Booking Office being unable to contact the Practice immediately, will notify the Practice of the Patient details, together with a request to contact the Patient to

arrange the Initial Assessment. If the Practice is unable to contact the Patient to book the Initial Assessment within one Working Day, the Contractor must notify NH's Central Booking office using the Fusion Helpline Number.

- 3.4 The Contractor shall request permission from NH should the patient wish to be referred to a satellite clinic (owned and operated by the Contractor) that differs from the location that the Central Booking Office intended, providing that the satellite clinic is already an approved Fusion location.
- 3.5 The Contractor shall:
  - i ensure that each Patient completes and signs the Patient Authority Form; and
  - ii retain the Patient Authority Form safely and securely at the Premises and deliver the same up to NH, promptly upon request.
- 3.6 The Initial Assessment must be completed within two Business Days of receiving the Request. The Physiotherapist who performed the Initial Assessment must then complete an Initial Report on the Patient and forward it to NH via the Worklist within one Business Day of the Initial Assessment.
- 3.7 Unless previously agreed with NH, no Treatment from the patient's entitlement may be performed on the same day as the Initial Assessment.
- 3.8 The first RFAT in respect of the Patient must be completed online by the Physiotherapist treating the Patient and forwarded to NH electronically if the Physiotherapist forms the reasonable clinical opinion (giving full clinical reasons) that the Patient requires further Treatment. Such Treatment may not commence until NH has provided authority electronically to the Physiotherapist to proceed.
- 3.9 For any further RFATs, a manual request will need to be submitted by email by the Physiotherapist treating the Patient. Such treatment may not commence until NH has provided authorisation by email to the treating Physiotherapist to proceed.
- 3.10 If the Request for Additional Treatment or Discharge report is to be delayed by more than one Business Day, an SOS report must be

submitted or the appropriate information communicated to the Fusion Team.

3.11 Following the final Treatment Session of the series for the Patient, the Contractor shall procure that the Physiotherapist who treated the Patient completes the Discharge Report on-line and forwards it via the Worklist to NH within one Business Day of the date of the final Treatment Session. Late receipt may result in non-payment of the Fee relating to the Treatment Session, as specified in clause 6.7.

3.12 If the Physiotherapist requires any additional information in order to arrange to provide an Initial Assessment or Treatment, the Contractor shall advise the NH Health Central Booking Office without delay.

3.13 If a Patient:

- i fails to attend an appointment with the Practice without providing at least 24 hours' notice of cancellation prior to the time of the appointment;
- ii discontinues a scheduled series of Treatment Sessions; or
- iii is unable to continue a scheduled series of Treatment Sessions for any reason

the Contractor will inform the central team by email to [DNA.Fusion@nuffieldhealth.com](mailto:DNA.Fusion@nuffieldhealth.com), within one Business Day of the DNA event occurring.

3.14 If a Patient fails to attend two appointments from a scheduled series of Treatment Sessions (for the purposes of this clause, such series shall include any Initial Assessment) booked with the Practice without providing at least 24 hours' notice of cancellation prior to the time of the appointment, the Practice has the right to Discharge the patient with immediate effect via the Worklist, or via email to the Fusion Team if the Patient has not yet entered treatment. All remaining appointments for that Patient shall be cancelled from the date of the second occasion the Patient fails to attend. If the Practice does decide to continue treatment any further DNAs or late cancellations are at risk to the Practice and will not be reimbursed at the agreed rate (as per 6.16).

3.15 If a Patient gives the Practice at least 24 hours' notice prior to the time of their appointment of their intention not to attend the appointment,

the Practice shall rearrange such appointment with the Patient for a mutually convenient date and time.

3.16 No Patient may be referred by the Practice for further investigations and / or consultations without notifying NH. This does not include investigations for conditions where an urgent medical review is required, for example suspected cauda equinae symptoms, fractures, cancers or other such conditions.

3.17 Subject to 3.16, the Contractor shall take responsibility of a patient's onward referral (where it is necessary) for further investigation (including but not limited to: X-rays, surgical consultations and MRI scans).

#### **4. STANDARD OF SERVICES**

4.1 The Contractor shall:

- i carry out the Services in accordance with the Law and Good Practice, in each case from time to time prevailing;
- ii adhere consistently to the core standards and recommendations from time to time imposed by NH on members of Fusion and notified to the contractor and (without limitation) ensure that the Patients are provided, at all times, with the quality of service which they could reasonably expect from a first rate physiotherapy practice;
- iii keep an up to date list of all Physiotherapists working at the Practice and all relevant qualifications and screening performed including the Disclosure and Barring Services (DBS) check, the Health and Care Professions Council (HCPC) and the Chartered Society of Physiotherapy (CSP) registration numbers and provide NH with a copy of such list upon request and ensure that it informs NH promptly when a Physiotherapist ceases to be engaged by the Contractor;
- iv procure that each Physiotherapist shall at all times that they provide Services:
  - (i) be a current member of the CSP and abide by the CSP Quality Assurance Standards (2012), the HCPC's Standards of Conduct, Performance and Ethics (2012), the Standards of Proficiency (2008) and the Data Protection Act 1998;

- (ii) follow the Nuffield Health Evidence-Based and Consensus-Lead Pathways, where one exists to cover the Patient's condition;
- (iii) have a valid enhanced DBS check which does not show any convictions (excluding convictions for traffic offenses).
- (iv) be registered with the HCPC and have no HCPC imposed conditions of practice which would limit their ability to practice or treat any group of patients, save where they have previously declared the condition or conditions to NH and have received written consent from NH (which may be granted or withheld at NH's absolute discretion) to continue treating Patients;
- (v) ensure that they promptly declare to NH any HCPC imposed conditions of practice;
- (vi) if they use acupuncture as a treatment technique, be accredited by the Acupuncture Association of Chartered Physiotherapists or a member of the British Medical Acupuncture Society;
- (vii) have a minimum of three years post graduate clinical experience (predominantly Musculoskeletal in nature) which is relevant to the Patients they treat, with evidence of relevant and on-going continuing professional development. Where a practitioner has less than five years post graduate clinical experience, they must be supervised by a senior practitioner with at least five years' experience; and
- (viii) notify the Fusion Team of the names of all practitioners treating NH patients under the terms above.

v ensure that all Staff shall:

- (i) if applicable, be registered with the appropriate professional regulatory body;
- (ii) possess the appropriate IT skills to operate the NH Worklist via the Fusion portal without difficulty, as well as the appropriate skills required to use the Practice's own email and internal IT system when relating to the treatment of an NH patient as well as provide a unique

email address for every Physiotherapist so that they can individually assess the Fusion portal.

- (iii) possess the appropriate qualifications, experience, skills and competencies to perform the duties required of them and be appropriately supervised, managerially and professionally;
  - (iv) be covered by adequate insurance for the provision of the Services; and
  - (v) carry and, where appropriate display, valid and appropriate identification;
- vi be fully responsible for the management and control of its Physiotherapists and other Staff;
  - vii be fully responsible for recruiting and selecting its Physiotherapists and other Staff, ensuring that all necessary vetting checks, performance appraisals and clinical audits on them are carried out, including (without limitation) in the case of Physiotherapists carrying out such vetting checks, performance appraisals and clinical audits as NH may from time to time specify and NH reserves the right to view the results;
  - viii have in place systems for seeking and recording specialist professional advice and shall ensure that every Physiotherapist and other member of Staff involved in the provision of the Services receives:
    - (i) proper and sufficient continuous professional development training; and
    - (ii) full and detailed appraisals;each in accordance with Good Practice and the standards of their relevant professional body, if any, in each case from time to time prevailing.

4.2 If at any time the Practice or any individual Physiotherapist fails to comply with any of the provisions of clause 4.1, the Contractor shall promptly notify NH.

4.3 The Contractor shall promptly notify NH if any Physiotherapist becomes the subject of an HCPC investigation or conditions of practice. It will be at the sole discretion of NH to decide if that

Physiotherapist will be entitled to continue treating Patients. Failure by the Contractor to notify NH of any Physiotherapist who is subject to any HCPC investigation or conditions of practice, immediately upon the Contractor becoming aware will entitle NH to terminate this agreement with immediate effect under clause 13.3.

- 4.4 The Contractor shall at all times comply with the Law and any applicable quality standards in relation to the Services Environment and the Equipment and shall ensure that the Services Environment and the Equipment are clean, safe, suitable, sufficient, functional, effective and fit for the purpose of providing the Services in compliance with all Consents.
- 4.5 The Contractor shall, at all times, and at its own cost, make available all Equipment necessary to provide the Services in accordance with the Law and any necessary consents.
- 4.6 The Contractor shall notify NH immediately should any part of their address(es) change, and shall not treat NH patients at any locations not approved by NH via the application procedure.
- 4.7 During the term of this agreement the Contractor shall:
  - i not do anything that could bring NH, any other member of NH's Group or Fusion into disrepute or damage the reputation of NH, any other member of NH's Group or Fusion;
  - ii promptly give NH such information relating to the Practice, the Contractor, the Physiotherapists and other Staff, as NH may request in such form and at such times as NH may from time to time reasonably require;
  - iii exhibit such notices, in such places as NH may require, to the effect that the Contractor is operating the Practice independently from NH;
  - iv at its own expense, maintain the Premises to the highest of standards and refurbish, redecorate or improve the Premises as and when necessary to maintain such standards; and
  - v store, use and maintain all Equipment strictly in accordance with the manufacturer's instructions and Good Practice, including, in relation to infection control.

## 5. CONTRACT MANAGEMENT

5.1 Each party shall appoint a Representative whose responsibility shall be to:

- i review and monitor, on an on-going basis, the due and proper performance by the appointing party of its obligations pursuant to this agreement; and
- ii review the extent to which the other party has performed its obligations under this agreement.

## 6. FEES

6.1 NH shall pay the Contractor the Fees for any Initial Assessment or Treatment provided by the Practice to a Patient in accordance with and subject to the terms of this agreement, irrespective of whether a Patient is self-funding or his or her treatment is covered under any policy of insurance.

6.2 The Contractor agrees that NH shall be entitled to the following discounts on the charges for Initial Assessments only based on the number of referrals for Initial Assessment ("Volume Discount") in each Contract Year:

- (i) £2 reduction per assessment after 50 referrals for Initial Assessment;
- (ii) £4 reduction per assessment after 100 referrals for Initial Assessment; and
- (iii) £6 reduction per assessment after 150 referrals for Initial Assessment.

The Volume Discount will be capped at a maximum of £6 reduction per referral for Initial Assessment after 150 referrals in each Contract Year.

6.3 NH will not apply the Volume Discount without first notifying the Contractor.

6.4 Both parties shall review and, if agreed, revise the Fees on each Review Date.

- 6.5 The Fees shall include the Treatment lengths (as specified in 1.1), as well as submission of all clinical reports and/or any email or phone communication regarding any facet of the management of the referral.
- 6.6 The Contractor shall complete and submit, at the same time as the Initial/Discharge Reports, an invoice via the Worklist to NH, which can be found on the second page of the online Report in respect of each Patient, for any Initial Assessment or Treatment provided by the Practice up to the time of each of the following Reports:
- i the Initial Report;
  - ii the Request for Additional Treatment Report(s); and
  - iii the Discharge Report.
- 6.7 All appointments not previously invoiced (including those from secondary RFAT reports) must appear on the Discharge Report. Failure to invoice for appointments at this stage will prevent NH from being able to recover the costs from the instructing parties and accordingly NH shall have no responsibility for settling any invoices which are rendered after the date of the Discharge Report.
- 6.8 In the event NH requests Clinical Notes pertaining to a patient's treatment, the Contractor will release the Clinical Notes to NH at no cost within 15 Business Days of the request without exception.
- 6.9 In the event of a Complaint against the Contractor, and it is deemed appropriate by the Clinical Governance Team to review Clinical Notes, the Contractor will send the Clinical Notes to NH within 5 working days in accordance with clause 6.6. If the Contractor is unable to meet this deadline, the Contractor must contact the Clinical Governance Team.
- 6.10 Hydrotherapy sessions will be payable at the rate agreed between the parties.
- 6.11 Without prejudice to the provisions of clause 6.7, any invoicing error made by the Practice must be brought to the attention of NH by email to the [Finance.Fusionquery@nuffieldhealth](mailto:Finance.Fusionquery@nuffieldhealth) within one Business Day of the date of the invoice, failing which any error will not be retrospectively corrected, unless NH otherwise agrees.

- 6.12 No DNA's shall be included on any Report. These shall be reported as specified in clause 3.14.
- 6.13 NH will only make payment for Services authorised in accordance with the terms and conditions set out in this agreement.
- 6.14 Payment will not be made by NH to the Contractor unless all requested case management documentation (including all Reports and invoices) has been completed to NH's reasonable satisfaction.
- 6.15 If a Patient fails to attend two appointments from a scheduled series of Treatment Sessions, at the same time as the notification of the cancellation is to be made by email to [DNA.Fusion@nuffieldhealth.com](mailto:DNA.Fusion@nuffieldhealth.com), as provided in clause 3.14, an invoice for the cancellation fee referred to in clause 6.16 shall be attached to the email. If the Practice is unable to email an invoice, it shall be posted within five Business Days of the date the email should have been sent, for the attention of the **Accounts Payable – Fusion**, Finance Department, Nuffield Health, Epsom Gateway, Ashley Avenue, Epsom, Surrey KT18 5AL.
- 6.16 NH will only pay for DNAs if the Patient failed to cancel the appointment 24 hours or more prior to the time of the appointment. The Fee will be at the rate of £20 per appointment and will only be paid by NH to the Contractor once NH has received payment in respect of the DNA from the relevant payee. In addition:
- i a maximum of two payments in respect of DNAs may be invoiced in respect of the Patient, following notification of the DNA/late cancellation to NH;
  - ii the Patient will be removed from the active work list (if specified by the clinic – agreeing to the terms in 3.14);
  - iii no further invoices in respect of the Patient for DNA's will be accepted by NH;
  - iv the Practice shall make the Patient aware, at the time of booking that a late cancellation/DNA policy applies; and
  - v the Practice shall not pursue the Patient for a DNA or late cancellation charge.
- 6.17 Subject always to the provisions of clause 6.16, NH will endeavour to make payment within 30 days of the end of the month following the

month in which the Practice's relevant Report, as referred to in clause 6.6, has been approved, subject to there being no dispute over the sum invoiced. An email will be sent to the Practice on approval. This will constitute the invoice date.

- 6.18 Payment will be made by BACS to bank account in the name of the Practice.
- 6.19 NH shall not be liable to pay or reimburse the Contractor for any Services provided to a Patient, except to the extent that NH has issued a Request and the Contractor has complied with any other applicable requirements of this agreement and the Services concerned or the costs thereof do not extend beyond that to which the Patient is to receive under this agreement.
- 6.20 As the Contractor's agreement is with NH, the Contractor will not pursue a Patient or third party referrers for any information or monies owed or accept any payment whatsoever from a Patient (including self-funding Patients), unless instructed to do so in writing by NH.
- 6.21 Where NH considers that, in its reasonable opinion, it is not liable to settle all or part of an invoice for any reason whatsoever NH shall notify the Contractor stating the reasons why such invoice or part thereof is disputed by NH. The parties shall act in good faith in resolving the disputed invoice. This shall not affect any obligation of NH to pay any undisputed invoices in accordance with clause 6.17 nor allow the Contractor to cease to provide or suspend any Services.
- 6.22 NH shall settle any disputed sums referred to in clause 6.21 within 30 Working Days of the date of agreement or determination of such sums.
- 6.23 If after NH has settled an invoice, NH believes it has made an overpayment in relation to such invoice NH shall notify the Contractor as soon as reasonably possible and inform the Contractor that the overpayment may (without limitation) be recouped by NH in the form of the underpayment or non-payment of any other invoice from the Contractor. The Contractor shall be entitled to dispute the overpayment within five Business Days of the receipt of the overpayment notice from NH, by written notice to the NH stating the grounds for the dispute and the parties shall attempt to resolve the dispute in good faith.

6.24 The Contractor must not pursue a Patient for any payment that NH is required to settle under the terms of this Agreement or for any excess that a Patient is required to pay under his/her insurance policy for Treatment.

## 7. INSPECTION AND AUDIT RIGHTS

7.1 NH and its agents shall have the right, with five (5) Business Days' notice, to reasonable access to conduct an inspection of each of the Premises, the Equipment, books of account, records and documentation of the Practice relating to the Services only and interview the Physiotherapists and other Staff from time to time in:

- i order to carry out an on-site audit of the clinical and operational standards of the Practice; or
- ii connection with any complaints which have been raised about the Practice by anyone.

7.2 NH shall be entitled to undertake periodic Patient feedback surveys and to carry out spot checks and contact Patients regarding their Initial Assessment and Treatment.

7.3 The Contractor will be provided with a copy of any audit report produced under clause 7.1. or survey produced under clause 7.2. with the name of the Patient or Patients (or any identifiable features) redacted. If any material issue is identified as a result of any inspection, audit, survey or spot check carried out by NH pursuant to clause 7.1 or clause 7.2, NH shall notify the Contractor of the issue and the remedial action required.

7.4 NH and its agents shall also be entitled to access the Premises with three (3) weeks' prior notice to review and discuss with the Contractor the Contractor's performance of the Services.

7.5 NH may, from time to time, with no less than five (5) Business Days' notice to the Contractor, conduct an audit of the Contractor's underlying billing or clinical data in respect of Patients in order to satisfy itself of the appropriateness of decisions made or charges billed and/or paid. Save in the case of fraud or where an external regulatory body is involved, the period to which the audit relates shall not exceed six years prior to the date of the audit. If as a result of the audit it is established that NH has been overbilled or claims have been made by the Contractor against NH by or for more than five (5) % of

the actual sum which should have been billed or claimed, the Contractor shall reimburse NH for all reasonable professional or other costs which it pays, incurs, suffers or sustains as a result of carrying out the audit. The provisions of this clause 7.5 shall continue to apply for the period of one year after the termination or expiry of this agreement for any reason.

7.6 The Contractor will provide NH with all such assistance (including without limitation copies of all clinical notes at no cost to NH) that NH may reasonably require when exercising its rights under clause 7.1, clause 7.2 and clause 7.5.

7.7 **This agreement is conditional on the successful completion and pass of self-audits. The Contractor must complete a self-audit and return the completed self-audit questionnaires to NH within 10 working days from the Effective Date, or as directed by NH. Thereafter, a self-audit must be conducted annually or as directed by NH. The Contractor will be provided with a copy of any audit report produced. NH shall have the right to terminate this agreement immediately if the Contractor fails to comply with its obligations under this clause or if an unsatisfactory result is provided by the audit.**

7.8 Nothing in this clause 7 shall:

- i place any obligation on NH to carry out any inspection, audit, survey, spot check or otherwise exercise its rights or take any acts or steps under this clause 7; or
- ii in any way reduce or extinguish any of the Contractor's obligations or liabilities under this agreement, regardless of whether or not NH exercises any of its rights under this clause 7.

## 8. VARIATION

8.1 The Contractor understands and agrees that NH shall have the explicit right to amend any part of this agreement (with the exception of the Fees) at any time without requiring the Contractor's consent and all such amendments made shall be binding on the Contractor.

## 9. CONFIDENTIALITY

9.1 Subject to clause 9.2, the Contractor shall and shall procure that each of the Physiotherapists and the Contractors other Staff treat as confidential and not disclose or use:

- i any information obtained as a result of negotiating, entering into or performing this agreement which relates to:
  - (i) the provisions of this agreement; or
  - (ii) the negotiations relating to this agreement; or
- ii Confidential Information, save to the extent strictly necessary to provide the Services under this agreement.

9.2 Notwithstanding the provisions of clause 9.1, the Contractor may disclose information:

- i if and to the extent required by the law of any relevant jurisdiction;
- ii if and to the extent required by any securities exchange or regulatory or governmental body or any tax authority to which the Contractor is subject, including HPC;
- iii to any sub-contractor appointed by the Contractor under clause 16 and to the Contractor's professional advisers, auditors, actuaries and bankers provided in each case such persons have been informed by the Contractor of the confidential nature of such information and have agreed to treat such information as confidential information;
- iv if and to the extent the information has come into the public domain through no fault of the Contractor, any person to whom the information has been disclosed under clause 9.2 iii, the Physiotherapists, or other Staff; or
- v if and to the extent NH has given prior written consent to the disclosure.

Any information to be disclosed pursuant to clause 9.2i and clause 9.2ii shall, where practicable in the circumstances and not otherwise prohibited, be disclosed only after notice to and consultation with NH.

9.3 The provisions of this clause 9 shall continue to apply after the termination or expiry of this agreement for any reason.

## 10. DATA PROTECTION

- 10.1 The Contractor undertakes to comply with its obligations under the Data Protection Legislation, so far as it may apply to this agreement.
- 10.2 The Contractor shall take all:
- i appropriate and prudent technical and organisational measures against inappropriate, unauthorised or unlawful processing of personal data and against accidental or unlawful loss, alteration or destruction of, or damage to, personal data;
  - ii necessary steps to ensure the reliability of any of the Staff who have access to the personal data.
- 10.3 The Contractor shall procure that the Practice shall maintain the confidentiality of each Patient's medical information or records exchanged in accordance with this agreement. No such information or records may be disclosed without the prior consent of the Patient concerned, unless the then prevailing law allows or requires it.
- 10.4 The Contractor shall indemnify NH against all claims and proceedings and all liability, loss, costs and expenses incurred by NH as a result of any claim made or brought by an individual or other person in respect of any loss, damage or distress caused to them as a result of the Contractor's unauthorised processing, unlawful processing, destruction of and/or damage to any data processed by the Contractor, its Staff or agents.
- 10.5 Patient records must be kept by the Contractor for 8 years – with the following exceptions: **Children and young people**: Retain until the patient's 25<sup>th</sup> birthday, or 26<sup>th</sup> if the patient was 17 at conclusion of treatment, or 8 years after the patient's death if death occurred before 18<sup>th</sup> birthday. **Mentally disordered persons** (within the meaning of the Mental Health Act 1983): 20 years after no further treatment considered necessary; or 8 years after the patient's death if patient died while still receiving treatment. Records must be easily and quickly accessible to the Contractor – should NH have need to request them.
- 10.6 No personal data processed by the Contractor pursuant to this agreement shall be exported outside the European Economic Area without the prior written permission of NH.

10.7 The provisions of this clause 10 shall continue to apply after the termination or expiry of this agreement for any reason.

## **11. INSURANCE**

11.1 The Contractor shall maintain in force and procure that there is maintained in force, at its or their own cost, adequate and appropriate insurance policies, with reputable insurance companies to cover the Contractors, Physiotherapists, other Staff and sub-contractors liabilities and potential liabilities under or in connection with this agreement (including the Services to be provided), including, but not limited to:

- i employer's liability insurance for not less than £5 million pounds per claim;
- ii professional indemnity insurance for not less than £5 million pounds per claim; and
- iii public liability insurance for not less than £5 million pounds per claim.

11.2 The Contractor shall, upon request, from time to time, provide documentary evidence to NH that the insurance policies referred to in clause 11.1 are fully maintained in full force and effect and the premiums are fully paid.

11.3 The Contractor shall maintain in force and procure that there is maintained in force the insurance policy or policies referred to in clause 11.1ii for the period of at least six years following the termination or expiry of this agreement for any reason.

11.4 This clause 11 shall survive in all respects the termination or expiry of this agreement for any reason.

## **12. INDEMNITY**

12.1 Without prejudice to its liability for breach of any of its obligations under this agreement, the Contractor shall be liable to NH and shall indemnify and keep NH and each other member of NH's Group fully indemnified from and against any loss, damages, liabilities, costs, expenses, claims, demands, fines, penalties or proceedings whatsoever in respect of any:

- i loss of or damage to property (whether real or personal);
- ii injury to any person, including injury resulting in death;
- iii claim by a Patient against NH
- iv breach of its obligations under clause 9 (Confidentiality) and clause 10 (Data Protection); and
- v other Losses which NH and each other member of NH's Group pays, incurs, suffers or sustains

that result from or arise out of acts or omissions (whether in respect of negligence, breach of contract or otherwise) of the Contractor, any of the Physiotherapists, the Staff, sub-contractors or any of them in connection with the performance of this agreement or the provision of the Services, including the use of Equipment or other materials or products in the provision of the Services, except in so far as such loss, damage or injury has been caused by any wilful act or omission by or on the part of NH, or any other member of NH's Group, their employees or agents.

12.2 This clause 12 shall survive in all respects the termination or expiry of this agreement for any reason.

### 13. TERMINATION

13.1 Either party may terminate this agreement on three months' written notice to the other.

13.2 NH may terminate this agreement with immediate effect and by any means, if NH shall consider that to allow the agreement to continue will or could place the safety of Patients, prospective Patients or any of them at risk. NH will confirm its decision in writing, if the original notification was not in writing.

13.3 A party (the **Non-Defaulting Party**) may terminate this agreement with immediate effect by written notice to the other party (the **Defaulting Party**) without prejudice to any other rights and remedies the Non-Defaulting Party may have, if:

- i the Defaulting Party ceases to hold or have the benefit of or fails to obtain any licence, approval, authorisation or consent required by any applicable law or regulation which is required to enable it to substantially carry out its obligations under this

agreement and, in addition, if the Defaulting Party is the Contractor, where the Contractor ceases to hold or have the benefit of or fails to obtain any Consents which results in the Contractor being unable to provide substantially all the Services at the Premises;

- ii the Defaulting Party is in material breach (which includes a breach which becomes material by its persistence) of any provision of this agreement and such breach has not, if capable of being remedied, been remedied to the reasonable satisfaction of the Non-Defaulting Party (save as to the time of the performance) within 14 days of receipt by the Defaulting Party of written notice from the Non-Defaulting Party requiring such remedy;
- iii the Defaulting Party is the Contractor and the Practice or any of the Physiotherapists at the Practice commit any breach of their professional codes of conduct, are struck off or suspended from any applicable register of physiotherapists or in NH's opinion are otherwise deemed unfit to practice.
- iv the Defaulting Party is the Contractor and the Contractor has failed to provide notification to NH in accordance with the provisions of clause 4.3.
- v any procedure is commenced with a view to the winding-up or re-organisation of the Defaulting Party (in each case, other than for the purpose of a solvent amalgamation or reconstruction);
- vi any step is taken or any procedure is commenced with a view to the appointment of an administrator, receiver, administrative receiver or company voluntary arrangement in relation to all or a substantial part of the Defaulting Party's assets;
- vii the holder of any security over all or substantially all of the assets of the Defaulting Party takes any step to enforce that security;
- viii any of the assets of the Defaulting Party is subject to attachment, sequestration, execution or any similar process and that process is not terminated or discharged within seven days;
- ix the Defaulting Party enters into, or any step is taken, whether by the Defaulting Party or otherwise, towards entering into a

composition or arrangement with its creditors or any class of them, including, but not limited to, a company voluntary arrangement or a deed of arrangement;

- x the Defaulting Party is the Contractor, the Contractor is an individual, a partnership or a limited liability partnership and the individual or any partner of the partnership or member of the limited liability partnership has any steps taken or procedure commenced in respect of him to appoint a trustee in bankruptcy or effect an individual voluntary arrangement or other composition or arrangement with his creditors;
- xi the Defaulting Party enters into or any step is taken, whether by the Defaulting Party or otherwise, towards any analogous procedure under the laws of any jurisdiction to the procedures set out in clauses 13.3v to 13.3ix x inclusive; or
- xii the Defaulting Party is the Contractor and there is a change in Control of the Contractor.

13.4 Termination or expiry of this agreement shall be without prejudice to:

- i any accrued rights, liabilities or remedies arising under this agreement or at law; and
- ii any provision in this agreement which is expressly stated to survive termination or expiry.

13.5 If a Patient has booked an Initial Assessment or Treatment (including a series of Treatments) from the Practice which has yet to be fulfilled at the time the agreement terminates or expires, unless the termination is as a consequence of the operation of clause 13.2, 13.3iii or 13.3iv, the Contractor shall procure that the Practice shall continue to provide the Initial Assessment and Treatment Sessions which have been so booked, and submit any reports required. Any Services provided to a Patient during this further period shall be provided in accordance with the provisions of this agreement. The Contractor shall be entitled to invoice NH for such Initial Assessment or Treatment Sessions and NH shall settle such invoices in accordance with the term of this agreement, notwithstanding the termination or expiry of this agreement.

13.6 If NH has need to request Clinical Notes following the termination of this agreement, the Contractor will provide them in accordance with the terms of 6.6.

13.7 Following the termination of this agreement, the Contractor will provide NH with adequate contact details to enable NH to contact the Contractor regarding patients treated at the location(s).

13.8 Upon the termination or expiry of this agreement, for whatever reason, the Contractor will procure that the Practice, the Physiotherapists and other Staff:

- i immediately cease, in any way, to represent themselves as being part of or otherwise connected with NH, any other member of NH's Group or Fusion;
- ii immediately cease to use any Intellectual Property;
- iii do not at any time, whether directly or indirectly and whether alone or in conjunction with or on behalf of any person, in any capacity, trade or practice under the names "Nuffield", "Fusion" or any other name, style, logo or imprint which is the same as, similar to or which includes or may be confused with such names or any other name or trade name used by NH or any other member of the NH Group;
- iv deliver up to NH all material provided by NH or created for the purpose of this agreement, together with any copies thereof, which remain in their possession, power or control where those materials contain the name "Nuffield", "Fusion" or any other trade mark or logo of any member of NH's Group; or
- v at the request of NH, within seven days destroy any material provided by NH or created for the purposes of this agreement which embodies the name, "Nuffield", "Fusion" or any other trade mark or logo of any member of the NH's Group, provided that this shall not apply to records and documents relating to patients.

13.9 This clause 13 shall survive in all respects the termination or expiry of this agreement for any reason.

#### **14. ANNOUNCEMENTS**

14.1 Subject to clause 14.2, no announcement concerning this agreement or any ancillary matter shall be made by the Contractor without the prior written approval of NH.

14.2 Notwithstanding the provisions of clause 14.1, the Contractor may, whenever practicable after consultation with NH, make an announcement concerning this agreement or any ancillary matter if required by:

- i Law; or
- ii any securities exchange or regulatory or governmental body to which that Party is subject, wherever situated, including (amongst other bodies) the London Stock Exchange plc and The Panel on Takeovers and Mergers.

14.3 The provisions of this clause 14 shall continue to apply after the termination or expiry of this agreement for any reason.

## 15. INTELLECTUAL PROPERTY

15.1 The Contractor acknowledges that:

- i it does not have any right, title or interest in the Intellectual Property or any updates or improvements to it, save as specifically set out in this agreement; and
- ii any goodwill (and any other rights) in the Intellectual Property which result from the use by the Contractor or NH of the Intellectual Property shall vest in NH.

15.2 If the Contractor learns of any threatened or actual infringement of the Intellectual Property, or of any circumstance which suggests that the use of the Intellectual Property may infringe the intellectual property of a third party, it shall immediately inform NH, giving all such details as NH requests.

15.3 NH shall have the conduct of any proceedings relating to the Intellectual Property and may take whatever action it, in its sole discretion, decides in respect of any infringement or alleged infringement of it, or arising from its use. Any rights that the Contractor has under section 30 of the Trade Marks Act 1994 are excluded. The Contractor shall co-operate with NH in taking such action and NH shall meet any reasonable expenses of the Contractor in doing so.

15.4 The Contractor shall:

- i not apply for registration of any of the Intellectual Property (or any intellectual property that is confusingly similar to the Intellectual Property) in its own name, in any part of the world;
- ii comply with all requests by NH as to the use of the Intellectual Property and the ™, © and ® symbols in relation to the Intellectual Property;
- iii if requested, provide all reasonable assistance to enable NH to register such of its Intellectual Property as is capable of registration;
- iv not license (or purport to license) any other person to use any of the Intellectual Property;
- v not use the Intellectual Property other than as specifically permitted by this agreement;
- vi not use any intellectual property that is confusingly similar to the Intellectual Property;
- vii not do anything that may adversely affect the Intellectual Property or NH's or any member of NH's Group's right or title to it; and
- viii immediately stop using any advertising or promotional material or packaging which contains any Intellectual Property on receipt of a request by NH to do so.

15.5 NH hereby (to the extent that it has the power so to do), grants a royalty free, revocable, non-exclusive, non-transferable, licence for the Contractor to use the mark "Fusion" and any other insignia, symbols, brand names, trade names, trade marks or other Intellectual Property of NH required to provide the Services to the extent, for such period and in such manner (if any) as may be approved or specified in writing by NH from time to time.

15.6 Any intellectual property rights subsisting in the Reports, the Patient Authority Form and the NH Evidence Based and Consensus-Lead Pathways shall belong to NH absolutely.

15.7 The Contractor acknowledges and agrees that contact with NH (including calls made, received and transferred to or by NH) may be recorded by NH's telephony system

15.8 This clause 15 shall survive in all respects the termination or expiry of this agreement for any reason.

**16. ASSIGNMENT AND SUB-CONTRACTING**

- 16.1 The Contractor shall not assign, or purport to assign, all or any part of the benefit of, or its rights or benefits under, this agreement without the prior written consent of NH.
- 16.2 NH may assign, novate or otherwise transfer in whole or in part any of its rights and/or obligations under this agreement to another member of NH's Group or to any person to whom NH is selling all or substantially all of its business, which is of materially sufficient financial standing to fulfil the obligations of NH under this agreement (or such obligations as are being transferred).
- 16.3 Subject to clause 16.4, the Contractor shall not sub-contract or enter into any arrangement whereby another person is to perform any or all of its obligations under this agreement without the prior written consent of NH.
- 16.4 Without prejudice to the Contractor's obligations under this agreement concerning Physiotherapists and other Staff, clause 16.3 shall not preclude the Contractor from employing or engaging individual Physiotherapists or other Staff to perform the Services at the Premises.

**17. STATUS**

- 17.1 The relationship of the Contractor to NH is that of independent contractor and nothing in this agreement shall render the Contractor nor any of its Physiotherapists or other Staff, an employee, worker, agent or partner of NH and the Contractor shall not and shall procure that none of its Physiotherapists or other Staff hold themselves out as such.
- 17.2 Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 17.3 The Contractor shall be fully responsible for and shall fully indemnify NH for and in respect of:

- i any corporation tax, income tax, National Insurance and Social Security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services by the Contractor, the Physiotherapists, the Staff or any of them, to the extent such indemnity is not prohibited by law.
- ii all reasonable costs and expenses and any penalty, fine or interest paid incurred suffered or sustained by NH in connection with or in consequence of any such tax, contribution, liability, deduction, assessment or claim referred to in clause 17.3i; and
- iii any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor, the Physiotherapists, the Staff or any of them against NH arising out of or in connection with the provision of the Services.

17.4 NH may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Contractor.

17.5 This clause 17 shall survive in all respects the termination or expiry of this agreement for any reason.

## 18. NOTICES

18.1 Any notice under this agreement shall be served by delivering it personally (which includes delivery by courier), sending it by registered post, e-mail or by fax to the address and for the attention of the relevant party set out in clause 18.3.

18.2 Any notice under this agreement shall be deemed to be received:

- i If delivered personally, at the time of delivery;
- ii In the case of pre-paid recorded delivery or registered post, two Business Days from the date of posting; or
- iii In the case of fax and e-mail, at the time of transmission;

Provided that if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

18.3 Notices under this agreement shall be sent to a party at its address or facsimile number and for the attention of the individual set out below:

i For NH:

(i) address: as set out at the head of this agreement;

(ii) for the attention of: the Company Secretary;

(iii) fax number: 0208 329 6215

(iv) e-mail: fusion@nuffieldhealth.com

ii For the Contractor:

(i) address: as provided to NH

(ii) for the attention of: the Practice Manager;

or such other address or facsimile number in the United Kingdom as may be notified in writing from time to time by the relevant party to the other party.

## 19. FURTHER ASSURANCE

Each party shall, from time to time, on being required to do so by the other party, do or procure the doing of all such acts and/or execute or procure the execution of all such documents, in a form reasonably satisfactory to the party concerned, as the party concerned may reasonably require for giving full effect to this agreement and securing each party with the full benefit of the rights, powers and remedies conferred upon it by this agreement.

## 20. WAIVER

20.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

20.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

20.3 A waiver (which may be given subject to conditions) of any right or remedy provided under this agreement or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It

shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

20.4 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

## **21. ENTIRE AGREEMENT**

21.1 This agreement together with any appendices, documents, and terms that NH may incorporate into this agreement by notice to the Contractor constitute the whole agreement between the parties and supersedes and extinguishes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

21.2 Each party acknowledges that, in entering into this agreement, it does not rely on any statement, representation, assurance or warranty (**Representation**) of any person (whether a party to this agreement or not) other than as expressly set out in this agreement. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in this agreement.

21.3 Nothing in this clause shall limit or exclude any liability for fraud.

## **22. RIGHTS OF THIRD PARTIES**

22.1 To the extent that the provisions of this agreement confer benefits on members of NH's Group, such benefits are intended to be enforceable by each such member by virtue of the Contracts (Rights of Third Parties) Act 1999.

22.2 To the extent that the provisions of this agreement confer benefits on Patients, such benefits may be enforceable by each such Patient by virtue of the Contracts (Rights of Third Parties) Act 1999 with the prior written consent of NH.

22.3 Save as provided in clause 22.1 or clause 22.2, the parties do not intend that any term of this agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this agreement.

22.4 Notwithstanding that any term of this agreement may be or become enforceable by a person who is not a party to it, the terms of this agreement or any of them may be varied, amended or modified or this agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this Agreement may be rescinded (in each case), without the consent of any such third party.

**23. INVALIDITY**

If any provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:

- i the legality, validity or enforceability of any other provision of this agreement; or
- ii the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this agreement.

**24. COSTS**

Except as otherwise stated herein, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of the terms hereof.

**25. EXECUTION OF AGREEMENT**

25.1 This agreement and any variation may be executed manually or electronically using a digital signature.

25.2 Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record.

**26. GOVERNING LAW AND JURISDICTION**

26.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

- 26.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.
- 26.3 Each party waives (and agrees not to raise) any objection, on the ground of *forum non conveniens* or any other ground, to the taking of proceedings in the courts of England and Wales. Each party also agrees that a judgment against it in proceedings brought in England and Wales shall be conclusive and binding upon it and may be enforced in any other jurisdiction
- 26.4 The parties consent to use the Adobe EchoSign service for purposes of electronically signing this agreement.

## **Schedule 1 The Services**

Initial Assessment and Treatment and any goods, facilities and services which are reasonably required to be provided or made available to the Patient in order to provide an Initial Assessment or Treatment including (without limitation) the services of a Physiotherapist, access to and the use of the Premises and the Services Environment, the use of all Equipment necessary to carry out the Initial Assessment and Treatment, the provision of all necessary Staff, dressings, bandages, drink and other sustenance reasonably required by the Patient during Initial Assessment or Treatment or otherwise whilst within the Services Environment.