

Date

25 August 2021

**SPOKE AGREEMENT**

Between

**(1) GLOBAL CAREER NETWORKS LIMITED**

And

**(2) HEALTH EDUCATION ENGLAND**

**(`HEE`)** Relating to:

The recruitment of Diagnostic Radiographers from overseas to work and learn in NHS organisations across England on a 3 year earn, learn, return scheme within the Global Allied Health Professionals Programme.

## SECTION ONE - FORM OF AGREEMENT

This Agreement is made on: 25/08/2021

### GLOBAL CAREER NETWORKS LIMITED

30 Victoria Terrace  
Addingham  
Ilkley  
LS29 0NF

and: **HEALTH EDUCATION ENGLAND (HEE)**

1st Floor Blenheim House  
Duncombe Street  
Leeds  
LS1 4PL

referred to individually as “**a Party**” and together as “**the Parties**”.

The Agreement commences on:

|                       |               |            |
|-----------------------|---------------|------------|
| Day: 25 <sup>th</sup> | Month: August | Year: 2021 |
|-----------------------|---------------|------------|

(the “**Commencement Date**”)

and, unless terminated earlier in accordance with its other provisions, the Agreement remains in effect until:


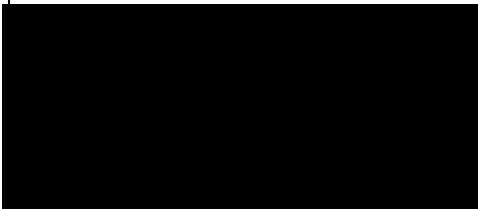
|                       |              |            |
|-----------------------|--------------|------------|
| Day: 31 <sup>st</sup> | Month: March | Year: 2024 |
|-----------------------|--------------|------------|





(the “**Expiry Date**”).

### IT IS AGREED THAT

This Form of Agreement (Section One) together with the attached Terms and Conditions and

Schedules 1 to 5 inclusive (Section Two) are the documents which collectively form this “**Agreement**”.

|  |  |
|--|--|
| Signed for <b>GLOBAL CAREER NETWORKS LIMITED</b>                             |  |
| Title or position held on behalf of<br><b>GLOBAL CAREER NETWORKS LIMITED</b> |  |
| Full Name  |  |
| Signature  |  |
| Date   | 25 August 2021   |

|  |   |
|--|---|
| Signed for <b>HEALTH EDUCATION ENGLAND</b>                             |   |
| Title or position held on behalf of<br><b>HEALTH EDUCATION ENGLAND</b> | <br> |
| Full Name  |    |
| Signature  |   |
| Date   | 21/09/2021  |

## SECTION TWO - TERMS AND CONDITIONS

### BACKGROUND:

- (A) Health Education England (**HEE**) was established for and is committed to the provision of high quality education and training for the development of doctors, Radiographers and other healthcare professionals within England.
- (B) HEE has been working for some time in developing the programme for Allied health professionals – radiographers, mammographers, sonographers for Global Engagement.

HEE established a hub office based in England which would be operated by HEE to manage providers of suitably qualified candidates to be employed by specific participating NHS Trusts in England .

- (C) The Provider is participating in the Programme and is working with HEE to source candidates to be promoted to NHS Trusts pursuant to the Programme, for such candidates to be employed directly by NHS Trusts as Radiographers in England as part of the Programme.
- (D) A requirement is for HEE and the Provider to enter into a direct contractual arrangement in the terms set out in this Agreement which will regulate the relationship between HEE and the Provider in relation to Radiographers coming through the Programme and shall form the basis of the contractual relationship between HEE and each participating NHS Trust for the supply of Allied health professions through the Programme.

### AGREED TERMS:

#### 1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

##### 1.1 Definitions

In this Agreement the following words and expressions shall, save where the context otherwise requires, have the following meanings:

**Agreement Year** means each period of twelve (12) consecutive Months from the Commencement Date (or a subsequent anniversary of it) whilst this Agreement remains in existence, save that the final Agreement Year may be such shorter period up to and including the date of expiry or early termination of the Agreement;

**Business Day** means any day which is not a Saturday, Sunday or public holiday in England;

**Change in Law** means the coming into effect or repeal (without re-enactment or consolidation) of any Law or any amendment or variation to any Law or any judgement of a relevant court of Law which changes

binding precedent in England and Wales in each case after the date of this Agreement;

**Commencement Date** has the meaning given to it in Section One – Form of Agreement above;

**Commission** means the sums payable by HEE to the Provider as set out in Schedule 2.

**Controller, Data Controller, Processor, Data Processor, Data Subject, Personal**

**Data, Processing, Process and Processed:** as set out in the Data Protection Legislation in force at the time;

**Data Protection Legislation:** (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law;

**Dispute Resolution Procedure** means the dispute resolution procedure detailed in clause 13;

**Expiry Date** has the meaning given to it in in Section One – Form of Agreement above;

**FOIA** means the Freedom of Information Act 2000;

**Force Majeure** has the meaning given in clause 24;

**Good Industry Practice** means using standards, practices, methods and procedures conforming to the Law and exercising that standard of skill, care and diligence which would reasonably be expected of an appropriately qualified, skilled and experienced person in the provision of services similar in nature to the Services;

**HEE Services** means the services to be procured by HEE to be provided by the relevant participating NHS Trust as set out in more detail in Schedule 3 Part A;

**Intellectual Property Rights** means any and all patents, trademarks, service marks, domain names, design rights, utility models, inventions, know how, trade and business names, copyrights and rights in databases and any other similar rights or obligations subsisting

anywhere in the world (whether registered or not) for the full duration of such rights including extensions and renewals, and including the goodwill in the same;

**Law** means:

- (a) any Act of Parliament or the Welsh Assembly, any statutory instrument or other subordinate legislation of either parliament or any exercise of the Royal Prerogative;
- (b) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
- (c) any applicable guidance direction or determination or NHS requirements with which HEE is bound to comply, to the extent that the same are published and publicly available; and
- (d) any applicable judgement of a relevant court of law which creates binding precedent on England and Wales,

in each case, in force in England and Wales;

**Losses** has the meaning given in clauses 8.2 and 15.4;

**Month** means a calendar month (and the term Monthly shall be construed accordingly);

**NHS** means the National Health Service for England and Wales;

**NHS Trust** means any NHS Trust or NHS Foundation Trust established from time to time and operating anywhere in England;

**Provider Services** means the services to be provided by the Provider;

**Quality Framework** means the Quality Framework as amended from time to time a copy;

**Regulatory Body** means the relevant validating, accrediting and regulatory body which sets, monitors and maintains standards for the relevant profession Radiographers are required to be registered with (as applicable), including, without limitation the NMC;

**Remedial Action Plan** has the meaning given in clause 13;

**Services** shall mean, where the context permits, the Provider Services and the HEE

Services;

**Term** shall have the meaning set out in clause 2.1;

**UK** means the United Kingdom of Great Britain and Northern Ireland.

## **1.2 Interpretation and Construction**

In the Agreement, unless the context otherwise requires:

1.3 Words importing any gender include any other gender, and words in the singular include the plural and vice versa.

1.4 Clause and Schedule headings are inserted for convenience only and shall have no legal effect. Reference in this Agreement to any clause or Schedule without further designation shall be construed as a reference to the clause or Schedule to this Agreement, and in the event of any conflict between a provision of a clause and a Schedule, then the clauses of the Agreement shall prevail.

1.5 References to any statute or statutory provision in this Agreement shall be deemed to refer to those provisions as replaced, amended, extended or re-enacted from time to time whether by statute or by directive or regulation (which is, in the case of a directive or regulation, intended to have direct application within the UK and has been adopted by the Council of the European Communities) and all statutory instruments or orders made pursuant to it.

1.6 A reference to a statute or statutory provision includes:

1.6.1 any subordinate legislation (as defined in Section 21(1) of the Interpretation Act 1978) made under it;

1.6.2 any repealed statute or statutory provision which it re-enacts (with or without modification); and

1.6.3 any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it.

1.7 Where consent or approval of a Party to this Agreement is required for any purpose under or in connection with the terms of this Agreement it shall be given in writing.

1.8 Any reference to a Party shall include a reference to any successor in title or any organisation or entity which has taken over its function or responsibilities and its permitted assigns.

1.9 All references to this Agreement include (subject to all relevant approvals) a reference to this Agreement as amended, supplemented, substituted, novated or assigned from time to time.

## **2. COMMENCEMENT AND TERM**

This Agreement shall take effect on the Commencement Date and shall, unless terminated earlier in accordance with its other provisions or the general Law, continue for a period of eighteen (18) months after the Commencement Date (“**the Initial Period**”). After the end of the Initial Period, the Agreement shall then continue (unless terminated earlier in accordance with its other provisions or the general Law) until such time as either Party gives the other not less than one (1) Months’ notice of termination, such termination to take effect on an anniversary of the Commencement Date (the Initial Period and any subsequent period of the Agreement being known together as “**the Term**”).

## **3. CO-OPERATION**

3.1 The Parties agree to co-operate in good faith at all times with regard to their respective obligations under this Agreement, and with regard to the provision of the HEE Services and the Provider Services in furtherance of the Programme hereunder and to agree upon acceptable working protocols moving forward.

3.2 All communication with reference to this agreement will be with HEE only unless explicit agreement is approved by HEE in respect to content, respondent, timing, nature and purpose.

## **4. WARRANTIES**

4.1 The Provider warrants to HEE and shall provide a direct warranty to any participating Trust that:

4.1.1 Allied health professions put forward by them pursuant to this Agreement have successfully completed all mandatory procedural steps set out in Schedule 1; and

4.1.2 all information supplied by the Provider in respect of any Allied health professions proposed to be employed by a participating NHS Trust is accurate and up to date; and

4.1.3 all information is supplied by the Provider to HEE using the Applicant Tracking System. The Provider can not grant access to any other organisation.

4.2 Until such time as the Provider is able to evidence to the reasonable satisfaction of HEE that the Provider can comply with the warranty set

out in clause 4.1 then no Allied health profession's will be entitled to work as a nurse as part of the Programme in England.

## **5. SERVICES**

### **HEE Services**

5.1 HEE shall procure the provision by any participating NHS Trust of the HEE Services set out in Schedule 2 Part A:

5.1.1 in accordance with the terms of this Agreement;

5.1.2 with all due skill, care and diligence using appropriately experienced, qualified and trained personnel;

5.1.3 in accordance with Good Industry Practice;

5.1.4 in compliance with the Law; and

5.1.5 subject to clause 5.3, otherwise in accordance with the reasonable requests of the Provider.

5.2 In the event of any conflict or inconsistency between any of the requirements set out in clauses 5.1.1 to 5.1.5 (inclusive), the Parties will discuss such conflict or inconsistency with a view to resolving the same; each Party shall continue to provide all Services to each other which are not in dispute.

5.3 HEE shall not be obliged to comply with any instructions from the Provider under clause 5.1.5 which:

5.3.1 do not comply with the Law; or

5.3.2 will or are likely to require HEE or any participating NHS Trust to incur additional costs in complying with such instructions (save where such costs can be recovered by HEE and/or any participating NHS Trust through a variation agreed pursuant to the provisions of this Agreement).

### **Provider Services**

5.4 The Provider shall provide the Provider Services at all times:

5.4.1 in accordance with the terms of this Agreement;

5.4.2 with all due skill, care and diligence using appropriately experienced, qualified and trained personnel;

5.4.3 in accordance with Good Industry Practice;

5.4.4 in compliance with the Law; and

5.4.5 subject to clause 5.3, otherwise in accordance with the reasonable requests of the Trust and/or HEE in terms of any agreed standards to which the Provider Services are required to be supplied from time to time.

5.5 In the provision of the Provider Services, the Provider shall comply with any agreed Key Performance Indicators agreed between the Parties from time to time or as otherwise set out in the Services Agreement, as the case may be.

## **6. PAYMENTS**

6.1 The Provider shall be entitled to issue its invoice in respect of Commission once a nurse has safely arrived in England and taken up their employment with the relevant participating NHS Trust.

6.2 HEE agrees, subject to compliance by the Provider with the provisions of clause 5.5, to make payment (for and on behalf of the relevant participating NHS Trust) to the Provider of the Commission (or such of it that remains outstanding) in accordance with the provisions set out in Schedule 2, within thirty (30) days of the date of the Provider's invoice.

6.3 The Provider shall ensure that each Allied health profession understands the payment obligations they will each be liable for upon signing a contract of employment with a participating NHS Trust, as which are set out in more detail in the financial worksheet set out in Schedule 2 Part B.

6.4 All sums payable by HEE (for an on behalf of a participating NHS Trust) to the Provider under this Agreement are expressed in and are to be paid in pounds sterling (£) and are exclusive of VAT, which shall, where applicable, be paid in addition at the rate in force at the due time for payment subject to the relevant person supplying a valid VAT invoice to the other.

## **7. UNLAWFUL DISCRIMINATION**

7.1 Each Party shall ensure that in carrying out its obligations under this Agreement, it shall comply, and it shall procure that all of its employees, agents and sub- contractors comply, with the provisions of the Equality Act 2010 or any statutory modification or amendment made thereto from time to time or of any similar legislation which has been, or may be, enacted from time to time relating to discrimination in employment or discrimination in the delivery of public services.

7.2 Each Party shall use reasonable endeavours to ensure that all Allied health profession enjoy equal opportunity to receive education and training opportunities regardless of any protected characteristic as defined in the Equality Act 2010 (other than a disability which would prevent that person from practising).

## **8. LIABILITY AND INSURANCE**

8.1 HEE shall procure that any NHS Trust participating in the Programme has in place at all times in respect of each Allied health profession employed pursuant to this Agreement and any Agreement entered into by HEE with a participating NHS Trust and throughout the term of any Allied health profession employed by them pursuant to or in connection with the Programme appropriate professional medical insurance or other indemnity cover for all activity they perform under or in connection with the operation of this Agreement.

8.2 Without prejudice to its liability to HEE for breach of any of its obligations under this Agreement, the Provider shall be liable for and shall indemnify both HEE and any participating NHS Trust against any and all liability, loss, damage, costs, expenses, claims or proceedings whatsoever (**Losses**) incurred or paid by HEE and/or any participating NHS Trust in respect of any claim against HEE and/or any participating NHS Trust, arising under any statute or otherwise in respect of:

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

8.2.2 any injury to any person, including injury resulting in death;

arising out of any act or omission or breach of this Agreement by the Provider, save to the extent caused by any act or omission or breach of this Agreement by HEE and/or any participating NHS Trust.

8.3 No Party excludes or limits its liability for:

8.3.1 death or personal injury arising as a result of the negligence of that Party or any of its officers, employees or agents;

8.3.2 fraud or fraudulent misrepresentation; or

8.3.3 any other liability which cannot be excluded or limited by reason of law.

8.4 Subject to clause 8.3 above and save in respect of the indemnities at clauses 8.2 and 15.6 (liability in respect of which shall remain unlimited), in no event shall either Party be liable under this Agreement for any special, incidental, indirect or consequential loss or damage of any kind howsoever arising in respect of this Agreement or actions connected herewith whether caused by tort (including negligence), breach of

contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

8.5 Subject to clauses 8.3 and 8.4 above and save in respect of the indemnities at clauses 8.2 and 15.6 (liability in respect of which shall remain unlimited), each Party's maximum aggregate liability in each Agreement Year under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise will in no circumstances exceed two (2) times the aggregate Commission paid or payable by HEE to the Provider in the Agreement Year during which such liability arose or five million pounds (£5,000,000) whichever amount is the greater.

## **9. VARIATION**

The terms of this Agreement shall not be varied except where variations are agreed in writing and signed by or on behalf of each of the Parties.

## **10. NOVATION, ASSIGNMENT AND SUB-CONTRACTING**

10.1 HEE and the Provider hereby acknowledge and agree that this Agreement shall be binding on, and shall inure to the benefit of, HEE and the Provider and their respective successors in title and permitted transferees and assigns.

10.2 In the case of HEE, its successors shall include any party to whom HEE (and / or such governmental or regulatory authority as may be involved), transfers the property, rights and liabilities of HEE, upon HEE ceasing to exist or upon its status changing or it being reorganised or upon its functions being altered, and references to Parties, shall be construed accordingly. For the avoidance of doubt, in the event any participating NHS Trust, or any successor body, ceases to exist, the provisions of the NHS Act 2006 (or any successor legislation) in relation to residual liabilities including, without limitation, sections 70 and 71 thereof, shall apply.

10.3 The Provider may not assign, novate, transfer, sub-contract, or otherwise dispose of its rights or obligations under this Agreement in whole or in part, without the prior written consent of HEE (such consent not to be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, such consent from HEE shall be permitted to require the Provider to impose upon such subcontractors obligations no less onerous than those agreed to by the Provider pursuant to this Agreement and the Provider shall remain responsible to HEE for all acts and omissions of such subcontractors as if they were the acts and omissions of the Provider themselves.

10.4 Should this Agreement be so novated in accordance with clause 10.3, both Parties shall enter into a Deed of Novation, as will the assignee, or such other document as HEE may reasonably require giving effect to such assignment.

## **11. TERMINATION**

11.1 Either Party may terminate this Agreement at any time after the expiry of the Initial Period and without further liability to the other (save as specifically stated in it) on giving not less than one (1) Months' written notice of its intention to do so.

11.2 Either Party may terminate this Agreement on notice in writing to the other on the occurrence of any one or more of the following events:

11.2.1 if the other Party commits a material breach of this Agreement and such breach is not capable of being remedied within one (1) month of a notice in writing requesting its remedy;

11.2.2 if the other Party commits a persistent breach of this Agreement

(which for

the avoidance of doubt shall mean any non-material breach which is repeated more than four (4) times within any Agreement Year); and/or

11.2.3 the other Party is in receipt of a quality report from any Regulatory Body which has material adverse implications for the provision of any of the Services, where a Remedy Action Plan has not been agreed and enforced.

11.3 Either Party may terminate this Agreement at any time and without further liability to the other (save as specifically stated in it) on giving not less than thirty (30) days written notice of its intention to do so if any Change in Law or policy is made which has the effect of making this Agreement impossible, impractical or uneconomic for either Party to continue to perform and be engaged with.

11.4 The termination of this Agreement for whatever reason shall be without prejudice to any rights or liabilities which have accrued prior to the date of termination, and shall not affect the validity of any provision of this Agreement which expressly or by implication is intended to remain in force following its expiry or earlier termination (including, without limitation, clauses 3, 4, 6, 7, 8, 12, 13, 14, 15, 16, 18, 19, 20 and 26).

## **12. CONSEQUENCES OF TERMINATION**

12.1 Unless otherwise agreed between the Parties, if, following termination there are any Radiographers remaining subject to contracts

of employment with a participating NHS Trust, this Agreement shall remain in full force and effect in relation to such Radiographers until such time as their contracts of employment have expired in accordance with their respective terms or a comparable alternative has been organised and agreed by each participating NHS Trust and the Provider.

12.2 In the event of termination or expiry of this Agreement no further Radiographers shall be allocated to be employed upon contracts of employment with any participating NHS Trust under or otherwise pursuant to the Programme and upon the terms of this Agreement.

12.3 In the event of early termination of this Agreement, the Provider shall be required to share such information as HEE reasonably deems relevant with any successor organisation(s) subject only to any obligations of confidentiality included within the Agreement.

12.4 In the event of expiry or termination of this Agreement:

12.4.1 each Party shall immediately return to the other all of that other Party's information and other property (save to the extent that same may be required to perform residual obligations upon it);

12.4.2 any unpaid invoices shall immediately become due and payable and any amounts for which an invoice has not been submitted may be invoiced immediately (the invoices being payable upon demand);

12.4.3 both Parties shall co-operate fully to ensure an orderly handover in relation to all aspects of the Services to alternative providers (if any) and shall at all times act in such a manner as not to adversely affect the delivery of the Services or the obligations of the Parties under this Agreement.

12.5 The Parties shall cooperate in the period immediately prior to expiry or termination of the Agreement to ensure that all obligations relating to the Agreement and its expiry / termination have been and continue to be complied with.

### **13. DISPUTE AND REMEDIATION**

13.1 During any dispute arising between the Parties, it is agreed that the Parties respectively shall continue provision of the Services (unless either of the Parties requests in writing that it does not do so).

13.2 In the case of any dispute arising out of or in connection with this Agreement, HEE and the Provider shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the

dispute and following the procedure set out below before considering commencing court proceedings.

13.3 If any dispute arises out of this Agreement either Party may commence formal inter- Party resolution of the dispute acting reasonably and in good faith in doing so. Level 1 of the management levels set out below will commence at the request, in writing, of either Party. Respective representatives of each Party as set out in the table below shall have five (5) Business Days at each level to resolve the dispute before escalating the matter to the next level as appropriate.

| Level | HEE representative                                | Provider representative |
|-------|---|-------------------------|
| 1     | Head of Programme (AHP International Recruitment) |                         |
| 2     | Head of Global Workforce, Education & Research    |                         |
| 3     | Deputy Director, Global Health Partnerships       |                         |

13.4 If the procedure set out above fails for whatever reason to resolve such dispute, the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution (CEDR); or (b) if agreed in writing by the Parties, with any other recognised alternative mediation organisation, using the model procedures of CEDR or the alternative mediation organisation, as the case may be.

13.5 Where a Party is in breach of its obligations under this Agreement, the Parties shall co-operate to draw up a remedial action plan (**Remedial Action Plan**) which shall include actions to be taken and timescales to be met. The Party in breach of its obligations shall comply with the Remedial Action Plan.

13.6 Nothing in this clause shall remove a Party's rights to terminate the Agreement, nor to seek emergency injunctive or other relief if it considers such action is necessary to protect its legitimate rights or interests.

## 14. CONFIDENTIAL INFORMATION

14.1 Each Party undertakes that it shall not at any time during the Term, and for a period of five (5) Agreement Years after its expiry or termination disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 14.2.2.

14.2 Each Party may disclose the other party's confidential information:

14.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Agreement. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it

discloses the other Party's confidential information comply with this Clause 14.2; and

14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No Party shall use the other Party's confidential information for any purpose other than to perform its obligations under the Agreement.

## 15. DATA PROTECTION

15.1 Each Party shall comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

15.2 Neither Party shall, through its acts or omissions, place the other Party in breach of any Data Protection Legislation.

15.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, HEE is the Data Controller and the Provider is the Data Processor. Schedule 4 sets out the scope, nature and purpose of Processing by the Provider, the duration of the Processing and the types of Personal Data and categories of Data Subject.

15.4 Without prejudice to the generality of clause 15.1, the Provider shall, in relation to any Personal Data Processed in connection with the performance by the Provider of its obligations under this Agreement:

15.4.1 Process that Personal Data only on the written instructions of HEE unless the Provider is required to Process such Personal Data otherwise by the laws of any member of the European Union or by the laws of the European Union applicable to the Provider (**Applicable Laws**). Where the Provider is relying on Applicable Laws as the basis for Processing Personal Data, the Provider shall promptly notify HEE of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying HEE;

15.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by HEE, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 the technical and organisational measures adopted by it);

15.4.3 ensure that all personnel (including, without limitation, employees) who have access to and/or Process Personal Data are legally obliged to keep the Personal Data confidential;

15.4.4 not transfer any Personal Data outside of the United Kingdom unless the prior written consent of HEE has been obtained and the following conditions are fulfilled:

clauses

15.4.4.1 HEE or the Provider enter into the Standard Contractual set out in Schedule 5 (and/or such other appropriate safeguards in relation to the transfer as specified by HEE from time to time);

15.4.4.2 the Data Subject has enforceable rights and effective legal remedies;

15.4.4.3 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; and

15.4.4.4 the Provider complies with reasonable instructions notified to it in advance by HEE with respect to the Processing of the Personal Data;

15.4.5 assist HEE, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and otherwise to comply

with HEE's obligations under the Data Protection Legislation to respond to requests from Data Subjects or exercise of the rights of Data Subjects or information mandated to be provided to Data Subjects;

15.4.6 notify HEE without undue delay and in any event within twenty four (24) hours of the point at which the Provider becomes aware of any Personal Data breach or other security incident affecting or relating to Personal Data;

15.4.7 at the written direction of HEE, delete or return Personal Data and all copies thereof to HEE on termination of the Agreement or at any other time unless required by Applicable Laws to store the Personal Data; and

15.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and relevant provisions of the Data Protection Legislation and allow for and cooperate with audits including, without limitation, inspections by HEE or HEE's designated auditor.

15.5 HEE does not consent to the Provider appointing any third party processor of Personal Data under this Agreement.

15.6 The Provider agrees to indemnify and keep indemnified and defend at its own expense (on an unlimited basis) HEE against all costs, claims, damages or expenses incurred by HEE or for which HEE may become liable, due to any failure by the Provider or its employees, agents or sub-contractors to comply with any of its obligations under this clause 15 or the Data Protection Legislation.

## **16. INTELLECTUAL PROPERTY**

16.1 Each Party acknowledges that all legal and beneficial interest in any Intellectual Property Rights in any document, information, report, licence, text, graphics, data, computer programme, website or other electronic media, and any other materials or thing, and any and all works which are developed or created by or on behalf of the other Party in connection with the performance of this Agreement are, and shall remain, the property of that other Party (or its licensors, as applicable).

16.2 Each Party acknowledges that all legal and beneficial interest in any Intellectual Property Rights in any document, information, report, licence, text, graphics, data and any other materials or thing, and any and all works which are developed or created jointly by the Parties whilst giving effect to this Agreement are, and shall remain, joint property of the Parties. Each Party shall have the irrevocable right free of charge to use such joint property independently of the other in such Party's normal

business operations. If either Party wishes to permit a third party to use such joint property, it shall seek the other Party's prior written consent (not to be unreasonably withheld or delayed) to grant a licence to such third party to enable it to exploit the said joint property and any income which either derives shall be shared between the Parties as they agree at the time or, failing any such agreement, shall be shared equally.

16.3 Each Party hereby grants the other a non-exclusive, royalty-free, world-wide licence to use such of that Party's Intellectual Property Rights as are necessary for the other Party to perform this Agreement or any equivalent subsequent agreement between the Parties, but solely for this purpose. This licence shall endure for the duration of this Agreement and any subsequent agreement between the Parties with the same subject-matter.

## **17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to the Agreement shall not have the right to enforce any terms of it which confer a benefit on it (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

## **18. LAW AND JURISDICTION**

The Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England.

## **19. PARTNERSHIPS**

19.1 Nothing contained in this Agreement shall be construed so as to constitute either Party to be the agent of the other.

19.2 This Agreement shall not operate so as to create a partnership or joint venture of any kind between the Parties nor operate so as to create a relationship of employer and employee or principal and agent.

## **20. AUDIT ACCESS**

For the purpose of:

20.1 the examination and certification of the Provider's accounts and records for and relating to this Agreement; or

20.2 so as to measure the economy, efficiency and effectiveness with which the Provider has used its resources in relation to the subject matter to this Agreement; or

20.3 the examination by HEE of the Provider's protocols and practices;

the Provider shall permit the appropriately authorised audit body or their authorised contractors to examine such documents relating to the provision of the Services (or the operation of the Agreement generally) as they may reasonably require which are owned, held or otherwise within the control of the Provider and the Provider shall produce such oral or written explanations as it considers necessary.

## **21. ADVERTISEMENTS AND MARKETING**

Unless otherwise agreed between the Parties during the subsistence of this Agreement, no disclosure, announcement, circular advertisements or publications or any form of marketing or public relations exercise in connection with the subject matter or the terms of this Agreement or the existence of this Agreement and the Parties to it or them shall be made by or on behalf of a Party to this Agreement without the approval in writing of the other Party.

## **22. NOTICES AND SERVICE**

22.1 Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left or sent:

22.1.1 by hand; or

22.1.2 by registered post; or

22.1.3 by facsimile

to the duly authorised representative of that Party or such other person, address or fax number as they may from time to time designate by written notice to the other for such purpose.

22.2 Subject to clause 22.4 any notice or other information given by post under clause 22.1 above which is not returned to the sender as undelivered shall be deemed to have been given on the third day after the envelope containing the same was so posted; and proof by way of statutory declaration of personnel involved that the envelope containing any such notice or information was properly addressed, and sent by first class recorded pre-paid post, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.

22.3 Subject to clause 22.4 any notice or other information sent by facsimile transmission shall be deemed to have been duly given on the date of transmission, provided that a confirming copy thereof is sent by first class recorded pre-paid post to the other Party at its principal address within twenty four (24) hours after transmission.

22.4 Any notice or other information received or deemed by virtue of this clause 22 to have been received by the recipient Party on a day which is

not a Business Day shall instead be deemed to have been given on the next following Business Day.

## **23. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and which together shall have the same effect as if each Party had signed the same document.

## **24. FORCE MAJEURE**

No Party will be liable for delay or for the consequences of any delay in performing any of its obligations under this Agreement if such delay is due to any cause whatsoever beyond its reasonable control resulting from act of God, government regulation, fire, war, pandemics, epidemics, terrorist activity, civil commotion or industrial dispute (not directly involving the employees of either Party) (**Force Majeure**) but nothing in this clause shall limit the obligations of either Party to use its reasonable endeavours to fulfil its obligations.

## **25. WARRANTY AS TO CAPACITY**

Each Party warrants and represents to the other that it has full authority, power and capacity to enter into this Agreement and that all necessary actions have been taken to enable it lawfully to enter into this Agreement.

## **26. PREVENTION OF CORRUPTION**

26.1 No Party shall offer or give or agree to give to the other or its staff or agents, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or having done or refrained from doing any act in relation to the obtaining or execution of this Agreement or any other contract or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any other such contract.

26.2 Both Parties shall comply at all times with the Bribery Act 2010 and shall not do, or permit to be done, anything that constitutes an offence under that Act or which might put the other Party in the position of committing an offence under that Act.

26.3 A breach of clause 26.2 by either Party shall not be capable of remedy and will give rise to the right to terminate this Agreement.

## **27. ENTIRE AGREEMENT**

Unless otherwise stated in this Agreement, this Agreement constitutes the entire understanding between the Parties in relation to its subject matter and supersedes all prior representations, communications, negotiations and

understandings concerning the subject matter of this Agreement. No Party has relied on any warranty or representation except as expressly set out in this Agreement.

## **28. AREAS OF OPERATION**

28.1 The Provider should not, under any circumstances, conduct any direct recruitment activities within `do not recruit` areas (DNR's). Refer to the HEE lead for this information. This includes, but is not limited to:

- Seminars or roadshows.
- Direct contact with candidates by telephone, email, or other means.
- Direct recruitment activity via local offices, whether those owned by the contractor itself or those of its local partners.
- Physical advertising material such as posters, newspaper advertisements etc.
- Digital advertising which is intentionally directed outside of the contractor's areas of operations, or where it is clear that the nature of the advertisement means it will be disproportionately viewed in areas outside of the contractor's areas of operation.

28.2 The geographical distribution of Allied health professions being recruited by each partner will be regularly reviewed by HEE, to ensure there is no abuse of the clauses allowing for indirect recruitment within the DNR areas. Where it is clear that these definitions are not being properly adhered to, the SLA will be terminated.

28.3 Any breach of this agreement relating to the DNR areas will result in immediate termination of the SLA with no notice required.

28.4 This condition is subject to future regulatory changes or amendments and restrictions by appropriate organisations.

## **SCHEDULE 1**

### **ROLES AND RESPONSIBILITIES OF THE PROVIDER**

#### **Recruitment:**

- Approach HCPC registered candidates
- Conduct programme campaign workshops across India
- Collate and file eligible applications
- Preliminary screening of CV and certificates
- Telephone interview to understand expectations
- Run competency sessions to manage candidates expectations and identified NHS requirements from employing trusts
- Support short listed candidates with NHS interview process.
- Compile an interview schedule to suit NHS employing trust and candidates' availability

#### **In-country induction:**

- Conduct a series of events to acclimatise the candidates
- Provide bespoke support to facilitate communication between Trusts and candidate
- Support the candidates with IELTS/NARIC, police clearance, visa applications

#### **During and Post Scheme**

- Act as continued support to the programme throughout the placement, providing advise on cultural intelligence and an immediate link for the global professionals and their families.
- Provide in-country support to the programme for the global professionals who have opted to return to India

**SCHEDULE 2  
PART A**

**COMMISSION PAYABLE BY HEE (ON BEHALF OF EACH PARTICIPATING NHS  
TRUST) TO  
THE PROVIDER**

HEE shall pay to the Provider (on behalf of each relevant participating NHS Trust) in respect of each Radiographer:

Payment by result 12% of Year 1 annual salary as stated on the offer letter from the employing trust payable upon arrival in the UK of the Radiographer

## PROGRAMME FINANCIAL FRAMEWORK

|                 |  | Paid by      |            | Paid by Trust Notes |            |
|-----------------|--|--------------|------------|---------------------|------------|
|                 |  | Professional |            |                     |            |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |
| 2. Upon Arrival |  |              |            |                     |            |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  |              |            | [REDACTED]          | [REDACTED] |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |
| [REDACTED]      |  | [REDACTED]   | [REDACTED] |                     | [REDACTED] |

## **SCHEDULE 4**

### **PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

#### **1 DESCRIPTION OF THE PROCESSING TO BE UNDERTAKEN BY THE PROVIDER**

1.1 **SCOPE** The processing of personal data for purposes of the Provider sourcing and recruiting candidates to be employed as Radiographers at NHS Trusts in England as part of the Programme (such personal data to be provided via HEE's applicant tracking system).

1.2 **NATURE** 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.

1.3 **PURPOSE OF PROCESSING** For the purpose of sourcing, identifying and assessing candidates to be provided to NHS Trusts in England pursuant to the Programme.

1.4 **DURATION OF THE PROCESSING** For the duration of the Agreement, unless otherwise instructed by HEE.

#### **2 TYPES OF PERSONAL DATA TO BE PROCESSED BY THE PROVIDER**

This may include: name, address, date of birth, NI, number, telephone number, qualification details/certificates, passport details, etc

#### **3 TYPES OF SPECIAL CATEGORIES OF PERSONAL DATA (OR SENSITIVE PERSONAL DATA) TO BE PROCESSED BY THE PROVIDER**

This may include personal data revealing or relating to a data subject's:

- (a) [racial or ethnic origin;]
- (b) [political opinions;]
- (c) [religious or philosophical beliefs;]
- (d) [trade-union membership;]
- (e) [genetic data]

- (f) [biometric data for the purpose of uniquely identifying a natural person]
- (g) [physical or mental health or condition;]
- (h) [sex life or sexual orientation;]
- (i) [the commission or alleged commission by them of any offence;]
- (j) [any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings.]]

#### **4 CATEGORIES OF DATA SUBJECT**

This may include potential and successful candidates

## SCHEDULE 5

### STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, Health Education England (**HEE**) (as **data exporter**) and Medline Recruitment (as **data importer**) have agreed on the following Contractual Clauses (the **Clauses**) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Schedule 4.

#### 1 Definitions

For the purposes of the Clauses:

- (a) **personal data, special categories of data, process/processing, controller, processor, data subject and supervisory authority** shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) the **data exporter** means the controller who transfers the personal data;
- (c) the **data importer** means the processor who agrees to receive from the data exporter personal data intended for processing on its behalf after the transfer in accordance with its instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) the **sub-processor** means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with its instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) the **applicable data protection law** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established; and
- (f) **technical and organisational security measures** means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

#### 2 Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Schedule 4 which forms an integral part of the Clauses.

### **3 Third-party beneficiary clause**

4(b) 3.1 The data subject can enforce against the data exporter this Clause 3, Clause

to Clause 4(i), Clause 5(a) to Clause 5(e) and Clause 5(g) to Clause 5(j), Clause 6.1 and Clause 6.2, Clause 7, Clause 8.2 and Clause 9 to Clause 12 as third-party beneficiary.

3.2 The data subject can enforce against the data importer this Clause 3.2, Clause 5(a) to Clause 5(e) and Clause 5(g), Clause 6, Clause 7, Clause 8.2 and Clause 9 to Clause 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3.3 The data subject can enforce against the sub-processor this Clause 3.3, Clause 5(a) to Clause 5(e) and Clause 5(g), Clause 6, Clause 7, Clause 8.2, and Clause 9 to Clause 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3.4 The Parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

### **4 Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Annex B to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8.3 to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Annex B and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subjects as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to Clause 4(i).

## **5 Obligations of the data importer**

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Annex B before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorised access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Annex B which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11; and
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## **6 Liability**

6.1 The Parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any Party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

6.2 If a data subject is not able to bring a claim for compensation in accordance with clause 6.1 against the data exporter, arising out of a breach by the data importer or its sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

6.3 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

6.4 The Parties agree that if one party is held liable for a violation of the clauses committed by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.

6.5 Indemnification is contingent upon:

- (a) the data exporter promptly notifying the data importer of a claim; and
- (b) the data importer being given the possibility to cooperate with the data exporter in the defence and settlement of the claim.

## **7 Mediation and jurisdiction**

7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

7.2 The Parties agree that the choice made by the data subject will not prejudice its

substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## **8 Cooperation with supervisory authorities**

8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

## **9 Governing Law**

The Clauses shall be governed by the law of England and Wales.

## **10 Variation of the contract**

The Parties undertake not to vary or modify the Clauses. This does not preclude the Parties from adding clauses on business related issues where required as long as they do not contradict the Clauses.

## **11 Sub-processing**

11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the

prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written

agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

11.2 The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

11.3 The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of England and Wales.

11.4 The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## **12 Obligation after the termination of personal data processing services**

12.1 The Parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

12.2 The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-

processing facilities for an audit of the measures referred to in paragraph 1.