

NHS FRAMEWORK AGREEMENT FOR THE PROVISION OF SERVICES

The Authority	Salisbury NHS Foundation Trust (Salisbury Managed Procurement Services) Odstock Road, Salisbury, Wiltshire SP2 8BJ
Supplier Name	[Insert name, address and, where applicable, the company number of the Supplier]
Supplier Address including for service of Notices under this Contract	
Supplier Company Number (from Companies House)	
Supplier Contact for Contract Management	
Supplier UKPRN (RoATP or RoEPAO number provided by ESFA)	
Date	
Type of Services	Framework for the Provision of Apprenticeship Training and End Point Assessment (Ref S10353) September 2022 update Note – This is the contract for membership of the Framework. This is not an employer contract to deliver the services to a specific organisation. To deliver services, you must have an employer-specific contract issued following the call-off process detailed in this Contract.

This Framework Agreement is made on the date set out above subject to the terms set out in the schedules and appendix listed below ("**Schedules**"). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Framework Agreement.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Framework Agreement.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations
Schedule 5	Specification and Tender Response Document
Schedule 6	Commercial Schedule
Schedule 7	Ordering Procedure, Award Criteria and Order Form

Appendix A	Call-off Terms and Conditions for the Provision of Services
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Signed by the authorised representative of THE AUTHORITY

Name:	Simon Dennis	Signature:	
Position:	Head of Commercial, Salisbury Managed Procurement Services		

Signed by the authorised representative of THE SUPPLIER

Name:		Signature	
Position:			

Reference Copy not for contracting

Schedule 1

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Framework Agreement.
- 1.2 The optional Key Provisions at Clauses 8 to 10 of this Schedule 1 shall only apply to this Framework Agreement where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Framework Agreement where such provisions are set out at the end of this Schedule 1.

2 Term

- 2.1 The Term of this Framework Agreement shall be **for Apprenticeship Enrolments up to 31st March, 2025** and shall remain in force until the last enrolled learner (on or before that date) completes their programme.

3 Contract Managers

- 3.1 The Contract Managers at the commencement of this Framework Agreement are:

- 3.1.1 for the Authority:

Salisbury Managed Procurement Services

- 3.1.2 for the Supplier - see details on Contract Header page

4 Names and addresses for notices

- 4.1 Notices served under this Framework Agreement are to be delivered to:

- 4.1.1 for the Authority:

Salisbury Managed Procurement Services, Odstock Road, Salisbury, Wiltshire SP2 8BJ
or by email to sft.commercial@nhs.net

- 4.1.2 for the Supplier – see details on Contract Header page

5 Management levels for escalation and dispute resolution

5.1 The management levels at which a Dispute will be dealt with are as follows:

Level	Authority representative	Supplier representative
1	Head of Commercial	
2	Director of Procurement & Commercial Services	
3	Chief Financial Officer	

6 Order of precedence

6.1 Subject always to Clause 2.10 of Schedule 4, should there be a conflict between any other parts of this Framework Agreement the order of priority for construction purposes shall be:

6.1.1 the provisions on the front page of this NHS Framework Agreement for the Provision of Services;

6.1.2 Schedule 1: Key Provisions;

6.1.3 Schedule 5: Specification and Tender Response Document (but only in respect of the Authority's requirements);

6.1.4 Schedule 2: General Terms and Conditions;

6.1.5 Schedule 6: Commercial Schedule;

6.1.6 Schedule 3: Information Governance Provisions;

6.1.7 Schedule 4: Definitions and Interpretations;

6.1.8 the order in which all subsequent schedules, if any, appear; and

6.1.9 any other documentation forming part of the Framework Agreement in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

6.2 For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 5. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses,

proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

- 6.3 For the avoidance of doubt, no Supplier term or document shall override, amend, change or take precedence over any Framework term including Employer Terms issued following a call-off order.

7 Participating Authorities

- 7.1 The following Contracting Authorities are entitled to place Orders:

7.1.1 Salisbury NHS Foundation Trust and all bodies listed below

7.1.2 Central Government Departments, Local Government and Public Corporations :

7.1.3 <https://www.gov.uk/government/organisations>

7.1.4 Please note Central Government departments may be subject to Government Digital Service approval before using the Framework Agreement.

7.1.5 Local Authorities (England and Wales)

7.1.6 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791684/List of councils in England 2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791684/List_of_councils_in_England_2019.pdf)

7.1.7 National Parks Authorities

7.1.8 <https://www.nationalparks.uk/about-us>

7.1.9 Educational Establishments in England and Wales, maintained by the Department for Education including Schools, Universities and Colleges listed :

7.1.10 <https://www.compare-school-performance.service.gov.uk/schools-by-type?step=default&table=schools®ion=all-england&for=secondary>

7.1.11 Police Forces listed by the College of Policing, plus Police Scotland and Police Service of Northern Ireland

7.1.12 https://www.college.police.uk/About/Copyright_Licensing/Pages/Home-Office-police-forces.aspx

7.1.13 Police Forces and Special Police Forces in the United Kingdom, and/or Police and Crime Commissioners (as defined by the Police Reform and Social Responsibility Act 2011) and/or the Police Authorities (as defined in the Police Act 1964, Police Act 1996, Serious Organised Crime and Police Act 2005, Police and Justice Act 2006, Police, Public Order and Criminal Justice (Scotland) Act 2006), and other relevant legislation for the constituent parts of the United Kingdom, for their respective rights and interests

7.1.14 Fire and Rescue Services in the United Kingdom

7.1.15 <http://www.fireservice.co.uk/information/ukfrs>

- 7.1.16 <http://www.nifrs.org/areas-districts/>
- 7.1.17 <http://www.firescotland.gov.uk/your-area.aspx>
- 7.1.18 NHS Bodies England
- 7.1.19 <http://www.nhs.uk/ServiceDirectories/Pages/AcuteTrustListing.aspx>
- 7.1.20 <http://www.nhs.uk/ServiceDirectories/Pages/CCGListing.aspx>
- 7.1.21 <http://www.nhs.uk/ServiceDirectories/Pages/MentalHealthTrustListing.aspx>
- 7.1.22 <http://www.nhs.uk/ServiceDirectories/Pages/CareTrustListing.aspx>
- 7.1.23 <http://www.nhs.uk/ServiceDirectories/Pages/AreaTeamListing.aspx>
- 7.1.24 <http://www.nhs.uk/ServiceDirectories/Pages/SpecialHealthAuthorityListing.aspx>
- 7.1.25 <http://www.nhs.uk/ServiceDirectories/Pages/OtherListing.aspx>
- 7.1.26 Hospices in the UK
- 7.1.27 <https://www.hospiceuk.org/about-hospice-care/find-a-hospice?gclid=CPLU3cD7zdECFdaRGwodNeoDyw>
- 7.1.28 Registered Social Landlords (Housing Associations)
- 7.1.29 <https://www.gov.uk/government/publications/current-registered-providers-of-social-housing>
- 7.1.30 Third Sector and Charities in the United Kingdom
- 7.1.31 <http://www.charitycommission.gov.uk/find-charities/>
- 7.1.32 <http://www.oscr.org.uk/search-charity-register/>
- 7.1.33 <http://www.charitycommissionni.org.uk/charity-search/>
- 7.1.34 Citizens Advice in the United Kingdom
- 7.1.35 <http://www.citizensadvice.org.uk/index/getadvice.htm>
- 7.1.36 www.cas.org.uk
- 7.1.37 <http://www.citizensadvice.co.uk/>
- 7.1.38 Any corporation established, or a group of individuals appointed to act together, for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and (i) financed wholly or mainly by another contracting authority listed above in this section of this Framework Agreement;
- 7.1.39 (ii) subject to management supervision by another contracting authority listed above in this section of this Framework Agreement; or

- 7.1.40 (iii) more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, are appointed by another contracting authority listed above in this section of this Framework Agreement
- 7.1.41 (iv) an association of or formed by one or more of the Contracting Authorities listed above in this section of this Framework Agreement
- 7.1.42 Entities which are not public sector bodies may also use the Framework Agreement if the Authority is satisfied that:
- 7.1.43 • such entity is calling-off goods and/or services directly, solely and exclusively in order to satisfy contractual obligations to one or more public sector bodies, all of which are entitled to use the Framework Agreement on their own account;
- 7.1.44 • all goods to be called-off by it are to be used directly, solely and exclusively to provide goods and/or services at sites occupied by such public sector body(ies); and
- 7.1.45 • it will pass the benefit of the call-off contract to such public sector body(ies) directly, in full and on a purely “pass-through” basis. Accordingly there must be no mark-up, management fee, service charge or any similar cost solely in relation to the supply of goods and/or services imposed on the relevant public sector body(ies), who must be able to benefit from the terms of the Framework Agreement in a like manner and to the same extent as if using the Framework Agreement on its/their own account.
- 7.1.46 Any ‘bodies governed by public law’ which under the Public Contracts Regulations 2015 means bodies that have all of the following characteristics
- 7.1.47 (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- 7.1.48 (b) they have legal personality; and
- 7.1.49 (c) they have any of the following characteristics:—
- 7.1.50 (i) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;
- 7.1.51 (ii) they are subject to management supervision by those authorities or bodies; or
- (iii) they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law. For the avoidance of doubt, any successor bodies of any of the above entities shall be entitled to place Orders and shall be deemed Participating Authorities for the purposes of this Framework Agreement.

Optional Key Provisions

- 8** Quality assurance standards ☒ (only applicable to the Framework Agreement if this box is checked and the standards are listed)

- 8.1 The following quality assurance standards shall apply, as appropriate, to the provision of the Services:

Ofsted Rating (where issued) – Full Inspection, outcome of Grade 1 or Grade 2 relating to Apprenticeships and Quality of Education, or Monitoring Visit outcome of Reasonable or Significant Progress relating to Apprenticeships and Quality of Education.

Registration on the ESFA Register of Apprenticeship Training Providers, and Register of End Point Assessment Organisations where End Point Assessments are delivered by the organisation.

- 9 Different levels and/or types of insurance ☐ (only applicable to the Framework Agreement if this box is checked and the table sets out the requirements)**

- 9.1 Not used

- 10 Guarantee ☐ (only applicable to the Framework Agreement if this box is checked)**

- 10.1 Not used

Reference Copy not for contracting

Schedule 2

General Terms and Conditions

Contents

1. Supplier's appointment
2. Authority commitments
3. Ordering procedures
4. Reasonable assistance
5. Supplier Performance and Lifescience Industry Accredited Credentialing Register
6. Business continuity
7. The Authority's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Statutory compliance
12. Independence of Participating Authorities
13. Limitation of liability
14. Insurance
15. Term and termination
16. Consequences of expiry or early termination of this Framework Agreement
17. Suspension of Supplier's appointment
18. Complaints
19. Sustainable development
20. Electronic services information
21. Change management
22. Dispute resolution
23. Force majeure
24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice
28. Assignment, novation and subcontracting
29. Prohibited Acts
30. General

1 Supplier's appointment

- 1.1 The Authority appoints the Supplier as a potential provider of the Services and the Supplier shall be eligible to be considered for the award of Orders during the Term.
- 1.2 In consideration of the Authority agreeing to appoint the Supplier to this Framework Agreement in accordance with Clause 1.1 of this Schedule 2 and the mutual exchange of promises and obligations under this Framework Agreement, the Supplier undertakes to provide the Services under Orders placed with the Supplier:
 - 1.2.1 of the exact quality, type and as otherwise specified in the Specification and Tender Response Document;
 - 1.2.2 at the Contract Price calculated in accordance with the Commercial Schedule; and
 - 1.2.3 to such extent and at such times and at such locations as may be specified in an Order.
- 1.3 The Supplier agrees that the Call-Off Terms and Conditions for the Provision of Services shall apply to all Services provided by the Supplier to a Participating Authority pursuant to this Framework Agreement. The Supplier agrees that it will not in its dealings with a Participating Authority seek to impose or rely on any other contractual terms which in any way vary or contradict the relevant Contract.
- 1.4 The Supplier shall comply fully with its obligations set out in this Framework Agreement, the Specification and Tender Response Document, the Call-off Terms and Conditions for the Provision of Services and any other provisions of Contracts entered into under and in accordance with this Framework Agreement (to include, without limitation, the KPIs).
- 1.5 In complying with its obligations under this Framework Agreement, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.

2 Authority commitments

- 2.1 Unless otherwise set out in the Commercial Schedule, the Supplier acknowledges that:
 - 2.1.1 there is no obligation on the Authority or on any other Participating Authority to purchase any Services from the Supplier during the Term;
 - 2.1.2 no undertaking or any form of statement, promise, representation or obligation has been made by the Authority and/or any other Participating Authority in respect of the total volumes or value of the Services to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation;
 - 2.1.3 in entering this Framework Agreement, no form of exclusivity has been granted by the Authority and/or other Participating Authority; and

- 2.1.4 the Authority and/or other Participating Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

3 Ordering procedure

- 3.1 Any Participating Authority may enter into Contracts by placing an Order in accordance with the Ordering Procedure.

4 Reasonable assistance

- 4.1 Upon the written request of any Participating Authority, the Supplier shall provide such Participating Authority with any reasonable and proportionate information that it holds about the Services it supplies under this Framework Agreement including, without limitation, alongside other related services, to enable the Participating Authority to complete any necessary due diligence before purchasing such Services, or any connected or replacement Services.

5 Supplier Performance and Lifescience Industry Accredited Credentialing Register

- 5.1 Not used

6 Business continuity

- 6.1 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

6.1.1 the criticality of this Framework Agreement to the Participating Authorities; and

6.1.2 the size and scope of the Supplier's business operations,

regarding continuity of the provision of the Services during and following a Business Continuity Event.

- 6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Framework Agreement to Participating Authorities and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

- 6.3 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.

- 6.4 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
- 6.5 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to fulfil its obligations in accordance with this Framework Agreement.

7 The Authority's obligations

- 7.1 The Authority shall provide reasonable cooperation to the Supplier and shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the Supplier complying with its obligations under this Framework Agreement.
- 7.2 The Authority shall comply with the Authority's Obligations, if any.

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Framework Agreement. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Framework Agreement. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings where requested by the Authority to review the performance of the Supplier under this Framework Agreement and to discuss matters arising generally under this Framework Agreement. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Framework Agreement. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at intervals agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Framework Agreement. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier under this Framework Agreement and any Contracts when assessed in accordance with the KPIs, as relevant to the Framework Agreement and any Contracts, since the last such performance report;
 - 8.3.2 details of any complaints by Participating Authorities in relation to the provision of the Services, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification and Tender Response Document as being relevant to the operation of this Framework Agreement;

- 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
- 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Services ordered and any payments made under this Framework Agreement or any Contracts and any other information relevant to the operation of this Framework Agreement.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
- 8.6.2 sharing the management information, or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Framework Agreement and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

9 Price and payment

- 9.1 The Contract Price for all Contracts shall be calculated as set out in the Commercial Schedule and the payment provisions for all Contracts shall be as set out in the Call-off Terms and Conditions for the Provision of Services.

- 9.2 Where any payments are to be made under this Framework Agreement by either Party in addition to any payments to be made by Participating Authorities under any Contracts, the details of such payments and the invoicing arrangements shall be set out in the Commercial Schedule.
- 9.3 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Framework Agreement, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.4 The Supplier shall pay to the Framework operating Authority (for the avoidance of doubt, Salisbury NHS Foundation Trust) an Activity Based Income (ABI) fee comprising the sum of 1% of the exact Apprenticeship cost for each learner (levy cost plus any additional non levy-funded items as part of the course). The Authority shall send a summary of enrolments via order number to the Supplier, who then shall, within ten working days:
- 9.4.1 Confirm to the Authority the actual number of learners enrolled against that order number, together with the total cost,
- 9.4.2 Advise the Authority of any other Apprentices enrolled subsequent to the original Order Number, regardless of whether or not an order number was received for those subsequent enrolments,
- 9.4.3 Where the order number/contract number commences 10353-, the Supplier shall advise all enrolments regardless of the Apprenticeship Standard Number
- 9.4.4 Where the order number/contract number commences 3xxxx-, the Supplier shall advise all enrolments for the Apprenticeship Standards listed in the Commercial Schedule for the original contract,
- 9.4.5 Following receipt of the Supplier's completed return, the Authority shall invoice the Supplier for the total ABI fee. This will be payable within 30 days. The Authority shall not be required to separate any invoice by Supplier department, faculty, cost centre or other delineator. Where the Supplier operates a Purchase Order system, it is the Supplier's responsibility to provide such a Number when submitting their Return, and the Authority shall be under no obligation to later amend or reissue invoices where a Purchase Order number is not quoted. In such cases, the Supplier shall not delay payment to the Authority where a Purchase Order has not been issued in time by the Supplier.
- 9.5 If a Party fails to pay any undisputed sum properly due to the other Party under this Framework Agreement, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10 Warranties

- 10.1 The Supplier warrants and undertakes that:
- 10.1.1 it will comply with the terms of all Contracts entered into by Participating Authorities under this Framework Agreement;

- 10.1.2 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Framework Agreement, any Contracts, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.3 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Framework Agreement (to include, without limitation, as referred to in the Specification Document and Commercial Schedule) and all accompanying materials is accurate;
- 10.1.4 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to enter into and comply with its obligations under this Framework Agreement;
- 10.1.5 it has the right and authority to enter into this Framework Agreement and that it has the capability and capacity to fulfil its obligations under this Framework Agreement;
- 10.1.6 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Framework Agreement and the documents referred to in this Framework Agreement;
- 10.1.7 all necessary actions to authorise the execution of and performance of its obligations under this Framework Agreement have been taken before such execution;
- 10.1.8 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.9 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Framework Agreement;
- 10.1.10 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Framework Agreement;
- 10.1.11 it has satisfied itself as to the nature and extent of the risks assumed by it under this Framework Agreement and has gathered all information necessary to perform its obligations under this Framework Agreement and all other obligations assumed by it;
- 10.1.12 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.13 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.13 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.

- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.4 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.4.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.4.2 promptly provide to the Authority:
- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.6 Any warranties provided under this Framework Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Statutory compliance

- 11.1 The Supplier shall comply with all Law and Guidance relevant to its obligations under this Framework Agreement and any Contracts.
- 11.2 Without limitation to Clause 11.1 of this Schedule 2, the Supplier shall be responsible for obtaining any statutory licences, authorisations, consents or permits required in connection with its performance of its obligations under this Framework Agreement and any Contracts.

12 Independence of Participating Authorities

- 12.1 The Supplier acknowledges that each Participating Authority is independently responsible for the conduct of its award of Contracts under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- 12.1.1 the conduct of Participating Authorities other than the Authority in relation to the operation of this Framework Agreement; or

- 12.1.2 the performance or non-performance of any Participating Authorities other than the Authority under any Contracts between the Supplier and such other Participating Authorities entered into under this Framework Agreement.

13 Limitation of liability

- 13.1 Nothing in this Framework Agreement shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
 - 13.1.2 for fraud or fraudulent misrepresentation;
 - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law;
 - 13.1.4 to make any payments agreed in accordance with Clause 9.2 of this Schedule 2; or
 - 13.1.5 pursuant to 2.5 of Schedule 3.
- 13.2 Subject to Clause 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Framework Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to five hundred thousand GBP (£500,000).
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Framework Agreement whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.
- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Framework Agreement.
- 13.5 The liability of the Supplier and any Participating Authorities under any Contracts entered into pursuant to this Framework Agreement shall be as set out in the Call-off Terms and Conditions for the Provision of Services forming part of such Contracts.

14 Insurance

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.

- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Framework Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Framework Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Framework Agreement, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Framework Agreement shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Framework Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 Term and termination

- 15.1 This Framework Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Framework Agreement or the general law, shall continue until the end of the Term.
- 15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Framework Agreement would otherwise have expired, provided that the duration of this Framework Agreement shall be no longer than the total term specified in the Key Provisions.
- 15.3 In the case of a breach of any of the terms of this Framework Agreement by either Party that is capable of remedy (including any failure to pay sums due under this Framework Agreement), the non-breaching Party may, without prejudice to its other rights and remedies under this Framework Agreement, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Framework Agreement in accordance with Clause 15.4(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such

other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2, a material breach of this Framework Agreement by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

15.4 Either Party may terminate this Framework Agreement by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Framework Agreement which is:

- (i) not capable of remedy; or
- (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.

15.5 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier if:

15.5.1 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Framework Agreement, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

15.5.2 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Framework Agreement or the reputation of the Authority;

15.5.3 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Framework Agreement in breach of Clause 28.1 of this Schedule 2;

15.5.4 pursuant to and in accordance with the Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or

- 15.5.5 the warranty given by the Supplier pursuant to Clause 10.4 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.4 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.4 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Framework Agreement and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Framework Agreement to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Framework Agreement on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
- 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Framework Agreement by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
- 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2) shall entitle, but shall not compel, the Authority to terminate this Framework Agreement in accordance with Clause 15.4(i) of this Schedule 2.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

- 15.7 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:
- 15.7.1 the Framework Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
- 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Framework Agreement;
- 15.7.3 the Framework Agreement should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
- 15.7.4 there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the

failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Framework Agreement under this Clause 15.7.4.

- 15.8 If the Authority novates this Framework Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Framework Agreement in accordance with Clause 15.5.1 to Clause 15.5.3 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Framework Agreement by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

16 Consequences of expiry or early termination of this Framework Agreement

- 16.1 Upon expiry or earlier termination of this Framework Agreement, the Authority and the Supplier agree that all Contracts entered into under this Framework Agreement will continue in full force and effect unless otherwise terminated under the terms and conditions of such Contracts.
- 16.2 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Framework Agreement. This cooperation shall extend to providing access to all information relevant to the operation of this Framework Agreement, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements. Any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The expiry or earlier termination of this Framework Agreement for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.4 The expiry or earlier termination of this Framework Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

17 Suspension of Supplier's appointment

- 17.1 Without prejudice to the Authority's rights to terminate this Framework Agreement, if a right for the Authority to terminate this Framework Agreement arises (irrespective of whether the circumstances leading to such right are capable of remedy) in accordance with Clause 15 of this Schedule 2, the Authority may suspend the Supplier's appointment to receive new Orders under this Framework Agreement by giving notice in writing to the Supplier and all Participating Authorities.
- 17.2 If the Authority provides notice to the Supplier in accordance with Clause 17.1 of this Schedule 2, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time provided that such suspension shall be lifted where:
- 17.2.1 the circumstances leading to the Authority's right to terminate this Framework Agreement have been remedied;

- 17.2.2 the Authority has satisfied itself that the risk and/or impact of the circumstances giving rise to the Authority's right to terminate this Framework Agreement no longer requires such suspension; or
- 17.2.3 the Authority exercises its rights to terminate this Framework Agreement in accordance with Clause 15 of this Schedule 2.

18 Complaints

- 18.1 The Supplier shall notify the Authority of any formal written complaints made by other Participating Authorities relating to the Supplier's noncompliance with any of its obligations under any Contract within two (2) Business Days of the Supplier becoming aware of such complaints.
- 18.2 Without prejudice to any rights and remedies that the Participating Authority may have under the relevant Contract and/or the Authority may have under this Framework Agreement, the Supplier shall use its reasonable endeavours to resolve such complaint within ten (10) Business Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.
- 18.3 Within two (2) Business Days of a written request by the Authority, the Supplier shall provide further reasonable details of the complaint to the Authority, including details of the steps being taken to progress its resolution and, following its resolution, details of how and when the complaint was resolved.

19 Sustainable development

- 19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental, social and labour requirements, characteristics and impacts of the Services and the Supplier's supply chain;
- 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social, and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and
- 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.
- 19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.

20 Electronic services information

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.

- 20.2 The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.
- 20.3 If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.
- 20.5 The Authority may reproduce for its sole use the Services Information provided by the Supplier in the Authority's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 20.6 Before any publication of the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Framework Agreement.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

21 Change management

- 21.1 The Supplier acknowledges to the Authority that the requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this Framework Agreement shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Framework Agreement, it is agreed that the Supplier shall continue its performance of the provisions of the Framework Agreement (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Framework Agreement the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each

other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 this Schedule 2 as the first stage in the Dispute Resolution Procedure.

- 22.3 If any Dispute arises out of the Framework Agreement either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Framework Agreement shall prevent:
- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
 - 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Framework Agreement for any reason.

23 Force majeure

- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Framework Agreement nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.

- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Framework Agreement if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
 - 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
 - 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Framework Agreement and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Framework Agreement the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Framework Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Framework Agreement by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Framework Agreement.

24 Records retention and right of audit

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Framework Agreement.

- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Framework Agreement.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Framework Agreement. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Framework Agreement.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Framework Agreement, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Framework Agreement that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Framework Agreement for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or
 - 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Framework Agreement.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Framework Agreement.

25 Conflicts of interest and the prevention of fraud

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.
- 25.2 The Authority reserves the right to terminate this Framework Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of

the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Framework Agreement and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

26 Equality and human rights

26.1 The Supplier shall:

26.1.1 ensure that (a) it does not, whether as employer or as a provider of Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services and any associated services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.

26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

27 Notice

27.1 Subject to clause 22.5 of this Schedule 2, any notice required to be given by either Party under this Framework Agreement shall be in writing quoting the date of the Framework Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

27.2 A notice shall be treated as having been received:

27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or

27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted

on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or

- 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

28 Assignment, novation and subcontracting

- 28.1 The Supplier shall not assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Framework Agreement without the prior consent in writing of the Authority, such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Framework Agreement, every act or omission of the Sub-contractor shall for the purposes of this Framework Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Framework Agreement shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Framework Agreement.
- 28.3 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.3.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
- 28.3.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement. The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contract.
- 28.4 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.5 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Framework Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework

Agreement or any part of this Framework Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 Prohibited Acts

29.1 The Supplier warrants and represents that:

29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
- (ii) in connection with this Framework Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:

29.2.1 the Authority shall be entitled:

- (i) to terminate this Framework Agreement and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.2.2 any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

29.2.3 notwithstanding Clause 22 of this Schedule 2, any Dispute relating to:

- (i) the interpretation of Clause 29 of this Schedule 2; or
- (ii) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

30 General

- 30.1 Each of the Parties is independent of the other and nothing contained in this Framework Agreement shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Framework Agreement.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Framework Agreement shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Framework Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Framework Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Framework Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Framework Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Framework Agreement or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Framework Agreement including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Framework Agreement are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Framework Agreement or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 A person who is not a party to this Framework Agreement shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Framework Agreement.
- 30.9 This Framework Agreement, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Framework Agreement or any variation to this Framework Agreement, contain the entire understanding between the Supplier and the Authority relating to the operation of this Framework Agreement to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Framework Agreement. Nothing in this Framework Agreement seeks to exclude either Party's liability for Fraud. Any tender conditions and/or

disclaimers set out in the Authority's procurement documentation leading to the award of this Framework Agreement shall form part of this Framework Agreement.

- 30.10 This Framework Agreement, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Framework Agreement or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Framework Agreement shall be in English.
- 30.13 Once a client Authority of the framework Authority (i.e an Authority calling off from the framework) has indicated to the Supplier their intention to use this Framework, the Supplier shall not, under any circumstances, encourage, entice, or invite the Authority to use an alternative contracting method, either directly with the Supplier or via an alternative framework or procurement route. Suppliers found to be doing so may be removed from the framework and shall not be entitled to re-apply.
- 30.14 Once the Supplier has an Employer Contract (see Annexe A) in place with the relevant Contracting Authority, the Supplier shall :
 - 30.14.1 Resource delivery of that Apprenticeship fully, and to completion / End Point Assessment of the Apprentice, including (but not limited to) sufficient competent staff, learning materials, premises, monitoring systems and any other resource necessary to deliver the Apprenticeship
 - 30.14.2 The Supplier shall not, under any circumstances, be entitled to withdraw provision or cease delivery of the Apprenticeship unless ordered to do so by a regulatory body
 - 30.14.3 The Supplier shall not, under any circumstances, request, entice, encourage or demand the Contracting Authority to move delivery of the Apprenticeship to an alternative Supplier
 - 30.14.4 Where the Supplier breaches these conditions, and ceases delivery of the Apprenticeship, the Contracting Authority shall be fully entitled to recover all costs incurred, including actual and administrative, in sourcing new provision for the Apprentice, including any difference in cost between sums already drawn from the Apprenticeship Levy by the current Supplier and the estimate of costs to complete the Apprenticeship quoted by any incoming Supplier.

Schedule 3

Information and Data Provisions

1 Confidentiality

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
- 1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
- (i) which is in or enters the public domain other than by breach of this Framework Agreement or other act or omissions of the Recipient;
 - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
 - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
 - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 The Authority may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
- 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;

- 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Framework Agreement;

and for the purposes of this Framework Agreement, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to the operation of this Framework Agreement, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Framework Agreement. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Framework Agreement.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Framework Agreement and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Framework Agreement.
- 1.6 Clause 1 of this Schedule 3 shall remain in force:
 - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
 - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Framework Agreement unless otherwise agreed in writing by the Parties.

2 Data protection

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.

- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Framework Agreement, the Parties shall comply with the Data Protection Protocol.
- 2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Framework Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 2.5 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Framework Agreement.

3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Framework Agreement and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Framework Agreement are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
 - 3.2.2 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, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
 - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
 - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
 - 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the

Environmental Regulations, may disclose information concerning the Supplier and this Framework Agreement; and

- 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Framework Agreement is not Confidential Information.
- 3.4 Notwithstanding any other term of this Framework Agreement, the Supplier consents to the publication of this Framework Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Framework Agreement for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Framework Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 4 Information Security**
- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
- 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
- 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

Schedule 4

Definitions and Interpretations

1 Definitions

- 1.1 In this Framework Agreement the following words shall have the following meanings unless the context requires otherwise, other than in relation to the Call-off Terms and Conditions for the Provision of Services at Appendix A of this Framework Agreement. The definitions and Interpretations that apply to the Call-off Terms and Conditions for the Provision of Services are as set out at Appendix A of this Framework Agreement.

“Authority”	means the authority named on the form of Framework Agreement on the first page;
“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the Specification and Tender Response Document;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Framework Agreement;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to fulfil its obligations under this Framework Agreement including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
“Call-off Terms and Conditions for the Provision of Services”	means the call-off terms and conditions for Contracts as set out at Appendix A of this Framework Agreement forming part of the Contracts placed under this Framework Agreement;
“Codes of Practice”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Commencement Date”	means the date of this Framework Agreement;
“Commercial Schedule”	means the document set out at Schedule 6;
“Confidential Information”	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Framework Agreement including any procurement process which is:</p> <p>(a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;</p>

	<p>(b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</p> <p>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority's intranet;</p>
"Contract"	means any contract entered into under this Framework Agreement with the Supplier by any Participating Authority as further defined in the Call-off Terms and Conditions for the Provision of Services;
"Contracting Authority"	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
"Contract Manager"	means for the Authority and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
"Contract Price"	means the price exclusive of VAT that is payable to the Supplier by a Participating Authority under any Contract for the full and proper performance by the Supplier of its obligations under such Contracts (as calculated in accordance with the provisions of the Commercial Schedule) and as confirmed in the relevant Order Form relating to the particular Contract;
"Controller"	shall have the same meaning as set out in the GDPR;
"Data Protection Legislation"	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
"Data Protection Protocol"	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Framework Agreement;
"Dispute(s)"	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Framework Agreement, any matters of contractual construction and interpretation relating to the Framework Agreement, or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
"Dispute Resolution Procedure"	means the process for resolving Disputes as set out in Clause 22 of Schedule 2;

"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
"Electronic Trading System(s)"	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
"Environmental Regulations"	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
"eProcurement Guidance"	means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it;
"Equality Legislation"	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
"FOIA"	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
"Force Majeure Event"	means any event beyond the reasonable control of the Party in question to include, without limitation: <ul style="list-style-type: none"> (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party's ability to perform its obligations under this Framework Agreement; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or

	<p>procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</p> <p>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
"Framework Agreement"	means the form of framework agreement at the front of this document and all schedules and appendices attached to the form of framework agreement;
"Fraud"	means any offence under any law in respect of fraud in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Anti-Abuse Rule"	<p>means</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Framework Agreement, including in accordance with any codes of practice published by relevant trade associations;
"Guidance"	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by

	the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HM Government Cyber Essentials Scheme"	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview
"Intellectual Property Rights"	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
"Key Provisions"	means the key provisions set out in Schedule 1;
"KPI"	means the key performance indicators as set out in Schedule 5;
"Law"	means any applicable legal requirements including, without limitation,: <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
"NHS"	means the National Health Service;
"Occasion of Tax Non-Compliance"	means:

	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Order Form”	means the template order form on which Orders are to be placed, as set out in Schedule 7;
“Ordering Procedure”	means the procedure enabling Participating Authorities to call-off Services and enter into Contracts under this Framework Agreement, as set out in Schedule 7;
“Orders”	means orders for Services placed under this Framework Agreement by Participating Authorities;
“Participating Authority”	means a Contracting Authority entitled to place Orders under this Framework Agreement including the Authority and any other Contracting Authority as set out in the Key Provisions;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Personal Data”	shall have the same meaning as set out in the GDPR;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Process”	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the GDPR;
“Prohibited Acts”	has the meaning given under 29.1.1 of Schedule 2;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2;

“Services”	means the services that the Supplier is required to provide to Participating Authorities under Contracts placed under this Framework Agreement, details of such Services being set out in the Specification and Tender Response Document and any Order;
“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's services catalogue from time to time;
“Specification and Tender Response Document”	means the document set out in Schedule 5 as amended and/or updated in accordance with this Framework Agreement;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Framework Agreement including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Framework Agreement;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Supplier”	means the supplier named on the form of Framework Agreement on the first page;
“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Term”	means the term as set out in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Framework Agreement on a specified date and setting out the grounds for termination;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2; and
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Framework Agreement to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Framework Agreement.

- 1.5 References in this Framework Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Framework Agreement.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Framework Agreement.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Framework Agreement provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 5) and any other part of this Framework Agreement, such other part of this Framework Agreement shall prevail.
- 1.11 Where a document is required under this Framework Agreement, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Any guidance notes in grey text do not form part of this Framework Agreement.
- 1.13 Any Breach Notice issued by a Party in connection with this Framework Agreement shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.14 Any terms defined as part of a Schedule or other document forming part of this Framework Agreement shall have the meaning as defined in such Schedule or document.

Schedule 5

Specification and Tender Response Document

Reference Copy not for contracting

Salisbury Managed Procurement Services

S/10353

Framework for the Provision of Apprenticeship Training and
End Point Assessment

April 2023 Framework Response Guide and Requirements
v2.0



Background

Salisbury NHS Foundation Trust's Managed Procurement Services are a long established provider of education and other procurement services across the public and third sectors, assisting over 300 employer organisations, as well as working through national and regional strategic partnerships, delivering specialist knowledge to assist employers in sourcing high quality apprenticeship and end point assessment provision.

Salisbury frequently work in partnership with professional bodies, and NHS trusts, STPs / ICSs, and wider regional systems, as well as organisations such as London Councils, the Association of Directors of Social Services, the Ambulance Chief Executives Association, Public Health England, NHS Leadership Academy and NHS England.

Salisbury also work outside education in areas such as energy, professional services and commercial retail.

Salisbury NHS Foundation Trust are therefore a Contracting Authority within the meaning of the Public Contract Regulations 2015, and are able to make this Framework available to other public organisations listed in the relevant section of this document. Salisbury Managed Procurement Services is a trading name of Salisbury NHS Foundation Trust for the delivery of this Framework and associated services.

This Requirement

This Framework was established in February 2021 to replace the previous Dynamic Purchasing System operated by Salisbury NHSFT.

This Framework operates at two levels - Level One, where any suitably qualified and eligible provider can submit details of all the apprenticeships they offer, and employers can then either direct award or, via Salisbury, conduct a further competition against their local needs. Level Two will be a smaller number of providers for a specific standard, appointed via a Further Competition, using a higher selection criteria published with each ITT.

Both levels of listing are open across all our eligible public and third sector organisations. Level Two listed providers can be selected either by employer direct award or a further competition amongst those listed.

This Requirement document covers the April/May 2023 opening of the Framework and constitutes Instructions to Suppliers including mandatory requirements.

All Providers must agree to the Framework terms and conditions published as part of the Invitation to Tender (ITT) - amendments to those Terms will not be made for specific providers.

Please note the final selection of providers to award for a specific requirement is a decision for employers and this Framework does not represent a spend commitment by any organisation.

Incorrectly submitted responses will be rejected and the Trust is not obliged to offer an opportunity for suppliers to resubmit correctly.

The framework opens twice a year to allow for the following :

1 - Existing providers to update their course listing (using the Excel document issued, previous framework documents will not be considered)

2 - New providers to apply to join the Framework

3 - Existing providers to advise of changes in their status, e.g. contact details or Ofsted rating.

Some framework openings are for mandatory updates and will be described as such on the ITT title. In this case, all existing suppliers must provide a response otherwise they will be removed from the framework.

Supplier Eligibility

In order to be approved onto the Framework, providers must :

- Be fully registered on the Register of Approved Training Providers (where offering apprenticeship training provision) and/or the Register of End Point Assessment Organisations (where offering end point assessment).
- Provide (for all programmes) at least one resit for **every** exam, assessment, or module (including repeated years) free of charge, and one retake at End Point Assessment (regardless of appointed EPAO where not integrated)
- Where an Ofsted rating has been issued, this must be Grade 1 (Outstanding) or Grade 2 (Good). Where an Ofsted Monitoring Report has been issued, this must be either for Significant Progress or Reasonable Progress. Organisations with a current rating of "Requires Improvement" or "Inadequate" may not apply.
- Organisations experiencing a reduction in their Ofsted rating / visit to a rating below the above criteria **must notify Salisbury immediately**, and will be suspended from the Framework until their Ofsted rating meets the criteria above. Employers with existing contracts with such providers may continue to order through Salisbury.
- Organisations without a current Ofsted rating / visit may still apply but must meet all other quality criteria.
- Providers must, for each Apprenticeship they are wishing to be listed for, provide details of starts / completions / success and attrition on their Framework Response form. Any provider with more than 50% of their starts on an Apprenticeship who fail to complete that Apprenticeship will not be listed for that standard.
- No Providers offering a cost above the ESFA funding band for the apprenticeship will be listed for that Apprenticeship.
- Where a Standard requires Professional Body approval to deliver, the Provider must either (a) have that approval in place at the time of submitting that Standard onto the framework, or (b) be reasonably expecting to gain that approval before the next scheduled opening of the Framework (and must provide evidence to support this). Where neither of these criteria can be fulfilled, the Provider must wait until the next opening of the Framework to submit that Standard. Where employers / regions run a Further Competition for that standard, providers may respond with a roadmap to professional body accreditation acceptable to the Employers.

- University providers must agree not to use UCAS points or other academic criteria above any listed in the Apprenticeship Standard as selection criteria for any programme, and must work with employers to accept prior or experiential learning, including bridging programmes, in order to accept learners onto programme.
- Where a qualification/exam is included by the Provider but not mandated in the standard (e.g. accounting membership) the requirement for the Provider to include free resits still applies, and the Provider must also offer the apprenticeship without additional content (meeting the full requirement of the Apprenticeship Standard) should the Employer wish.
- The Provider will always deliver the most recent version of the Apprenticeship Standard as defined by the Institute for Apprenticeships and Technical Education.

Regional / National Delivery

The Framework Response document asks for delivery locations of any face to face / physical delivery of training. Two criteria apply for selection onto the Framework :

- "National" delivery may only be selected by a Provider where they either have a physical location in all of the seven regions listed, or where they will deliver training within every region (e.g. at employer location) without requiring the learner to travel to a location outside of the region in which they are employed, or where the delivery is fully online including online face-to-face teaching (e.g. via MS Teams)
- If a provider requires learners to travel to any location, for any part of the Apprenticeship training, then the provider will only be listed as delivering in that location.
- This does not affect the ability of Employers to select those providers, regardless of where the Employer is based, if they are able to support their learners travelling to the Provider's location.

Award Criteria - Employers

Employers will be able to award to providers either via Direct Award providing all the Framework eligibility criteria are current for that Provider/Standard, or by Further Competition usually supported through the team at Salisbury.

Responding to this Opportunity

The timetable for this opportunity is as follows :

ITT open to Providers and published on Contract Finder	Monday 17 th April 2023
Last date for submission of clarification questions	Tuesday 5 th May 2023
Close date for submitted responses	Monday 15 th May 2023
Bidders advised of Outcome	Target within 10 days of submitting response, subject to extension at the Authority's discretion

Opportunities are also advertised on the .gov **Find a Tender portal** (<https://www.gov.uk/find-tender>) We do not notify providers directly of opening dates except where they are already on the Framework, but will not change opening dates, or extend close dates, where suppliers have not received such notification.

Method of Response Submission

Fully completed responses MUST be submitted in accordance with the following :

- Submitted by the close date via email to **BOTH** sft.commercial@nhs.net **AND** simon.dennis@nhs.net
- Submissions MUST be fully completed - the Excel response document MUST have the Completion Instructions, Mandtory, and Bidder Response Apprenticeships tabs completed
- For the Bidder Response Apppprenticeships worksheet, bidders MUST use the dropdown "Bidding to Provide" column to indicate where they are offering a standard, and MUST complete all of the required information on each line.
- Bids where the Bidder has applied filters, changed the sort order, or otherwise altered the original content or format, will be rejected.
- The Response **MUST** be saved with a filename in the following convention **only** :
 - S10353_SupplierName_April 2023 Response

Information for Providers

Please note the following conditions apply to this Framework:

1. Contracting Authority - The Contracting Authority will be the organisation(s) listed in the Requirements summary above, depending on the employing Trust for the Learner.
2. Responses and Questions - All responses, bids and questions must **ONLY** be submitted to Salisbury NHSFT via email to sft.commercial@nhs.net.
3. Bidders must not, under any circumstances, approach NHS organisations or other employers with questions or requesting advice during the tender period. This is to ensure all bidders have equality of opportunity. Bidders found to be doing so will be removed from the ITT concerned, and may be removed from the Framework.
4. Terms & Conditions - The successful bidder(s) will be awarded contracts under standard NHS Terms & Conditions issued with the ITT. Bidders' own terms or conditions will not be accepted by the Contracting Authority.
5. Award of Business - All offers on any Procurement are made in good faith and reasonable expectation, however the Contracting Authority retains the right to change indicated student numbers. The Contracting Authority retains the right to make a reduced, or no, award following the outcome of the Competition.
6. Payment for Apprenticeship Training is from the Apprenticeship Digital Account to the Provider. Salisbury NHSFT shall not be liable for any financial sums or values under any circumstances, and the Contracting Authority shall only be liable for additional student fees if agreed and included in the Commercial Schedule of the final contract.
7. Supplier Fee - There is no fee to join, or participate in further Competitions under the Framework. By submitting a bid, suppliers agree to pay Salisbury NHSFT the sum of 1% (one percent) of the value of all business they are awarded following a Competition, excluding VAT. Please note this fee CANNOT be included in training course costs, and CANNOT be deducted from the training value paid from the student Digital Account. The full value of training given in the supplier's bid MUST be the value they deliver to

the student. The Activity Based Charge is payable in full following the commencement of the learner(s) on programme.

Framework Scope & Eligible Organisations

The Contracting Authority expressly reserved the right (i) not to award any contract as a result of the procurement process commenced by publication of this notice; and (ii) to make whatever changes it saw fit to the content and structure of the tendering competition; and in no circumstances will the Contracting Authority be liable for any costs incurred by the candidates.

The awarding of a place on the Framework does not mean that there is any guarantee of subsequent contracts being awarded. Any expenditure, work or effort undertaken prior to contract award is accordingly a matter solely for the commercial judgement of potential suppliers. Any orders placed under this Framework will form a separate contract under the scope of this Framework between the supplier and the specific requesting other contracting body. The Contracting Authority and other contracting bodies utilising the Framework shall only use electronic portals during the life of the agreement.

Any values that have been provided are only an estimate. We cannot guarantee to suppliers any business through this framework agreement.

The Framework has been established by Salisbury NHS Foundation Trust, for use by the following bodies (and any future successors to these organisations):

The following Contracting Authorities are entitled to place Orders:

Salisbury NHS Foundation Trust and all bodies listed below :

Central Government Departments, Local Government and Public Corporations :

<https://www.gov.uk/government/organisations>

Please note Central Government departments may be subject to Government Digital Service approval before using the Framework Agreement.

Local Authorities (England and Wales)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791684/List_of_councils_in_England_2019.pdf

National Parks Authorities

<https://www.nationalparks.uk/about-us>

Educational Establishments in England and Wales, maintained by the Department for Education including Schools, Universities and Colleges listed :

<https://www.compare-school-performance.service.gov.uk/schools-by-type?step=default&table=schools®ion=all-england&for=secondary>

Police Forces listed by the College of Policing, plus Police Scotland and Police Service of Northern Ireland

https://www.college.police.uk/About/Copyright_Licensing/Pages/Home-Office-police-forces.aspx

Police Forces and Special Police Forces in the United Kingdom, and/or Police and Crime Commissioners (as defined by the Police Reform and Social Responsibility Act 2011) and/or the Police Authorities (as defined in the Police Act 1964, Police Act 1996, Serious Organised Crime and Police Act 2005, Police and Justice Act 2006, Police, Public Order and Criminal Justice (Scotland) Act 2006), and other relevant legislation for the constituent parts of the United Kingdom, for their respective rights and interests

Fire and Rescue Services in the United Kingdom

<http://www.fireservice.co.uk/information/ukfrs>

<http://www.nifrs.org/areas-districts/>

<http://www.firescotland.gov.uk/your-area.aspx>

NHS Bodies England

<http://www.nhs.uk/ServiceDirectories/Pages/AcuteTrustListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/CCGListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/MentalHealthTrustListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/CareTrustListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/AreaTeamListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/SpecialHealthAuthorityListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/OtherListing.aspx>

Hospices in the UK

[https://www.hospiceuk.org/about-hospice-care/find-a-](https://www.hospiceuk.org/about-hospice-care/find-a-hospice?gclid=CPLU3cD7zdECFdaRGwodNeoDyw)

[hospice?gclid=CPLU3cD7zdECFdaRGwodNeoDyw](https://www.hospiceuk.org/about-hospice-care/find-a-hospice?gclid=CPLU3cD7zdECFdaRGwodNeoDyw)

Registered Social Landlords (Housing Associations)

<https://www.gov.uk/government/publications/current-registered-providers-of-social-housing>

Third Sector and Charities in the United Kingdom

<http://www.charitycommission.gov.uk/find-charities/>

<http://www.oscr.org.uk/search-charity-register/>

<http://www.charitycommissionni.org.uk/charity-search/>

Citizens Advice in the United Kingdom

<http://www.citizensadvice.org.uk/index/getadvice.htm>

www.cas.org.uk

<http://www.citizensadvice.co.uk/>

Any corporation established, or a group of individuals appointed to act together, for the specific purpose of meeting needs in the general interest, not having an industrial or commercial

character, and (i) financed wholly or mainly by another contracting authority listed above in this section of this Framework Agreement;

(ii) subject to management supervision by another contracting authority listed above in this section of this Framework Agreement; or

(iii) more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, are appointed by another contracting authority listed above in this section of this Framework Agreement

(iv) an association of or formed by one or more of the Contracting Authorities listed above in this section of this Framework Agreement

Entities which are not public sector bodies may also use the Framework Agreement if the Authority is satisfied that:

- such entity is calling-off goods and/or services directly, solely and exclusively in order to satisfy contractual obligations to one or more public sector bodies, all of which are entitled to use the Framework Agreement on their own account;
- all goods to be called-off by it are to be used directly, solely and exclusively to provide goods and/or services at sites occupied by such public sector body(ies); and
- it will pass the benefit of the call-off contract to such public sector body(ies) directly, in full and on a purely “pass-through” basis. Accordingly there must be no mark-up, management fee, service charge or any similar cost solely in relation to the supply of goods and/or services imposed on the relevant public sector body(ies), who must be able to benefit from the terms of the Framework Agreement in a like manner and to the same extent as if using the Framework Agreement on its/their own account.

Any ‘bodies governed by public law’ which under the Public Contracts Regulations 2015 means bodies that have all of the following characteristics

(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) they have legal personality; and

(c) they have any of the following characteristics:–

(i) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;

(ii) they are subject to management supervision by those authorities or bodies; or

(iii) they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

This Framework is valid for four years, ending 23:59 on 31 March, 2025. Employers may enter into contracts which extend beyond the lifetime of the Framework – no maximum is set by the Framework for the length of that subsequent contract. All subsequent contracts under the

Framework are non-exclusive and do not form a minimum financial commitment by the Contracting Authority(ies).

Contracting Process - Awarded Suppliers

All contracting and ordering is managed via DocuSign. There are two separate types of contract if a supplier is awarded a place on the Framework :

- The Framework contract between the Supplier and Salisbury, which governs the operation of the Framework
- The contract with individual employer organisations - this is only issued when an order is placed with Salisbury by the employer.

Framework suppliers **must, at all times** following the ordering and contracting process outlined in the Framework Terms & Conditions - including **not issuing their own contracts at any time** to employers. Supplier's contracts are able to be embedded into the Employer Contract issued by Salisbury via DocuSign. Suppliers found to be issuing their own contracts direct may be removed from the Framework, therefore it is essential that Suppliers ensure those managing contracts in their organisation are aware of how the process works.

Suppliers MUST obtain an order number for all enrolments, including cohorts subsequent to the first starters.

The ordering process is shown below, but in summary :

- The employer sends an order form to Salisbury, outlining standard(s), estimated learner numbers (not contractual), price agreed with the supplier (maximum, may be reduced by RPL), and the start dates agreed by the Supplier (example below)



Salisbury NHSFT Managed Procurement Services URN/ Order Form – Apprenticeships Procurements

Employer Organisation Details Employer MUST complete		Education Provider Organisation Details Employer MUST complete	
Organisation Full Legal Name – MUST match your DAS account name		Organisation Full Legal Name MUST match their DAS account	
Employer Address		Provider Address	Do not complete – completed on DocuSign when issued
Employer Contact Name		Provider Contact Name	
Employer Contact Email		Provider Contact Email	
Contract Signatory Name			
Contract Signatory Email			

Employers – all GREEN sections on this form must be completed please. We cannot accept "tbc" etc instead of dates – the month of planned start is needed.				
Apprenticeship Standard No *	Apprenticeship Standard Title	Max Cost per Learner inc EPA	Estimated Number of Learners	Learner / Cohort Start Date

Employers: Please send a copy of this form to simon.dennis@nhs.net when your training provider is aware of your requirement. **DO NOT RETURN IN ANY FORMAT OTHER THAN WORD (NO PDFs PLEASE)**
Providers: This Call-off is not valid until you receive an issued number and Employer Contract. All subsequent enrolments are covered by Framework Terms & Conditions at all [times](#) and you **MUST NOT** issue your own Terms & Condition or ask employers to agree to your Terms in any documentation.

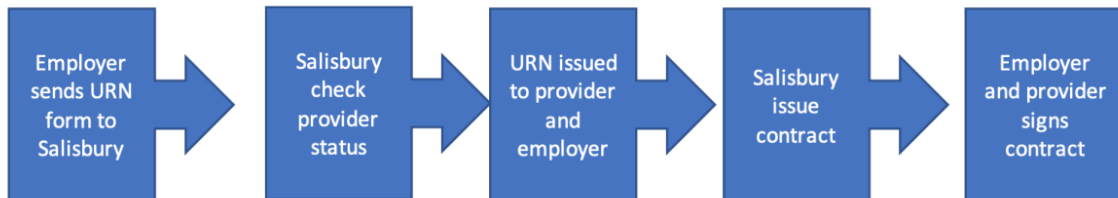
Salisbury NHSFT Use Only				
Issued URN Number	URN Issue Date	New contract issued?	Or existing contract number	Salisbury Competition/Framework No

SIGNATURE FIELDS ARE COMPLETED VIA DOCUSIGN WHEN ISSUED – PLEASE DO NOT COMPLETE MANUALLY

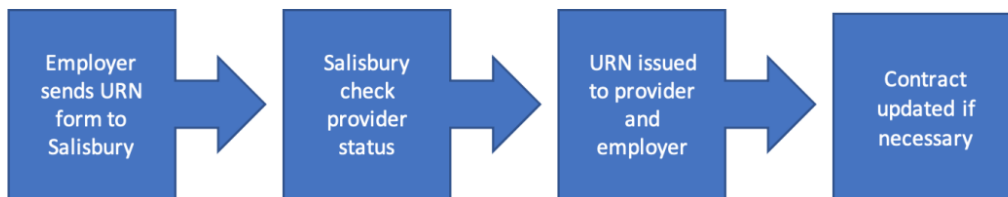
Employer Signature	Date	Provider Signature	Date

- Salisbury allocate an order number, and issue (a) the order form and (b) an employer contract if one is not already in place. Order forms go to both employer and supplier at the same time, contracts go to the provider first for completion then will automatically go to the employer on provider signature. This is done automatically via DocuSign.
- Employers then enrol learners via the Digital Apprenticeship Service (DAS) system.

First time with provider or new standard with existing provider



New enrolment / cohort with existing provider



Suppliers must report all learner enrolments to Salisbury – including all enrolments subsequent to contract issue whether or not an order number was obtained. This is done via an annual return issued by Salisbury to suppliers, which must be completed within 14 days.

Further Information

For further information, email Simon Dennis at simon.dennis@nhs.net or email sft.commercial@nhs.net

Schedule 6

Commercial Schedule

(Supplier's response to ITT included separately within the DocuSign envelope)

Reference Copy not for contracting

Schedule 7

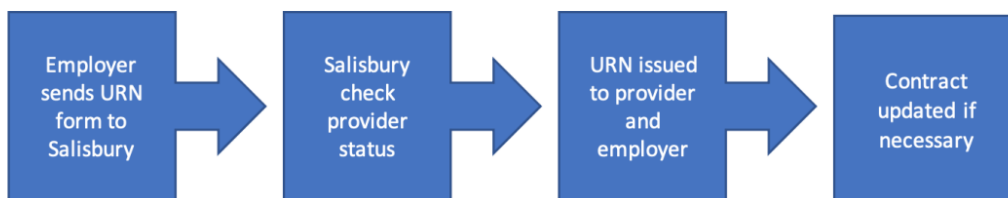
Ordering Procedure, Award Criteria and Order Form

7.1 Any eligible Authority may order via this Framework via the following process :

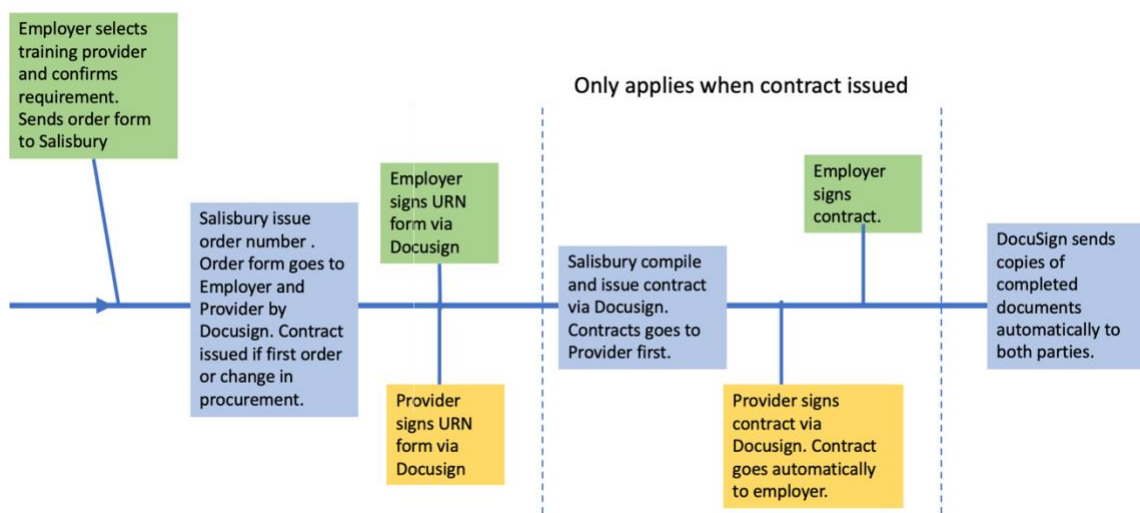
First time with provider or new standard with existing provider



New enrolment / cohort with existing provider



7.2 The Contracting process following an order being sent to the Framework Authority shall be as follows :




7.3 The Supplier shall, in all cases, obtain an Order Number (URN Number) from Salisbury for any requirement where the Supplier has (a) received a contract / order number for a previous enrolment from the Apprentices employing Authority, or (b) where the Supplier has been awarded a national or regional procurement award for the relevant standard following a Further Competition.


7.4 The Authority calling off via this Framework shall be entitled to make a Direct Award to any Supplier on the Framework using their own award criteria specific to each Authority, or may award following a Further Competition run on their behalf by Salisbury NHSFT, or run by themselves prior to then issuing a Direct Award under this Framework.

7.5 In all cases, all Apprentice enrolments with the Supplier from an Authority, subsequent to the first order number/contract issue, shall fall automatically under the terms of this Framework, and Suppliers shall not be entitled to issue their own contract terms independently of this process.

7.6 An example Order Form to be used is shown below, which may be updated from time to time by the Framework Authority. This may be subject to changes during the lifetime of the framework to update either contracting system process changes or other requirements to amend.



Salisbury Managed
Procurement Services



Salisbury
NHS Foundation Trust

Salisbury NHSFT Managed Procurement Services
URN/ Order Form – Apprenticeships Procurements

Employer Organisation Details Employer MUST complete		Education Provider Organisation Details Employer MUST complete	
Organisation Full Legal Name – MUST match your DAS account name		Organisation Full Legal Name MUST match their DAS account	
Employer Address		Provider Address	Do not complete – completed on DocuSign when issued
Employer Contact Name		Provider Contact Name	
Employer Contact Email		Provider Contact Email	
Contract Signatory Name			
Contract Signatory Email			

Employers – all GREEN sections on this form must be completed please. We cannot accept “tbc” etc instead of dates – the month of planned start is needed.

Apprenticeship Standard No *	Apprenticeship Standard Title	Pathway (e.g. speciality route for clinical programmes or additional qualifications for corporate – may not apply to all standards)	Max Cost per Learner ^{inc EPA}	Estimated Number of Learners	Learner / Cohort Start Date

Employers: Please send a copy of this form to simon.dennis@nhs.net when your training provider is aware of your requirement. **DO NOT RETURN IN ANY FORMAT OTHER THAN WORD (NO PDFs PLEASE)**
Providers: This Call-off is not valid until you receive an issued number and Employer Contract. All subsequent enrolments are covered by Framework Terms & Conditions at all times and you MUST NOT issue your own Terms & Condition or ask employers to agree to your Terms in any documentation.

Salisbury NHSFT Use Only				
Issued URN Number	URN Issue Date	New contract issued?	Or existing contract number	Salisbury Competition/Framework No

SIGNATURE FIELDS ARE COMPLETED VIA DOCUSIGN WHEN ISSUED – PLEASE DO NOT COMPLETE MANUALLY

Employer Signature	Date	Provider Signature	Date
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7.7 The Supplier shall not, at any time, issue their own Contract / Terms & Conditions / Service Agreement or similar to the Authority (employer). The Supplier may insert such a document into the relevant Schedule on the issued Employer Contract via DocuSign, but may not request the Authority (employer) to sign such outside of the Employer Contract. Where Suppliers repeatedly do so, the Framework Authority (Salisbury) reserve the right to suspend or remove that Supplier from the Framework, and make an administration charge where additional work by the Framework Authority is required to resolve employer queries.

7.8 The URN / Order Form information is indicative of the Authority's requirement in terms of numbers of learners, and start dates. The Cost Section on the Order Form sets the maximum payable by the Authority (employer) for the Apprenticeship. It does not reflect the exact price which may be reduced for prior learning. The Framework Authority will not reissue Order Forms for price changes below the maximum, or for amended start dates or indicative number of learners.

7.9 Any additional documents required for the Apprenticeship, for example the Training Plan or Cost Breakdown (as defined by the Education and Skills Funding Agency) **must** carry the URN / Order Number issued by the Framework Authority for the relevant cohort.

Reference Copy not for contracting

Schedule 8

Additional Framework Terms of Business

1. These Terms represent the relationship between Salisbury Managed Procurement Services (part of Salisbury NHS Foundation Trust) and any supplier registering, or returning a bid, via Salisbury's Framework for Education (Levy or Non Levy) and Training.
2. SMPS at all times act on behalf of their client organisations. Unless specifically stated, at no point do Salisbury NHSFT have a contractual obligation to bidders other than the operation of the Framework.
3. Student volumes are offered by client organisations as a best estimate at the time of issue. They do not represent a contractual commitment or a minimum guaranteed volume.
4. All opportunities offered via the Framework are offered on the basis of bidders agreeing to the Framework Terms & Conditions. Bidder contract documents may be supplied by bidders, but in the event of any contract being established, NHS Terms will take precedence at all times. The most current version of NHS Terms are issued with each Invitation to Tender. Different terms may be offered for Salisbury's non-NHS client organisations.
5. Maintenance of bidder contact details is self-service by the bidder. SMPS accept no liability for lost opportunities where the bidder has not maintained current contact details. Bidders are able to have more than one logon, contact Bravo Support for details. We strongly recommend Bidder Organisations do not have a single point of contact, as opportunities may be missed due to leave or absence.
6. All ITT events will close automatically at the stated time. SMPS will not consider bids beyond that timeframe. Bidders are strongly advised not to leave placing bids until the last minute.
7. On placement of students with the successful bidder(s), the Supplier shall become liable for a 1% Activity Based Income fee calculated on the value of the individual Levy claim made by the Supplier. This shall apply to all enrolments where the Apprentice has remained on programme after the first 42 days. Salisbury shall issue regular statements of enrolments / order numbers to the Supplier, which the Supplier shall verify (including adding any additional enrolments not listed) and return to Salisbury within seven days of receipt. Repeated non-payment or delayed payment constitutes grounds for exclusion from future bid opportunities. This sum cannot be taken from Levy payments by the Employer and cannot be passed back to the Employer to pay in any way.

8. Purchase Orders – Where the Bidder organisation requires a Purchase Order to pay fees, it is the responsibility to organise this once they know they will be in receipt of learners. Salisbury will not amend or re-issue invoices where a Purchase Order number has not been provided.
9. Decisions with regard to awards, selection, and evaluation are taken solely by Salisbury's client organisations. Whilst Salisbury NHSFT are a Contracting Authority for the establishment of the Framework, only the client organisation is the Contracting Authority for the opportunity. Any decision appeals, claims or queries must be addressed to the Authority named in the opportunity documents.
10. Communication relating to the Framework, or opportunities, must only be via the Messaging function on Bravo. Questions to individuals, either at Salisbury or client organisations, may not be answered. Please note all clarification questions during ITTs are anonymised and circulated to all bidders.
11. To be fully registered on the FRAMEWORK, bidder organisations must complete and submit the relevant Invitation to Tender, and be accepted by Salisbury NHSFT.
12. Bidders should pay close attention to the Bid Instructions, especially on the Quality & Delivery sheet where issued. Failure to complete correctly, or exceeding the maximum file size, may result in the bid being excluded.
13. During the ITT phase, or following ITT close but prior to award, Bidder organisations must not contact Employer organisations with regard to progress on award, unless via the Bravo portal. Bidders must also ensure that during both timeframes, they do not publicise their involvement in bidding for the ITT.
14. Following notification of an award of business, or following signing of contracts, Bidders / Providers must not embark on any publicity without the consent of the Employer organisations involved. This includes the use of social media by employees of the Provider.
15. Contracts awarded following a procurement are only valid on issue of a Unique Reference Number (Order Number) by Salisbury, following a request from an Employer organisation. Providers MUST NOT issue their own contracts or written agreements to Employers unless incorporated into the NHS Terms contract issued by Salisbury.
16. Business Success Fees (1% of course value) are payable in full once the learner has completed the initial 42 days of a programme (calendar days from course commencement date). Providers must report learner starts to Salisbury by responding to issue of an enrolment statement by Salisbury.

17. Use of NHS logo / NHS Organisations branding

The Supplier shall not copy or use on any promotional material, the NHS logo (“blue lozenge”) or the logo of any NHS organisation (for example, NHS trust). The NHS logo, including those of NHS organisations, is protected by law and consent is required from the Secretary of State for any supplier organisation to use or reproduce.

Suppliers shall not approach NHS organisations to use their logo – authority to grant that is not devolved to those organisations.

Where the Supplier believes it has a legitimate reason to use the NHS logo, prior written consent from the Secretary of State shall be obtained, via the NHS Brand Identity Team.

All NHS Brand identity requirements, including the process for seeking consent to use, is located at <https://www.england.nhs.uk/nhsidentity/>

Suppliers wishing to promote that they are on the Salisbury NHSFT Framework may request to use the Framework logo by contacting sft.commercial@nhs.net

Reference Copy not for contracting

Appendix A

Call-off Terms and Conditions for the Provision of Services

Where an Order Form is issued by the Authority that refers to the Framework Agreement, the Contract is made between the Authority and the Supplier on the date of that Order Form. The Contract is subject to the terms set out in the schedules of these Call-off Terms and Conditions listed below ("**Schedules**").

The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of the Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of the Contract.

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of an Order Form covering the relevant Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Order Form.

The Definitions in **Error! Reference source not found.** of these Call-off Terms and Conditions apply to the use of all capitalised terms in the Contract.

S10353 – Apprenticeship Education Framework

Contract Agreement and Call Off

Note – This Employer / Provider Call Off contract is governed by the Framework Contract S10353 between the Provider and Framework Operator (Salisbury NHS Foundation Trust).

Contracting Authority (Employer)	
Employer Contact Name	
Employer Address	
Employer Contact Email	
Education Provider (Supplier)	
Supplier Contact Name	
Supplier Address	
Supplier Contact Email	
Salisbury Framework URN Number	
<p>Please note – This Contract is NOT valid unless a URN number has been issued by Salisbury to both the Authority and the Supplier. This number will be inserted above at time of Contract Issue and a completed URN form will be issued to both Parties.</p> <p>The Supplier MUST be in receipt of a URN/Order Form bearing an issued URN Number for all cohorts enrolled under this contract.</p> <p>At all times the Framework Terms & Conditions published (S10353) will apply in addition to this document.</p> <p>ALL documentation issued by Suppliers MUST carry the Order Number allocated by Salisbury.</p> <p>Suppliers must NOT request contract changes from the Authority named. Any contract content enquiries must be sent to Salisbury as the framework operator, by email to sft.commercial@nhs.net</p>	



Salisbury Managed
Procurement Services

Contract Declaration	
Both Parties confirm that they have read and understood the Framework Terms Contract issued as part of this Procurement, including the Provider responses and the Order of Precedence. Both Parties agree to be bound by those Contract terms.	
For the Contracting Authority (Employer)	For the Education Provider
Signatory Name :	Signatory Name :
Signatory Position :	Signatory Position :
Date of Signature :	Date of Signature :

FRAMEWORK (EMPLOYER) TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES (CONTRACT VERSION)

The Authority	As detailed on the Contract Call Off form
The Supplier	As detailed on the Contract Call Off form
Type of Services	<p>Provision of Apprenticeships under Framework S10353.</p> <p>If the URN begins 10353- then the contract covers all standards listed by the provider.</p> <p>If the URN begins 3xxxx- the contract covers solely the standards detailed in Schedule 6 and cannot be transferred to other Standards.</p>
Start Date	Date of Student Placement
End Date	<p>Student enrolments – up to 31st March 2025</p> <p>Apprentices - Date of Course Completion (including EPA) or Termination</p>

This Contract is made on the date set out above subject to the terms set out in the schedules listed below (“**Schedules**”). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and authorise payment for, the Services on the terms of this Contract.

The Definitions in Schedule 2 apply to the use of all capitalised terms in this Contract.

Schedules

1.15 (External) Apprenticeship Funding Rules	1.16 As published by the Education & Skills Funding Agency at https://www.gov.uk/guidance/apprenticeship-funding-rules
1.17 (External) The Requirements of the relevant Apprenticeship Standard	1.18 As published by the Institute for Apprenticeships and Technical Education at https://www.instituteforapprenticeships.org/apprenticeship-standards/?
1.19 Schedule 1	1.20 Key Provisions
1.21 Schedule 2	1.22 General Terms & Conditions
1.23 Schedule 3	1.24 Definitions & Interpretations
1.25 Schedule 4	1.26 Contract Key Performance Indicators
1.27 Schedule 5	1.28 Authority local Requirements, Terms or Service Specification (where issued)

1.29 Schedule 6	1.30 Supplier's Response to ITT – added as a Docusign attachment, may be multiple documents
1.31 Schedule 7	1.32 Supplier's Apprenticeship Agreement (added as a Docusign attachment where provided) and shall not overwrite any Term within the Framework Contract. Must not carry Learner Identifiable data (where issued)

Note

This is a Contract to provide the services detailed above and in line with tender documentation issued. This does not form a volume commitment nor imply any exclusivity to provide the services detailed during the lifetime of the Contract.

Student numbers are only confirmed at the time of individual student / cohort commencement.

Where multiple Contracting Authorities are listed as signatories, no joint liability is established between those Contracting Authorities. Each Authority forms an independent contractual relationship with the Supplier.

In all cases where Supplier documentation is enclosed as a Schedule, in the event of any conflict between the contents of those documents and these NHS Terms, the NHS Terms shall prevail.

Any documentation issued to Contracting Authorities by Suppliers outside of this Contract shall, in the event of a dispute, be secondary to the Terms of this Contract.

Apprenticeship Conditions or Regulations (Funding Rules) issued by the Education & Skills Funding Agency, and the shall have precedence at all times.

Contract content questions must only be directed to Salisbury NHSFT at sft.commercial@nhs.net

Apprenticeship Funding Rule questions should be directed to the Education & Skills Funding Agency :

helpdesk@manage-apprenticeships.service.gov.uk

Telephone 08000 150 6000

Schedule 9

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 26 of this Schedule 1 shall apply to this Contract.
- 1.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Term

- 2.1 New Enrolments – This contract shall be valid for new learners to be enrolled with the Supplier up to 31st March 2025.
- 2.2 Learners on programme – This contract shall remain in force beyond the period in 2.1 whilst enrolled learners complete their Apprenticeship, including End Point Assessment.

3 Contract Managers – Not Used

4 Names and addresses for notices -See address on Order Form

- 2.1 4.1 Notices should be addressed to the Supplier contact on the order form unless an alternative has been provided by the Supplier in Schedule 7 (Supplier's Documentation).

5 Order of precedence

- 5.1 Should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

2.1

2.2	(External) Apprenticeship Funding Rules	2.3	As published by the Education & Skills Funding Agency at https://www.gov.uk/guidance/apprenticeship-funding-rules
2.4	(External) The Requirements of the relevant Apprenticeship Standard	2.5	As published by the Institute for Apprenticeships and Technical Education at https://www.instituteforapprenticeships.org/apprenticeship-standards/
2.6	Schedule 1	2.7	Key Provisions
2.8	Schedule 2	2.9	General Terms & Conditions
2.10	Schedule 3	2.11	Definitions & Interpretations
2.12	Schedule 4	2.13	Contract Key Performance Indicators
2.14	Schedule 5	2.15	Authority local Requirements, Terms or Service Specification (where issued)

2.16	Schedule 6	2.17	Supplier's Response to ITT – added as a Docusign attachment, may be multiple documents
2.18	Schedule 7	2.19	Supplier's Apprenticeship Agreement (added as a Docusign attachment where provided) and shall not overwrite any Term within the Framework Contract. Must not carry Learner Identifiable data (where issued)

2.20

5.1.1 any other Authority documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

5.2 For the avoidance of doubt, the contents of any Authority documentation shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 6. Should there be a conflict between these parts of the Specification, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

5.3 Also for the avoidance of doubt, Suppliers will be required to provide any terms and conditions documents which they wish the Authority to sign, at bid stage. Only documentation supplied at bid stage will be included in this Contract, and subsequently submitted documents will not be signed by the Authority. In all cases, where conflict exists between these Framework Terms and the Supplier's documentation, provisions in these Terms shall take precedence unless statutory legislation applies. ESFA required documentation, such as ESFA compliant Training Plans and Cost Breakdowns, or subsequent ESFA required documents, shall be exempt from this requirement.

5.4 When issuing additional documents to Authorities (e.g. enrolment form, cost breakdown, or training plan) the Supplier **must** ensure the issued Salisbury order number is clear, and that such documentation does not include any reference to a Supplier's Terms & Conditions, or does not attempt to introduce any clause or cost contrary to the provisions of this Contract.

6 Application of TUPE at the commencement of the provision of Services

6.1 The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.

3 Optional Key Provisions

7 Implementation phase

7.1 Not applicable

8 Services Commencement Date

8.1 The Services Commencement Date shall be at the enrolment of each Learner up to and including 31st March 2025.

9 Induction training

- 9.1 Where required by the Authority, the Supplier shall ensure that all Staff complete the Authority's induction training for those Staff attending the Authority's site. All Staff shall complete the training prior to the Actual Services Commencement Date (or immediately following the Services Commencement Date where this date is the date of this Contract) and all new Staff appointed throughout the Term shall also complete the training. The Supplier shall further ensure that all Staff complete any extra training that the Authority makes available to its own staff and notifies the Supplier in writing that it is appropriate for the Staff.
- 9.2 All Staff either attending Authority's site for training purposes, or training students in other locations (including the Supplier's own) shall hold current DBS clearance where requested by the Authority or where legally required (e.g. working with vulnerable adults).

10 Quality assurance standards

- 10.1 Education & Skills Funding Agency, Ofsted, Quality Assurance Agency for Higher Education, and Institute for Apprenticeship standards shall apply at all times.

11 Different levels and/or types of insurance

- 4 11.1 Insurance levels will be maintained commensurate with standard employer organisation requirements.

12 Assignment of Intellectual Property Rights in deliverables, materials and outputs

- 12.1 Each Party shall retain their own IP ownership in material they have originated. Where material is created and published jointly by the Parties a separate agreement will be required.

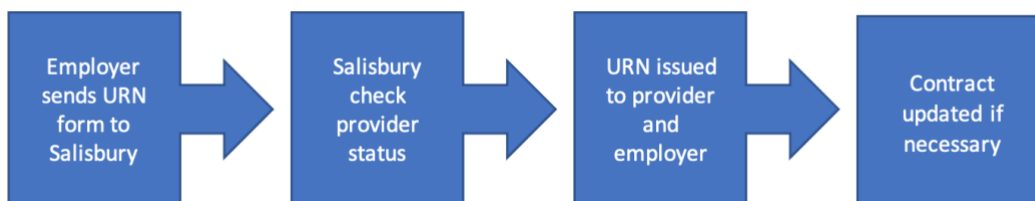
13 Ordering Process

- 13.1 The framework ordering process applies to all enrolments under this Contract. Where an employer omits to request an Order Number (URN) from Salisbury, the Supplier should do so and the obligation to report that Apprentice's enrolment remains.

First time with provider or new standard with existing provider



New enrolment / cohort with existing provider



- 13.2 All Order Numbers are issued on URN forms by Salisbury via Docusign. When issued, both Authority (Apprentices' employer) and Supplier should sign the URN.
- 13.3 Contracts are also issued via Docusign – the Supplier may not amend or alter any issued Framework Contract. Suppliers may insert their own documentation (not related to a specific Apprentice) in the relevant allowed Schedule insertion via Docusign attachment.
- 13.4 Suppliers may not issue their own contracts or agreements to the Authority at any time, outside the process detailed in 13.3 above.
- 13.5 All enrolments under this Contract must be reported to Salisbury by the Supplier via an Enrolment Return which will be issued periodically by Salisbury.

14 Authority step-in rights

- 14.1 If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights in line with selecting an alternative Supplier.

15 Grant of lease or licence

- 15.1 Not applicable

16 Guarantee

- 16.1 Not applicable

17 Data Processor & Data Controller

- 17.1 The Parties acknowledge that they are independent Data Controllers in respect of Personal Data Processed under this Contract.

18 Purchase Orders

- 18.1 Any sums not able to be recovered via the ESFA payment mechanism(s) shall only be paid where a valid Purchase Order was issued by the Authority **prior to** the Supplier delivering the service.
- 18.2 For clarity, the only exception to this is where the Authority falls out of Levy (ESFA guidance applies).
- 18.3 All other charges above the tendered price, including any chargeable resits only allowed after first free resit per exam/assessment), etc, **MUST** be agreed by Purchase Order with the Authority before they are incurred by the Authority and stated on the Order Form sent to Salisbury.

19 Monthly payment profile

- 19.1 The Authority shall be responsible for the Contract Price and shall pay the Contract Price to the Supplier to the extent that it is not payable by ESFA from the Authority's Digital Apprenticeship Service ("DAS") account in accordance with ESFA Funding Rules. No charges other than those detailed in the Apprenticeship Framework / Standards (and / or Tender Response) shall be payable unless by Authority issued Purchase Order in advance.

- 19.2 The Supplier must fulfill all its student registration obligations within 14 days of the Authority completing all its enrolment obligations. If the Supplier is not able to do this, then the Supplier must notify the Authority within five days of student commencement, and the Authority shall have the right to move the student to an alternative Supplier.
- 19.3 Should the Supplier not comply with 19.2 above, with reference to claiming payments via the ESFA's DAS account, the following shall apply :
- 19.3.1 Payments not claimed from the Authority within 60 days of the Authority completing all its obligations in relation to the Digital Apprenticeship Service Account, shall become the responsibility of the Provider and shall not be authorised by the Authority, and
- 19.3.2 Where a provider's delay in claiming payment following the completion of steps required in 20.3.1 means that the funds in the Employer's DAS account are no longer available, due to "sunset" reclamation by ESFA, the Provider shall fund the apprentices' training directly for the period concerned, and shall not attempt to reclaim from the Authority.
- 19.3.3 The provisions of clause 20.3 shall not apply where the reason for the delay is not created by the Supplier.

4.2

20 Termination for convenience

- 20.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on three month's written notice. This contract does not imply any form of exclusivity to provide the services listed.

21 Right to terminate following a specified number of material breaches

- 21.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least one previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the first Breach Notice.
- 21.2 For the avoidance of doubt, a Supplier experiencing a reduced Ofsted rating during the lifetime of this Contract from that declared at tender stage, shall constitute an immediate breach. If the rating falls to Inadequate, the Contract may be terminated immediately should the Supplier be unable to claim ESFA payments. For other grade changes, the Authority may terminate if they wish or may agree an Improvement Plan with the Supplier.
- 21.3 Where an Ofsted outcome has fallen below the Framework entry criteria, the Supplier shall be immediately suspended from the Framework. Existing employer contracts will remain valid subject to Clause 21.2. The Supplier shall be removed from the Employer Guide produced by the Framework Authority, and will be required to re-apply at the Framework opening window subsequent to an improved Ofsted outcome meeting the entry criteria.

22 Expert Determination

- 22.1 Not used in connection with this Contract.

4.3 23.0 Not used

4.4 24.0 Not used

4.5 25.0 Not used

26 Charges and Payments

- 26.1 With the exception of the Authority falling out of Levy, the Authority shall pay the Charges to the Supplier to the extent that the Charges have not been recovered by the Supplier from the ESFA only where such payment outside the Apprenticeship Levy has been agreed, and confirmed by the Authority by issuing a Purchase Order prior to the activity
- 26.2 The Supplier shall send invoices in respect of the portion of the Contract Price to the Authority at the frequency set out in the relevant Apprenticeship Programme. The Authority shall pay such invoices within thirty (30) days of receipt or such longer period as may be agreed.
- 26.3 Subject to the Authority providing the bank account details of the company or other legal person that employs the relevant Apprentice, the Supplier shall pay to the Authority any Incentive Payments received from the ESFA on behalf of the Authority within thirty (30) days of receipt or such other timescale as may be specified in the Funding Rules.
- 26.4 Where for any reason the ESFA requires the Supplier to return any Incentive Payments or any other payment, the Authority shall pay to the Supplier an amount equal to the sum required to be returned. The Supplier shall notify the Authority of any requirement to return payments to the ESFA and the Authority shall pay such amount to the Supplier within thirty (30) days of such notice.
- 26.5 All sums payable by or to the Supplier or the Authority are exclusive of VAT. In the case of any VAT payable, the VAT shall be due thirty (30) days after receipt by the receiving party of a valid VAT invoice.
- 26.6 Without prejudice to the rights of either party under this agreement, any sums outside Levy payments that remain unpaid after their due date shall bear interest at the rate of four per cent (4%) above the Bank of England base rate from time to time.
- 26.7 The Supplier will not, under any circumstances, be allowed to recover consequential loss of future or anticipated earnings from the Authority where an Apprentice has withdrawn from the programme (for example, ESFA completion payments), and in all circumstances will not attempt to levy any form of additional charge, cost, penalty payment, or similar, and must not attempt to write such ability into any form of documentation provided to the Authority.
- 26.8 The Supplier shall not, as part of any enrolment or onboarding process, as the Authority to provide financial information such as the Authority's bank details, and shall not seek any form of Direct Debit or Continuous Payment Authority from the Authority.
- 26.9 The Supplier shall not, at any time, following receipt of an order form or contract, request the Authority to use an alternative form of contract or induce the Authority to cancel the Order / Contract and then contract directly with the Supplier.
- 26.10 The Supplier shall apply these Terms to all enrolments subsequent to the Order Form / Contract issue up to the end of the Framework Contract period, regardless of whether a new order number has been provided by Salisbury.

27 Authority Obligations

- 27.1 Subject always to compliance with the ESFA Funding Rules, the Authority shall:
- 27.1.1 from the commencement of the relevant Apprenticeship Programme, employ and pay the Apprentice in accordance with the Law, agreed employment terms and conditions for the duration of the relevant Apprenticeship Programme which shall be not less than the period set out in the relevant Apprenticeship Programme (subject to earlier termination of this agreement in accordance with its terms and/or the Apprentice's employment contract);
- 27.1.2 promptly do all acts and not omit to do any thing reasonably requested of the Authority by the Supplier for the purposes of the Supplier's:
- (a) compliance with the Funding Rules; and
- (b) obtaining any payment to which it may be entitled under the Funding Rules;
- 27.1.3 enter into and procure that each Apprentice enters into:
- (a) an Apprenticeship Agreement (this Contract only); and
- (b) a commitment statement or training plan as required by the Funding Rules,

Each of which must be in place for the entire length of the Apprenticeship and meet the requirements of the Funding Rules and made available to the Supplier on request;

- 27.1.4 provide such training and/or carry out such actions as are assigned to the Authority in the Apprenticeship Programme and in any event support each Apprentice in their learning and development to the reasonable satisfaction of the Supplier;
- 27.1.5 notify in writing the Supplier of any Break in Learning;
- 27.1.6 confirm promptly on request by providing signed declarations to the Supplier:
 - (a) each Apprentice's eligibility for apprenticeship funding;
 - (b) any eligibility for 16-18 year old incentive payments (if applicable);
 - (c) the average number of employees employed by the Authority in the three years immediately preceding the first day of an Apprenticeship and (if applicable) the Authority's eligibility for small Authority incentive payment;
 - (d) any other matters on which the Supplier requires written evidence that is in the possession of the Authority in order for the Supplier to comply with the Funding Rules;
 - (e) the address or addresses where the Apprentice shall be carrying out their working hours; and
 - (f) whether learning support is available to support Apprentices with additional learning needs,
- 27.1.7 ensure, and on request confirm, that:
 - (a) the Apprentice is employed for a suitable number of hours per week and that training both on and off the job is included in those hours of employment;
 - (b) the funding for the Apprenticeship is not used to pay the apprentice's wages;
 - (c) the Apprentice is enabled to complete the Apprenticeship within their working hours and make available time for the Apprentice to be able to complete the Apprenticeship Programme including:
 - (i) permitting the time stated in the current ESFA Funding Rules of each Apprentice's employed hours to be used for off-the-job training;
 - (ii) releasing the Apprentice to the Supplier for undertaking such training and courses with the Supplier as set out in the Apprentice Proposal;
 - (iii) providing the Apprentice the use of equipment necessary to enable the Apprentice to fulfil training objectives;
 - (iv) cooperating with the Supplier to arrange for any necessary End-Point Assessment and allowing the Apprentice to attend the same
 - (v) Provide additional off the job paid hours for the completion of English and Maths functional skills up to level 2 if the apprentice is unable to provide compliant evidence of previous achievement.
- 27.1.8 comply with the terms of any agreement between the Authority and the ESFA;
- 27.1.9 comply with any Mandatory Policies that shall have been specified by the Authority at the time of Tender, or as may be required by an Authority as part of their general business

- 27.2 To secure an efficient working relationship between the Supplier and the Authority and to protect the interests of the Apprentice, the Authority shall:
 - 27.2.1 cooperate in good faith with the Supplier and any Subcontractor and/or Apprentice Assessment Organisation to enable the successful delivery and completion of each Apprenticeship;
 - 27.2.2 where indicated in the Contract Particulars that the Supplier will be providing on-line administrative tasks, provide to the Supplier on request all necessary log-in information to enable the Supplier to access the Authority's Digital Account for the purposes of confirming the Funding available in respect of an Apprentice and uploading on behalf of the Authority information required pursuant to the Funding Rules relating to the Apprentice, the Apprenticeship Programme and/or other relevant matters;
 - 27.2.3 allow the Supplier, it's staff, auditors, contractors or agents, including the Supplier's Representative, access to the Apprentice, the Authority's premises and any relevant records or documents, including health and safety records, to allow the Supplier to comply with the Supplier's obligations under this agreement. Such access shall be as reasonably agreed between the parties or on reasonable notice from the Supplier;
 - 27.2.4 promptly notify the Supplier in writing when it becomes aware or develops a reasonable suspicion that the Apprentice wishes to withdraw from the Apprenticeship;
 - 27.2.5 immediately notify the Supplier if the Apprentice informs the Authority that they no longer wish to continue with the Apprenticeship; and

- 27.2.6 appoint an Authority's Representative and promptly notify the Supplier of any change of the Authority's Representative from time to time.

28 Criteria required at all times

- 28.1 The Supplier shall, at all times during the life of this contract, maintain the following :

- 28.1.1 Registration on the Register of Approved Training Providers managed by the Education and Skills Funding Agency
- 28.1.2 Registration, where required, on the Register of End Point Assessment Organisations
- 28.1.3 Respond to any Mandatory Update on the Salisbury Framework for the Provision of Apprenticeships (S10353) including updating pass/fail criteria
- 28.1.4 Where the Supplier has been inspected / visited by Ofsted, the following shall apply :
 - Full Inspection Outcome – Rating shall be Grade 2 or above
 - Monitoring Visit Outcome – Rating shall be Reasonable Progress or Significant Progress.
- 28.1.5 Any change in the Supplier's Ofsted rating shall be communicated to Salisbury immediately.
- 28.1.6 Any Supplier falling below the criteria in 28.1.4 above will be suspended from the Framework. Existing contracts shall remain valid, and the obligation to report all enrolments shall continue.
- 28.1.7 Following suspension from the Framework, the Supplier shall not be entitled to re-apply until the opening window following receipt of an Ofsted outcome which meets the criteria in 28.1.4
- 28.1.8 Suppliers without an Ofsted visit may be required to demonstrate Apprenticeship Completion rates in excess of the national average across all offered Apprenticeships.
- 28.1.9 The Supplier shall comply with all commitments, offers and requirements made within the original Tender Specification, either for general Framework contracts, or higher-level profession specific procurements as detailed in Schedule 6 of this contract.

4.6

4.7

Schedule 10

General Terms and Conditions

Contents

1. Provision of Services
2. Premises, locations and access
3. Cooperation with third parties
4. Use of Authority equipment
5. Staff and Lifescience Industry Accredited Credentialing Register
6. Business continuity
7. The Authority's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Intellectual property
12. Indemnity
13. Limitation of liability
14. Insurance
15. Term and termination
16. Consequences of expiry or early termination of this Contract
17. Staff information and the application of TUPE at the end of the Contract
18. Complaints
19. Sustainable development
20. Electronic services information
21. Change management
22. Dispute resolution
23. Force majeure
24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice
28. Assignment, novation and Sub-contracting
29. Prohibited Acts
30. General

1 Provision of Services

1.1 The Authority appoints the Supplier and the Supplier agrees to provide the Services:

- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
- 1.1.2 in accordance with all other provisions of this Contract;
- 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions and/or the Specification and Tender Response Document;
- 1.1.4 in accordance with the Law and with Guidance;
- 1.1.5 in accordance with Good Industry Practice;
- 1.1.6 in accordance with the Policies; and
- 1.1.7 in a professional and courteous manner.

In complying with its obligations under this Contract, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.

1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document. Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 10, the Supplier shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.

1.3 The Supplier shall commence delivery of the Services on the Services Commencement Date.

1.4 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.

1.5 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.

1.6 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.

1.7 The Supplier shall notify the Authority forthwith in writing:

- 1.7.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
- 1.7.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.

- 1.8 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 1.9 Upon receipt of notice pursuant to Clause 1.7 of this Schedule 10 or any report or communication pursuant to Clause 1.8 of this Schedule 10, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.10 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 1.11 Should the Authority be of the view, acting reasonably, that the Supplier can no longer provide the Services, then without prejudice to the Authority's rights and remedies under this Contract, the Authority shall be entitled to exercise its Step In Rights if the Key Provisions refer to the Authority having such rights under this Contract.
- 1.12 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations.

2 Premises, locations and access

- 2.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 2.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 2.3 Subject to Clause 2.4 of this Schedule 10, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 10 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 10.
- 2.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 10, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.
- 2.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 2.4 of this Schedule 10. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in

accordance with Clause 21 of this Schedule 10. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

3 Cooperation with third parties

- 3.1 The Supplier shall, as reasonably required by the Authority, cooperate with any other service Suppliers to the Authority and/or any other third parties as may be relevant in the provision of the Services.

4 Use of Authority equipment

- 4.1 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:

- 4.1.1 shall be provided at the Authority's sole discretion;
- 4.1.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
- 4.1.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and
- 4.1.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

5 Staff and Lifescience Industry Accredited Credentialing Register

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
- 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
 - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
 - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and

- 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
- 5.7.1 are questioned concerning their Convictions; and
- 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
- 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 10;
- 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 10; or
- 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 10.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 10, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
- 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
- 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
- 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any

regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.

- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 10 have been met.
- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
- 5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit Authority premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

6 Business continuity

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the provision of the Services. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.
- 6.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 6.2.1 the criticality of this Contract to the Authority; and
- 6.2.2 the size and scope of the Supplier's business operations,
- 1.1.1 regarding continuity of the provision of the Services during and following a Business Continuity Event.
- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 10 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
- 6.4 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made

by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.

- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

7 The Authority's obligations

- 7.1 Subject to the Supplier providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 10.
- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
- 7.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.
- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
 - 8.3.2 details of any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification and Tender Response Document;

- 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
- 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavors to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyze such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
- 8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 10, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.
- 9 Price and payment**
- 9.1 The maximum Contract Price shall be calculated as set out in the Schedule 6 (Bid Response) and the actual Price shall be that entered by the Supplier on the Digital Apprenticeship Service Individual Learner Record (ILR) following any adjustments for prior learning/experience, and as approved by the Authority on that system.
- 9.2 The full content of the Apprenticeship Standard shall be delivered by the Supplier within the maximum funding band set by Ifate for the relevant standard. Funding band maximums can be located at <https://www.instituteforapprenticeships.org/apprenticeship-standards/?> and shall apply to the version of the Standard at the time of the Apprentice's enrolment.
- 9.3 At all times, the Supplier shall include, without additional charge to the Authority, the cost of any and every first resit, retake, assessment or other test/examination. This applies to every such test/examination, including End Point Assessment. For the avoidance of doubt, this will also include any complete module where the learner failing an exam or assessment has led to the requirement to retake.

- 9.4 Where the Supplier offers an additional cost option to the Authority, for example a residential school or content not written into the Apprenticeship Standard, the Supplier must not attempt to make such additional cost mandatory to the enrolment of the Apprentice or the completion of the Apprenticeship Standard.
- 9.5 Any additional costs following from Clause 9.4 above must be agreed with the Authority prior to Apprentice enrolment, and must be detailed on the Order Form submitted to Salisbury.
- 9.6 At all times, the Education & Skills Funding Agency Apprenticeship Funding Rules will apply. These can be found at <https://www.gov.uk/guidance/apprenticeship-funding-rules> and the version in force at the time of Apprentice Enrolment will apply.
- 9.7 Payment shall be made via the ESFA Digital Apprenticeship Service account in line with the ESFA Funding Rules.
- 9.8 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.

10 Warranties

10.1 The Supplier warrants and undertakes that:

- 10.1.1 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.2 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.3 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 10.1.4 it shall not make any significant changes to its system of quality controls and processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.5 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.6 receipt of the Services by or on behalf of the Authority and use of the deliverables or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.7 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the provision of the Services;
- 10.1.8 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.9 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;

- 10.1.10 without limitation to the generality of Clause 10.1.7 of this Schedule 10, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;
- 10.1.11 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.12 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.13 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant products being purchased;
- 10.1.14 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.15 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.16 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.16 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;
- 10.1.17 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.18 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document) and all accompanying materials is accurate;
- 10.1.19 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
- 10.1.20 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.21 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;

- 10.1.22 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.23 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
- 10.1.24 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 10.1.25 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 Without prejudice to the generality of Clause 10.2 of this Schedule 10, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Authority.
- 10.4 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.5 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.5.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.5.2 promptly provide to the Authority:
- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.6 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 10 have been breached or there is a risk that any warranties may be breached.
- 10.7 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Intellectual property

- 11.1 The Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.
- 11.2 Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use such items in the course of the Authority's normal business operations. For the avoidance of doubt, unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

12 Indemnity

- 12.1 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

12.1.1 any injury or allegation of injury to any person, including injury resulting in death;

12.1.2 any loss of or damage to property (whether real or personal);

12.1.3 any breach of Clause 10.1.6 and/or Clause 11 of this Schedule 10; and/or

12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

- 12.2 Liability under Clause 12.1.1 and 12.1.3 of this Schedule 2 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.

- 12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or

12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

- 1.1.2 Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).

- 1.1.3 12.4 The Authority agrees to indemnify the Supplier, and to keep the Supplier indemnified, together with its officers, directors, employees and agents, against all actions, claims, proceedings and all damages, losses, costs and expenses (including any recovery in whole or in part of any sums received or due to be received from the ESFA) arising

out of or in connection with any breach, negligent performance or failure or delay in performance of this Agreement (including, without limitation any breach of clause 27 of the Key Provisions) by the Authority, its employees, agents or subcontractors.

13 Limitation of liability

13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:

13.1.1 for death or personal injury resulting from its negligence;

13.1.2 for fraud or fraudulent misrepresentation; or

13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 10, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.

13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

13.3.1 extra costs incurred purchasing replacement or alternative services;

13.3.2 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;

13.3.3 the costs of extra management time; and/or

13.3.4 loss of income due to an inability to provide health care services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.

13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:

13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 10 shall be replaced with one million pounds (£1,000,000);

13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 10 shall be replaced with three million pounds (£3,000,000);

13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 10 shall

be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 10 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and

13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 10 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 10 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

13.6 Clause 13 of this Schedule 10 shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 10 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of Authority's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority or successor organisations.

14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.

14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 10 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.

14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.

14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.

14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 10 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

15 Term and termination

15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.

15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.

- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.6 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4 m(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
 - 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
 - 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,
- 1.1.4 shall be deemed, for the purposes of Clause 15.4 (ii) of this Schedule 10, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.
- 15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:
- (i) not capable of remedy; or
 - (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 15.5 The Authority may terminate this Contract forthwith by issuing a Termination Notice to the Supplier if:
- 15.5.1 the Supplier does not commence delivery of the Services by any Long Stop Date;
 - 15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
 - 15.5.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;

- 15.5.4 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 10; .
- 15.5.5 the warranty given by the Supplier pursuant to Clause 10.5 of this Schedule 10 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.5 of this Schedule 10, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.5 of this Schedule 10 that in the reasonable opinion of the Authority are acceptable.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
 - 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
 - 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 10 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
 - 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 10.
- 1.1.5 In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 10, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.
- 15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
 - 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
 - 15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
 - 15.7.4 there has been a failure by the Supplier and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4.
- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.1 to Clause 15.5.4 of

this Schedule 10 shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

- 15.9 Within three (3) months of the Commencement Date the Supplier shall develop and agree an exit plan with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within one (1) month of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract. If the Parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.9 of this Schedule 10 (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

16 Consequences of expiry or early termination of this Contract

- 16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract, subject to Clause 21.3 in Schedule 1,
- 16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:
- 16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;
- 16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and
- 16.2.3 subject always to the requirements of the Data Protection Legislation and any requirements of the ESFA, any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 10 for the period set out in Clause 24.1 of this Schedule 10.
- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
- 16.6 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.7 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

17 Staff information and the application of TUPE at the end of the Contract

17.1 TUPE shall not apply under this Contract.

18 Complaints

18.1 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

18.2 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.

19 Sustainable development

19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:

19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Services and the Supplier's supply chain;

19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and

19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 10.

19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 10.

20 Electronic services information

20.1 Where requested by the Authority, the Supplier shall provide the Authority the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.

20.2 The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 10.

20.3 If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.

20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority's contracts from

time to time. Subject to Clause 20.5 of this Schedule 10, no obligation to illustrate or advertise the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 10.

- 20.5 The Authority may reproduce for its sole use the Services Information provided by the Supplier in the Authority's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 20.6 Before any publication of the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 10 or otherwise under the terms of this Contract.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

21 Change management

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 10, any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 10 as the first stage in the Dispute Resolution Procedure.
- 22.3 Following the service of a Dispute Notice the Parties shall first seek to resolve the Dispute by convening a meeting between the Authority's Contract Manager and the Supplier's Contract Manager (together the "**Contract Managers**").
- 22.3.1 The meeting of the Contract Managers must take place within five (5) Business Days of the date of the Dispute Notice (the "**Dispute Meeting**").
- 22.3.2 The Contract Managers shall be given ten (10) Business Days following the date of the Dispute Meeting to resolve the Dispute.
- 22.3.3 The Contract Managers can agree to further meetings at higher levels within each Party's organisation, in addition to the Dispute Meeting, but such meetings must be held within a ten (10) Business Day timetable.

- 22.3.4 If at any point it becomes clear that the timetable set out cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the timetable. Any agreed extension to the timetable shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 10 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties, shall acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Contract shall prevent:
- 22.6.1 either Party taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 10 shall survive the expiry of or earlier termination of this Contract for any reason.
- 23 Force majeure**
- 23.1 Subject to Clause 23.2 of this Schedule 10 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 10 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 10;
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 10.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.

- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 10 and subject to Clause 23.10 of this Schedule 10, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 10 shall continue in full force and effect unless otherwise specified in this Contract.
- 24 Records retention and right of audit**
- 24.1 Subject to any statutory requirement, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.3 Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.4 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:
- 24.4.1 the examination and certification of the Authority's accounts; or
- 24.4.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.

24.5 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 10 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

24.6 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.

24.7 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Contract.

25 Conflicts of interest and the prevention of fraud

25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 10 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

26 Equality and human rights

26.1 The Supplier shall:

26.1.1 ensure that (a) it does not, whether as Authority or as Supplier of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an Authority or Supplier of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.

26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

27 Notice

- 27.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
- 27.2 A notice shall be treated as having been received:
- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
 - 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
 - 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

28 Assignment, novation and Sub-contracting

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 10 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 10, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 10 shall be subject to:
- 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under the ESFA Funding Rules;
 - 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
 - 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
 - 28.2.4 the provisions of Clause 9 of this Schedule 10 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
 - 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.

- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:
- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such Sub-contracting;
 - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
 - 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
 - 28.4.4 contain a right for the Authority to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
 - 28.4.5 requires the Supplier or other party receiving services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;
 - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
 - 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;
 - 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and
 - 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.
- 28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
 - 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.

- 28.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 Prohibited Acts

- 29.1 The Supplier warrants and represents that:

29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

- 29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:

29.2.1 the Authority shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.2.2 any termination under Clause 29.2.1 of this Schedule 10 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

29.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:

- (i) the interpretation of Clause 29 of this Schedule 2; or

(ii) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

30 General

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of Authority/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 10, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

- 30.11 Subject to Clause 22 of this Schedule 10, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.
- 30.13 Use of NHS logo / NHS Organisations branding
- 30.13.1 The Supplier shall not copy or use on any promotional material, the NHS logo (“blue lozenge”) or the logo of any NHS organisation (for example, NHS trust). The NHS logo, including those of NHS organisations, is protected by law and consent is required from the Secretary of State for any supplier organisation to use or reproduce.
- 30.13.2 Suppliers shall not approach NHS organisations to use their logo – authority to grant that is not devolved to those organisations.
- 30.13.3 Where the Supplier believes it has a legitimate reason to use the NHS logo, prior written consent from the Secretary of State shall be obtained, via the NHS Brand Identity Team.
- 30.13.4 All NHS Brand identity requirements, including the process for seeking consent to use, is located at <https://www.england.nhs.uk/nhsidentity/>
- 30.13.5 Suppliers wishing to promote that they are on the Salisbury NHSFT Framework may request to use the Framework logo by contacting sft.commercial@nhs.net
- 30.14 Conduct of Suppliers in relation to Apprentices on Programme
- 30.14.1 The Supplier shall recognise that at all times, the Apprentice is an employee of the Authority. The Supplier shall not carry out any action which may affect the Apprentice’s employment status, including (but not limited to):
- (i) Suspending, removing or ceasing to provide teaching to the Apprentice without the Employer’s prior agreement, including removing learners for insufficient attendance, progress, or poor conduct
 - (ii) Extending course length, amending attendance days, or delaying the commencement of a programme without the prior agreement of the Authority
 - (iii) All and any change the Supplier may wish to make to either the Apprenticeship, the method or days of delivery, or days required to study must, in all cases, be agreed with the Authority prior to any change being made.
 - (iv) Where an Apprentice requires additional time or support to complete an Apprenticeship, for example beyond the Supplier’s normal time period for completion, the Supplier shall not make, or attempt to introduce, any cost or charge for so doing, and shall not cease delivery of training without the prior written agreement of the Authority.

Definitions

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Contract shall also apply to this Protocol. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Officer" and "Data Subject"	shall have the same meanings as set out in the GDPR;
"Data Subject Access Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
"Personal Data Breach"	shall have the same meaning as set out in the GDPR;
"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
"Protocol" or "Data Protection Protocol"	means this Data Protection Protocol;
"Sub-processor"	means any third party appointed to Process Personal Data on behalf of the Supplier related to this Contract.

1 DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, both parties are independent data controllers.
- 1.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 1.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:
- 1.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 1.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
- 1.4.1 process that Personal Data only in accordance with the terms of this Protocol, unless the Supplier is required to do otherwise by Law. **If it is so required the Supplier** shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
 - 1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 1.4.3 ensure that :
 - (i) the Supplier's Personnel do not Process Personal Data except in accordance with this Contract);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this Protocol;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 1.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data;
- 1.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination or expiry of the Contract unless the Supplier is required by Law to retain the Personal Data.
- 1.5 Subject to Clause 1.6 of this Protocol, the Supplier shall notify the Authority immediately if it:
 - 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 1.5.2 receives a request to rectify, block or erase any Personal Data;
 - 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
 - 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 The Supplier's obligation to notify under Clause 1.5 of this Protocol shall include the provision of further information to the Authority in phases, as details become available.
- 1.7 Taking into account the nature of the Processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 of this Protocol (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - 1.7.1 the Authority with full details and copies of the complaint, communication or request;

- 1.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 1.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 1.7.4 assistance as requested by the Authority following any Data Loss Event;
 - 1.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 1.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Protocol. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 1.8.1 the Authority determines that the Processing is not occasional;
 - 1.8.2 the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 1.8.3 the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.
- 1.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:
- 1.11.1 notify the Authority in writing of the intended Sub-processor and Processing;
 - 1.11.2 obtain the written consent of the Authority;
 - 1.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Protocol such that they apply to the Sub-processor; and
 - 1.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 1.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Authority may, at any time on not less than 30 Business Days' notice, revise this Protocol by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Business Days' notice to the Supplier amend this Protocol to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 The Supplier shall comply with any further instructions with respect to Processing issued by the Authority by written notice.

- 1.16 Subject to Clauses 1.13, 1.14, and 1.15 of this Protocol, any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
- 1.17 The Supplier shall achieve compliance for all requirements in the relevant NHS Data Security & Protection Toolkit.
- 1.18 The Supplier shall complete and publish an annual information governance assessment using the NHS Data Security & Protection Toolkit.

Reference Copy not for contracting

Schedule 11

Definitions and Interpretations

2 Definitions

2.1 In this Contract the following words shall have the following meanings unless the context requires otherwise:

"Actual Services Commencement Date"	means the date the Supplier actually commences delivery of the Services;
"Actuary"	means a Fellow of the Institute and Faculty of Actuaries;
"Authority"	means the authority named on the form of Contract on the first page;
"Authority's Actuary"	means the Government Actuaries Department;
"Authority's Obligations"	means the Authority's further obligations, if any, referred to in the Key Provisions;
"Breach Notice"	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
"Broadly Comparable"	means certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of Fair Deal for Staff Pensions;
"Business Continuity Event"	means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event;
"Business Continuity Plan"	means the Supplier's business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
"Business Day"	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
"Cabinet Office Statement"	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
"Change Control Process"	means the change control process, if any, referred to in the Key Provisions;
"Charges"	means any sum outside the Apprenticeship Levy which has been agreed between the parties at time of acceptance of the Supplier's ITT response (Schedule 6), and/or confirmed by the Authority by issuing a Purchase Order prior to the activity.
"Commencement Date"	means the date of this Contract;
"Commercial Schedule"	means the document set out at Schedule 6

“Confidential Information”	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <p>(j) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;</p> <p>(k) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</p> <p>(l) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;</p>
“Contract”	means the form of contract at the front of this document and all schedules attached to the form of contract;
“Contracting Authority”	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 10;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
“Controller”	shall have the same meaning as set out in the GDPR;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“Data Protection Legislation”	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;
“Direction Letter”	means an NHS Pensions Direction letter issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of

		participation of the Supplier or Sub-contractor in the NHS Pension Scheme in respect of the Eligible Employees;
"Dispute(s)"		means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"		means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
"Dispute Procedure"	Resolution	means the process for resolving Disputes as set out in Clause 22 of Schedule 10.
"DOTAS"		means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
"Electronic System(s)"	Trading	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
"Eligible Employees"		<p>means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other Authority which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the Authority (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services.</p> <p>For the avoidance of doubt a member of Staff who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHS Pension Scheme "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection.</p>
"Employee Transfer Date"		means the Transferred Staff's first day of employment with the Supplier (or its Sub-contractor);
"Employment Liabilities"		means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;

“Environmental Regulations”	Shall mean any relevant legislation in force at the time, or subsequent to, the commencement date;
“eProcurement Guidance”	means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“ESFA”	“ESFA” means the Education and Skills Funding Agency and any successor body
“ESFA Funding Rules”	“ESFA Funding Rules” means (a) the following ESFA publications as revised or replaced from time to time: (i) Apprenticeship funding and performance-management rules for Suppliers May 2017 to July 2018 Version 6; (ii) Apprenticeship funding: rules and guidance for Authorities May 2017 to July 2018; and (iii) Apprenticeship technical funding guide for starts from May 2017 Version 3; and (b) all other rules or guidance published by ESFA from time to time;
“Exit Requirements”	means the Authority’s exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
“Fair Deal for Staff Pensions”	means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced);
“FOIA”	shall mean the Freedom of Information Act 2000 or subsequent amendments;
“Force Majeure Event”	means any event beyond the reasonable control of the Party in question to include, without limitation: (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire;

	<p>(e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</p> <p>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</p> <p>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
"Fraud"	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Anti-Abuse Rule"	<p>means</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service Supplier engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
"Guidance"	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory

	Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HM Government Cyber Essentials Scheme"	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
"Implementation Plan"	means the implementation plan, if any, referred to in the Key Provisions;
"Implementation Requirements"	means the Authority's implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
"Intellectual Property Rights"	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
"Interested Party"	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
"Key Provisions"	means the key provisions set out in Schedule 1;
"KPI"	means the key performance indicators as set out in Schedule 4;
"Law"	<p>means any applicable legal requirements including, without limitation,:</p> <ul style="list-style-type: none"> (h) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (i) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (j) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (k) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (l) requirements set by any regulatory body as applicable in England and Wales; (m) any relevant code of practice as applicable in England and Wales; and (n) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);

"Long Stop Date"	means the date, if any, specified in the Key Provisions;
"Losses"	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law;
"Measures"	means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE;
"NHS"	means the National Health Service;
"NHS Body"	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
"NHS Pensions"	means NHS Pensions (being a division of the NHS Business Services Authority) acting on behalf of the Secretary of State as the administrators of the NHS Pension Scheme or such other body as may from time to time be responsible for relevant administrative functions of the NHS Pension Scheme, including the Pensions Division of the NHS Business Services Authority;
"NHS Pension Scheme"	means the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
"NHS Pension Scheme Arrears"	means any failure on the part of the Supplier or any Sub-contractor to pay Authority's contributions or deduct and pay across employee's contributions to the NHS Pension Scheme or meet any other financial obligations under the NHS Pension Scheme or any Direction Letter in respect of the Eligible Employees;
"NHS Pension Scheme Regulations"	means, as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) and any subsequent regulations made in respect of the NHS Pension Scheme, each as amended from time to time;
"Occasion of Tax Non-Compliance"	<p>means:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal</p>

	conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
“Order Form”	means the Order Form (or URN form) submitted by the Authority to Salisbury NHSFT which generates the Order Number for the cohort;
“Order Number”	means the framework order number issued by Salisbury NHSFT for a cohort. This will also become the contract number where a contract is issued for the first time for the particular requirement;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Pension Benefits”	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme;
“Personal Data”	shall have the same meaning as set out in the GDPR;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Premature Retirement Rights”	rights to which any Transferred Staff (had they remained in the employment of an NHS Body or other Authority which participates automatically in the NHS Pension Scheme) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
“Premises and Locations”	has the meaning given under Clause 2.1 of Schedule 10;
“Process”	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the GDPR;
“Purchase Order”	means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 10;
“Services”	means the services set out in this Contract (including, without limitation, the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date;
“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance

	with Clause 20 of Schedule 10 for inclusion in the Authority's services catalogue from time to time;
"Specification and Tender Response Document"	means the document set out in Schedule 6 as amended and/or updated in accordance with this Contract;
"Staff"	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
"Step In Rights"	means the step in rights, if any, referred to in the Key Provisions;
"Sub-contract"	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
Sub-contractor	means a party to a Sub-contract other than the Supplier;
"Subsequent Transfer Date"	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
"Subsequent Transferring Employees"	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
"Successor"	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
"Supplier"	means the supplier named on the form of Contract on the first page;
"Supplier Code of Conduct"	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
"Supplier Personnel"	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
"Term"	means the term as set out in the Key Provisions;
"Termination Notice"	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
"Third Party"	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
"Third Party Body"	has the meaning given under Clause 8.5 of Schedule 10;

"Third Party Employees"	means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
"Transfer Date"	means the Actual Services Commencement Date;
"Transfer Option"	an option given to each Eligible Employee with either: (a) accrued rights in the NHS Pension Scheme; or (b) accrued rights in a Broadly Comparable scheme, as at the Employee Transfer Date, to transfer those rights to the Supplier's (or its Sub-contractor's) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes);
"Transfer Option Deadline"	the first Business Day to fall at least three (3) months after the notice detailing the Transfer Option has been sent to each Eligible Employee;
"Transferred Staff"	means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a Sub-contractor by operation of TUPE, the Cabinet Office Statement or for any other reasons, as a result of the award of this Contract;
"Transferring Employees"	means all those employees, if any, assigned by the Authority to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
"VAT"	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 2.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 2.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 2.4 References in this Contract to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of this Contract.
- 2.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 2.6 Unless set out in the Supplier's Bid Response (Schedule 6) as a chargeable item and subject to Clause 30.5 of Schedule 10, the Supplier shall bear the cost of complying with its obligations under this Contract.

- 2.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 2.8 Words denoting the singular shall include the plural and vice versa.
- 2.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 2.10 Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 6) and any other part of this Contract, such other part of this Contract shall prevail.
- 2.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 2.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 2.13 Any guidance notes in grey text do not form part of this Contract.
- 2.14 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 2.15 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

Schedule 4

Key Performance Indicators and Actions Required – applicable to this Contract.

2.16 Key Performance Indicators (KPI)

Service Performance Indicator (Description)	Frequency	Measure	SERVICE LEVEL PERFORMANCE MEASURE			CONSEQUENCE
			Service Level Pass GREEN	Service Level Warning AMBER	Service Level Fail RED	
Provision of support and cooperation to the Authority to achieve learner outcomes	Monthly	Trust Staff	> 98% achieved	50% - 97% achieved	< 50% achieved	Action plan to move back to Green within one month.
Provide the Authority with regular reporting information to include: <ul style="list-style-type: none"> Progress of learners (actual v's on target) Notification of learners who have not passed and plans to support them Attendance records for all taught sessions 	Monthly	Trust Staff	> 98% achieved	50% - 97% achieved	< 50% achieved	Action plan to move back to Green within one month.
Provide the Authority with results of the mid and end point student evaluations and the actions put in place by the Supplier to address concerns/issues highlighted within the responses.	Quarterly	Trust Staff	> 98% achieved	50% - 97% achieved	< 50% achieved	Action plan to move back to Green within one month.
Attend Contract Management Meetings	Quarterly where requested	Trust Staff	> 98% achieved	50% - 97% achieved	< 50% achieved	Action plan to move back to Green within jointly agreed specified timescales

Key Performance Indicators – Supplier Performance and Timescales

KPI	Title	Description	Requirement
P001	Response to Queries	Respond to an Employer or Apprentice query – acknowledgment of query	Two working days
P002	Query Resolution	Resolve query to Employer’s satisfaction	Five working days or provide explanation for longer timescale
P003	Contract Turnaround	Return signed contract to Employer (DocuSign)	Ten working days from date of receipt from Salisbury
P004	DAS Cohort Addition	Apprentice added / agreed on DAS by Supplier	Ten working days and in all cases prior to Apprentice commencing on programme
P005	Tripartite Meetings	Authority (employer), Supplier and Apprentice tripartite meetings	Must not exceed ESFA timescale or 12 weeks, whichever is the lesser

Schedule 5 (where used)**Authority local Specifications, Terms, or Conditions**

Requirements specific to the named Authority where issued to the Supplier. This Schedule may not always be used.

Document added as Docusign attachment where issued.

Reference Copy not for contracting

Schedule 6

Supplier's Framework or ITT response

Document added as Docusign attachment. Please note where a Supplier has been awarded on a Higher Level procurement (ITT reference starting C.....) the commitments within that bid will automatically apply to all enrolments. Framework response bids (Salisbury reference starting 10.....) may only be used where a Higher Level award to the Supplier has not been made.

Please note this Schedule is included separately within the Docusign envelope which constitutes this Contract.

Schedule 7

Provider Apprenticeship Agreement (embedded document). Contents of this Schedule shall not amend, supersede, or overrule any Term in the preceding Schedules or the Framework Contract, and shall not impose any charge on the employer above the Ifate funding band for the Apprenticeship. Any agreed additional costs (such as external exam fees) must be listed on the URN Order Form prior to enrolment.

Document added as Docusign attachment.

Reference Copy not for contracting