DATED

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NHS EDUCATION AND TRAINING CONTRACT

between

HEALTH EDUCATION ENGLAND

and

C & H Barton Limited

Type Of Services: The Provision of Pre-registration Trainee Pharmacy Technician (PTPT) Training

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N S HEALTH E " UCATION ENGLAND - EDUCATION AND TRAINING CONTRACT

This jontract is d_____

da Parties

HEA TH EDUCATI ENGLAND, whose head office is at 1st Floor, Blenheim House, Dun mbe Street, L s, LS1 4PL, **("HEE");** and

C&HBarton Limite • Whose head office is at 79 Bedford Road, Barton Le Clay, Beds, MK45 4LL (**he "Provider"**,

each Party and to ether, the Parties.

Sign 4**d by th auth • rased representative of HEE**

Nam :

Sign ure:

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Sign d by thel **auth lsed representative of THE PROVIDER**

Nam: At_

Sign ture:

Positi:

Commented [14A11: Do not add the date until both signatures are added.

1 DEFINITIONS

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

"Actual Monthly Value" means for the relevant month, the aggregate of all Funding payments made to the Provider under this contract in respect of all Services delivered in that month (excluding VAT but before any deductions, withholdings or set-off);

"Business **Continuity Event"** means any event or issue that could impact on the operations of the Provider and its ability to provide the Services including an influenza, epidemic, pandemic and any Force Majeure Event;

"Business **Continuity Plan"** means the Provider'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;

"Change Control Process" means the change control process referred to in clause 44 and 45;

"Codes of Practice" shall have the meaning given to the term in paragraph 0 of 0;

"Commencement Date" means the date of this contract;

"Confidential Information" 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:

Personal Data including without limitation which relates to any Learner;

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

Policies and such other documents which the Provider may obtain or have access to through HEE's Intranet;

"Contracting Authority" means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than HEE;

"Contract Management Meeting" means a meeting of HEE and the Provider held in accordance with clause 28;

"Co tract Perform nce Not e"	a notice given by **HEE** to the Provider under clause 27, alleging failure by the Provider to comply with any obligation on its part under this contract; or a notice given by the Provider to **HEE** under clause 27 alleging failure by **HEE** to comply with any obligation on its part under this contract, as appropriate;
"Co troller"	shall have the same meaning as set out in the Data Protection Legislation;
"Co victions"	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);
"CO ID-19"	means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
"Da Loss Event'	means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this contract, and/or actual or potential loss, inaccessibility of and/or destruction of such Personal Data in breach of this contract, including any Personal Data Breach;
"Dat Protection L islation"	means (i) the Data Protection Act 2018; (ii) any European Union laws that relate to data protection or privacy that have been incorporated into UK law following the exit of the UK from the European Union as amended or supplemented from time to time by UK law including but not limited to the UK GDPR (iii) any European Union laws that are applicable in the UK pursuant to Article 71 of the withdrawal agreement between the European Union and the UK (2019/C 384 1/01); and (iv) all applicable Law about the processing of personal information and privacy; and the guidance and codes of practice issued by the Information Commissioner;
"Dat Protection P otocol"	means the protocol contained in 0;
"Dis losure and B rring Se Ice"	means the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012;
"Dis ute(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 Resolution Procedure"	means the process for resolving Disputes as set out in clause 24;
"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;
"EDS2"	means the Equality Delivery System for the NHS - EDS2, being a tool designed to help NHS organisations, in discussion with local stakeholders, to review and improve their equality performance for people with characteristics protected by the Equality Act 2010, and to support them in meeting their duties under section 1 of the Equality Act 2010, available on the NHS England webpage (as may be updated or superseded from time to time);
"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 HEE may specify from time to time;
"Emergency Preparedness, Resilience and Response"	means the emergency preparedness, resilience and response guidance relating to the need to plan for, and respond to, a wide range of incidents and emergencies that could affect health or patient care, issued by NHS England / NHS Improvement and available on the NHS England webpage (as may be updated or superseded from time to time);
"Employed Learner"	means those Learners who are recruited into NHS posts on Programmes leading to statutory or voluntary registration, who are for the duration of their training only employed by a Provider, or another contractually agreed Lead Employer, and for whom HEE may provide a financial contribution;
"eProcurement Guidance"	means the NHS eProcurement strategy available via:

	http://www.gov.uk/govemment/collections/nhs-procurement together with any further Guidance issued by the Department of Health and Social Care in connection with it;
"Eqt ality Legislati	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;
"Ex eption Repo	means a report issued in accordance with clause 32 notifying the relevant Party's Goveming Body of that Party's breach of a Remedial Action Plan and failure to remedy that breach;
"Fo e Majeure Ev nt"	has the meaning given to it in clause 22;
"Electronic Tradin Sysem(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;
"Exi Requiriement	means HEE's exit requirements, as set out in the Service Specification and/or otherwise as part of this contract, which the Provider must comply with during the Term and/or in relation to any expiry or early termination of this contract;
"Exiry Date	means the date delivery of the Services shall end as specified in 0 (Service Specification and Tender Submissions);
"Ex ra-ordinary R view Mee ling"	means a meeting to be held in accordance with clause 37.3;
"FOI	shall have **the** meaning given to the term in paragraph 0 of 0;
	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;
"Fu ding"	means the Funding that is payable to the Provider by **HEE** under the contract for the full and proper performance by the Provider of its obligations under the contract;

"General Anti-Abuse Rule"	means: the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"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 contract, including in accordance with any codes of practice published by relevant trade associations;
"Governing Body"	means in respect of any Party, the board of directors, governing body, executive team or other body having overall responsibility for the actions of that Party;
"Governing Documents"	means a Party's standing orders, scheme of delegation, and standing financial instructions, as may be updated, replaced, or superseded from time to time;
"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 Provider by HEE and/or have been published and/or notified to the Provider by the Department of Health and Social Care, NHS England / Improvement, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the Cabinet Office, HM Treasury, 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;
"HEE Materials"	means all documents, information, items and materials in any form, whether owned by HEE or a third party, which are provided by **HEE to** the Provider in connection with the Services;
"HEE Representative"	**means either a Regional** Director, National Director, regional manager and/or a national manager of HEE;
"HEE Quality Framework"	means the multi-professional education and training quality framework published by HEE in April 2016 and as amended thereafter from time to time, measuring the

quality of education and training across learning environments in England;

"HMI Government 9yber Ess ntials Schem means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this published at:

https://www.gov.uk/govemment/publications/cyber-essentials-scheme-overview;

means the Human Rights Act 1998;

"Im **ediate Action Plan"** means a plan setting out immediate actions to be undertaken by the Provider to protect the safety of Services to Learners, Service Users, the public and/or Staff;

"Im lementation Req irements" means I-IEE's implementation and mobilisation requirements (if any), as may be set out in the Service Specification which the Provider must comply with as part of implementing the Services;

"insolvency Event means the occurrence of any of the following events in respect of the Provider: (i) the Provider being, or being deemed for the purposes of any applicable Laws or Guidance to be, unable to pay its debts or insolvent; (ii) the Provider admitting its inability to pay its debts as they fall due; (iii) the value of the Provider's assets being less than its liabilities taking into account contingent and prospective liabilities; (iv) the Provider suspending payments on any of its debts or announces an intention to do so; (v) by reason of actual or anticipated **financial** difficulties, the Provider commencing negotiations with creditors generally with a view to rescheduling any of its indebtedness; (vi) a moratorium is declared in respect of any of the Provider's indebtedness; (vii) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Provider; (viii) a composition, assignment or arrangement with any creditor of any member of the Provider; (ix) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Provider or any of its assets; (x) a resolution of the Provider or its directors is passed to petition or apply for the Provider's winding-up or administration; (xi) the Provider's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court of otherwise); or (xii) if the Provider

	suffers any event analogous to the events set out in (i) to (xi) of this definition in any jurisdiction in which it is incorporated or resident;
"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;
"JI Report"	**means** a report detailing the findings and outcomes of a Joint Investigation;
"Joint Investigation"	**means** an investigation into the matters referred to in a Contract Performance Notice in accordance with clause 29;
"KPI"	**means the key performance indicators as** set out in 0;
"Law"	**means any applicable legal requirements including, without limitation:** any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; any 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) retained in UK law following the exit of the UK from the European Union; any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; requirements set by any regulatory body as applicable in England and Wales; any relevant code of practice as applicable in England and Wales; and any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
"Learner"	means those individuals enrolled on a Programme of education I training to be supplied pursuant to this contract by the Provider as part of the Services;
"Lead Employer	**means a third party whom it is agreed will act as employer of Staff or Learners;**
"Local Counter Fraud nominated Specialist°	**the accredited local counter fraud specialist** by HEE;

" L o r g Stop Date"	**means the date 3 months following the Services Commencement Date;**
" L o ses"	**means 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 as set out in clause 13.1 of this contract;**
"Nat onal D recto	**means a person with delegated authority from HEE for and on behalf of HEE on a national basis;**
" N H	**means the National Health Service;**
" N H Brand"	**means the name and logo of the NHS and any other names, logos and graphical presentations as held by the Secretary of State required to be used in connection with the provision of the Services;**
"NH Branding G delines"	**means NHS brand policy and guidelines, as revised, updated or re-issued from time to time by NHS England and/or the Department of Health and Social Care, and which are available on the NHS England webpage (as may be updated or superseded from time to time);**
"NH CFA"	**means the NHS Counter Fraud Authority, the special health authority charged with identifying, investigating and preventing fraud and other economic crime within the NHS and the wider health group;**
"Occasion of n- Tax Co pliance'	**means:** **any tax return of the Provider 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:** **a Relevant Tax Authority successfully challenging the Provider 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;** **the failure of an avoidance scheme which the Provider 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** **any tax return of the Provider 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;**

"Party"	**means** HEE or the Provider as appropriate and Parties means both HEE and the Provider,
"Personal Data"	shall have the same meaning as set out in the Data Protection Legislation;
"Personal Data Breach"	shall have the same meaning as set out in the Data Protection Legislation;
"Policies"	means the policies, rules and procedures of HEE as provided to the Provider from time to time;
"Premises and Locations"	has the meaning given under clause 6.1;
"Process"	shall have the same meaning as set out in the Data Protection Legislation. Processing and Processed shall be construed accordingly;
"Processor	shall have the same meaning as set out in the Data Protection Legislation;
"Programme"	**any programme as** identified in 0;
"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;
"Provider	means the supplier named at the top of this contract on the first page;
"Provider Outputs"	means any output of the Services to be provided by the Provider to HEE as specified in 0 and any other documents, products and materials provided by the Provider to HEE in relation to the Services;
"Previous Contract"	means a contract between HEE and the Provider for the delivery of services which are the same or substantially the same as the Services, the term of which immediately precedes the Term;
"Provider Personnel"	**means any employee, agent, consultant and/or contractor of the Provider or Sub-contractor who is either partially or fully engaged in the performance of** the Services;
"Provider Representative"	means such person with delegated authority to act on behalf of the Provider as notified by the Provider to HEE from time to time in accordance with clause 8.1.4;

"Pu chase Order"	means the purchase order required by HEE's commercial governance systems (if applicable);
"Qu lity an Perfc ance Req ireme i ts"	means the requirements set out in 0;
Re ional Director	means the person with delegated authority from HEE to act for and on behalf of **HEE** within any given Region;
"Re ion"	means any one or more of the seven (7) **HEE** geographical regions which are set out as follows: (i) Midlands, (ii) East of England, (iii) London, (iv) North East and Yorkshire, (v) North West, (vi) South East, (vii) South West;
"Rel vant Tax Aut ority"	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Provider is established;
Re edial Action an"	means a plan to rectify a breach of or performance failure under this contract (or, where appropriate, a Previous Contract in accordance with the terms of such Previous Contract), specifying actions and improvements required, dates by which they must be achieved and consequences for failure to do so, as further described in clause 30;
"Residual Contract Period"	means the period after this contract expires or is terminated in accordance with its terms, during which the Provider is required (pursuant to the provisions of clauses 16.3 and 16.4 of this contract) to complete the Programme of education I training of Learners enrolled on such Programmes of education / training under this contract and all other relevant activity;
"Re iew Meeting"	means a meeting to be held in accordance with clause 37 at the intervals set out in clause 37 or as otherwise requested in accordance with clause 37;
"Se ice User"	means a patient or service user for whom a Provider has statutory responsibility;
"Seices"	means the services set out in Part 2 of 0 of this contract and including, without limitation, Part 1 of 0 which sets out the requirements of **HEE** as issued to tenderers as part of the procurement process and the Provider's response to these requirements;
"Se ices **Comme cement Dat**	means the date delivery of the Services shall commence as specified in 0 (Service Specification and Tender Submissions). If no date is specified in 0 (Service Specification and Tender Submissions) this date shall be the Commencement Date;

"Service Development and Improvement Plan or SDIP"	means an agreed plan setting out improvements to be made by the Provider to the Services (which may comprise or include any Remedial Action Plan agreed in relation to a Previous Contract);
"Services Information"	means information concerning the Services as may be reasonably requested by HEE and supplied by the Provider to HEE in accordance with clause 19 of this contract;
"Service Specification"	means the information set out in Part 2 of 0;
"Staff"	means all persons employed or engaged by the Provider to perform its obligations under this contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
"Sub-contract"	means any sub-contract entered into by the Provider or by any Sub-contractor of any level for the purpose of the performance of any obligation on the part of the Provider under this contract;
"Sub-contractor"	means any sub-contractor, whether of the Provider itself or at any further level of sub-contracting, under any Sub-contract;
"Term"	means the term set out in clause 2.1;
"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 Body"	has the meaning given under clause 9.11 of this contract;
"UK GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended or supplemented from time to time by UK law
"VAT"	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax;
"WRES"	means the NHS Workforce Race Equality Standard.

Clause, Schedule and paragraph headings shall not affect the interpretation of this contract.

A **pe on** incl es a atural person, corporate or unincorporated body (whether or not sepa to lega perso having ality).

The chedut f o r m part of this contract and shall have effect as if set out in full in the of thi contra A n y body eference to this contract includes the Schedules.

A reference t a **co** wherver and howe **,any** shall include any company, corporation or other body corporate, ,incorporated or established.

Unless the context o herwise requires, words in the singular shall include the plural and plural shall include ti in the e singular.

Unle s the context o herwise requires, a reference to one gender shall include a reference to the o er genders.

This ontract shall binding on, and endure to the benefit of, the parties to this contract and their bi espective nal representatives, successors and permitted assigns, and references to an pers Party ude that Party's personal representatives, successors and permitted assig shall i s.

A ref from rence to any g idance or policy is a reference to it as amended, superseded, or replaced ime to tiine.

A ref rence to a stat to or statutory provision is a reference to it as amended, extended or red enact from time to time.

A reference ti a sta tote or statutory provision shall include ail subordinate legislation from Ume to ti made e un er that statute or statutory provision.

Unle s the ntext erwise requires, any reference to European Union law that is directly appli able or rectly ective in the UK at any time is a reference to it as it applies in England to and ales f,cm tin vise time including as retained, amended, extended, re-enacted or on or after other giv@n effe 11pm on 31 January 2020.

A ref rence to **writl or written** includes either letter or email only.

Any bligation on a arty not to do something includes an obligation not to allow that thing to be do e.

A ref rence to **this ontract or to** *any* other contract or document referred to in this contract is a r ference of this ntract or such other contract or document, in each case as varied from time time.

Ref nces to claus and Schedules are to the clauses and Schedules of this contract e and nces to 'parag phs are to paragraphs of the relevant Schedule. refer

Any ords following he terms **including, include, in particular, for example** or any expr sion shall be similar construed as illustrative and shall not limit the sense of the desc ption, **de**finition words, , phrase or term preceding those terms.

2 I COMIIiIENCEMENTAND DURATION

2.1 This c ntract hall commence on the Commencement Date and shall continue, unless termin ted e rlier in accordance with clause 15, or until the Expiry Date (or the expiry

date of any Extended Term in accordance with clause 2.2 and Schedule 1) when this contract shall terminate automatically without notice (the "Term").

2.2 The Term may be extended in accordance with 0 provided the Services have commenced before the Long Stop Date. The Term shall include the Initial Term and, where applicable, any Extended Term agreed between the Parties in accordance with Schedule 1.

2.3 The Provider shall provide or procure the provision of the Services to HEE from the Services Commencement Date as specified in 0.

2.4 For the avoidance of doubt, there is no automatic roll-over of this contract on expiry or termination of the Term.

2.5 Where this contract is used to facilitate an initial pilot project, the contract shall not be extended in accordance with clause 2.2 and 0.

2.6 The Parties acknowledge that the Staff of the Provider (and the Provider) are not acting as agents of HEE when carrying out the Services.

3 PROVIDER'S WARRANTIES

3.1 The Provider warrants, represents and undertakes that:

3.1.1 it has full power and authority to enter into this contract and to deliver the Services, and that all necessary approvals and consents have been obtained and are in full force and effect;

3.1.2 the execution of this contract does not and shall not contravene or conflict with its Governing Documents or any legal obligations (including under contract) to which it is subject;

3.1.3 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;

3.1.4 any information provided by the Provider is in all material respects accurate and not misleading, and since its provision there has not been any material change to that information or to the Provider's position or developments that would have adversely affected the decision of a reasonable public sector funder to fund the Services substantially on the terms of this contract;

3.1.5 to the best of its knowledge, nothing shall have, or is likely to have, a material adverse effect on its ability to deliver the Services (assuming receipt of the Funding); and it has, and shall maintain, adequate insurances in respect of the Services;

3.1.6 unless otherwise set out in the Services 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;

3.1.7 receipt of the Services by or on behalf of HEE and use of the Provider Outputs or of any other item or information supplied or made available to HEE as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;

3.1.8 it and shall maintain a properly documented system of quality controls an processes covering all aspects of its obligations under this contract an or under Law and/or Guidance and shall at all times comply with such qu Ity controls and processes;

3.1.9 its all not make any significant changes to its system of quality controls and pr cesses in relation to the Services without notifying HEE in writing at least tw rity one (21) Business Days in advance of such change (such notice to inc ude the details of the consequences which follow such change being im lemented);

3.1.10 wit out prejudice to any specific notification requirements set out in this cot act, it will promptly notify HEE of any health and safety hazard which ha arisen, or the Provider is aware may arise, in connection with the performance of the Services and take such steps as are reasonably ne essary to ensure the health and safety of persons likely to be affected by su h hazards;

3.1.11 unl ss otherwise confirmed by HEE in writing (to include, without limitation, as part of the Service Specification), it will ensure that any products pu hased by the Provider partially or wholly for the purposes of providing th Services will comply with requirements five (5) to eight (8), as set out in An ex 1 of the Cabinet Office Procurement Policy Note - Implementing Art de 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014) (a supplemented by procurement policy note 01/15: implementing Energy E lency Directive article 6: further information), to the extent such re irements apply to the relevant products being purchased;

3.1.12 it s all at all times conduct its business in a manner that is consistent with an anti-slavery policy of HEE and shall provide to HEE any reports or other inf rmation that HEE may request as evidence of the Provider's compliance wit this;

3.1.13 it ll fully and promptly respond to all requests for information and/or reg psts for answers to questions regarding this contract, the provision of the Services, any complaints and any Disputes at the frequency, in the tim frames and in the format as requested by HEE from time to time (acting re onably);

3.1.14 all nformation included within the Provider's responses to any documents iss ed by HEE as part of the procurement relating to the award of this co tract (to include, without limitation, as referred to in the Schedules) and all ccompanying materials is accurate;

3.1.15 all Necessary actions to authorise the execution of and performance of its obl dations under this contract have been taken before such execution;

3.1.16 the e are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the fin ncial condition, business or operations of the Provider;

3.1.17 the e are no material agreements existing to which the Provider is a party wh ch prevents the Provider from entering into or complying with this co tract;

3.1.18 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this contract;

3.1.19 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;

3.1.20 all information, data and other records and documents required by HEE as set out in the Services shall be submitted to HEE in the format and in accordance with any timescales set out in the Schedules;

3.1.21 it shall comply with the eProcurement Guidance as it may apply to the Provider and shall carry out all reasonable acts required of the Provider to enable HEE to comply with such eProcurement Guidance, to the extent the same applies to HEE;

3.1.22 as at the Commencement Date, it has notified HEE 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 Provider shall:

(i) notify HEE in writing of such fact within five (5) Business Days of its occurrence; and promptly provide to HEE:

(A) details of the steps which the Provider 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

(B) such other information in relation to the Occasion of Tax Non-Compliance as HEE may reasonably require;

3.1.23 it will inform HEE in writing immediately within one (1) Business Day upon becoming aware that any of the warranties set out have been breached or there is a risk that any warranties may be breached.

3.2 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.

4 PROVIDER'S RESPONSIBILITIES

4.1 The Provider shall manage and supply the Services in accordance with this contract in all material respects.

4.2 The Provider shall meet the Milestones specified in 0.

4.3 The Provider shall appoint a manager for the Services, such person as identified in 0. That person shall have authority to contractually bind the Provider on all matters relating to the Services. The Provider shall use all reasonable endeavours to ensure that the same person acts as the Provider's manager throughout the term of this contract, but may replace that person from time to time where reasonably necessary in the interests of the Provider's business.

4.4 The Provider shall ensure they attend and prepare as necessary for any Review Meetings convened under clause 37 of this contract, and shall acknowledge a request

from I1pE to hold a Review Meeting or an Extra-ordinary Review Meeting within three (3) B Siness Days.

4.5 The Provider shall provide the Services:

4.5.1 in accordance with the terms of this contract;

4.5.2 wit all due skill care and diligence using appropriately experienced, qu I fled and trained personnel;

4.5.3 in ccordance with Good Industry Practice and more particularly the HEE Qu ity Framework;

4.5.4 in ccordance with regulatory requirements of any Regulator in respect of th Services;

4.5.5 in ompliance with applicable Laws and Guidance (including the holding and m ntaining of all necessary licences, authorisations consents, ac reditations, and permissions in order to ensure compliance in all respects wit its obligations under this contract);

4.5.6 using all reasonable endeavours to ensure that it does not do, and to procure thanone of its employees, directors, officers or agents does, anything that madamage the name, reputation or goodwill of HEE or the NHS in any material respect; and

4.5.7 in anner which does not infringe the Intellectual Property Rights of any thi (canner arty.

4.6 I The Provider shall ensure invoices are sent to HEE in a timely fashion, in accordance with 0 '

4.7 The P r:i vider shall comply with the Implementation Requirements in accordance with any timesca! s as may be set out in **0.**

4.8 The Provide shall comply fully with its obligations set out in this contract, including without limita ion any KPIs in 0 and all obligations contained in this contract in relation to the quality performance, characteristics, supply and delivery of the Services.

4.9 If the Service or any part of them, are regulated by any Regulator, the Provider shall ensure I that 1 the Commencement Date in clause 2 it has in place all relevant registria,tions nd shall maintain such registrations during the Term.

4.10 The Provider shall notify HEE in writing within two (2) Business Days of any changes to such regis tion or any other matter relating to its registration that would affect the delive' ı or th quality of Services.

4.11 The P7 vider shall notify HEE in writing within two (2) Business Days of the Provider ti:. becoming a 'e of any such failure:

4.11.1 of ny pending inspection of the Services, or any part of them, by a Regulator immediately upon the Provider becoming aware of such inspection; and

4.11.2 of t1e Services, or any part of them, to meet the quality standards required by Regulator.

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.

4.12 Following any inspection of the Services, or any part of them, by a Regulator, the Provider shall provide HEE with a copy of any report, or other communication published or provided by the relevant Regulator, within two (2) Business Days, in relation to the provision of the Services.

4.13 Upon receipt of notice, or any report or communication pursuant to this clause 4, HEE shall be entitled to request further information from the Provider and/or a meeting with the Provider, and the Provider shall cooperate fully with any such request.

4.14 The Provider shall ensure that its Provider Representative informs HEE Representative in writing within forty eight (48) hours upon:

4.14.1 becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or

4.14.2 the Provider Representative having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred.

4.15 The Provider shall ensure that the Provider *Representative* informs HEE Representative in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.

4.16 The Provider 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 HEE. To qualify for such relief, the Provider must notify HEE promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of HEE together with the potential impact on the Provider's obligations.

4.17 Subject to the requirements of this contract and any Law, the Provider shall be entirely responsible for the employment and conditions of service of Staff. The Provider shall ensure that such conditions of employment are consistent with its obligations under this contract.

4.18 The Provider will at all times during the contract employ a sufficient number of appropriately trained, qualified, experienced and skilled Staff to ensure that it complies with its obligations under this contract. This will include, but not be limited to, the Provider providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.

4.19 The Provider 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 0 or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Provider shall be subject to the prior written approval of HEE, such approval not to be unreasonably withheld or delayed.

4.20 The Provider shall ensure that all Staff are aware of, and at all times comply with, the contract.

4.21 The Provider shall:

4.21.1 emp oy only those Staff who are careful, skilled and experienced in the du es required of them;

4.21.2 enure that every member of Staff is properly and sufficiently trained and ins cted;

4.21.3 en **re** all Staff have the qualifications to carry out their duties;

4.21.4 ma r ain throughout the Term all appropriate licences and registrations with an relevant bodies (at the Providers expense) in respect of the Staff; and

4.21.5 en re all Staff comply with such registration, continuing professional de elopment and training requirements or recommendations appropriate to the r role including those from time to time issued by the Department of He Ith and Social Care or any relevant Regulator or any industry body in rel **ton** to such Staff.

4.22 The Provide 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 condifion whi h is known to, or does potentially, place the health and safety of HEE's staff, Learne Service Users or visitors at risk unless otherwise agreed in writing with HEE.

4.23 The Provide shall ensure that all potential Staff or persons performing any of the

perso rece ng health care services:
childr n or of Pr vulnerable persons and/or have access to or come into contact with

r q 4.23.1 uestioned concerning their Convictions; and

4.23.2 obta n appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Prcvider engages the potential staff or persons in the provision of the Sermces.

4.24 The Provide shall take all necessary steps to ensure that such potential staff or n persons obta standard and enhanced disclosures from the Disclosure and Barring her Service' (or o appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Provider's cost and expense.

4.25 The Provider hall ensure that no person is employed or otherwise engaged in the provis on of th Services without HEE's prior written consent if:

4.25.1 the person has disclosed any Convictions upon being questioned about their Co =bons;

4.25.2 the person is found to have any Convictions following receipt of standard anc /pr enhanced disclosures from the Disclosure and Barring Service (or r oth appropriate body); or

4.25.3 the person fails to obtain standard and/or enhanced disclosures from the Dis losure and Barring Service (or other appropriate body) upon request by the Provider.

4.26 The Provider shall ensure where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Provider:

4.26.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;

4.26.2 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

4.26.3 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 Learners or any other person.

4.27 The Provider shall ensure that HEE 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 Provider 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 Learners, Service Users, or any other person. The Provider shall only be entitled to continue to engage or employ such member of Staff with HEE's written consent and with such safeguards being put in place as HEE may reasonably request. Should HEE withhold consent the Provider shall remove such member of Staff from the provision of the Services forthwith.

4.28 The Provider shall immediately provide to HEE any information that HEE reasonably requests to enable HEE to satisfy itself that the obligations set out in this clause 4 have been met.

4.29 HEE may at any time request that the Provider remove and replace any member of Staff from the provision of the Services, provided always that HEE will act reasonably in making such a request. Prior to making any such request HEE shall raise with the Provider HEE's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. HEE shall be under no obligation to have such prior discussion should HEE have concerns regarding Learner or Service User safety.

4.30 The relationship of the Provider to HEE will be that of independent contractor and nothing in this contract shall render the Provider (or any of its Staff) an employee, worker, agent, partner or member of HEE and the Provider shall not hold itself out as such. This contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Provider shall be fully responsible for and shall indemnify HEE for and in respect of:

4.30.1 any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services. The Provider shall further indemnify HEE against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by HEE in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

4.30.2 an iability arising from any employment-related claim or any claim based on orker status (including reasonable costs and expenses) brought by the Pr vider (or a member of its Staff) against HEE arising out of or in connection wit the provision of the Services.

4.31 Unless othe se confirmed by HEE in writing, the Provider shall ensure full compl ance (ci include with any implementation timelines) with any Guidance issued by the Depa ent of Health and Social Care and/or any requirements and/or Policies issued by H E (to include as may be set out as part of any procurement documents leading, to th laward of this contract) in relation to the adoption of, and compliance with, any sch me or schemes to verify the credentials of Provider Representatives that visit N S pre ises.

4.32 Once €mpli rice with any notified implementation timelines has been achieved by the Provi r, the rovider shall, during the Term, maintain the required level of compliance in acc rdanc With any such Guidance, requirements and Polices.

4.33 The Provider shall use reasonable endeavours to ensure its Business Continuity Plan operates effe c$lvely alongside HEE's business continuity plan where relevant to the e provision of t Services. The Provider shall also ensure that its Business Continuity on Plan complies an ongoing basis with any specific business continuity requirements out in as mat, be se the Service Specification.

4.34 Throu hout tl e Term, the Provider will ensure its Business Continuity Plan provides for co tinuity during a Business Continuity Event. The Provider confirms and agrees such Busines Continuity Plan details and will continue to detail robust arrangements that are, reasc able and proportionate to:

4.34.1 the criticality of this contract to HEE; and

4.34.2 the ize and scope of the Provider's business operations,

regarding co nuity of the provision of the Services during and following a Business Continuity E nt.

4.35 The Pr vider shall test its Business Continuity Plan at reasonable intervals, and in any event o les than once every twelve (12) months or such other period as may be en agreed betw the Parties taking into account the criticality of this contract to HEE and and the size scope of the Provider's business operations. The Provider shall ide to promptly pro HEE, at HEE's written request and within ten (10) Business Days, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that Provider tests its Business Continuity Plan in accordance with the of this requirements contract and reasonable and proportionate information regarding such the outcome tests.

4.36 The Provide shall provide to HEE a copy of any updated or revised Business Contiliuity Pl within ten (10) Business Days of any material update or revision Busin ss Co to the nutty Plan.

4.37 HEE may s ggest reasonable and proportionate amendments to the Provider regarding th Business Continuity Plan at any time. Where the Provider, acting reasonably, the Provider such suggestions made by HEE to be relevant and appropriate, made by HEI incorporate into the Business Continuity Plan all such suggestions in respect of such Business Continuity Plan. Should the Provider not

incorporate any suggestion made by HEE into such Business Continuity Plan it will explain the reasons for not doing so to HEE.

4.38 Should a Business Continuity Event occur at any time, the Provider shall implement and comply with its Business Continuity Plan and provide regular written reports to HEE on such implementation.

4.39 During and following a Business Continuity Event, the Provider shall use reasonable endeavours to continue to provide the Services in accordance with this contract.

5 HEE'S RESPONSIBILITIES

5.1 HEE shall:

5.1.1 co-operate and adopt a partnership approach with the Provider in all matters relating to the Services;

5.1.2 appoint a manager for the Services, to work with the HEE Representative. Only the HEE Representative shall have the authority to contractually bind HEE on matters relating to the Services;

5.1.3 arrange Contract Management Meetings in accordance with clause 28;

5.1.4 arrange Review Meetings in accordance with clause 37;

5.1.5 provide to the Provider in a timely manner all documents, information, items and materials in any form (whether owned by HEE or third party) required under 0 or otherwise reasonably required by the Provider in connection with the Services and ensure that they are accurate and complete in all material respects;

5.1.6 ensure any formal communication under this contract is responded to within three (3) Business Days and which includes agreement for a detailed response within a reasonable timeframe;

5.1.7 provide the Funding in accordance with 0 on receipt of a valid invoice;

5.1.8 ensure that the Provider has access to the **HEE** Quality Framework;

5.1.9 engage with other relevant national bodies, government, Regulators, and arm's length bodies to review the performance and suitability of the Provider to undertake education and training for HEE;

5.1.10 support the Provider throughout their engagement of the Services, and ensure collaborative and partnership practice is enabled for the healthcare system, with the Provider, and

5.1.11 enable, so far as reasonably possible, the sharing of best practice for all providers for the purpose of innovation and transformation of the NHS workforce, either current or future.

5.2 If the Provider's performance of its obligations under this contract is prevented or delayed by any act or omission of HEE, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the

Provi qr shal be allowed a proportionate extension of time to perform its obligations equal b the lay caused by HEE.

5.3 HEE shall pr vide the Provider with any reasonable and proportionate cooperation necessary to liable the Provider to comply with its obligations under this contract. The Provider sha at all times provide reasonable advance written notification to HEE of any such coo eration necessary in circumstances where such cooperation will require HEE to plan f r and/or allocate specific resources in order to provide such cooperation.

6 I PREMISES, OCATIONS AND ACCESS

4 6.1 The Service hall be provided at such premises and at such locations within those by the Parties in writing **("Premises and Locations").**

premises as if

6.2 Subject to th provider and its Staff complying with all relevant policies applicable to such pnamis and Locations, HEE shall (where the Premises and Locations are those of HE gran reasonable access to the Provider and its Staff to such Premises and Locati s to nable the Provider to provide the Services.

6.3 Any ac ess ranted to the Provider and its Staff under this clause 6 shall be non-exclua e an revocable. Such access shall not be deemed to create any greater rights or inter st th h so granted (to include, without limitation, any relationship of landlord t i and tenant) i the Premises and Locations. **The** Provider warrants that it shall carry out all such reas nable further acts to give effect to this.

6.4 Where it is p ovided for by a specific mechanism set out in 0, **HEE** may increase, reduce or o erwise vary the Premises and Locations in accordance with such mechanism.

6.5 Any variation to the Premises and Locations where the Services are to be provided shall tie agr by the Parties in accordance with the Change Control Process. If agreeMent !mot be reached the matter shall be referred to, and resolved in accordance th, the Dispute Resolution Procedure.

7 COOPERATION WITH THIRD PARTIES

7.1 The P ovider all, as reasonably required by HEE, cooperate with any other service provides to E and/or any other third parties as may be relevant in the provision of the Se ices.

8 USE Q HE QUIPMENT

8.1 Unless other se set out in 0 or otherwise agreed by the Parties in writing, any equipment or other items provided by HEE for use by the Provider:

8.1.1 shall be provided at HEE's sole discretion;

8.1.2 sh II be inspected by the Provider in order that the Provider can confirm to its easonable satisfaction that such equipment and/or item is fit for its int ded use and shall not be used by the Provider until it has satisfied itself of t is;

8.1.3 mu t be retumed to HEE within any agreed timescales for such return or oth rwise upon the request of HEE; and

8.1.4 shall be used by the Provider at the Provider's risk and the Provider shall upon written request by HEE reimburse HEE for any loss or damage relating to such equipment or other items caused by the Provider (fair wear and tear exempted).

9 CONTRACT MANAGEMENT

9.1 The Provider shall appoint and retain a Provider Representative and HEE shall appoint and retain a HEE Representative who shall be the primary point of contact for the other Party in relation to matters arising from this contract.

9.2 Should either the HEE Representative or the Provider Representative be replaced, the Party replacing the HEE Representative or the Provider Representative (as applicable) shall promptly inform the other Party in writing of the name and contact details for the new HEE Representative or Provider Representative. Any HEE Representative or the Provider Representative appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the contract.

9.3 The Provider confirms and agrees that it will be expected to work closely and cooperate fully with the HEE Representative.

9.4 Each Party shall ensure that its representatives (to include, without limitation, the HEE Representative and the Provider Representative) shall, attend Review Meetings in accordance with clause 37.

9.5 Each Party shall ensure that those attending such meetings have authority to make decisions regarding the day to day operation of the contract.

9.6 Ten (10) Business Days prior to each Review Meeting the Provider shall provide a written contract management report to HEE 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:

9.6.1 details of the performance of the Provider when assessed in accordance with the KPIs in 0;

9.6.2 details of any complaints, their nature and the way in which the Provider has responded to such complaints since the last review meeting written report;

9.6.3 the information specified in the Services;

9.6.4 a status report in relation to the implementation of any current Remedial Action Plan by either Party; and

9.6.5 such other information as reasonably required by HEE.

9.7 Unless specified otherwise in the Services, HEE shall take minutes of each Review Meeting and shall circulate draft minutes to the Provider within five (5) Business Days following such Review Meeting.

9.8 The Provider shall inform HEE in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes.

9.9 If the Provider does not respond to HEE within such five (5) Business Days the minutes will *be* deemed to be approved.

9.10 Where they are any differences in interpretation of the minutes, the Parties will use their reason ble endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

9.11 The Provide shall provide such management information as HEE may request from time i time thin five (5) Business Days of the date of the request. The Provider shall suppl the anagement information to HEE in such form as may be specified by HEE and, livhere equested to do so, the Provider shall also provide such management information o another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, fothe purposes of analysing public sector expenditure and planning future proctirmen activities) **("Third Party Body").**

9.12 The Pi rovide confirms and agrees that HEE may itself provide the Third Party Body with manag tment information relating to the Services purchased, any Funding er this provided unc contract, and any other information relevant to the operation of this **contract.**

9.13 I **Upon raceip** of management information supplied by the Provider to HEE and/or the Third Party ody, or by HEE to the Third Party Body, the Parties hereby consent to Third Party the ody and HEE:

9.13.1 st nng and analysing the management information and producing statistics; an

9.13.2 sh ring the management information or any statistics produced using the m nagement information with any other Authority.

9.14 If the Third arty Body and/or HEE shares the management information or any other information rovided under clause 9.13, any Authority receiving the management hall, information where such management information is subject to obligations of der this confidence ui contract and such management information is provided direct by **HEE to** such Authority, be informed of the confidential nature of that information by aII HEE **and** sh be requested by HEE not to disclose it to anybody that is not an ess Authoity (un required to do so by Law).

9.15 HEE may ma Ice changes to the type of management information which the Provider is required to s poly and shall give the Provider at least one (1) month's written notice of any changes

10 FUNDING

10.1 The Funding **hall be calculated as set** out in 0.

10.2 Unlesr-othe se stated in **0** the Funding:

10.2.1 sh I be payable from the Services Commencement Date;

10.2.2 sh I remain fixed during the Term; and

10.2.3 is the entire Funding payable by HEE to the Provider in respect of the SerVices and includes, without limitation, any licence fees, supplies and all cor sumables used by the Provider, travel costs, accommodation expenses,

the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.

10.3 Unless stated otherwise in 0:

10.3.1 the Funding profile for this contract is monthly in arrears, the Provider shall invoice HEE, within fourteen (14) Business Days of the end of each calendar month, the Funding in respect of the Services provided in compliance with this contract in the preceding calendar month; or

10.3.2 where clause 10.3.1 does not apply, the Provider shall invoice HEE for Services at any time following completion of the provision of the Services in compliance with this contract.

10.4 Each invoice shall contain such information of the Services delivered, including the Purchase Order number and be addressed to such individual as HEE may inform the Provider from time to time.

10.5 The Funding is exempt and exclusive of VAT. Which under normal circumstances is not chargeable to HEE.

10.6 Where HEE agree in advance to pay VAT, HEE shall pay at the prevailing rate subject to receipt from the Provider of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

10.7 HEE shall verify and pay each valid and undisputed invoice received within thirty (30) Business Days of receipt of such invoice at the latest. However, HEE shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.

10.8 Where HEE raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) Business Days of the query being raised. No interest is permitted to be added to a future invoice.

10.9 If the Parties are unable to agree a resolution within thirty (30) Business Days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. No interest is permitted to be added to a future invoice.

10.10 HEE shall not be in breach of any of any of its Funding obligations under this contract in relation to any queried or disputed invoice sums unless the process referred to in this clause 10 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Provider and HEE has then failed to pay such sum within a reasonable period following such determination.

10.11 The Provider shall pay to HEE any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Funding) that may become due in accordance with the provisions of the Services. For the avoidance of doubt, HEE may invoice the Provider for such sums or deductions at any time in the event that they have not automatically been credited to HEE in accordance with the provisions of the Service Specification. Such invoices shall be paid by the Provider within thirty (30) Business Days of the date of such invoice.

10.12 HEE reserves the right to adjust:

10.12 1 arty monies due to the Provider from HEE as against any monies due to HEE fr 7, the Provider under this contract; and

10.12 2 a monies due to HEE from the Provider as against any monies due to the Pr vider from HEE under this contract.

10.1 Where HEE is entitled to receive any sums (including, without limitation, any costs, charts or xpenses) from the Provider under this contract, HEE may invoice the Provi er for uch sums. Such invoices shall be paid by the Provider within thirty (30) Business D 's of the date of such invoice.

11 INT4LECT AL PROPERTY

11.1 Except as s t out expressly in this contract no Party shall acquire the Intellectual Property Rig Is of any other Party.

11.2 The PII confirms and agrees that ail Intellectual Property Rights in and to the Provider Out uts, Services, materials and any other output developed by the Provider as part of th Services shall be owned by HEE.

11.3 The Provide hereby assigns with full title guarantee by way of present and future assignment I Intellectual Property Rights in and to such Provider Outputs, Services, materials and other outputs to HEE.

11.4 The Rrpvideri shall ensure that all Staff assign any Intellectual Property Rights they may ve in the Provider and to such Provider Outputs, Services, materials and other outputs to o waive their give effect to clause 11.3 and that such Staff absolutely and irrevocably other ittput oral rights in relation to such Provider Outputs, Services, materials and

11.5 This clause

is hereby granted a non-exclusive, non-transferable, royalty-free, non- right and licence to use all Intellectual Property Rights assigned ause 11.3 for academic and research purposes, including research ects funded by third parties provided that no third party shall gain any such Intellectual Property Rights.

ance of doubt, the Provider is not granted any permission to use any operty

11.6 The Provide Rights licenced to it in accordance with clause 11.6 for commercial sublicensabk pursuant to

11.8 AllIntellectua I Property Rights used or owned by a Party prior to the Commencement Date rack round IP") are and shall remain the exclusive property of the Party (or, ownin them where applicable, the third party from whom its right to use the P has Background I derived).

11.9 Each Party rants to the other a, royalty-free, non-exclusive licence to use its for the Backg round I sole purpose of developing and delivering the Services but for ose. no other purr Neither Party shall be entitled to grant any sub-licence over or in other respect of th Party's Background IP.

11.10 The 4ovider

11.10.1 shall indemnify **HEE** in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by HEE arising out of or in connection with any claim brought against **HEE** for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Provider Outputs; and

11.10.2 shall not be in breach of the warranty at clause 3.1.7, and **HEE** shall have no claim under the indemnity at clause 11.10.1, to the extent the infringement arises from:

the use of **HEE** Materials in the development of, or the inclusion of HEE Materials in any Provider Output;

any modification of the Provider Outputs or Services, other than by or on behalf of the Provider, and

compliance with HEE's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Provider shall notify **HEE** if it knows or suspects that compliance with such specification or instruction may result in infringement.

11.11 HEE:

warrants that the receipt and use of HEE Materials in the performance of this contract by the Provider, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

11.11.2 shall indemnify the Provider in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Provider arising out of or in connection with any claim brought against the Provider, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of this contract of HEE Materials.

11.12 If either Party (the **"Indemnifying Party")** is required to indemnify the other Party (the **"Indemnified Party")** under this clause **11,** the Indemnified Party shall:

11.12.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 11.10.1 or clause 11.11.2 (as applicable) ("IPRs Claim");

11.12.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

11.123 pr iide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to bursement rei by the Provider of the Indemnified Party's costs so incurred;
an

11.12 no , without prior consultation with the Indemnifying Party, make any ad ission relating to the IPRs Claim or attempt to settle it, provided that the In emnifying Party considers and defends any IPRs Claim diligently, using co npetent counsel and in such a way as not to bring the reputation of the Inc emnified Party into disrepute.

12 I **INSURANC**

12.1 Without prej vice to its obligations to HEE under this contract, including its indemnity and liability bligations, the Provider shall for the Term at its own cost take out and maintain, orprocure the taking out and maintenance of the insurances as set out in

this cause d any other insurances as may be required by applicable Law and/or Guid ce (to ether the **"Insurances"**)

12.2 During the T rm and for a period of six (6) years after the Provider ceases to have anv oblig;ions rider this contract, the Provider shall maintain in force the following ivies insur nce po with reputable insurance companies:

12.2.1 pul lic liability insurance with a limit of at least [£2,000,000] a claim;

12.2.2 pr fessional indemnity insurance (which, for the avoidance of doubt, shall inc ude cover for any clinical malpractice) with a limit of at least [£5,000,000] for claims arising from a single event or series of related events in a single cal rar year;

12.2.3 em oyer's liability insurance with a limit of at least [£5,000,000] for claims an ing from a single event or series of related events in a single calendar ye **r** and

12.2.4 a d uate insurance cover for any loss, injury and damage caused by or to a n .earners (whilst on the Premises or not) in the course of providing the S e vices with a limit of at least **[£10,000,000]** for claims arising from a single e v (confirms
or series of related events in a single calendar year.

12.3 The Provider confirms that the insurance taken out in accordance with this clause 12 adequately avers any losses caused by injury or death to persons (including ing Learns) ari from the Services including as a result of any notifiable infectious l'sted diseas s as under the Health Protection (Notification) Regulations 2010, not limited including, bul

12.4 During the T , the Provider shall fulfil all duties relating to the Learners' health, safety and w Dare as if it was their employer and shall comply with HEE's reasonable requests in c nnection with the Provider's duties in relation to the Learners.

12.5 The P ovider hall agree with HEE the specific duties and obligations of such persons as regards L arner supervision and patient care as appropriate. For the purposes of this clause 1 and in performing the Services, the Provider agrees to be deemed to be the employe of the Learner whilst undertaking a Programme(s) and not for the purposes of mployment law, save where the Learner is an Employed Learner or a second em oyed via a secondment agreement with the Provider.

12.6 At the commencement of this contract and from time to time thereafter at the reasonable request of HEE or the HEE Representative, the Provider shall produce evidence of the insurances obtained and maintained in accordance with this clause 12 to HEE.

12.7 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Provider of any liabilities under this contract. It shall be the responsibility of the Provider 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 Provider 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.

12.8 The Provider 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.

13 LIABILITY

13.1 Without prejudice to its liability to HEE for breach of any of its obligations under this contract, the Provider shall be liable for and shall indemnify HEE against any direct liability, loss, damage, costs, expenses, claims or proceedings whatsoever ("Losses") (subject always to an obligation upon HEE to mitigate any Losses to every reasonably practicable extent) incurred by HEE in respect of any claim against HEE, arising under any statute or otherwise in respect of:

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

13.1.2 any injury to any person (including but not limited to Learners), including injury resulting in death; or

13.1.3 any infectious disease present on the Premises (including but not limited to COVID-19); or

13.1.4 any Losses of the Provider that that result from or arise out of the Provider's negligence or breach of contract in connection with the performance of this contract except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Provider, their Staff or agents; or

13.1.5 any material or non-material damage to any person as a result of infringement of the Data Protection Legislation, arising directly out of any act or omission or breach of this contract by the Provider (which expression shall in the remainder of this clause include its servants, agents, contractors or any other person who at the request of the Provider is or should be performing or discharging or purporting to perform or discharge one or more of the obligations of the Provider under this contract) save to the extent caused (or contributed to) by any act or omission or breach of contract by HEE.

13.2 Upon the expiry or earlier termination of this contract, the Provider shall ensure that any ongoing liability it has or may have arising out of this contract shall continue to be

the subject o appropriate indemnity arrangements for the period of twenty one (21) years from to ination or expiry of this contract or until such earlier date as that liability may reasona ly be considered to have ceased to exist.

14 **LIMITATION F UABIUTY**

14.1 Subje to cl use 13, the limit of the Provider's liability to HEE for any claim arising under is co tract shall be limited to a maximum of 120% of the total Funding provided under this c ntract in pounds sterling in aggregate for all occurrences or series of occu Aces i any year of the Term.

14.2 Subje t to cl use 13, HEE's total liability to the Provider for any and all claims arising under this co tract shall be limited to the total Funding.

14.3 Nothing in th s contract shall exclude or limit the liability of either Party for death or personal inju lily by negligence or for fraud or fraudulent misrepresentation or any other lia Iffy which cannot be excluded or limited by reason of law.

14.4 Neither Party may benefit from the limitations and exclusions set out in this clause in respet of an liability arising from its deliberate default.

14.5 HEE as no sponsibility for any other costs incurred by the Provider in connection with **t e** Se 'ces and/or the Programme(s) to which the Funding relates, and the Provider mu indemnify and keep HEE indemnified against any losses, damages, costs, xpenes, labilies, claims, actions, proceedings or other liabilities that are sult 1 from raise ut of the Provider's acts or omissions in relation to the Services and/or the Programme(s) or its duties to third parties.

14.6 The Provider hall further indemnify HEE against any costs, claims or other liabilities:

14.6.1 wh h arise in relation to or in connection with any acts or omissions by any Le; mers during their attendance on an enrolled Programme of education pursuant to this contract; and

14.6.2 wh ch HEE incurs as a direct result of the Provider's act or omission in as Ewing any Staff suitability to work alongside or to supervise Learners in the course of undertaking any Programme of education pursuant to this co tract.

14.7 For the avoid rice of doubt, without limitation, the Parties agree that for the purposes of this contr GI the following costs, expenses and/or loss of income shall be direct recoverable I sses (to include under any relevant indemnity) provided such costs, expenses an /or loss of income are properly evidenced by the claiming Party:

14.7.1 ext costs incurred purchasing replacement or alternative services;

14.7.2 the costs of extra management time; and/or

14.7.3 costs incurred as a result of a Data Loss Event, including the costs of informing Data Subjects of the Data Loss Event

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

14.8 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.

15 TERMINATION

15.1 Without affecting any other right or remedy available to it, HEE may terminate this contract or any part of the Services at any time on six (6) months' written notice, but may in its absolute discretion terminate on three (3) months' written notice. HEE will consider the impact on the Provider and the healthcare system in making the decision for termination on three (3) months, and share this decision publicly.

15.2 Without affecting any other right or remedy available to it, the Provider may terminate this contract or any part of the Services at any time with the written agreement of HEE and providing twelve (12) months' notice in writing. In partnership with the Provider and at the discretion of HEE this notice period may be reduced where it is reasonable to HEE to do so, provided that twelve (12) months' notice has been provided.

15.3 Without affecting any other right or remedy available to it, either Party may terminate this contract with immediate effect by giving written notice to the other Party if:

15.3.1 the other Party commits a material breach of any term of this contract and (if such breach is remediable) fails to remedy that breach within a period of twenty (20) Business Days after being notified in writing to do so;

15.3.2 the other Party repeatedly breaches any of the terms of this contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this contract;

15.3.3 where the Provider is an NHS Trust or NHS Foundation Trust, the Provider is or becomes subject to an order made under section 65B or 65D of the NHS Act 2006;

15.3.4 the Provider is in receipt of a quality report from any Regulator which has material adverse implications for the provision of any of the Services, where a Remedial Action Plan has not been agreed and enforced;

15.3.5 the Provider is subject to an Insolvency Event or otherwise its financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this contract is in jeopardy; and/or

15.3.6 the Secretary of State for Health and Social Care no longer authorises and/or funds HEE to commission, and manage the provision of Funding in a manner as envisaged by this contract.

15.4 For the purposes of clause 15.3.1 **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:

15.4.1 a substantial portion of this contract; or

15.4.2 any number of the obligations set out in the contract,

over the term of this contract in deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

15.5 Without affec g any other right or remedy available to it, the Provider may terminate this c ntract th immediate effect by giving written notice to HEE if HEE fails to pay any amount e under this contract on the due date for payment and remains in default not legs tha forty (40) Business Days after being notified in writing to make such paymek. No Terest is payable on these amounts.

15.6 The terrninati n of this contract for whatever reason shall be without prejudice to any rights or liabil ties which have accrued prior to the date of termination.

15.7 HEE may te mate this contract forthwith by issuing a Termination Notice to the Provider if:

15.7.1 the Provider does not commence delivery of the Services by any Long Stop Da e;

15.7.2 the contract has been substantially amended to the extent that the Public Co tracts Regulations 2015 require a new procurement procedure;

15.7.3 HE has become aware that the Provider should have been excluded under reg akin 57(1) — (4) of the Public Contracts Regulations 2015 from the pro urement procedure leading to the award of this contract;

15.7.4 the contract should not have been awarded to the Provider in view of a ser ous infringement of obligations under any applicable Law; or

15.7.5 the has been a failure by the Provider and/or one its Sub-contractors to co ly with legal obligations in the fields of environmental, social or labour Ca where the failure to comply with legal obligations in the fields of en ironmental, social or labour Law is a failure by one of the Providers Sub-co tractors, HEE may request the replacement of such Sub-contractor and the Provider shall comply with such request as an alternative to HEE

te nating this contract under this clause 15.7.5;

15.7.6 the Provider, or any third party guaranteeing the obligations of the Provider un er this contract, ceases or threatens to cease carrying on its business; I su ends making payments on any of its debts or announces an intention to do **6;** is, or is deemed for the purposes of any Law to be, unable to pay its de tS as they fall due or insolvent; enters into or proposes any composition, as gnment or arrangement with its creditors generally; takes any step or su ers any step to be taken in relation to its winding-up, dissolution, ad nistration (whether out of court or otherwise) or reorganisation (by way of oluntary arrangement, scheme of arrangement or otherwise) otherwise tha as part of, and exclusively for the purpose of, a bona fide reconstruction or malgamation; has a liquidator, trustee in bankruptcy, judicial custodian, co Pulsory manager, receiver, administrative receiver, administrator or si lar officer appointed (in each case, whether out of court or otherwise) in res ect of it or any of its assets; has any security over any of its assets enf rced; or any analogous procedure or step is taken in any jurisdiction;

15.7.7 the Provider undergoes a change of control within the meaning of sections 45 and 451 of the Corporation Tax Act 2010 (other than for an intra-group ch nge of control) without the prior written consent of HEE and HEE shall be ntitled to withhold such consent if, in the reasonable opinion of **HEE,** the pro sed change of control will have a material impact on the performance of t Is contract or the reputation of HEE;

15.7.8 the Provider purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this contract;

15.7.9 the warranty given by the Provider is materially untrue; or

15.7.10 the Provider breaches its obligation to notify HEE of any Occasion of Tax Non-Compliance.

15.8 If HEE, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Provider and/or any third party guaranteeing the obligations of the Provider under this contract and/or any material Sub-contractor of the Provider when compared to any information provided to and/or assessed by HEE as part of any procurement process or other due diligence leading to the award of this contract to the Provider or the entering into a Sub-contract by the Provider, the following process shall apply:

15.8.1 HEE may (but shall not be obliged to) give notice to the Provider 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 HEE may require within a reasonable time period as specified in such notice;

15.8.2 a failure or refusal by the Provider to provide any financial or other security and/or assurances requested in accordance with clause 15.8.1 in accordance with any reasonable timescales specified in any such notice issued by HEE shall be deemed a breach of this contract by the Provider and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and

15.8.3 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, HEE to terminate this contract.

15.9 In order that HEE may act reasonably in exercising its discretion in accordance with clause 15.8.1, the Provider shall provide HEE with such reasonable and proportionate up-to-date financial or other information relating to the Provider or any relevant third party entity upon request.

15.10 Within six (6) months of the Commencement Date the Provider shall develop and agree an exit plan with HEE consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this contract. The Provider shall provide HEE with the first draft of an exit plan within four (4) months 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.

15.11 If the Parties cannot agree an exit plan in accordance with the timescales set out in clause 15.10 (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 OBLIGATIONS ON TERMINATION AND SURVIVAL

16.1 Upon expiry or earlier termination of this contract, HEE agrees to pay the Provider for the Services which have been completed by the Provider in accordance with this contract prior to expiry or earlier termination of this contract.

16.2 Immediatel following expiry or earlier termination of this contract and/or in accordance with any tim scales as set out in the agreed exit plan:

16.2.1 th Provider shall comply with its obligations under any agreed exit plan;

16.21 al el al de data, excluding Personal Data, documents and records (whether stored ctronically or otherwise) relating in whole or in part to the Services and other items provided on loan or otherwise to the Provider by HEE shall be livered by the Provider to HEE provided that the Provider shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the S rvices; (b) the Provider is required by Law and/or Guidance to keep co les; or (c) the Provider was in possession of such data, documents and re rds prior to the Commencement Date; and

16.2.3 a Personal Data Processed by the Provider on behalf of HEE shall be returned to HEE or destroyed in accordance with the relevant provisions of th Data Protection Protocol.

16.3 In the vent still on, a Pr provisions o1 in relation t completed, writing, orga Hat upon termination of this contract, there remain any Learners who are gramme of education / training pursuant to this contract, subject to the clause 16.4, the terms of this contract shall remain in full force and effect such Learners until their Programmes of education / training have r if this is not feasible, the Provider will, with the agreement of HEE in rise alternative provision of a comparable standard and quality.

16.4 Durini) the Programme termination HEE. esidual Contract Period the Provider shall complete the delivery of all of education / training for Learners who have not, upon the expiry or f this contract, completed the same unless agreed to the contrary with

16.5 The FirOvide shall retain all data relating to the provision of the Services that are not

transferred destroyed pursuant to clause 16.2.3 for a maximum of 6 years from termition or expiry of this contract.

16.6 The Provider shall cooperate fully with HEE or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiryir earl er termination of this contract. This cooperation shall extend to providing acces to all information relevant to the operation of this contract, as reasonably required by F EE to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.

16.7 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.

16.8 The expiry o earlier termination of this contract shall not affect any obligations which expressly or y implication are intended to come into or continue in force on or after such expiry o earlier termination.

17 COMPLAINTS

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

17.2 Each Party shall inform the other of all complaints 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.

18 SUSTAINABLE DEVELOPMENT

18.1 The Provider 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 Provider shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Service Specification. Without prejudice to the generality of the foregoing, the Provider shall:

18.1.1 comply with all Policies and/or procedures and requirements set out in the Service Specification in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Services and the Provider's supply chain;

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

18.1.3 maintain plans and procedures that support the commitments made as part of the Provider's significant labour, social and environmental policies, as referred to at clause 18.1.1.

18.2 The Provider shall meet reasonable requests by HEE for information evidencing the Provider's compliance with the provisions of this clause 18.

19 ELECTRONIC SERVICES INFORMATION

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

19.2 The Provider warrants that the Services Information is complete and accurate as at the date upon which it is delivered to HEE and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of HEE following publication of the same.

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

19.4 The Provider grants HEE 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 HEE's contracts from time to time. Subject to clause 19.5, no obligation to illustrate or advertise the Services Information is imposed on **HEE,** as a consequence of the licence conferred by this clause 19.4.

19.5 HEE may r produce for its sole use the Services Information provided by the Provider in HEE's s ices catalogue from time to time which may be made available on any NHS comm nications networks in electronic format and/or made available on HEE's external we Site and/or made available on other digital media from time to time.

19.6 Before any yblication of the Services Information (electronic or otherwise) is made by HEE HEE ill submit a copy of the relevant sections of HEE's services catalogue to the Flrovide for approval, such approval not to be unreasonably withheld or delayed. For the avoi lance of doubt the Provider shall have no right to compel HEE to exhibit the Service Information in any services catalogue as a result of the approval given by it pursuant t this clause 19.6 or otherwise under the terms of this contract.

If requested Service Spe ification, the Provider and **HEE** shall discuss and seek to agree faith in good ments to use any Electronic Trading System. arrangE

20 **PUBLICITY ND NHS BRANDING**

apply NHS b se 20.2, the Provider must not, without the prior written consent of HEE, prior written anding or HEE's name or logo to the Services, and must obtain the HEE's with the Pros 3proval (not to be unreasonably withheld) for any publicity in connection der's receipt of the Funding.

20.2 For all activi ty relating to the Services (including, but not limited to any activity in ith connection the Provider's receipt of the Funding), the Provider shall make clear on all public tlons, notices, and communications, that the Services are HEE-funded Servies. HE permits the Provider's use of the HEE logo for the sole purpose of its comp lance vffh this clause. Such use of the HEE logo must comply with the NHS Branding Gu delines and this clause 20.

20.3 If **HEE** does permit the Provider to use NHS branding, its name or logo in with SE connection ryices, that permission is limited to the purposes and comniUnicatE duration **d** to the Provider by HEE and the Provider must comply with **Branding Gui** the NHS delines.

20.4 GoodWill in e Services, to the extent branded as NHS services, shall belong both the separately to Secretary of State and the Provider. The Provider may enforce s own its rights in ii branding even if it includes the NHS Brand. The Provider must ier provide what assistance the Secretary of State may reasonably require to allow bf the Secretarti State to maintain and enforce his rights in respect of the NHS Brand.

20.5 The Provide shall not request any endorsement in any form whatsoever from HEE staff *(i,nt* hich ncludes any person employed or engaged by HEE) **("HEE Staff")** in **relatioh to** th provider's products and/or Services, or use any comments made by any member of BE Staff in relation to the Provider's products and/or Services, in any publicity, mar eting or on any website, including the Provider's website or social media, without the p or express written permission of HEE.

21 **ADVERTISE ENTS AND MARKETING**

21.1 Unless othe se agreed by HEE, no disclosure, announcement, advertisement or publication or any form of marketing or public relations exercise in connection with this contract or th existence of this contract and the Parties to it or them shall be made by or on behalf f 'a Party to this contract without the approval of HEE in writing. For the avoidence of coubt, the provisions of this clause 21 shall in no way preclude the

Provider from advertising, publishing or announcing in any way the details of the healthcare or education services it delivers.

22 FORCE MAJEURE

22.1 Force Majeure Event means any circumstance not within a Party's reasonable control including (having regard to Emergency Preparedness, Resilience and Response guidance) without limitation:

22.1.1 acts of God, flood, drought, earthquake or other natural disaster,

22.1.2 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

22.1.3 nuclear, chemical or biological contamination or sonic boom;

22.1.4 any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to provide a necessary licence or consent;

22.1.5 collapse of buildings, fire, explosion or accident;

22.1.6 any labour or trade dispute, strikes, industrial action or lockouts; and/or

22.1.7 non-performance by Providers and interruption or failure of utility service.

22.2 For the avoidance of doubt, a Force Majeure Event does not include an epidemic, pandemic, or other incidents which have been planned under NHS Emergency Preparedness, Resilience and Response requirements. Providers are required to work in partnership to Identify these events and to collaborate with HEE to comply with any national guidance issued in these circumstances.

22.3 Provided it has complied with clause 22.5, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this contract by a Force Majeure Event **("Affected Party"),** the Affected Party shall not be in breach of this contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

22.4 The corresponding obligations of the other Party shall be suspended, and it's time for performance of such obligations extended, to the same extent as those of the Affected Party.

22.5 The Affected Party shall:

22.5.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify HEE in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this contract; and

22.5.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

22.6 If the **Forc Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the Party not affected y the Force Majeure Event may terminate this contract by giving 4 weeks' written Inotic to the Affected Party.**

22.7 All Regulator NHS and HEE notices should be adhered to by the Provider in the event of a **Force** M **jeure Event.**

23 COSIS AN XPENSES

23.1 Each Party is responsible for paying its own costs **and expenses incurred in** connection with the **neg** tiation, preparation and execution of this contract.

24 DIS4TE R SOLUTION PROCEDURE

24.1 If a dispute a ses out of or in connection with this contract or the performance, validity or enforceabi ity of it **("Dispute") then except as expressly provided in this contract, the Parties shall ollow the procedure set out in** this clause:

24.1.1 eit er Party shall give to the other written **notice of the Dispute, setting out** its **nature and full particulars ("Dispute Notice"), together with relevant su porting documents. On service of the Dispute Notice, the HEE Re resentative and the Provider Representative shall attempt in good faith to solve the Dispute;**

24.1.2 if t **e HEE Representative and Provider Representative are for any reason** un ble to resolve the Dispute within thirty **(30) days of service of the Dispute No ioe, the Dispute shall be referred to a Director of HEE and a senior dir ctor of the Provider who shall attempt in good faith to resolve it;**

24.1.3 if t e Director of HEE and the senior director of the Provider are for any rea on unable to resolve the Dispute within thirty (30) days of it being ref rred to them, the Dispute shall be referred to the CEO **of HEE and the CE of the Provider who shall attempt in good faith to resolve** it; **and**

24.1.4 if t e CEO of HEE and the CEO of the Provider are for any reason unable to res ve the Dispute within thirty (30) days of it being referred to them, the Parties shall attempt to settle it by mediation in accordance with the CEDR Mo el Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party mu t serve notice in **writing ("ADR notice") to the other Party to the Dispute, req** sting a mediation. A **copy of the ADR notice should be sent to CEDR. Th Mediation shall start not later than thirty (30) days after the date of the AD notice.**

24.2 No Party ma commence any court proceedings under clause 46.11 (in relation to the whole or part of the Dispute until thirty (30) Business Days after service of the ADR notice provid d that the right to issue proceedings is not prejudiced by a delay.

24.3 If the Dispute iS not resolved within thirty (30) Business Days after service of the ADR notice, or eit er Party fails to participate or to continue to participate in the mediation before the ex gyration of the said period of thirty (30) Business Days, or the mediation terminates b ore the expiration of the said period, the Dispute shall be finally resolved by the courts f **England and Wales in accordance with clause 46.11.**

25 QUALITY AND PERFORMANCE REQUIREMENTS

25.1 The Provider shall provide the Services, and meet the Quality and Performance Requirements in accordance with 0 and the HEE Quality Framework.

26 CONTRACT MANAGEMENT

26.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality and Performance Requirement and the Provider fails to meet the Quality and Performance Requirement, HEE shall be entitled to exercise the agreed consequence immediately and without issuing a Contract Performance Notice, irrespective of any other rights HEE may have under this clause 26.

26.2 The provisions of this clause 26 do not affect any other rights and obligations the Parties may have under this contract.

27 CONTRACT PERFORMANCE NOTICE

27.1 If HEE believes that the Provider has failed or is failing to comply with any obligation on its part under this contract it may issue a Contract Performance Notice to the Provider.

27.2 If the Provider believes that HEE has failed or is failing to comply with any obligation on its part under this contract it may issue a Contract Performance Notice to HEE.

28 CONTRACT MANAGEMENT MEETING

28.1 Unless the Contract Performance Notice has been withdrawn, HEE and the Provider must meet to discuss the Contract Performance Notice and any related issues within ten (10) Business Days following the date of the Contract Performance Notice.

28.2 At the Contract Management Meeting HEE and the Provider must ensure that HEE Representative and the Provider Representative are in attendance (including representatives from the quality, finance, and performance and operations department of HEE) and agree either:

28.2.1 that the Contract Performance Notice is withdrawn; or

28.2.2 to implement an appropriate Immediate Action Plan and/or Remedial Action Plan.

28.3 If HEE and the Provider cannot agree on either course of action, they must undertake a Joint Investigation.

29 JOINT INVESTIGATION

29.1 If a Joint Investigation is to be undertaken:

29.1.1 HEE and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than two (2) months) and the appropriate representatives from each relevant Party to participate in the Joint Investigation as well as HEE Representative and the Provider Representative; and

29.1.2 HEE and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

29.2 On completi rt of a Joint Investigation, HEE and the Provider must produce and agree a JI Report. e JI Report must include a recommendation to be considered at the next Review eeting that either:

29.2.1 thel Contract Performance Notice be withdrawn; or

29.2.2 a emedial Action Plan be agreed and implemented.

29.3 Either HEE r the Provider may require a Review Meeting to be held at short notice within lye (5 usiness Days to consider a JI Report.

30 **REMEDIAL CTION PLAN**

30.1 If a Remedia Action Plan is to be implemented, HEE and the Provider must agree the contents of t e Remedial Action Plan within:

30.1.1 fivt (5) Business Days following the Contract Management Meeting; or

30.1.2 fivt (5) Business Days following the Review Meeting in the case of a Re edial Action Plan recommended under clause 29.2.2,

as appropria

30.2 The Remedial Action Plan must set out:

30.2.1 act ons required and which Party is responsible for completion of each action to medy the failure in question and the date by which each action must be co pleted;

30.2.2 the improvements in outcomes and/or other key indicators required, the date by hich each improvement must be achieved and for how long it must be ma ntained; and

30.2.3 an agreed reasonable and proportionate financial sanctions or other co sequences for any Party for failing to complete any agreed action and/or to thieve and maintain any agreed improvement (any financial sanctions ap lying to the Provider not to exceed in aggregate 20% of the Actual Mo thly Value in any month in respect of any Remedial Action Plan).

30.3 If a Remedia Action Plan is agreed during the final year of the Term, that Remedial Action Plan ay specify a date by which an action is to be completed or an improvement is to be achieved or a period for which an improvement is to be maintained f l ing or extending after the Expiry Date (or the expiry date of any Extended Te in accordance with clause 2.2 and Schedule 1), with a view to that Remedial Ac ion Plan being incorporated in an SDIP under a subsequent contract between HE land the Provider for delivery of services the same or substantially the same as the ervices.

30.4 The Provider and HEE must implement the actions and achieve and maintain the improvement applicable to it within the timescales set out in, and otherwise in ith, accordance the Remedial Action Plan.

30.5 HEE nd th Provider must record progress made or developments under the ial Act Reme on Plan in accordance with its terms. HEE and the Provider must review

and consider that progress on an ongoing basis and in any event at the next Review Meeting.

30.6 Each Party shall bear its own costs in relation to any Joint Investigation.

31 IMPLEMENTATION AND BREACH OF REMEDIAL ACTION PLAN

31.1 If, following implementation of a Remedial Action Plan, the agreed actions have been completed and the agreed improvements achieved and maintained, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed.

32 EXCEPTION REPORT

32.1 If a Party fails to complete an action required of it, or to deliver or maintain the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan and does not remedy that failure within five (5) Business Days following receipt of notice requiring it to do so, the Provider or **HEE** (as the case may be) may issue an Exception Report:

32.1.1 to the relevant Party's chief executive and/or Governing Body; and/or

32.1.2 (if it reasonably believes it is appropriate to do so) to any appropriate Regulator,

in order that each of them may take whatever steps they think appropriate.

33 WITHHOLDING OF FUNDING AT EXCEPTION REPORT FOR BREACH OF REMEDIAL ACTION PLAN

33.1 If the Provider fails to complete an action required of it, or to deliver the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan:

33.1.1 (if the Remedial Action Plan does not itself provide for a withholding or other financial sanction in relation to that failure) HEE may, when issuing an Exception Report, withhold in respect of each action not completed or improvement not met, a reasonable and proportionate sum of up to 5% of the Actual Monthly Value, from the date of issuing the Exception Report and for each month the Provider's breach continues and/or the required improvement has not been achieved and maintained, subject to a maximum monthly withholding in relation to each Remedial Action Plan of 50% of the Actual Monthly Value; and

33.1.2 HEE must pay the Provider any Funding withheld under clause 33.1.1 within ten (10) Business Days following HEE's confirmation that the breach of the Remedial Action Plan has been rectified and/or the required improvement has been achieved and maintained. No interest shall be payable on those sums.

34 RETENTION OF SUMS WITHHELD FOR BREACH OF REMEDIAL ACTION PLAN

34.1 If, twenty (20) Business Days after an Exception Report has been issued under clause 32.1, the Provider remains in breach of a Remedial Action Plan, HEE may notify the Provider that any Funding withheld under clause 33.1.1 is to be retained permanently by HEE.

35 **UNJUSTIFI D WITHHOLDING OR RETENTION OF FUNDING**

35.1 If HEE with ()'lds sums under clause 33.1.1 or HEE retain sums under clause 34.1, and within nty (20) Business Days of the date of that withholding or retention the Provider pr Cluces evidence satisfactory to **HEE** that the relevant sums were withheld or retained njustifiably, HEE must pay those sums to the Provider within ten (10) ys BusAiss D following the date of HEE's acceptance of that evidence, no interest shall tie pa ble on these sums. If HEE does not accept the Providers evidence the refer Provider ma the matter to the Dispute Resolution Procedure at clause 24.

36 **RETEkMO OF FUNDING WITHHELD ON EXPIRY OR TERMINATION OF THIS CONTRAC**

36.1 If the !rovid r does not agree a Remedial Action Plan:

36.1.1 wi hin six (6) months following the expiry of the relevant time period set out in iause 30.1; or

he earlier, HEE may notify the Provider that any Funding withheld under whichever is

36.2 If the rovid r does not rectify a breach of a Remedial Action Plan before the Expiry Date or the expiry date of any Extended Term in accordance with clause 2.2 and Schedale 1) earlier termination of this contract, HEE may notify the Provider that any Funding ithheld under clause 33.1.1 is to be retained permanently by HEE.

37 **REVIEW ME TINGS**

37.1 Revi4), Meel unless the fo ds are to take place as specified in 0 between HEE and the Provider.

37.1.1 HE is assured of the delivery of Services, and that it meets the conditions of this contract, and all regulatory conditions, and that regular co rnunication has taken place between Provider and HEE, in which case the Provider and HEE may agree to formally note that conditions are met an a formal Review Meeting shall not take place, in these circumstances a lett **r** of confirmation shall be provided from HEE to the Provider, and

37.1.2 the Frovider submits a bi-annual return on their progress with the conditions of t is contract, the contents of which are satisfactory to HEE.

37.2 HEE may, in aabsolute discretion, continue with a Review Meeting even when the conditipns in use 37.1 are considered to be met, as part of good governance and accoutitabilit Practice.

37.3 Extra4rdina Review Meetings may be called by HEE or the Provider, giving ten (10) Business Da f written notice. In these circumstances the calling Party shall issue an agenda to th ther Party within five (5) Business Days of the meeting.

37.4 A Review Me ting shall be convened with representatives from the quality, finance, and rirforma ce and operations department of HEE.

37.5 HEE may determine at its absolute discretion to hold a Review Meeting via the submission of a paper review, rather than an in person formal attendance. The Provider may request that an in person formal attendance Review Meeting proceeds setting out its justification to HEE in writing.

38 RECORDS RETENTION AND RIGHT OF AUDIT

38.1 Subject to any statutory requirement, the Provider 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.

38.2 HEE shall have the right to audit the Provider's compliance with this contract. The Provider shall permit or procure permission for **HEE** 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 Provider's compliance with its obligations under this contract.

38.3 Should the Provider Sub-contract any of its obligations under this contract, **HEE** shall have the right to audit and inspect such third party. The Provider shall procure permission for HEE 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 Provider's obligations under this contract that are Sub-contracted to such third party. The Provider shall cooperate with such audit and inspection and accompany **HEE** or its authorised representative if requested.

38.4 The Provider shall grant to **HEE** or its authorised representative, such access to those records as they may reasonably require in order to check the Provider's compliance with this contract for the purposes of:

38.4.1 the examination and certification of HEE's accounts; or

38.4.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which **HEE** has used its resources.

38.5 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 Provider and may require the Provider to provide such oral and/or written explanations as they consider necessary. This does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Provider under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

38.6 The Provider shall provide reasonable cooperation to HEE, 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.

38.7 The Provider shall provide all reasonable information as may be reasonably requested by HEE to evidence the Provider's compliance with the requirements of this contract.

38.8 On the request of the Department of Health and Social Care, NHS England, NHS Improvement, NHSCFA, any regulatory body or HEE, the Provider must allow NHSCFA or any Local Counter Fraud Specialist, as soon as it is reasonably practicable

and in any efrent not later than 5 Business Days following the date of the request, access to:

38.8.1 all roperty, premises, information (including records and data) owned or co trolled by the Provider; and

38.8.2 all ≥taff who may have information,

38.9 which is rel rant to the detection and investigation of cases of bribery, Fraud or corruption, di ectly or indirectly in connection with this contract.

F INTEREST AND THE PREVENTION OF FRAUD

39 **CONFLICTS**

39.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are plac 0 in a position where, in the reasonable opinion of HEE, there is or may be an actual onflict, or a potential conflict, between the pecuniary or personal interests of the Provid 'and the duties owed to HEE under the provisions of this contract. The Provider will y7isclose to HEE full particulars of any such conflict of interest which may arise.

39.2 HEE rerve the right to terminate this contract immediately by notice in writing and/or to tak such ther steps it deems necessary where, in the reasonable opinion of HEE, there laor m y be an actual conflict, or a potential conflict, between the pecuniary or person l inte ests of the Provider and the duties owed to HEE under the provisions of this contract. The actions of **HEE** pursuant to this clause 39 shall not prejudice or affect any rig t of action or remedy which shall have accrued or shall subsequently accrue to HE

39.3 The Provider hall take all reasonable steps to prevent Fraud by Staff and the Provider

39.4 If the Provide or its Staff commits Fraud **HEE** may terminate this contract and recover

(including its jowners, members and directors). The Provider shall notify **HEE** immediately i t has reason to suspect that any Fraud has occurred or is occurring or is likely to oc r.
from the Pro der the amount of any direct loss suffered by HEE resulting from the termination.

40 **EQUALITY AND HUMAN RIGHTS**

40.1 The Provider

40.1.1 en ure that (a) it does not, whether as employer or as provider of the Se ces, engage in any act or omission that would contravene the Equality Le illation, and (b) it complies with all its obligations as an employer or pro der of the Services as set out in the Equality Legislation and take rea unable endeavours to ensure its Staff do not unlawfully discriminate wit ii the meaning of the Equality Legislation;

40.1.2 in t p management of its affairs and the development of its equality and div rity policies, cooperate with **HEE** in light of HEE's obligations to comply wit its statutory equality duties whether under the Equality Act 2010 or oth rwise. The Provider shall take such reasonable and proportionate steps as EE considers appropriate to promote equality and diversity, including ra equality, equality of opportunity for disabled people, gender equality, an equality relating to religion and belief, sexual orientation and age; and

40.1.3 the Provider shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Provider by this clause 40.

40.2 The Provider shall meet reasonable requests by HEE for information evidencing the Provider's compliance with the provisions of this clause 40.

40.3 The Provider shall perform its obligations under this contract in accordance with:

40.3.1 the Equality Act 2010 and any other equality applicable Law and/or Guidance (whether in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation);

40.3.2 the Provider's equality and diversity policy which must be consistent with HEE's equality and diversity policy available on the HEE website; and

40.3.3 any other requirements and Instructions which HEE reasonably imposes in connection with any equality obligations imposed on HEE at any time under equality Law and/or Guidance; and

40.3.4 take all necessary steps, and inform HEE of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

40.4 The Provider shall (and shall use its reasonable endeavours to procure that its Staff shall) at all times comply with the provisions of the HRA in the performance of the contract.

40.5 The Provider shall undertake, or refrain from undertaking, such acts as HEE requests so as to enable HEE to comply with its obligations under the HRA.

40.6 Where the Provider is an NHS Trust or an NHS Foundation Trust, the Provider shall implement EDS2 and WRES.

40.7 The Provider and HEE will work in partnership to address any equality, diversity and inclusivity matters relating to education and training.

41 **NOTICES**

41.1 Any notice or other communication given to a Party under or in connection with this contract shall be in writing and shall be:

41.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

41.1.2 sent by email to the address specified at the beginning of this contract.

41.2 Any notice or communication shall be deemed to have been received:

41.2.1 if delivered by hand, at the time the notice is left at the proper address;

41.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or

so

41.243' if ent by email, at the time of transmission, or, if this time falls outside B einess Hours in the place of receipt, when Business Hours resume.

41.3 This clause ces not apply to the service of any proceedings or any documents in any legalaction ac on r, where applicable, any arbitration or other method of dispute resolution.

42 **ASSIGNME , NOVATION AND SUB-CONTRACTING**

42.1 The provid r shall not, except where clause 42.2 applies, assign, Sub-contract, nova, cre to a trust in, or in any other way dispose of the whole or any part of this contract wi but the prior consent in writing of HEE such consent not to be unreasonab withheld or delayed. If the Provider Sub-contracts any of its obligations under this c ntract, every act or omission of the Sub-contractor shall for the purposes of thie Icontr dt be deemed to be the act or omission of the Provider and the Provider shall t3e liabl to HEE as if such act or omission had been committed or omitted by the Provider its fl

42.2 Notwthstan ing clause 42.1,the Provider may assign to a third party ("Assignee") the right tio! recei e Funding due and owing to the Provider under this contract for which an invoicie has Eien issued. Any assignment under this clause 42.2 shall be subject to:

42.2.1 ail related rights of HEE in relation to the recovery of sums due but unpaid;

42.2.2 H E receiving notification of the assignment and the date upon which the as ignment becomes effective together with the Assignee's contact inf rmation and bank account details to which HEE shall make payment;

42.2.3 th provisions of clause 10 continuing to apply in all other respects after the as ignment which shall not be amended without the prior written approval of H E; and

42.2.4 pa rpent to the Assignee being full and complete satisfaction of HEE's obl gation to pay the relevant sums in accordance with this contract.

42.3 Any authority liven by **HEE** for the Provider to Sub-contract any of its obligations under this contract hall not impose any duty on HEE to enquire as to the competency of any authorised ub-contractor. The Provider shall ensure that any authorised Sub-contractor h s the appropriate capability and capacity to perform the relevant obligations a d that the obligations carried out by such Sub-contractor are fully in accordance i h this contract.

42.4 Where the Pr vider enters into a Sub-contract in respect of any of its obligations under this contract relating to the provision of the Services, the Provider shall include provisions in each such Sub-contract, unless otherwise agreed with HEE in writing, whichtl

42.4.1 co tain 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-co rJacting;

42.4.2 con gin at least equivalent obligations as set out in this contract in respect of con dentiality, information security, data protection, Intellectual Property Rig ts, compliance with Law and Guidance and record keeping;

42.4.3 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 HEE (such approval not to be unreasonably withheld or delayed);

42.4.4 contain a right for HEE to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this contract;

42.4.5 requires the Provider or other party receiving services under the contract to consider and verify invoices under that contract in a timely fashion;

42.4.6 provides that if the Provider or other party fails to consider and verify an invoice in accordance with clause 42.4.5 the invoice shall be regarded as valid and undisputed for the purpose of clause 42.4.5 after a reasonable time has passed;

42.4.7 requires the Provider 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;

42.4.8 permitting the Provider to terminate, or to procure the termination of, the relevant Sub-contract where the Provider is required to replace such Subcontractor in accordance with clause 42.5;and

42.4.9 requires the Sub-contractor to include a clause to the same effect as this clause 42.4 in any Sub-contract which it awards.

42.5 Where HEE considers that the grounds for exclusion under regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:

42.5.1 if HEE finds there are compulsory grounds for exclusion, the Provider shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or

42.5.2 if HEE finds there are non-compulsory grounds for exclusion, HEE may require the Provider to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Provider shall comply with such a requirement.

42.6 The Provider 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 HEE pays the Provider's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Provider shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.

42.7 HEE shall upon written request have the right to review any Sub-contract entered into by the Provider in respect of the provision of the Services and the Provider shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from HEE. For the avoidance of doubt, the Provider shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.

42.8 HEE 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 Provider

warrants th t it will carry out all such reasonable further acts required to effect such transfer, as ignment, novation, sub-contracting or disposal. If HEE novates this contract to a y body that is not a Contracting Authority, from the effective date of such novation, th lparty assuming the position of HEE shall not further transfer, assign, novate, sub ntract or otherwise dispose of its rights and obligations under this contitt or part of this contract without the prior written consent of the Provider, such onse ot to be unreasonably withheld or delayed by the Provider.

43 I PROH1BITE ACTS

43.1 The Provide warrants and represents that:

43.1.1 it th not committed any offence under the Bribery Act 2010 or done any of ollowing **("Prohibited Acts"):**

offered give 9 or agreed to give any officer or employee of **HEE** any gift or of any kind consideratioi as an inducement or reward for doing or not doing or for rnot having done havin ,'done any act in relation to the obtaining or performance of igr agreement with this o any of HEE or for showing or not showing favour or disfavour M relation to this to an ersoi or any other agreement with HEE; or

in 9ectioi with this contract paid or agreed to pay any commission other than a payment, pai oculars of which (including the terms and conditions of the agreement for its payment) ave been disclosed in writing to HEE; and

43.1.2 it co s in place adequate procedures to prevent bribery and corruption, as templated by section 7 of the Bribery Act 2010.

43.2 If the i-ovide or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohib d Acts or has committed or commits any offence under the Bribery Act 2010 with or Without the knowledge of the Provider in relation to this or any other agreeent w th HEE:

43.3 I **HEE shall** be entitled:

to terminate his contract and recover from the Provider the amount of any loss resulti7 fro the termination;

to recover fr to the Provider the amount or value of any gift, consideration or commissio ncemed; and

to recover fro , the Provider any other loss or expense sustained in consequence of the carrying tat of the Prohibited Act or the commission of the offence under the Bribery /pct 2 10

43.4 any terrninati n under clause 43.3 shall be without prejudice to any right or remedy that has alrea accrued, or subsequently accrues, to HEE; and

43.5 notwithstandi g the Dispute Resolution Procedure, any Dispute relating to:

the in rpretat'n of use **43,** or

the a ount or value any gift, consideration or commission,

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

44 CHANGE CONTROL

44.1 Where **HEE** or the Provider sees a need to change this contract, HEE may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Process set out in this clause 44 and clause 45.

44.2 Until such time as a Change is made in accordance with the Change Control Process, HEE and the Provider shall, unless otherwise agreed in writing, continue to perform this contract in compliance with its terms prior to such Change.

44.3 Any discussions which may take place between HEE and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.

44.4 Any work undertaken by the Provider and the Provider's Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this clause 44 and clause 45 shall be undertaken entirely at the expense and liability of the Provider.

45 PROCEDURE

45.1 Discussion between **HEE** and the Provider concerning a Change shall result in any one of the following:

45.1.1 no further action being taken; or

45.1.2 a request to change this contract by HEE; or

45.1.3 a recommendation to change this contract by the Provider.

45.2 Where a written request for an amendment is received from HEE, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to HEE within three (3) weeks of the date of the request.

45.3 A recommendation to amend this contract by the Provider shall be submitted directly to HEE in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. **HEE** shall give its response to the Change Control Note within three (3) weeks or such other timescale as notified by HEE to the Provider.

45.4 Each Change Control Note shall contain:

45.4.1 the title of the Change;

45.4.2 the originator and date of the request or recommendation for the Change;

45.4.3 the reason for the Change;

45.4.4 full details of the Change, including any specifications;

45.4.5 the price, if any, of the Change;

45.4.6 a timetable for implementation, together with any proposals for acceptance of the Change;

45.4.7 a s hedule of Funding if appropriate;

45.4.8 de 3Is of the likely impact, if any, of the Change on other aspects of
cor this tract including:

the ti etable For the vision of the Change;

the p rsonnet, to be rovided;

the F nding;

d e d ;

the tr 'fling to' be pro

a n d

worki g arran emen

s;

other ontrac ual iss

alidity of the Change Control Note; and

the d to of expiry of

by HEE and the Provider.

provi ion for signatu

nge Control Note submitted by the Provider **HEE** shall, within the

45.5 Fore ch Ch period cif the Change Control Note:
of the elidity

cafe a sequential number to the Change Control Note;

45.5.1 all

and luate the Change Control Note and, as appropriate:

45.5.2 ev

ration; or

requ t further info

of the Change Control Note to be signed by or on behalf of HEE

arran e for o copk and s to the Provider; or
retur one of e cop

e rejection of the Change Control Note.

notify the Pro i er of

ntrol Note signed by HEE and by the Provider shall constitute an

45.6 A Change C the contract.
amendment t

to this contract, including to the Services, shall be recorded and

45.7 Any Ci,anges agreed e Change Control Notification form detailed in 0.
in writi g in t

46.1 A reference tc a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

46.2 A reference t to time under that statute or statutory provision.
made rom ti

46.3 Each f the
shall con
panne hip o
engag ng in
or authority
otherwise, un

a statute or statutory provision shall include all subordinate legislation
ies is independent of the other and nothing contained in this contract
ed to imply that there is any relationship between the Parties of of
principal/agent or of employer/employee nor are the Parties hereby

46.4 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

46.5 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.

46.6 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.

46.7 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.

46.8 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 46.8 right includes any power, privilege, remedy, or proprietary or security interest.

46.9 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 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.

46.10 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 Provider and HEE 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 HEE's procurement documentation leading to the award of this contract shall form part of this contract.

46.11 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.

46.12 Subject to clause 24, the Parties irrevocably agree that the courts of England and Wales shall have the exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this contract or its subject matter.

46.13 All written and oral communications and all written material referred to under this contract shall be in English.

I

SCHEDULE 1 - SERVICES SPECIFICATION AND TENDER SUBMISSIONS

Part 1: **Contract details**

1.1 Provider Contract Manager: [redacted]

1.2 Escalation Level 1-Provider Senior Manager: [redacted]

1.3 Escalation Level 2 - Provider, Director: [redacted]

1.4 HEE Contract Manager: [redacted]**, Regional Pharmacy Technician Lead, East of England Region**

1.5 Escalation Level 1 - HEE Senior Manager: [redacted]**, Regional Head of Pharmacy, East of England Region**

1.6 Escalation Level 2 — HEE Regional Director: [redacted]**, Regional Director, East of England Region**

1.7 Services Commencement Date: 01 September 2022

1.8 Long Stop Date: Not applicable

1.9 Expiry Date: 31 March 2025

1 10 Extension: This contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15 (Termination), until the Expiry Date **("Initial Term"),** when it shall terminate automatically without notice unless, no later than THREE months before the end of the Initial Term (or any Extended Term agreed under this paragraph), the parties agree in writing that the term of this contract shall be extended for THREE months **("Extended Term").** Unless it is further extended under this paragraph or terminated earlier in accordance with clause 15 (Termination), this contract shall terminate automatically without notice at the end of an Extended Term.

Part 2: Service Provision:

2. The activit covered within this Schedule 5 is non-recurrent for the period described below and nrithin Schedule 6 of this agreement relates to the education and training of pre-regi tration trainee pharmacy technicians (PTPT).

2. Act 4ty mul commence by 31st March 2023 and will be for a maximum thirty-month per od, unl ss suspension, necessary delay or cessation shall at any time apply.

2. Th providr will accommodate Year 1 and Year 2 PTPTs, with funding

2. The Autho ity will work with employers to develop and deliver a 24-month PTPT Tra ning pr gramme for PTPTs commencing before 31 March 2023 in line with the General Pt armaceutical Council (GPhC) 2017 Initial Educational and Training (IET) standards or pharmacy technicians.

2. Tha emplo er is responsible for employing PTPT(s) in line with their existing policies and proce ures. The employer will ensure appropriate DBS and reference checks o' arecarrie ut as per the employing organisations HR policies and that the PTPT or is 13year older.

2.6 PTPTs will be employed on a full-time, 24-month contract (min 30 hours per week).

2. Agreed fui ding has been allocated on the assumption that PTPTs will be employed as per N S Agenda for Change pay scale (annex 21 band 4) and terms and cond'tions

Part Structure of ucation and training programme

Trainin Prog mmes will:

- meet tie req irements of the GPhC 2017 IET standards for pharmacy technicians.
- be overseen N an Educational Supervisor, who must be a pharmacy professional (see [4]).
- have a work- ased Practice / Clinical Supervisor throughout each rotation/care setting (see [5]).
- include train' g and development to ensure accuracy in the assembly of medicines cy and the accu check of items dispensed by others as well as training in medicines nd reconciliation supply.
- provide expe ential learning opportunities.

- demonstrate quality benchmarking aligned to the Health Education England national quality framework.
- have a learning plan (demonstrably) in place before the PTPT starts.
- have placement objectives for each care setting/rotation.
- Where the training programme includes placements, the employer must ensure that the PTPT is fully inducted into each placement.

Part 4: Education provision

- The employer will procure the education provision which shall be a GPhC approved national qualification or course by a GPhC accredited training provider
- The employer is responsible for ensuring that the PTPT meets the education providers' entry requirements and undertakes any pre-screening as required.
- The PTPT must be given a minimum of one day per week to attend their education provider and / or complete distance/e-learning. This should be part of their paid employment and may contribute towards their 'off-the-job' training requirement if completing an apprenticeship.

Part 5: Designated Educational Supervisor

- Employers must have a named registered pharmacy professional to act as a designated educational supervisor who has been registered with the GPhC for at least two years at the point when the PTPT commences the programme.
- A designated educational supervisor is someone who is selected, appropriately trained and responsible for the overall supervision and management of the PTPT's educational progress during the 24-month training programme.
- To become a designated educational supervisor, candidates must:
  - be a registered pharmacy professional
  - have been practising as a registered pharmacy professional for at least two years in pharmacy
  - meet the GPhC tutor suitability requirements
  - meet the education provider's requirement
- The educational supervisor should work collaboratively with the practice/clinical supervisors to ensure the overall training programme meets the GPhC 2017 IET standards for pharmacy technicians and monitor the PTPTs progress throughout the training programme in order to give feedback at the annual appraisal.

It is expect d that the educational supervisor will also meet their PTPT at least once a month to pr ide holistic care, review progress and support.

Part 5: Practice 1 Clinical Supervisors

- A practice/clinical supervisor in pharmacy is someone who is selected, appropriately trained and responsible for overseeing a specified PTPTs work and provide developmental feedback during a period of training. This role requires appropriate assessment skills.
- Practice/clinical supervisors will support PTPTs to identify opportunities for learning in the workplace and provide supervision of PTPTs on a day-to-day basis, identifying PTPTs requiring additional support.
- Practice/clinical supervisors will be involved in and contribute to a work-based learning culture.
- The GPhC 2017 IET standards for pharmacy technicians require PTPTs to have the opportunity to work with the wider multi professional team to reflect the necessary knowledge and skills required of the role. We recognise that on occasion, supervision may be best placed with registered professionals outside of the pharmacy profession.
- The practice/clinical supervisor should meet with the PTPT at the start of a placement/rotation to agree learning outcomes, training and support. They should then meet with the PTPT mid-placement/rotation to provide interim feedback and support and then again at the end of the placement/rotation to provide summative feedback.
- Where a PTPT does not have placements / rotations, the practice / clinical supervisor should meet with the PTPT at the beginning of a 12-week period to agree learning outcomes, training and support. Following this, supervisors and PTPTs should meet mid-12-week period to provide interim feedback and support and then again at the end of the 12-week period to give summative feedback.

NHSE ucation and T ing Contract v1 — published [INSERT DATE]

SCHEDULE 2 - FUNDING

Pr viders II be Id one single payment of xxxxxxx at the end of the first calendar month d
of raining follow by eleven monthly (pro-rata) payments which will total xxxxxx in year fining
1 c , f the -year t programme (a total of xxxxxxx. Year 2 of the training programme thly (pro-
wil include 12 mo rata) payments of xxxxxxx, as described at (3) of this Schedule
2.

All funding offer iNithin this Schedule 2 are contingent upon **HEE** receiving funding 023-
ap royals for the 24 NHS Financial Year. HEE reserves the right to withdraw from tivity,
or uspend any a where finance is either delayed, suspended or ceased. In such flow the
ca es, will f Termination process described at (15) of Schedule 2 of this
co HEE
tract.

Th will ¶ovide funding contingent upon the Provider delivering Year 1 and
2 19Authority n Year mbers as follows:
TPT
training

Activil v		; •';	Fundit1TOper -	Number of PTI)Ts	Total FundlOg
PTPT Year 1	Educat per P	n and training FIT	£22,722	1	[redacted]
PTPT Year 2	Educa t per P	n and training PT	£23,327	1	[redacted]
		;| | |	.	**Total value**	**£48,099.00**

mepayme o **education and training contributions due to withdrawals:**
nts9 t ithd ws from training the employer must inform HEE immediately. The will
PTPT1thly stop from the month the PTPT withdraws. If additional payments I yer
ar he em will be liable to return the additional money.
payment
made

- nvoicin wil be made directly to contractors by the NHSBSA.
- Payment l a made into the bank account details that the NHSBSA hold for each
s will
- Payment eparate payment from the other payment that Contractors receive from
FCode II be a **n 1st** of each month in respect of reimbursement and renumeration.
This w the
NHSBSA

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- NHSBSA Customer Payments team will send written confirmation to the Contractor of the payment value.
- - Payments related to this activity will not appear on the NHSBSA Contractors Schedule of Payment.

SC IESDULE 3 - QUALITY AND PERFORMANCE REQUIREMENTS

1. uality Compl ce

.1 Theitpplie and their partners will allow HEE staff access to their sites and facilities upon reque t and where appropriate.

.2 The Suppli r and their partners will allow all those involved in the programme to provide fe pack on implementation, progress and completion, in line with orgat·r information governance policies and processes.

sation 1.3

The Supplie and their partners will be familiar with and ensure that PTPT training aligned to th is national **HEE** Quality Framework.

eIndicators

2. ey Perferman nce indicators are as per Schedule 1 of this agreement.

1 Key rierform

SCHEDULE 4 - DATA PROTECTION PROTOCOL

The definitions and interpretative provisions at clause 0 of this 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 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 Data Protection Legislation;
"Data Subject Access Request"	means a request made by, or on behalf of, a Data Subject to exercise rights granted pursuant to the Data Protection Legislation;
"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 Provider where the Provider is acting as a Processor in relation to this contract.

DATA PROTECTION

The Parties acknowledge that for the purposes of the Data Protection Legislation, if Table A of this Protocol has been completed then HEE is the Controller and the Provider is the Processor in relation to the Processing described at Table A. Where the Provider acts as a Processor they are only authorised to carry out the Processing listed in Table A.

The Provider shall notify HEE immediately if it considers that any of HEE's instructions infringe the Data Protection Legislation.

The Provider shall provide all reasonable assistance to **HEE** in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of HEE, include:

a systematic description of the envisaged Processing operations and the purpose of the Processing;

an assessment of the necessity and proportionality of the Processing operations in relation to the Services;

an assessment of the risks to the rights and freedoms of Data Subjects; and

the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

The Provider shall, in relation to any Personal Data Processed in connection with its obligations as a Processor under this contract:

process that Personal Data only in accordance with Table A of this Protocol, unless the Provider is required to do otherwise by Law. Where the Provider is required by Law to Process the Personal Data it shall promptly notify HEE before Processing the Personal Data or at the

first a ailable opport nity where prior notification is not possible unless notification to HEE is proh' ted by Law;

ensur that it has in lace Protective Measures as appropriate to protect against a Data Loss Event having taken a :Count of the:

nature of the data to be protected;

harm that might result from a Data Loss Event;

state of technological development; and

cost of implementing any measures;

ensure that:

the Provider Personnel do not Process Personal Data except in accordance with this contract (and in particular Table A of this Protocol);

it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:

( ) are aware of and comply with the Provider's duties under this Protocol;

(A) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;

(B) 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 HEE or as otherwise permitted by this contract; and

(C) have undergone adequate training in the use, care, protection and handling of Personal Data;

0.0.0 not ransfer Personal Data outside of the United Kingdom unless the prior writ consent of HEE has been obtained and the following conditions are fulfil d:

( ) HEE or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR) as determined by HEE;

(i) the Data Subject has enforceable rights and effective legal remedies;

(ii) the Provider 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 HEE in meeting its obligations); and

(iii) the Provider complies with any reasonable instructions notified to it in advance by HEE with respect to the Processing of the Personal Data;

at the written direction of HEE, delete or return Personal Data (and any copies of it) to HEE on termination or expiry of the contract unless the Provider is required by Law to retain the Personal Data;

assist HEE in ensuring compliance with the obligations set out in articles 32 to 36 of the UK GDPR taking into account the nature of the Processing and the information available to the Processor.

Subject to paragraph 0 of this Protocol, the Provider shall notify HEE immediately if it:

receives a Data Subject Access Request (or purported Data Subject Access Request);

receives a request to rectify, block or erase any Personal Data;

receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this contract;

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

becomes aware of a Data Loss Event.

The Provider's obligation to notify under paragraph 0 of this Protocol shall include the provision of further information to HEE in phases, as details become available.

Taking into account the nature of the Processing, the Provider shall provide HEE with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request described in clause 0 of this Protocol (and insofar as possible within the timescales reasonably required by HEE) including by promptly providing:

HEE with full details and copies of the complaint, communication or request;

such assistance as is reasonably requested by HEE to enable HEE to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

HEE, at its request, with any Personal Data it holds in relation to a Data Subject;

assistance as requested by HEE following any Data Loss Event;

assistance as requested by HEE with respect to any request from the Information Commissioner's Office, or any consultation by HEE with the Information Commissioner's Office.

The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Protocol and make such records available to HEE on request.

The Provider shall allow for audits of its Processing activity by HEE or HEE's designated auditor.

The Provider shall designate a Data Protection Officer I required by the Data Protection Leg lation.

Bef re allowing an Sub-processor to Process any Personal Data related to this contract, the Pro ider must:

noti HEE in writin pf the intended Sub-processor and Processing;

obta n the express rior written consent of HEE;

1 ente into a written reement with the Sub-processor which give effect to the terms set out in this rotocol Such t t they apply to the Sub-processor; and

prov de HEE with Lich information regarding the Sub-processor as HEE may reasonably requ re.

The Provide shall remain fully liable for all acts or omissions of any Sub-processor.

HEE may, **a**t **eny ti** e on not less than thirty (30) Business Days' notice, revise this Protocol by r placing i $t with ny applicable controller to processor standard clauses or similar terms form g partan! a plicable UK certification scheme (which shall apply when incorporated by) atta ment to this c ntract).

The arties agree t **take** a ccount of any guidance issued by the Information Commissioner's Offic . HEE ippy on notless than thirty (30) Business Days' notice to the Provider amend this Prot col to I ensure that it complies with any guidance issued by the Information Com issionor's Offi

The rovider shall mply with any further instructions with respect to Processing issued by rAny HEE ywritOn notic' such further written instructions shall be deemed to be incorporated am the into able A below f date at which such notice has been provided to the Provider.

Subj ct to pa'ragrapr1 0 and **0** of this Protocol, any change or other variation to this Protocol shall only bt binding once it has been agreed in writing and signed by an authorised repre entativ of bosh Parties.

Table A - Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the Processing	*<short description of what the processing is about i.e. its subjec matter>*
Duration of the Processing	*<Clearly set out the duration of the processing including dates> ana the supplier*
Nature and purposes of the Processing	*<Please be as specific as possible. but make sure that you cover ah intended purposes* *The nature of the processing means any operation such as collection. recording, organisation. structuring, storage, adaptation or alteration, retrieval. consultation. use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc* *The purpose might include: employment processing, statutory obligation, recruitment assessment etc>*
Type of Personal Data	*<Examples here include: name, address. date* of *birth. NI number. telephone number, pay, images, biometric data etc>*
Categories of Data Subject	*<Examples include: Staff (including volunteers. agents. and temporary workers), customers/ clients, suppliers, patients, Learners / pupils. members of the public, users* of a *particular website etc>*
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data data	*<Describe how long the data will be retained for, how it be returned or destroy>*

- INFORMATION AND DATA PROVISIONS

In re pect of any Cc nfidential Information it may receive directly or indirectly from the other Pa ("Discloser") and subject always to the remainder of this paragraph 0, each Party es ("Re ipient") under to keep secret and strictly confidential and shall not disclose any such Confidential In ormation to any third party without the Discloser's prior written consent provi ed that

the ecipient shall of be prevented from using any general knowledge, experience or skills whic were in its pot ssion prior to the Commencement Date;

the p ovisions of this aragraph 0 shall not apply to any Confidential Information:

which is in o nters the public domain other than by breach of this contract or other act or dmiss 11 s of the Recipient;

which is obt arced from a third party who is lawfully authorised to disclose such i information

which i auth ~ftsed for disclosure by the prior written consent of the Discloser;

which tie Re pient can demonstrate was in its possession without any obligation of confidentialit prior to receipt of the Confidential Information from the Discloser; or

which the R ipient is required to disclose purely to the extent to comply with the requirements f any relevant stock exchange.

Nothi g in this parag aph 0 shall prevent the Recipient from disclosing Confidential Information wher it is required ti do so by judicial, administrative, governmental or regulatory process in conn ction WO an action, suit, proceedings or claim or otherwise by applicable Law, inclu ing the Freedc of Information Act 2000 ("FOIA"), Codes of Practice on Access to on, on Gove nment Inform the Discharge of Public Authorities' Functions or on the rds **("Codes of** Mana ement of Recc **Practice")** or the Environmental Information Regulations 2004 "**Envirclr**jment **Regulations").**

HEE ay disclose th Provider's Confidential Information:

on a onfidential ba is, to any Contracting Authority (the Parties agree that all Contracting Authc rities receiving such Confidential Information shall be entitled to further disclose the on Confi ential Informal to other Contracting Authorities on the basis that the information is if to confi ential and is n be disclosed to a third party which is not part of any Contracting Auth tY);

on a onfiden ill bas s, to any consultant, contractor or other person engaged by HEE and/or the C ntractirig Auth illty receiving such information;

i to an releva t party cl.r the purpose of the examination and certification of HEE's accounts;

to an relevailtl part fpr any examination pursuant to section 6(1) of the National Audit Act 1983 f the econom iafficiency and effectiveness with which HEE has used its resources;

to Pa liament and P rliamentary Committees or if required by any Parliamentary reporting requir merits;

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 contract,

> and for the purposes of this contract, references to disclosure "on a confidential basis" shall mean HEE making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this paragraph 0.

The Provider may only disclose HEE's Confidential Information, and any other information provided to the Provider by HEE in relation this contract, to the Provider's Staff or professional advisors who are directly involved in the performance of or advising on the Provider's obligations under this contract. The Provider shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in this paragraph 0 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at HEE's written discretion, destroyed securely or returned to HEE when it is no longer required. The Provider shall not, and shall ensure that the Staff do not, use any of HEE's Confidential Information received otherwise than for the purposes of performing the Provider's obligations in this contract.

For the avoidance of doubt, save as required by Law or as otherwise set out in this 0, the Provider shall not, without the prior written consent of HEE (such consent not to be unreasonably withheld or delayed), announce that it has entered into this contract and/or that it has been appointed as a Provider to HEE and/or make any other announcements about this contract.

Paragraph 0 of this 0 shall remain in force:

without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and

for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this contract unless otherwise agreed in writing by the Parties.

DATA PROTECTION

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, each Party 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.

Where either Party is Processing Personal Data under or in connection with this contract as a Processor, the Parties shall comply with the Data Protection Protocol. Where the Parties are both Processing Personal Data under or in connection with this contract as Controllers, the Parties shall set out their rights and responsibilities in respect of such Personal Data in a document based on the model data sharing agreement at 0.

The provisions of this paragraph 0 are additional to those set out in the Data Protection Protocol.

Without prejudice to the generality of paragraph 0, when acting as a Controller HEE shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Provider for the duration and purposes of this contract.

Withc ut prejurd ce to e generality of paragraph 0, when acting as a Controller in
with t connection is contract th Provider shall:

not t insfer any Per onal Data outside of the UK without the prior written consent of HEE;

assis HEE in respo ding to any request from a Data Subject to exercise their rights under the
Data rotection Legi Nation and responding to consultations and inquiries from the
Com Information iissioncr offs q or any other regulator;

notif HEE without u due delay on becoming aware of a Data Loss Event; and

ensu that al Qersof unel who have access to or process Personal Data in connection with this
contr ct are c bilged keep the personal data confidential

Whe acting as a C 9troller, the Provider must obtain the prior written consent of HEE,
cons such nt not to be u reasonably withheld or delayed, prior to appointing any third
pros party as a sor of Person l Data under this contract.

The rovider and EE shall ensure that Personal Data is safeguarded at all times in
acco ance 'th the aw, and this obligation will include (if transferred electronically) only
trans wring P sone ata (a) if essential, having regard to the purpose for which the transfer that
is co ducted; nd (b is encrypted in accordance with any international data encryption are, and
stand rds for healthi as otherwise required by those standards applicable to HEE uidance (this
unde any Law and n includes, data transferred over wireless or wired networks, memory sticks
held laptops, CDs and tapes).

Wher, as a require ilnt of this contract, either Party is Processing Personal Data relating to
Lear ers as part of t an annual information governance assessment using the Data Security
comp ete and publist .dsptookit.nhs.uk);
& Pro ection Toolkit Services, that Party shall:

meet the stars ards ii

nomir the relevant NHS Data Security & Protection Toolkit;
direct ate an aform
and f rs or equivalei ion governance lead able to communicate with that Party's board of
regul am whom that governance body, who will be responsible for information governance
incide r reports' on in Party's board of directors or equivalent governance body will receive
ts of dra loss

in adc lion to the reps ements of the Data Protection Protocol, report all incidents of data loss
and b each oraonfid ce in accordance with applicable Department of Health and Social Care
and/o the NHS Engl nd and/or Health and Social Care Information Centre guidelines (which
can b provided to t Provider by the HEE on request);

put in lace a d main 4in policies that describe individual personal responsibilities for handling
Perso al Data and a ly those policies rigorously;

put in place and mai lain agreed protocols for the lawful sharing of Personal Data with other
NHS in rganisations ad (as appropriate) with non-NHS organisations in circumstances
which sharing of that data is required under this contract;

at all imes c mply w any information governance requirements and/or processes as may
be set out in t Se e Specification; and

comply with any new and/or updated requirements, Guidance and/or Policies notified to the Provider by HEE from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.

Subject to clause 14, the Provider shall indemnify and keep HEE indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Provider's unlawful or unauthorised Processing (whether in breach of this contract or the Data Protection Legislation) or the destruction inaccessibility and/or damage to Personal Data for which the Provider is responsible in connection with this contract.

The requirements of this paragraph 0 are in addition to, and do not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

FREEDOM OF INFORMATION AND TRANSPARENCY

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.

Each Party shall assist and cooperate with the other to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Parties agree:

that this contract and any recorded information held by one Party on the other's behalf for the purposes of this contract are subject to the obligations and commitments under the FOIA, Codes of Practice and Environmental Regulations;

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 Party receiving such a request;

that where a Party receives a request for information under the FOIA, Codes of Practice and Environmental Regulations in relation to this contract and/or its subject matter, and that Party itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the other Party 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 other Party;

that where the Provider receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Provider 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;

that either Party, 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 other Party and this contract; and

to assist the other Party 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 other Party within five (5) Business Days of that request and without charge.

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 contract is not Confidential Information.

Notwithstanding any other term of this contract, the Parties consent to the publication of this contract 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.

In preparing a copy of this contract for publication under paragraph 0 of this 0, **HEE** may consult with the Provider to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at HEE's absolute discretion.

The Provider shall assist and cooperate with HEE to enable **HEE** to publish this contract.

Where any information is held by any Sub-contractor of the Provider in connection with this contract, the Provider shall procure that such Sub-contractor shall comply with the relevant obligations set out in paragraph 74 of this 0, as if such Sub-contractor were the Provider.

INFORMATION SECURITY

Without limitation to any other information governance requirements set out in this 0, the Provider shall:

notify HEE forthwith of any information security breaches or near misses (including without limitation any breaches of confidentiality or actual information security breaches) in line with HEE's information governance Policies (which can be provided to the Provider by **HEE** on request); and

fully operate with any audits or investigations relating to information security and any privacy impact assessment undertaken by **HEE** and shall provide full information as may be reasonably requested by HEE in relation to such audits, investigations and assessments.

Where required in accordance with the Service Specification, the Provider will ensure that it puts place and maintains an information security management plan appropriate to this contract, the Services being provided and the obligations placed on the Provider. The Provider shall ensure such plan is consistent with any relevant Policies, Guidance, Good Industry **Practice** and any relevant quality standards as may be set out in the Service Specification.'

Where required in accordance with the Service Specification, the Provider shall obtain and maintain certification under the **HM** Government Cyber Essentials Scheme at the level set out in the Service Specification.

- CHANGE CONTROL NOTIFICATION FORM

CCN Number:

Title of Change	
Service Line	
Operations Lead	
CM originator	

Change Control Notice (CCN to the following agreement:		
Agreement name		**Date of Agreement**
Date Change Requested	**Date CCN Raised**	**Expiry date of CCN**

Contact Information for the proposed change	
Originator	**Other Party**
Name: **Company:** **Telephone:** **Email:**	**Name:** **Company:** **Telephone:** **Email:**

Clauses and Schedules affected

	Associated Chang ei Control Notices		
CCN	*No. !*	*Name of Agreement*	*Date of Agreement*

Reason for Chang

Desl:ription of Chile

Chaiges to rrntrlct charges and revised payment schedules

Price to implement change

Impact of change on other agreement provisions

Timetable for implementation

Acceptance	
Signed for and on behalf of: **Health Education England**	**Signed:** **Print Name:** **Title:** **Date:**
Signed for and on behalf of: [PROVIDER]	**Signed:**

	Print name: **Title:** **Date:**

- EXCHANGE OF INFORMATION BETWEEN HEE AND THE

PROVIDER Template Data Sharing Agreement

This Data Sharing Agreement is made on [Insert date]		
	Between: *[List all the parties]*	
	Purpose, objectives of the information sharing: *[Be clear and concise about the reasons for data sharing, giving as detailed a description as possible. You should set out what objective you are hoping to achieve by sharing personal data between organisations. Each purpose can be numbered separately]*	
	Controileds *(List here all organisations which are controllers as part of this agreement and for which purposes]*	
	Processor/s *[List here all organisations acting* as *processors and sub-processors as part of the agreement (and to which purpose they relate to) and state which controller(s) they report to]*	
	Data items to be processed (add more lines if required)	
	Detail Item	**Justification** **(including confirmation of signed DPIA where applicable)**

	I		
	I		

6	Article 6[i] Condit [Specif7hiclArticle i	on — Personal Data *6 condition (legal basis) is met]*	
	Legal Basis (One perso4I data	**of these must apply whenever you process I**	**Tick which one you are using**
	(a) CoriSent: their **personal**	**e** individual has given clear consent for you to process **ata** for a specific purpose.	
	(b) Contract: the indiyidual, before tIterin i	**he** processing is necessary for a contract you have with r because they have asked you to take specific steps into a contract.	
	(c) Legal obli the law (not inc	**lion:** the processing is necessary for you to comply with t.cling contractual obligations).	
	cl) Vital interests:	**the** processing is necessary to protect someone's life.	
	e) Public task he public inter as a clear bas	**the** processing is necessary for you to perform a task in st or for your official functions, and *the* task or function in law.	
	Legitimat e i terests[l] or the ason to prote I gitimate inter rocessing data	**i terests:** the processing is necessary for your legitimate itimate interests of a third party, unless there is a good the individual's personal data which overrides those ts. (This cannot apply if you are a public authority to perform your official tasks.) I	

7	**Article 9 condition — Special Categories of Personal Data** *[Specify here which Article 9 condition is met - a summary of the most likely conditions is provided below.]*	
	Conditions for processing special category data	**Tick which one you are using**
	(a) Explicit consent: (the data subject has given explicit consent)	
	(b) Vital interests: (to protect the vital interests of the data subject, who cannot give consent (life or death situations)	
	(c) Legal claims or judicial acts: (the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity)	
	(d) Reasons of substantial public interest (with a basis in law): (which shall be proportionate to the purpose and, respect the essence of the right to data protection)	
	(e) Health or social care (with a basis in law): (preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services)	
	(f) Public health (with a basis in law): (protecting against serious intemal or cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices)	
	(g) Archiving, research and statistics (with a basis in law): (archiving purposes in the public interest, scientific or historical research purposes or statistical purposes)	

	Other:			
	Please state (to indicate) below if you are processing data based on Schedule 1, Part 1, Act 2018:			
8	**IndividOl right and preferences**			
	Explain how these will be managed by the parties to this agreement]			
	ndividUal right			**Indicate how the right will be managed or why it is not applicable**
	The right to be		nformed	
	The right	of access		
	The right	to rec	ification	
	The right	to erasure		
	The right	to restrict	processing	
	The right	to portability		

	The right to object	
	Rights in relation to automated decision-making profiling	
	Please state below how you will manage any complaints raised regarding the proposed data sharing: **Does the National Data Opt-out apply to proposed purpose's for data sharing?** **YIN If yes, please state how these will be managed:**	
9	**Compliance with duty of confidentiality I right to privacy** *[Please state here how you will be satisfying the duty of confidentiality. NB this is in addition to how you have explained meeting data protection requirements to process personal data (above)]* - Consent - Statutory Gateway (e.g. approval under s251 of the NHS Act 2006) *[Please provide an explanation if necessary. If relying on statutory gateway, specify which and confirm whether it sets aside the common law duty of confidentiality.]* **Is there any interference with Human Rights Article 8?** Yes/No/Not applicable **If yes, document why it is necessary to interfere with Human Rights and proportionate to do so:**	

10	**Transparency**	*here*	*information* *how communication/s with the public will be undertaken i.e. update Privacy leaflets/posters, information on website/s etc]*
11	**How will**	*HSran y*	*org ,isation any i formation* **sharing be carried out?** *nism by which the data will be shared and an explanation, why this is secure and is responsible for ensuring security tputs/analysis will be shared and an explanation of why this is secure, necessary rate 7 including security precautions proportionate to the level of frequency is being transferred outside the EU and, if so, relevant safeguards (this pliance with Article 45 of the GDPR)*
12	**Accura6Y**	**of tho**	*the processes/procedure* **data being shared** *for ensuring that data held and shared is accurate. Explain will be shared with all recipients of the data.]*
13	**Rectification**	**of**	*this agreement.* **data that has been shared** *procedures in place, or to be put in place, for rectifying inaccurate data that or rectifying data that has been identified as inaccurate after sharing by the This is separate to the individual's right to rectification]*
14	**Retention**	**and of**	**isposal requirements for the information to be shared - including details nformation to the source organisations (if applicable)**
15	**reach**	**manage**	

	[Outline the process for how any breach of data security/confidentiality will be managed by relevant parties]
16	**Specify any particular obligation on Ar_iy party to this agreement**
17	**Contacts — Information Governance and Caldicott Guardian** *[List here the IG contacts for each organisation]*
18	**Commencement of agreement** *[Specify the date the Agreement will come into force]*
19	**Review of agreement** *[Specify if, and when, and by whom (specify job role) the agreement will be reviewed]*
20	**Review period** *[Specify, if applicable, how long any review period will be]*
21	**Variation** *[Specify here if the parties, or any party, can vary the terms of this agreement. If so, detail how this is done]*
22	**Ending the agreement** *[Specify how a party ends their participation in the Agreement, and how data will be managed by the exiting party]*
23	**End date**

[Speci fy the d ate the agreement ends]
21 *[Each "'roan's ion signs here, detailing the name and position of the signatory based on the sharind iequ Le. DPO/SIRO/CG/CEO/Head of service]*