

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

The Authority	NHS England, Quarry House, Quarry Hill, Leeds, LS2 7UE
The Supplier	Korn Ferry, Ryder Court, 14 Ryder Street, London, SW1Y 6QB
Date	Please see final signature below
Type of Services	Perinatal Culture and Leadership Development Programme (PCLDP) Debriefing Delivery

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

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

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

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations
Schedule 5	Specification and Tender Response Document
Schedule 6	Commercial Schedule
Schedule 7	Staff Transfer
Schedule 8	Expert Determination
Schedule 9	Key Performance Indicators (KPIs)

Signed by the authorised representative of THE AUTHORITY

NHS England Signature:

A large black rectangular box redacting the signature of the NHS England representative.

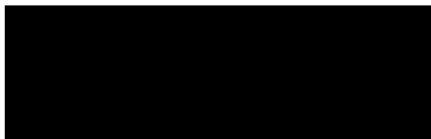
Full Name: 

Job Title/Role: Director of Financial Control

Date Signed: 27 February 2023

Signed by the authorised representative of THE SUPPLIER

Korn Ferry Signature:

A large black rectangular box redacting the signature of the Korn Ferry representative.

Full Name: 

Job Title/Role: Partner

Date Signed: 22/02/2023

Schedule 1
Key Provisions.

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 8 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 9 to 26 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Term

- 2.1 This Contract shall commence on the Commencement Date and the Term of this Contract shall expire **31/03/2024**. The Term may be extended in accordance with Clause 15.2 of Schedule 2 provided that the duration of this Contract shall be no longer than **six (6) months** in total.

Note that the term runs from the date when the Services are actually provided. If there is an implementation plan over, for example, three months, the term runs from the date the Services are provided. In these circumstances, it will be important to include a process in the implementation plan for acknowledging this date to ensure the term is clear.

The above approach has been adopted as it will mean that any delay in implementation does not have the effect of shortening the contract term. However, it may be that for some projects you want the services to start and/or end on a particular date or event. Where this is the case, this Key Provision can be amended accordingly.

3 Contract Managers

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

- 3.1.1 for the Authority:

[REDACTED]

- 3.1.2 for the Supplier:

[REDACTED]

4 Names and addresses for notices

- 4.1 Notices served under this Contract are to be delivered to:

- 4.1.1 for the Authority:

[REDACTED]

Quarry House, Quarry Hill

Leeds

LS2 7UE

- 4.1.2 for the Supplier:

[REDACTED]

Ryder Court, 14 Ryder Street

London
SW1Y 6QB

5 Management levels for escalation and dispute resolution

- 5.1 The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

Level	Authority representative	Supplier representative
1		
2		

6 Order of precedence

- 6.1 Subject always to Clause 1.10 of Schedule 4, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

- 6.1.1 the provisions on the front page of this NHS Contract for the Provision of Services (Contract Version);
- 6.1.2 Schedule 1: Key Provisions;
- 6.1.3 Schedule 5: Specification and Tender Response Document (but only in respect of the Authority's requirements);
- 6.1.4 Schedule 2: General Terms and Conditions;
- 6.1.5 Schedule 6: Commercial Schedule;
- 6.1.6 Schedule 3: Information Governance Provisions;
- 6.1.7 Schedule 7: Staff Transfer;
- 6.1.8 Schedule 4: Definitions and Interpretations;
- 6.1.9 the order in which all subsequent schedules, if any, appear; and
- 6.1.10 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

- 6.2 For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 5. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

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

- 7.1 The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier and the provisions of Schedule 7 shall apply.

8 Net Zero and Social Value Commitments

Supplier carbon reduction plans and reporting

- 8.1 The Supplier shall put in place, maintain and implement a board approved, publicly available, carbon reduction plan in accordance with the requirements and timescales set out in the NHS Net Zero Supplier Roadmap (see [Greener NHS »Suppliers \(england.nhs.uk\)](https://www.england.nhs.uk/greenernhs/get-involved/suppliers/) (<https://www.england.nhs.uk/greenernhs/get-involved/suppliers/>)), as may be updated from time to time.
- 8.2 A supplier assessment for benchmarking and reporting progress against the requirements detailed in the Net Zero Supplier Roadmap will be available in 2023 (“**Evergreen Supplier Assessment**”). The Supplier shall report its progress through published progress reports and continued carbon emissions reporting through the Evergreen Supplier Assessment once this becomes available and as may be updated from time to time.
- 8.3 The Supplier has appointed [REDACTED] (“**Supplier Net Zero Corporate Champion**”) who shall be responsible for overseeing the Supplier’s compliance with Clauses 8.1 and 8.2 of this Schedule 1 and any other net zero requirements forming part of this Contract. Without prejudice to the Authority’s other rights and remedies under this Contract, if the Supplier fails to comply with Clauses 8.1 and 8.2 of this Schedule 1, the Authority may escalate such failure to the Supplier Net Zero Corporate Champion who shall within ten (10) Business Days of such escalation confirm in writing to the Authority the steps (with associated timescales) that the Supplier will be taking to remedy such failure. The Supplier shall then remedy such failure by taking such confirmed steps by such timescales (and by taking any other reasonable additional steps that may become necessary) to ensure that such failure is remedied by the earliest date reasonably possible.

Net zero and social value in the delivery of the contract

- 8.4 The Supplier shall deliver its net zero and social value contract commitments in accordance with the requirements and timescales set out in the Specification and Tender Response Document forming part of this Framework Agreement and any Contracts (“**Net Zero and Social Value Contract Commitments**”).
- 8.5 The Supplier shall report its progress on delivering its Net Zero and Social Value Contract Commitments through progress reports, as set out in the Specification and Tender Response Document forming part of this Contract.
- 8.6 The Supplier has appointed [REDACTED] (“**Supplier Net Zero and Social Value Contract Champion**”) who shall be responsible for overseeing the Supplier’s compliance with Clauses 8.4 and 8.5 of this Schedule 1. Without prejudice to the Authority’s other rights and remedies under this Contract, if the Supplier fails to comply with Clauses 8.4 and 8.5 of this Schedule 1, the Authority may escalate such failure to the Supplier Net Zero and Social Value Contract Champion who shall within ten (10) Business Days of such escalation confirm in writing to the Authority the steps (with associated timescales) that the Supplier will be taking to remedy such failure. The Supplier shall then remedy such failure by taking such confirmed steps by such timescales (and by taking any other reasonable additional steps that may become necessary) to ensure that such failure is remedied by the earliest date reasonably possible.

Optional Key Provisions

- 9 Implementation phase ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

- 9.1 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Schedule 2 to the Implementation Plan shall apply and the Implementation Plan is set out in Schedule
- 10 Services Commencement Date (where the Services are to start at a date after the Commencement Date) ☐ (only applicable to the Contract if this box is checked and the dates are inserted in Clause 10.1 of this Schedule 1)**
- 10.1 The Services Commencement Date shall be **[insert date]** and the Long Stop Date referred to in Clause 15.5.1 of Schedule 2 shall be **[insert date]**.
- 11 Induction training ☐ (only applicable to the Contract if this box is checked)**
- 11.1 The Supplier shall ensure that all Staff complete the Authority's induction training. All Staff shall complete the training prior to the Actual Services Commencement Date (or immediately following the Services Commencement Date where this date is the date of this Contract) and all new Staff appointed throughout the Term shall also complete the training. The Supplier shall further ensure that all Staff complete any extra training that the Authority makes available to its own staff and notifies the Supplier in writing that it is appropriate for the Staff.
- 12 Quality assurance standards ☐ (only applicable to the Contract if this box is checked and the standards are listed)**
- 12.1 The following quality assurance standards shall apply, as appropriate, to the provision of the Services:
- 13 Different levels and/or types of insurance ☒ (only applicable to the Contract if this box is checked and the table sets out the requirements)**
- 13.1 The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

Type of insurance required	Minimum cover
Employer's Liability	£10,000,000
Public Liability	£5,000,000
Professional Indemnity	£5,000,000

- 14 Further Authority obligations ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)**
- 14.1 The Authority's Obligations are set out in Schedule
- 15 Assignment of Intellectual Property Rights in deliverables, materials and outputs ☐ (only applicable to the Contract if this box is checked)**
- 15.1 The Supplier confirms and agrees that all Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier as part of the Services in accordance with the Specification and Tender Response Document, shall be owned by the Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such deliverables, material and other outputs. The Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such deliverables, material and other outputs to the Supplier to give effect to Clause 15 of this Schedule 1 and that such Staff absolutely and irrevocably waive their moral rights in relation to such

deliverables, material and other outputs. Clause 15 of this Schedule 1 shall continue notwithstanding the expiry or earlier termination of this Contract.

16 Inclusion of a Change Control Process ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

16.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in Schedule

17 Authority step-in rights ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

17.1 If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights set out in Schedule

18 Grant of lease or licence ☐ (only applicable to the Contract if this box is checked)

18.1 Promptly following execution of this Contract, the Supplier shall enter into the **[lease/licence]**. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.

19 Guarantee ☐ (only applicable to the Contract if this box is checked)

19.1 Promptly following the execution of this Contract, the Supplier shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the procurement process followed by the Authority. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.

20 Data Protection Protocol ☐ (only applicable to the Contract if this box is checked)

20.1 The Parties shall comply with their respective obligations under the Data Protection Protocol.

21 Purchase Orders ☒ (only applicable to the Contract if this box is checked)

21.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Services to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Purchase Order.

22 Monthly payment profile ☒ (only applicable to the Contract if this box is checked)

22.1 The payment profile for this Contract shall be monthly in arrears.

23 Termination for convenience ☒ (only applicable to the Contract if this box is checked and Clause Error! Reference source not found. of this Schedule 1 is completed)

23.1 The Authority may terminate this Contract by 31/03/2023 in case of any disruption to funding

23.2 The Authority may terminate this Contract in accordance with Schedule 1, Clause 23.1 by issuing a Termination Notice to the Supplier at any time on one (1) month written notice.

23.3 The Authority shall not pay to the Supplier any termination sum

24 Right to terminate following a specified number of material breaches ☐ (only applicable to the Contract if this box is checked and Clause 24.1 of this Schedule 1 is completed)

24.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least [two (2)] previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the [third] Breach Notice.

25 Expert Determination ☐ (only applicable to the Contract if this box is checked)

25.1 Any Dispute between the Authority and the Supplier shall be dealt in accordance with the expert determination process as specified at Schedule 8.

25.2 For the avoidance of doubt, where Clause 25 of this Schedule 1 is checked, all Disputes shall be dealt in accordance with Clause 25.1 of this Schedule 1 above and the entirety of Clause 22 of Schedule 2 shall be deemed not to apply and deleted in its entirety from this Contract.

26 COVID-19 related enhanced business continuity provisions ☐ (only applicable to the Contract if this box is checked)

26.1 Subject to Clause 26.2 of this Schedule 1, the Supplier's Business Continuity Plan and, where required, its implementation must ensure the continuity of the provision of the Services under this Contract in all circumstances where there is a COVID-19 related Business Continuity Event and the text in Clause 6.6 of Schedule 2 to "use reasonable endeavours to" shall be deemed deleted for the purposes of any COVID-19 related Business Continuity Events. For the avoidance of doubt, to the extent that the Supplier fails to ensure such continuity, it shall be deemed not to have fulfilled its business continuity obligations pursuant to Clause 6 of Schedule 2 for the purposes of Clause 23.2.1 of Schedule 2.

26.2 To the extent only that the Supplier is prohibited from implementing its Business Continuity Plan (in full or part) due to any Laws or Guidance, it shall be relieved of its obligations under Clause 26.1 of this Schedule 1

Schedule 2

General Terms and Conditions

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1 Provision of Services

- 1.1 The Authority appoints the Supplier and the Supplier agrees to provide the Services:
 - 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions and/or the Specification and Tender Response Document;
 - 1.1.4 in accordance with the Law and with Guidance;
 - 1.1.5 in accordance with Good Industry Practice;
 - 1.1.6 in accordance with the Policies; and
 - 1.1.7 in a professional and courteous manner.
 - 1.1.8 In complying with its obligations under this Contract, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.
- 1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document., Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2, the Supplier shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1.3 The Supplier shall commence delivery of the Services on the Services Commencement Date.
- 1.4 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.
- 1.5 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.
- 1.6 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 1.7 The Supplier shall notify the Authority forthwith in writing:
 - 1.7.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
 - 1.7.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.

- 1.8 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 1.9 Upon receipt of notice pursuant to Clause 1.7 of this Schedule 2 or any report or communication pursuant to Clause 1.8 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.10 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 1.11 Should the Authority be of the view, acting reasonably, that the Supplier can no longer provide the Services, then without prejudice to the Authority's rights and remedies under this Contract, the Authority shall be entitled to exercise its Step In Rights if the Key Provisions refer to the Authority having such rights under this Contract.
- 1.12 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations.

2 Premises, locations and access

- 2.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 2.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 2.3 Subject to Clause 2.4 of this Schedule 2, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 2.
- 2.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule

2, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.

- 2.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 2.4 of this Schedule 2. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

3 Cooperation with third parties

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

4 Use of Authority equipment

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

5 Staff and Lifescience Industry Accredited Credentialing Register

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.

- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
- 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
 - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
 - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
 - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health and Social Care or any relevant regulatory body or any industry body in relation to such Staff.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
- 5.7.1 are questioned concerning their Convictions; and
 - 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
- 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2;
 - 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2; or
 - 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2.

- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
- 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
 - 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
 - 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 have been met.
- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
- 5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.
- 6 Business continuity**
- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the provision of the Services. The Supplier shall also ensure that its Business

Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.

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

6.2.1 the criticality of this Contract to the Authority; and

6.2.2 the size and scope of the Supplier's business operations,
regarding continuity of the provision of the Services during and following a Business Continuity Event.

- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

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

- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.

- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

7 The Authority's obligations

- 7.1 Subject to the Supplier providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2.

- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.

- 7.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.

- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
 - 8.3.2 details of any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification and Tender Response Document;
 - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also

provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.

- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
 - 8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

9 Price and payment

- 9.1 The Contract Price shall be calculated as set out in the Commercial Schedule.
- 9.2 Unless otherwise stated in the Commercial Schedule the Contract Price:
- 9.2.1 shall be payable from the Actual Services Commencement Date;
 - 9.2.2 shall remain fixed during the Term; and
 - 9.2.3 is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, 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.
- 9.3 Unless stated otherwise in the Commercial Schedule:
- 9.3.1 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or
 - 9.3.2 where Clause 9.3.1 of this Schedule 2 does not apply, the Supplier shall invoice the Authority for Services at any time following completion of the provision of the Services in compliance with this Contract.

- 9.3.3 Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time. Each invoice may be submitted electronically by the Supplier if it complies with the standard on electronic invoicing as set out in the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/2870.
- 9.4 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 9.5 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes of this Clause 9.5 of this Schedule 2 after a reasonable time has passed.
- 9.6 Where the Authority 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) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.6 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.
- 9.7 The Supplier shall pay to the Authority any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document. For the avoidance of doubt, the Authority may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Authority in accordance with the provisions of the Specification and Tender Response Document. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.8 The Authority reserves the right to set-off:
- 9.8.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and
- 9.8.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.
- 9.9 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.10 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest)

Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10 Warranties

10.1 The Supplier warrants and undertakes that:

- 10.1.1 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.2 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.3 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law, Guidance and Good Industry Practice and shall at all times comply with such quality controls and processes;
- 10.1.4 it shall not make any significant changes to its system of quality controls and processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.5 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law, Guidance, and/or Good Industry Practice, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.6 receipt of the Services by or on behalf of the Authority and use of the deliverables or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.7 it will comply with all Law, Guidance, Good Industry Practice, Policies and the Supplier Code of Conduct in so far as is relevant to the provision of the Services;
- 10.1.8 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.9 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.10 without limitation to the generality of Clause 10.1.7 of this Schedule 2, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;

- 10.1.11 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.12 any equipment it uses in the provision of the Services shall comply with all relevant Law, Guidance, and Good Industry Practice, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.13 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant products being purchased;
- 10.1.14 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.15 it shall (comply with its Net Zero and Social Value Commitments;
- 10.1.16 it shall provide to the Authority any information that the Authority may request as evidence of the Supplier's compliance with Clause 10.1.15 of this Schedule 2;
- 10.1.17 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.18 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document and Commercial Schedule) and all accompanying materials is accurate;
- 10.1.19 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
- 10.1.20 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.21 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 10.1.22 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;

- 10.1.23 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
- 10.1.24 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 10.1.25 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 Without prejudice to the generality of Clause 10.2 of this Schedule 2, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Authority.
- 10.4 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.5 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
 - 10.5.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
 - 10.5.2 promptly provide to the Authority:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.6 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.7 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
- 11 Intellectual property**
- 11.1 The Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights

used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.

- 11.2 Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document or elsewhere in this Contract, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence (with the right to sub-license to any supplier or other third party contracted by, engaged by and/or collaborating with the Authority) to use, modify, adapt or enhance such items in the course of the Authority's normal business operations. For the avoidance of doubt, unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document and/or elsewhere in this Contract, the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

12 Indemnity

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

- 12.1.1 any injury or allegation of injury to any person, including injury resulting in death;
- 12.1.2 any loss of or damage to property (whether real or personal);
- 12.1.3 any breach of Clause 10.1.6 and/or Clause 11 of this Schedule 2; and/or
- 12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

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

- 12.2 Liability under Clauses 12.1.1, 12.1.3 and 17.13 of this Schedule 2 and Clause 2.6 of Schedule 3 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.

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

- 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
- 12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim

following such transfer and any reasonable cooperation required by the Supplier from the Authority).

13 Limitation of liability

- 13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
 - 13.1.2 for fraud or fraudulent misrepresentation; or
 - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:
- 13.3.1 extra costs incurred purchasing replacement or alternative services;
 - 13.3.2 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
 - 13.3.3 the costs of extra management time; and/or
 - 13.3.4 loss of income due to an inability to provide health care services,
- in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.
- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
- 13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:
- 13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
 - 13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);

- 13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
- 13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 13.6 Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and

the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 Term and termination

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

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

- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.6 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4.2 of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

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

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

shall be deemed, for the purposes of Clause 15.4.2 of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

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

15.4.1 not capable of remedy; or

15.4.2 in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.

- 15.5 The Authority may terminate this Contract forthwith by issuing a Termination Notice to the Supplier:
- 15.5.1 if the Supplier does not commence delivery of the Services by any Long Stop Date;
 - 15.5.2 if the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
 - 15.5.3 if the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;
 - 15.5.4 if the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2;
 - 15.5.5 if the NHS Business Services Authority has notified the Authority that the Supplier or any Sub-contractor of the Supplier has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter) as assumed pursuant to the provisions of Part D of Schedule 7;
 - 15.5.6 pursuant to and in accordance with the Key Provisions and Clauses 15.6, 19.7.2, 23.8, 25.2, 25.4 and 29.2 of this Schedule 2;
 - 15.5.7 if the warranty given by the Supplier pursuant to Clause 10.5 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.5 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.5 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable; or
 - 15.5.8 pursuant to and in accordance with any termination rights set out in the Data Protection Protocol, as applicable to this Contract.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due

diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:

- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
- 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
- 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4.1 of this Schedule 2.

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

- 15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
 - 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract; or
 - 15.7.3 there has been a failure by the Supplier and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.3 of this Schedule 2.
- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.
- 15.9 Within three (3) months of the Commencement Date the Supplier shall develop and agree an exit plan with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within one (1) month of the Commencement Date. The Parties shall review and, as appropriate,

update the exit plan on each anniversary of the Commencement Date of this Contract. If the Parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.9 of this Schedule 2 (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

16 Consequences of expiry or early termination of this Contract

- 16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:
 - 16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;
 - 16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and
 - 16.2.3 any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 for the period set out in Clause 24.1 of this Schedule 2.
- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
- 16.6 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.7 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

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

- 17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by Law, supply to the Authority and keep updated

all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.

- 17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-contractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 17.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2, the Authority may withhold payment under Clause 9 of this Schedule 2.
- 17.4 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2.
- 17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-contractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:
 - 17.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
 - 17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
 - 17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
 - 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
 - 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
 - 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
 - 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 are subject to the Data Protection Legislation, the Supplier will, and shall procure that any Sub-contractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise

any other exemption or provision within the Data Protection Legislation which would allow such disclosure.

- 17.8 Having as appropriate gained permission from any Sub-contractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.
- 17.9 The Parties agree that where a Successor or the Authority provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 17.11 to Clause 17.14 of this Schedule 2 and (where relevant) the provisions of Clause 1.15 of Part D of Schedule 7 shall apply.
- 17.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-contractor as appropriate. The Supplier will, and shall procure that any Sub-contractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 17.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 17.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:
- 17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
 - 17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
 - 17.12.3 pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
 - 17.12.4 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
 - 17.12.5 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier

shall for itself and any Sub-contractor warrant that such records are accurate and up to date.

- 17.13 The Supplier will and shall procure that any Sub-contractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 17.13.1 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.12 of this Schedule 2;
 - 17.13.2 any act or omission by the Supplier or Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
 - 17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;
 - 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or Sub-contractor (including without limitation all wages, any accrued or unpaid holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
 - 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
 - 17.13.6 any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Authority's failure to comply with regulation 13(4) of TUPE.
- 17.14 The Supplier will, or shall procure that any Sub-contractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 17.15 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 17.16.1 the Authority will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;

- 17.16.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by the Authority or Successor;
- 17.16.3 if such offer of employment is accepted, the Authority will, or shall procure that the Successor will, immediately release the person from their employment; and
- 17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

18 Complaints

- 18.1 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 18.2 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.

19 Modern slavery and environmental, social, and labour laws

Environmental, social and labour law requirements

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

Modern slavery

- 19.2 The Supplier shall, and shall procure that each of its Sub-contractors shall, comply with:
 - 19.2.1 the Modern Slavery Act 2015 ("**Slavery Act**"); and

- 19.2.2 the Authority's anti-slavery policy as provided to the Supplier by the Authority from time to time ("**Anti-Slavery Policy**").
- 19.3 The Supplier shall:
- 19.3.1 implement due diligence procedures for its Sub-contractors and other participants in its supply chains in accordance with Good Industry Practice with the aim of avoiding slavery or trafficking in its supply chains;
 - 19.3.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
 - 19.3.3 upon request from the Authority, prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
 - 19.3.4 maintain a complete set of records to trace the supply chain of all goods and services purchased and/or supplied by the Supplier in connection with all contracts or framework agreements with the Authority;
 - 19.3.5 implement a system of training for its employees to ensure compliance with the Slavery Act; and
 - 19.3.6 ensure that any Sub-contracts contain anti-slavery provisions consistent with the Supplier's obligations under this 19 of this Schedule 2
- 19.4 The Supplier undertakes on an ongoing basis that:
- 19.4.1 it conducts its business in a manner consistent with all applicable Laws including the Slavery Act and all analogous legislation in place in any part of the world in which its supply chain operates;
 - 19.4.2 its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
 - 19.4.3 neither the Supplier nor any of its Sub-contractors, nor any other persons associated with it (including any Staff):
 - (i) has been convicted of any offence involving slavery or trafficking; or
 - (ii) has been, or is currently, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence committed regarding slavery or trafficking,
 not already notified to the Authority in writing in accordance with Clause 19.5 of this Schedule 2
- 19.5 The Supplier shall notify the Authority as soon as it becomes aware of:
- 19.5.1 any breach, or potential breach, of the Anti-Slavery Policy; or
 - 19.5.2 any actual or suspected slavery or trafficking in its supply chain.
- 19.6 If the Supplier notifies the Authority pursuant to Clause 19.5 of this Schedule 2, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, premises, facilities, records and/or any other relevant documentation in accordance with this Contract.

19.7 If the Supplier is in breach of Clause 19.3 of this Schedule 2 or the undertaking at Clause 19.4 of this Schedule 2 in addition to its other rights and remedies provided under this Contract, the Authority may:

19.7.1 by written notice require the Supplier to remove from performance of any contract or framework agreement with the Authority (including this Contract) any Sub-contractor, Staff or other persons associated with it whose acts or omissions have caused the breach; or

19.7.2 terminate this Contract by issuing a Termination Notice to the Supplier.

Further corporate social responsibility requirements

19.8 The Supplier shall comply with any further corporate social responsibility requirements set out in the Specification and Tender Response Document.

Provision of further information

19.9 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2. For the avoidance of doubt, the Authority may audit the Supplier's compliance with this Clause 19 of this Schedule 2 in accordance with Clause 24 of this Schedule 2.

20 Electronic services information

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

20.2 The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.

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

20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.

20.5 The Authority may reproduce for its sole use the Services Information provided by the Supplier in the Authority's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.

20.6 Before any publication of the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Contract.

- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

21 Change management

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.
- 21.4 The Supplier shall neither be relieved of its obligations to provide the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Contract Price as the result of:
- 21.4.1 a General Change in Law; or
 - 21.4.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

22 Dispute resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next levels until all level have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties, shall acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.

- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Contract shall prevent:
- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
 - 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
- 23 Force majeure**
- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
 - 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
 - 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable

serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.

- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.

24 Records retention and right of audit

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:

- 24.5.1 the examination and certification of the Authority's accounts; or
- 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Contract.

25 Conflicts of interest and the prevention of fraud

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.
- 25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

26 Equality and human rights

- 26.1 The Supplier shall:
 - 26.1.1 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
 - 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's

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

- 26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.
- 26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

27 Notice

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

28 Assignment, novation and Sub-contracting

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 2, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 shall be subject to:
- 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.8 of this Schedule 2;

- 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
 - 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
 - 28.2.4 the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
 - 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.
- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:
- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such Sub-contracting;
 - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law, Guidance, and Good Industry Practice, and record keeping;
 - 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
 - 28.4.4 contain a right for the Authority to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
 - 28.4.5 requires the Supplier or other party receiving services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 of this Schedule 2 after a reasonable time has passed;
 - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
 - 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of

- environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.3 of this Schedule 2;
- 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and
- 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.
- 28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
- 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 Prohibited Acts

- 29.1 The Supplier warrants and represents that:
- 29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing

- favour or disfavour to any person in relation to this or any other agreement with the Authority; or
 - (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and
 - 29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:
 - 29.2.1 the Authority shall be entitled:
 - (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
 - (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
 - (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
 - 29.2.2 any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
 - 29.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:
 - (i) the interpretation of Clause 29 of this Schedule 2; or
 - (ii) the amount or value of any gift, consideration or commission,
 shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

30 General

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and

any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

Schedule 3

Information and Data Provisions

1 Confidentiality

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
- 1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
- (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
 - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
 - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
 - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 The Authority may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
- 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

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

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

2 Data protection

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 2.2 Where the Supplier is Processing Personal Data and/or the Parties are otherwise sharing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol in respect of such matters.
- 2.3 The Supplier and the Authority shall ensure that patient related Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring patient related Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority

under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).

- 2.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to NHS patients and/or service users and/or has access to NHS systems as part of the Services, the Supplier shall:
- 2.4.1 complete and publish an annual information governance assessment using the Data Security and Protection toolkit;
 - 2.4.2 achieve all relevant requirements in the relevant Data Security and Protection toolkit;
 - 2.4.3 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
 - 2.4.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and Social Care and/or the NHS England and/or Health and Social Care Information Centre guidelines;
 - 2.4.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
 - 2.4.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
 - 2.4.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;
 - 2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;
 - 2.4.9 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and
 - 2.4.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, and any relevant Data Protection Protocol, as if such Sub-contractor were the Supplier.
- 2.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful

or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
 - 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
 - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
 - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
 - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
 - 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
 - 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 3.4 Notwithstanding any other term of this Contract, the Supplier consents 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.

- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

4 Information Security

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
 - 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
 - 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.
- 4.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

Schedule 4

Definitions and Interpretations

1 Definitions

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

“Actual Services Commencement Date”	means the date the Supplier actually commences delivery of the Services;
“Actuary”	means a Fellow of the Institute and Faculty of Actuaries;
“Anti-Slavery Policy”	has the meaning given under Clause 19.2.2 of Schedule 2;
“Authority”	means the authority named on the form of Contract on the first page;
“Authority’s Actuary”	means the Government Actuaries Department;
“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the Key Provisions;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Broadly Comparable”	means certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of Fair Deal for Staff Pensions;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including a pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
“Cabinet Office Statement”	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
“Change Control Process”	means the change control process, if any, referred to in the Key Provisions;

“Change in Law”	means any change in Law which impacts on the provision of the Services which comes into force after the Commencement Date;
“Codes of Practice”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Commencement Date”	means the date of this Contract;
“Commercial Schedule”	means the document set out at Schedule 6;
“Comparable Supply”	means the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Confidential Information”	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <ul style="list-style-type: none"> (a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;
“Contract”	means the form of contract at the front of this document and all schedules attached to the form of contract;
“Contracting Authority”	means any contracting authority as defined in Regulation 2 (1) of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
“Controller”	shall have the same meaning as set out in the UK GDPR;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and

	binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“Cost Increase”	shall have the meaning given to the term in Clause 1.3.2 of Part D of Schedule 7;
“Cost Saving”	shall have the meaning given to the term in Clause 1.3.4 of Part D of Schedule 7;
“Data Protection Legislation”	means the Data Protection Act 2018 and the UK GDPR and any other applicable laws of England and Wales relating to the protection of Personal Data and the privacy of individuals (all as amended, updated, replaced or re-enacted from time to time);
“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;
“Direction Letter”	means an NHS Pensions Direction letter issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHS Pension Scheme in respect of the Eligible Employees;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 or, where Clause 25 of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in Schedule 8. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of Schedule 2;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under

	vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
“Eligible Employees”	<p>means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the Authority (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services.</p> <p>For the avoidance of doubt a member of Staff who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an “open” Direction Letter or other NHS Pension Scheme “access” facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection under Part D of Schedule 7;</p>
“Employee Transfer Date”	means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor);
“Employment Liabilities”	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“eProcurement Guidance”	<p>means the NHS eProcurement Strategy available via:</p> <p>http://www.gov.uk/government/collections/nhs-procurement</p> <p>together with any further Guidance issued by the Department of Health and Social Care in connection with it;</p>
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England

	and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“EU References”	shall have the meaning given to the term in Clause 1.17 of this Schedule 4;
“Evergreen Supplier Assessment”	shall have the meaning given to the term in Clause 8.1 of Schedule 1;
“Exit Day”	shall have the meaning in the European Union (Withdrawal) Act 2018;
“Exit Requirements”	means the Authority’s exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
“Fair Deal for Staff Pensions”	means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced);
“FOIA”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Force Majeure Event”	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;

	<p>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties,</p> <p>but excluding, for the avoidance of doubt, any event or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union;</p>
"Fraud"	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
"General Anti-Abuse Rule"	<p>means</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"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;
"Guidance"	means any applicable guidance, supplier code of conduct, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health and Social Care, NHS England and NHS Improvement, the Medicines and Healthcare products Regulatory Agency, the European Medicines Agency,

	the European Commission, the Care Quality Commission, the National Institute for Health and Care Excellence and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HM Government Cyber Essentials Scheme"	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
“Implementation Plan”	means the implementation plan, if any, referred to in the Key Provisions;
“Implementation Requirements”	means the Authority’s implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
“Interested Party”	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
“Key Provisions”	means the key provisions set out in Schedule 1;
“KPI”	means the key performance indicators as set out in Schedule 5;
“Law”	means any applicable legal requirements including, without limitation: <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);

	<p>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</p> <p>(e) requirements set by any regulatory body as applicable in England and Wales;</p> <p>(f) any relevant code of practice as applicable in England and Wales; and</p> <p>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</p>
“Long Stop Date”	means the date, if any, specified in the Key Provisions;
“Losses”	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law;
“Net Zero and Social Value Commitments”	means the Supplier’s net zero and social value commitments, each as set out in the Key Provisions and/or the Specification and Tender Response Document;
“Net Zero and Social Value Contract Commitments”	shall have the meaning given in Clause 8.4 of Schedule 1;
“Measures”	means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE;
“NHS”	means the National Health Service;
“NHS Body”	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
“NHS Pensions”	means NHS Pensions (being a division of the NHS Business Services Authority) acting on behalf of the Secretary of State as the administrators of the NHS Pension Scheme or such other body as may from time to time be responsible for relevant administrative functions of the NHS Pension Scheme, including the Pensions Division of the NHS Business Services Authority;
“NHS Pension Scheme”	means the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
“NHS Pension Scheme Arrears”	means any failure on the part of the Supplier or any Sub-contractor to pay employer’s contributions or deduct and pay across employee’s contributions to the NHS Pension Scheme or meet any other financial obligations under the NHS Pension

	Scheme or any Direction Letter in respect of the Eligible Employees;
"NHS Pension Scheme Regulations"	means, as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) and any subsequent regulations made in respect of the NHS Pension Scheme, each as amended from time to time;
"Occasion of Tax Non-Compliance"	means: (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
"Party"	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
"Payment Date"	means twenty (20) Business Days after the last of the conditions in Clause 1.7 of Part D of Schedule 7 has been satisfied;
"Pension Benefits"	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme;
"Personal Data"	shall have the same meaning as set out in the UK GDPR;
"Policies"	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
"Premature Retirement Rights"	rights to which any Transferred Staff (had they remained in the employment of an NHS Body or other employer which participates automatically in the NHS Pension Scheme) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement

	Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
“Premises and Locations”	has the meaning given under Clause 2.1 of Schedule 2;
“Process”	shall have the same meaning as set out in the UK GDPR. Processing and Processed shall be construed accordingly;
“Purchase Order”	means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2;
“Services”	means the services set out in this Contract (including, without limitation, Schedule 5 which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date;
“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20.1 of Schedule 2 for inclusion in the Authority’s services catalogue from time to time;
“Slavery Act”	has the meaning given in Clause 19.2.1 of Schedule 2;
“Specification and Tender Response Document”	means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract;
“Specific Change in Law”	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Step In Rights”	means the step in rights, if any, referred to in the Key Provisions;

“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
Sub-contractor	means a party to a Sub-contract other than the Supplier;
“Subsequent Transfer Date”	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
“Subsequent Transferring Employees”	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
“Successor”	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
“Supplier”	means the supplier named on the form of Contract on the first page;
“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Supplier Net Zero Corporate Champion”	shall have the meaning given to the term in Clause 8.3 of Schedule 1;
“Supplier Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
“Supplier Net Zero and Social Value Contract Champion”	shall have the meaning given to the term in Clause 8.6 of Schedule 1;
“Term”	means the term as set out in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Third Party”	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;

“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2;
“Third Party Employees”	means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
“Transfer Amount”	an amount paid in accordance with Clause 1.7 of Part D of Schedule 7 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause 1.6 of Part D of Schedule 7 in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or a Third Party’s Broadly Comparable scheme and elected to transfer them to the Supplier’s Broadly Comparable scheme or the NHS Pension Scheme under the Transfer Option;
“Transfer Date”	means the Actual Services Commencement Date;
“Transfer Option”	an option given to each Eligible Employee with either: (a) accrued rights in the NHS Pension Scheme; or (b) accrued rights in a Broadly Comparable scheme, as at the Employee Transfer Date, to transfer those rights to the Supplier’s (or its Sub-contractor’s) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes);
“Transfer Option Deadline”	the first Business Day to fall at least three (3) months after the notice detailing the Transfer Option has been sent to each Eligible Employee;
“Transferred Staff”	means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a Sub-contractor by operation of TUPE, the Cabinet Office Statement or for any other reasons, as a result of the award of this Contract;
“Transferring Employees”	means all those employees, if any, assigned by the Authority to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;

"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law;
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and
"VAT"	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word "including" or "includes" then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier's responses to the Authority's requirements (the Supplier's responses being set out in Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 1.13 Any guidance notes in grey text do not form part of this Contract.
- 1.14 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice

that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.

- 1.15 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.
- 1.16 For the avoidance of doubt, and to the extent not prohibited by any Law, the term “expenses” (as referred to under any indemnity provisions forming part of this Contract) shall be deemed to include any fine and any related costs imposed by a commissioner, regulator or other competent body.
- 1.17 Any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
 - i. any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“EU References”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - ii. any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

Schedule 5

Specification and Tender Response Document

Annex A – Contact Details & Declaration

Declaration

- I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.
- I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document.
- I understand that the information will be used in the selection process to assess my organisation's suitability to be invited to participate further in this procurement.
- I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.
- I am aware of the consequences of serious misrepresentation.

Section 1	Contact details and declaration	
Question number	Question	Response
1.3(a)	Contact name	
1.3(b)	Name of organisation	KORN FERRY
1.3(c)	Role in organisation	CLIENT PARTNER
1.3(d)	Phone number	
1.3(e)	E-mail address	
1.3(f)	Postal address	Ryder Court, 14 Ryder Street, London SW1Y 6QB, United Kingdom
1.3(g)	Signature (electronic is acceptable)	
1.3(h)	Date	04 January 2023

Tenderer Declaration

Supplier name	Korn Ferry UK (Ltd)
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Tender name	Perinatal Culture and Leadership Development Programme (PCLDP)
Tender reference	C118058

1. Acceptance of Terms and Conditions/Original Call Off Term Questions

Yes ☒ No ☐

- 1.3** *If you have answered no to the above please provide details in the box below; please note that if the changes are significant, NHS England will require the Tenderer to submit a Supplier Information Questionnaire to us. Please note that if the changes affect the original response to mandatory exclusion questions, the Tenderer will be disqualified, any changes to discretionary exclusion questions will be considered. In this instance, Tenderers may be required to resubmit their SSQ response to NHS England:*

Response (maximum 2000 Characters)

N/A

- 1.4** *Confirmation that our organisation accepts the Terms and Conditions and Call-Off Order Form as set out in Appendix 2 to Document 3. This is a pass/fail question. YES = Pass, NO = Fail. Tenderers should confirm that these documents has been downloaded and read and that they confirm acceptance of these terms.*

Response

Yes ☒ No ☐

2. Conflicts of interest

3. Tenderers have a continuing duty to disclose actual or potential conflicts of interest in respect of themselves, their named sub-contractors and consortium members.
4. Please describe any (actual or potential) conflicts of interest that the Tenderer has identified and how these will be managed

Response (maximum 2000 Characters)

N/A

Tenderers are reminded that failure to identify material conflicts of interest may lead to rejection of its tender response.

5. Types of information that the contractor considers to be confidential

5.1 Type 1: Confidential information:

Information considered confidential	Reason for FoIA exemption sought (Include paragraph reference)	Period exemption is sought (Months)
N/A		

5.2 Type 2: Commercially sensitive information:

Information considered commercially sensitive	Reason for FoIA exemption sought (Include paragraph reference)	Period exemption is sought (Months)
N/A		

6. Declaration of Completion

6.1 Please complete the following:

I certify that the information supplied in the questionnaire is accurate to the best of my knowledge and belief. I also declare that I am authorised by the under mentioned organisation to supply the information given above and that, at the date of signing, the information given is a true and accurate record.	
Name	[REDACTED]
Date	20 December 2022
Company Name	Korn Ferry UK (Ltd)
Signature	[REDACTED]

Tenderers are reminded that the Authority may reject this tender if there is a failure to answer all relevant questions fully or false/misleading information is provided.

Form of Tender

TO: NHS England

DATE: 20 December 2022

PROVISION OF: Perinatal Culture and Leadership Development Programme (PCLDP)

REFERENCE NUMBER: C118058

We Korn Ferry (UK) Ltd the undersigned, having examined the ITT and its appendices set out below (the ITT Pack), do hereby offer to provide executive development services as specified in those documents and in accordance with the attached documentation (listed below) to NHS England commencing 09 January 2022 and continuing for the period specified in the Contract:

- Document 1: Tender Instructions
- Document 2: Statement of Requirements
- Document 3: this Form of Tender, and:
- Appendix 1 to Document 3: Tenderer Declarations
- Appendix 2 to Document 3: NHS England's (NHS Standard) Terms and Conditions of Contract
- Qualification Questionnaire via the Atamis Portal
- Technical Envelope (All Lots) via the Atamis Portal
- Social Value Envelope (All Lots) via the Atamis Portal
- Technical and Commercial Envelopes for Lot 1 via the Atamis Portal
- Technical and Commercial Envelopes for Lot 2 via the Atamis Portal
- Technical and Commercial Envelopes for Lot 3 via the Atamis Portal
- Supplier Code of Conduct

We agree:

(1) that the information contained in our Qualification Questionnaire response is correct and accurate and that we will inform NHS England forthwith if this position changes prior to an award of contract being made;

(2) by submitting a tender response, to be bound by the terms of the Contract without further negotiation or amendment;

(3) that this tender response and any contract arising from it shall be subject to and bound by the provisions of the ITT;

(4) to supply the goods/services of the exact quality and sort specified in the ITT and for the price set out in our completed Commercial Envelope(s) in such quantities and to such extent and at such times and locations as NHS England may direct and in full compliance with the Specification (substantially in the form set out in Document 2 of the ITT) and any other appointment terms as specified in this ITT (including any appendices to it);

(5) that the prices and charges offered are firm for the period of the contract (subject only to any indexation mechanism referred to in the Contract terms);

(6) with NHS England in legally binding terms to comply with the provisions of confidentiality set out in the ITT; and

(7) that this offer remains open for acceptance by NHS England until 90 days from the deadline for the receipt of tenders responses.

Execution of the Contract

If this offer is accepted, we will execute such documents in the form of the Contract within 30 days of being called on to do so.

We agree that before executing the Contract (and associated schedules) substantially in the form set out in the ITT, the formal acceptance of this tender in writing by NHS England or such parts as may be specified, together with the contract documents attached hereto shall comprise a binding contract between NHS England and Korn ferry (UK) Ltd.

We further undertake and it shall be a condition of any Contract, that:

- The amount of our tender has not been calculated by agreement or arrangement with any person other than NHS England and that the amount of our tender has not been communicated to any person until after the closing date for the submission of tenders and in any event not without the consent of NHS England.
- We have not canvassed and will not, before the evaluation process, canvass or solicit any member or officer, employee or agent of NHS England or other contracting authority in connection with the award of the Contract and that no person employed by us has done or will do any such act.

I warrant that I have all requisite authority to sign this tender and confirm that I have complied with all the requirements of the ITT.

Signature

[Redacted Signature]

Name and status

[Redacted Name], Client Partner

For and on behalf of

Korn Ferry (UK) Ltd

Date

20 December 2022

The Form of Tender (including the Certificate of Bona Fide Offer below) must be signed by an authorised signatory: in the case of a partnership, by a partner for and on behalf of the firm; in the case of a limited company, by an officer duly authorised, the designation of the officer being stated.

Certificate of Bona Fide Offer

I/We certify that this offer is made in good faith and that we have not fixed or adjusted the amount of the offer in accordance with any agreement or arrangement with any other person. We also certify that we have not, and we undertake that we will not:

- (i) communicate to any person other than the person inviting these offers the amount or the approximate amount of the offer except where the disclosure, in confidence, of the amount or approximate amount of the offer was necessary to obtain professional advice and/or quotations required for the preparation of the offer, for insurance purposes or for a contract guarantee bond;
- (ii) enter into any arrangement or agreement with any other person that he or any other person shall refrain from making an offer or as to the amount of any offer to be submitted;
- (iii) pay give or offer or agree to pay or give any sum of money or other valuable directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any offer or proposed offer for the goods/services any act or thing of the sort described in (i) or (ii) above.

The provisions of (i) (ii) and (iii) above shall not prevent the you entering into arrangements or discussing the offer, to the extent necessary, with another party that forms part of a consortium bid or is a proposed sub-contractor to you.

We certify that the principles described in paragraphs (i), (ii) and (iii) above have been and will be brought to the attention of all sub-contractors, suppliers and associated companies providing services or materials connected with this tender and any contract entered into with such sub-contractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.

We acknowledge that if we have acted or shall act in contravention of this certificate, NHS England will be entitled to cancel any contract between us and to recover from ourselves the amount of any loss and expense resulting from such a cancellation.

In this certificate, the word 'person' includes any person and anybody or association, corporate or unincorporated; 'any agreement or arrangement' includes any transaction, formal or informal and whether legally binding or not.

Signature

[Redacted Signature]

Name and status

[Redacted Name], Client Partner

For and on behalf of

Korn Ferry (UK) Ltd

Date

20 December 2022

Supplier Code of Conduct

Introduction

NHS England (the Authority) leads the National Health Service (NHS) in England. We set the priorities and direction of the NHS and encourage and inform the national debate to improve health and care. This Code of Conduct represents the principles that the Authority endorses and expects its partners and suppliers to support and follow and to ensure that their employees, partners and subcontractors will do the same. We want to work with Suppliers who are proud of their reputation for fair dealing and quality delivery and who consider working with the Authority to be reputation enhancing.

Scope

The provisions of this Code of Conduct are intended for third party Suppliers that are under contract to provide goods and/or services to the Authority. The Authority expects its Suppliers to communicate this Code of Conduct to their named subcontractors and employees and ensure that they, in turn, also observe the obligations and expectations outlined below.

Obligations and Expectations

We expect the highest standards of business ethics from Suppliers and their agents in the supply of goods and services funded by the public purse. We expect that Suppliers comply fully with all laws, regulations and standards that are applicable to their business and operations. Suppliers, and their named subcontractors, are also expected to ensure that *their* suppliers and supply chain also comply with, or observe, the obligations and expectations outlined below, as applicable. In selecting Suppliers, the Authority checks that it is contracting with reputable bodies. These checks are conducted in line with procurement regulations that guarantee fair access to opportunities for all Suppliers and equal treatment during selection processes.

a. Professional behaviour

We expect suppliers to speak out, without fear of consequences, when a project or service is unlikely to succeed because of *our* behaviours or lack of good governance. For contracts that deliver goods and/or services to users with particular needs, physical or mental, that place them in a vulnerable position, suppliers should ensure that they are treated with dignity and respect. In the spirit of investing in mutually supportive relationships, all parties are expected to be prepared to share intelligence of supply chain risks, so that these can be mitigated.

b. Bribery, corruption and anti-competitive behaviour

Any and all forms of bribery, corruption and extortion are strictly prohibited and may result in immediate contract termination, legal action and any other form of action specified in any contract. Suppliers shall comply with all applicable national and international anti-bribery legislation and standards, including, but not limited to, The Bribery Act 2010. Suppliers shall not offer or provide money or gifts to anyone where it is probable that all or part of the money or gift is being used to influence decisions that may result in a commercial advantage for the Supplier.

c. Environmental

Suppliers, their employees and named subcontractors shall comply with all applicable environmental laws, regulations and standards and shall make all practical efforts to minimise their energy consumption, natural resource use and waste generation.

d. Health and Safety

Suppliers and their named subcontractors shall comply with all applicable laws, regulations and standards relating to health and safety in the workplace or any location other than the workplace where production, manufacture or work is undertaken. Suppliers should demonstrate an active commitment to creating health-improving workplaces that is co-produced with employees and illustrates an active monitoring approach that utilises evidence-based practice for employer-led health improvement. The Authority commits to supporting suppliers in this through sharing our own learning and experiences of monitoring and improving workplace health with our supply chain.

e. Labour Standards and Human Rights

Suppliers and their sub-contractors must comply with all applicable human rights and employment laws in the jurisdictions in which they operate. Suppliers and their named sub-contractors shall ensure that slavery, including forced and compulsory (bonded) labour and human trafficking are not present in their business and operations. Suppliers and their sub-contractors shall comply with the provisions of the Modern Slavery Act 2015. Where Suppliers are required¹ to publish an annual slavery and human trafficking statement, this should be shared this with the Authority.

f. Wages and working hours

Suppliers shall comply with national laws regarding working hours, wages and benefits and shall put mechanisms in place to ensure that their supply chains also comply with relevant national laws. Suppliers are expected to work towards good practice in paying reasonable *living* wages.

g. Discrimination

The Supplier and their named subcontractors shall not discriminate on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, and sex and sexual orientation. Suppliers should have, or work towards, a published diversity and inclusion policy, an action plan to improve diversity and inclusion in the workplace, and embedded good practice for workplace inclusion across all protected characteristics, including additional ones as articulated in the Authority's Diversity and Inclusion objectives.

h. Generating Social Value

Where feasible, Suppliers and their named subcontractors are expected to increase commercial opportunities for underrepresented supplier groups, especially Small and Medium-sized Enterprises (SMEs) and Voluntary, Community and Social Enterprises (VCSEs) that support health-related objectives. They are also expected to offer work experience and/or opportunities to people with a learning disability, those from vulnerable or disadvantaged groups, and the long-term unemployed, through structured and supported pathways to work opportunities. The Authority commits to sharing with Suppliers learning and experiences of structured pathways to work opportunities to support this action.

i. Innovation and sustainable profit

The Authority expects Suppliers to use recognised industry practices in the delivery of goods and/or services. The Authority expects suppliers to generate sustainable profit which they can invest to support improvements in goods and services for the long term benefits of patients and the health economy. In doing so, Suppliers should continuously look to reduce costs and improve quality throughout the life of a contract with the Authority, which they can evidence through true open book accounting. Where the Supplier becomes aware of alternative, innovative solutions and/or creative approaches that can deliver an improved, quality product or service to The Authority and/or its stakeholders, they should notify the Authority, outlining the anticipated costs and benefits of such solutions.

(a) _____

¹<https://www.gov.uk/government/collections/modern-slavery-bill>

j. Management of Risk

The Authority tries to ensure that risk is placed with the party best able to manage it. This means requiring prime contractors not to flow risk inappropriately to subcontractors, and not to assert that they can manage risk that is in fact better managed by the Authority. All parties should also be prepared to share intelligence of supply chain risks, so that material commercial and operational risks, for example the impact of losing a key supplier, can be mitigated.

k. Cyber Security

It is essential that Suppliers safeguard the integrity and security of their systems and comply with the relevant government standards and guidance. Suppliers must inform the National Cyber Security Centre if they become aware of any cyber security incident that affects or has the potential to affect The Authority data.

l. Confidentiality

Suppliers are expected to comply with the provisions in their contracts and any legal requirements to protect sensitive information. Suppliers to the Authority may also be party to confidential information that is necessary for them to be effective partners. This information, even if it is not covered by contractual provisions, should be handled with the same care as information of similar sensitivity in the Supplier's own organisation.

m. Conflicts of Interest

The Authority expects Suppliers to mitigate appropriately against any real or perceived conflict of interest through their work with the Authority. A Supplier with a position of influence gained through a contract should not use that position to unfairly disadvantage any other supplier or reduce the potential for future competition.

n. Monitoring

Suppliers are expected to have identified, or be working towards identifying, their business' and operations' impacts on the environment, society and economy and to have, or plan to, put systems and processes in place to manage these and report on their progress and provide regular updates and copies of such reports to the Authority when requested.

For contracts with duration longer than 12 months, Suppliers are also expected to submit an annual statement to the Authority's Commercial and Procurement Team, signed by their most senior representative (e.g. CEO), that confirms compliance with all applicable environmental and social laws, regulations and standards, explains mitigating action for any breaches, and articulates the way in which the Supplier is supporting the expectations set out in this Code. The Authority reserves the Right to Audit a Supplier to confirm compliance with the obligations of this Code of Conduct and explore the extent to which the Code's expectations are addressed.

Any breach of the obligations articulated in this Code of Conduct is considered a material breach of contract by the Supplier.

Signed off by:

[REDACTED]
[REDACTED]

[REDACTED], Client Partner, Korn Ferry (UK)

Ryder Court, 14 Ryder Street

London SW1Y 6QB, United Kingdom

Social Value Pledge

Suppliers are invited to make a **voluntary** pledge, committing **any** value or volume of goods and/or services on a pro bono basis to suitable, mutually agreed, predominantly VCSEs, whose work supports health/care delivery or the wider determinants of health in the UK. This pro bono contribution should not be incorporated into the overall contract price, and whilst it may be aligned with the Supplier's wider Corporate Responsibility objectives, it should not already be accounted for as part of a wider CSR programme. The Social Value Pledge will be monitored as part of contract management.

The aim is to generate big value for society with minimal cost to business.

I hereby pledge to deliver the social value actions set out in our tender response for the Perinatal Culture and Leadership Development Programme (PCLDP), ref: C118058

Signed

[Redacted Signature]

[Redacted Name], Client Partner, Korn Ferry (UK)

Ryder Court, 14 Ryder Street
London SW1Y 6QB, United Kingdom

Clarification Log

Redacted

Technical and Social Value & Sustainability Responses

Redacted

Specification

1.1. Background to the requirements

2. Current Arrangements / Context
3. NHS England Maternity Transformation Programme (MTP) Team have developed a wide-ranging perinatal culture and leadership strategy, with a 'flagship' Perinatal Culture and Leadership Development Programme (PCLDP) for all maternity and neonatal services in England. The MTP are looking to commission cultural support offers for Trusts on the programme.
4. The term 'perinatal' encompasses maternity and neonatal services. The purpose of the programme is to improve the safety and quality of care delivered to women, birthing people and babies by enabling those with specific responsibility for safety in perinatal provider units to

understand the relationship between leadership, safety improvement and safety culture in order to enable change.

5. The programme is currently made up of three phases:
 6. Phase one is providing support for Board Level Safety Champions which has been commissioned and awarded to AQuA.
 7. Phase two is targeted at the perinatal service quadrumvirates - which include Heads/Directors of Midwifery, Clinical Directors for Obstetrics, Neonatal Leads and Maternity Operations Managers. A culture and leadership development programme for this group has been commissioned and awarded to Practive (details in Appendix 1).
- 1.4.2.1 The debriefing support delivery outlined in this ITT will be part of phase two of the PCLDP and will be aligned with this work.
8. Phase three is targeted at aspiring perinatal leaders. We have commissioned a programme for Aspiring Midwifery Leaders this year which has been awarded to Healthy You Ltd.
 9. Evidence from reviews of maternity services, including recently published investigations such as the [Ockenden review into Shrewsbury and Telford Hospital NHS Trust](#) and the [Kirkup review into East Kent Hospitals NHS Foundation Trust](#), have clearly identified that cultural issues are a theme across challenged organisations and have been a direct cause to underlying patient safety failures.
 10. Research has consistently found a positive association between compassionate, inclusive leadership and a positive safety culture and good clinical outcomes. Establishing a positive safety culture is a key foundation to meeting the Government's national maternity ambition and the NHS Patient Safety Strategy.
 11. Below are some links to policy/strategy documents which will support understanding of the policy/strategic context:
 - [A Just Culture Guide](#)
 - [Being Fair – Supporting a just and learning culture for staff and patients following incidents](#)
 - [Patient Safety Incident Response Framework](#)
 - [NHS Patient Safety Strategy](#)
 - [Government ambition to improve safety and reduce adverse outcomes within maternity services](#)

11.1. Scope of the Procurement

12. An essential element of the PCLDP is to undertake an assessment of the local culture of the perinatal service within provider trusts, using a tried and tested diagnostic tool. The selected tool for the programme is the SCORE (safety, communication, operational risk, resilience, and

- reliability) survey. The analysis obtained from the survey will assist with providing the appropriate development and ongoing support to nurture the cultural health.
13. The MTP wishes to commission a supplier or consortium of suppliers who will be responsible for delivering the debriefing activity following the SCORE surveys, including providing follow up support to Trusts.
 14. This procurement is for a supplier or consortium of suppliers who will:
 - 14.1.1.1. Identify approx. 20 of the 50 Debriefing Leads who will undertake the training outlined in appendix 2.
 - 14.1.1.0. Facilitating the Debriefing Leads training additional leads through a train the trainer model as required.
 - 14.1.1.1. Coordinate all Debriefing Leads to carry out debriefing across England, in alignment with the organisations taking part in the PCLDP (appendix 1).
 15. This procurement will include:
 - 15.1.1.1. Identifying approx. 20 of the 50 Debriefing Leads who will undertake the training outlined in appendix 2.
 - 15.1.1.1.1. The Debriefing Leads identified must have existing coaching and facilitation skills.
 - 15.1.1.1.2. These leads will be responsible for delivering the debriefing activities following the SCORE surveys and providing follow up support to organisations.
 - 15.1.1.1.3. These leads will also be able to train others within the successful provider company, as well as those in the system, to debrief using the train the trainer model.
 - 15.1.1.1.4. The remaining 30 debriefing leads will be NHS England staff, including Maternity Improvement Advisors, to ensure ongoing capacity and skill within the system as part of sustaining ongoing improvements in culture.
 - 15.1.1.0. Design and coordinate a programme for all trained Debriefing Leads to carry out debriefing across England, in alignment with the organisations taking part in the PCLDP (appendix 1).
 - 15.1.1.0.1. Allocate a 'pool' of Debriefing Leads to each of the seven NHS England regions and identify Debriefing Leads to be allocated to each organisation when they are onboarded onto the PCLDP (appendix 1).
 - 15.1.1.0.2. Coordinate the Debriefing Leads' debriefing activities with the relevant organisations and communications with Trusts.
 - 15.1.1.0.3. This will also include liaising with and getting sign off from key stakeholders, defining success, team experience, communication of the programme, collating ongoing learning and evaluation and mobilising the delivery team.
 - 15.1.1.1. Facilitation of debriefing delivery in relevant organisations by the Debriefing Leads. In each organisation the Debriefing Lead will be responsible for:
 - 15.1.1.1.1. Working with frontline perinatal teams to start the conversation and sense-check that the SCORE survey findings are a true reflection of how it feels to work there, to ask 'why' this feedback may have been given and what challenges and opportunities this presents. This is a vital part of the process. It ensures staff are listened

to and starts to build relationships and a sense of belonging as they are all part of the solution.

15.1.1.1.2. These conversations will be facilitated through holding a series of virtual and face to face focus groups with front line teams at site level, held over several weeks. The final number of sessions for each organisation will depend on the size and number of staff needed to debrief. The modelling for this will be agreed between NHSE's MTP team and the successful supplier.

15.1.1.1.3. Following the focus groups held with front line teams, the supplier will facilitate a series of face-to-face sessions with the senior perinatal leadership team at that site, and the nominated board safety champion and key stakeholders to further explore the findings and potential solutions to any identified areas of improvement

15.1.1.1.4. Providing additional sessions to those trusts with multiple sites, where required, to allow for organisational wide alignment, learning and improvement. This will bring all teams together, with overall strategic leadership to help address those multi-site organisations that currently work in silo at each separate site

15.1.1.1.5. Co-developing an 18-month improvement plan following the debriefing sessions to constructively address findings as part of a wider service improvement plan; these activities would include a comms plan and success measures (impact on staff/service/service users). This plan would be owned by the organisation and co-designed with the Debriefing Lead and local senior leadership teams, as well as other key stakeholders.

15.1.1.1.6. Working closely with the MTP Culture and Leadership Team and NHS England Patient Safety Collaboratives to ensure any agreed actions are aligned with broader NHS England led improvement work.

15.1.1.1.7. Providing a bridging role following the debriefing phase and the start of the planning phase, including identifying next steps.

15.1.1.2. To ensure a sufficient pool of debriefing leads is established, the successful supplier will facilitate training of additional Debriefing Leads, by utilising the train the trainer model training that existing Debriefing Leads will have received. The model of this will be agreed with the successful supplier, but is likely to involve identifying an additional cohort of debriefers that will support this work in each of the seven regions, and training them to debrief on the SCORE findings, using the train the trainer model

16. This procurement will not require the appointed provider to:

16.1.1.1. Directly provide the debriefing training to the first identified Debriefing Leads – this will be provided through the debriefing training procurement, outlined in appendix 2.

16.1.1.2. Identify which organisations to debrief – this will be managed by the NHS England MTP team, in line with the organisations who are involved in the PCLDP, and the appointed supplier will be put in contact with the relevant organisations.

17. Constraints and Dependencies

18. Number of end users:

18.1.1.1.1. This support will be for offered to all Trusts providing maternity and neonatal services in England, with 95% expected to take up the offer. Assuming 95% take up the offer of debriefing support it is

expected debriefing sessions will need to be carried out at 157 sites across 117 maternity and neonatal services.

18.1.1.1.2. Numbers of users to engage with at each Trust will vary depending on the structure and size of the organisation. However, at a minimum we expect the perinatal quadrumvirate and board level sponsor to be involved from each site, along with engagement with additional frontline staff.

19. Other roles or personnel who will be involved:

19.1.1.1. Liaison and alignment with the supplier of the PCLDP, Practive, and the NHS England MTP team is essential to ensure the logistical elements of the programme are aligned.

19.1.1.2. NHS England Patient Safety Team (MatNeoSIP) to maintain an overview of cultural initiatives.

19.1.1.3. NHS England Chief Midwifery Officer team lead the Maternity Safety Support Programme which the Maternity Improvement Advisors report into.

19.1.1.4. Safe and Reliable Healthcare will be providing the SCORE survey to the organisations in the programme who take up the offer. There is expectation that there may be some liaison/coordination with them.

19.1.1.5. The supplier appointed to provide the debriefing training (appendix 2) to ensure coordination of Debriefing Leads accessing training and support.

19.1.1.6. Provider Trusts involved in the programme will need to be engaged with to provide the offer and maintain contact.

20. Location:

20.1.1.1. This will be an England-wide programme. Some delivery will be virtual but travel to Trusts across England will be required for the face-to-face delivery.

20.1.1.2. Travel costs and expenses should be included in the bid, they will not be funded additionally by NHS England.

21. Constraints on time:
 - 21.1.1.1. This programme will be aligned with the PCLDP and timelines for delivery will be based on the PCLDP programme timelines (detailed in appendix 1).
 - 21.1.1.2. All Debriefing Leads will need to be trained (as per appendix 2) by 31st March 2023 and the programme will need to be designed and be ready to start debriefing by 1st April 2023.
22. Roles that are to be retained in-house by NHS England:
 - 22.1.1.1. The identification of Trusts to engage with
 - 22.1.1.2. The dissemination and coordination of the SCORE surveys.
23. Investment that will be required to be made by NHS England in order for the project to go ahead:
 - 23.1.1.1. This work will be unable to commence/progress unless a supplier is appointed to provide debriefing training as per appendix 2, in order to provide the training to Debriefing Leads.

23.2. Requirements

24. Mandatory and Minimum Requirements
25. Given the specialised nature of this requirement we are seeking a supplier who must have expertise in large scale culture improvement support and evidence of working successfully to support perinatal teams to improve their services locally.
26. The supplier must have experience in design and mobilisation of a national programme within healthcare, including involvement and co-development with stakeholders, defining success, team experience, managing communications and evaluation.
 - 26.1.1.1. They must have a proven methodology for supporting senior teams that is evidence based and can be applied locally to address local problems and achieve better outcomes.
 - 26.1.1.2. The evaluation must provide evidence of excellent processes of evaluation both of outcomes and impact.
27. The supplier must have experience in coordinating and delivering a national programme within NHS healthcare, and be able to demonstrate experience in project management,

delivery, quality management, scheduling, reporting, performance management and contracting.

27.1.1.1. Ability to be flexible and to scale up and down resources on demand will be key for this programme.

28. The supplier must be able to work effectively with other suppliers and stakeholders, including suppliers leading on aligned programmes, frontline staff, national organisations and service users.
29. The supplier must have access to approx. 20 individuals with coaching and facilitation skills, who can carry out the requirements of the debriefing model (see 2.2.2) from across England.
30. The identified Debriefing Leads must have existing coaching skills, experience of leading change and improvement work, with specific experience in culture improvement.
31. The supplier must understand the leadership agenda in the NHS, with significant experience of supporting leaders in healthcare
32. The supplier must have a track record of translating survey results around culture into realistic improvement plans that teams own and successfully deliver
33. Desirable Requirements
34. Experience of working with and an understanding of perinatal services and staff would be desirable but not essential.
35. Understanding of the leadership programme aspirations within the NHS national agenda.
36. Timescales & Implementation
37. The delivery of this programme will be aligned with the delivery of the PCLDP, a timeline for the PCLDP is outlined in appendix 1.
38. The design of the programme will need to be completed by 31st March 2023 and the programme should be ready to start delivery on 1st April 2023 if required.
39. All Debriefing Leads will need to be trained by 31st March 2023 and ready to deliver sessions on 1st April 2023 if required (subject to successful award of the procurement for debriefing training (appendix 2)).
40. Debriefing of all organisations will need to be complete by 31st March 2024.
41. Location
42. Debriefing Leads must be able to regularly travel to Trusts across England for face-to-face sessions. Virtual sessions can be carried out from wherever is practical for the Debriefing Leads however access to reliable internet is essential.

42.1.1.1. Given the requirement for travel across the country we recommend that a regional approach is taken to this model, with a 'pool' of Debriefing Leads available within each NHS England region. The supplier must therefore have the capacity and capability to have a national footprint of Debriefing Leads to provide support to teams locally. This will ensure that travel is limited, giving economic and environmental benefits.

43. Arrangements will be made with Trusts directly regarding the details of face-to-face visits.
44. Where possible there will be an expectation for the Debriefing Leads to be present at more than one site per day where close in proximity. This will be agreed with the MTP team during debriefing modelling.
45. Roles and Responsibilities
46. Please see the table below:

Role/Responsibility	NHS England	Supplier
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Contract management	X	
Project management		X
Identification of Debriefing Leads	X	X
Design of programme		X
Sign off of final programme design	X	
Identification of Trusts to work with	X	
Initial contact with Trusts	X	
Ongoing communication with Trusts		X
Logistical planning		X
Collation of insights		X
Sharing insights with NHS E		X

47. Management Information & Governance

48. In the design phase fortnightly calls with the MTP team will be required to ensure feasibility of plans and to support with any queries. When the project is mobilised monthly calls will be required to provide updates on the programme and raise any issues. Ad-hoc meetings for urgent issues are also encouraged.

49. Attendance at quarterly Perinatal Culture Steering Group and Perinatal Culture and Leadership Steering Groups meetings may be required.

50. The initial fortnightly meetings and longer-term monthly meetings should be attended by the Project Manager and any team members involved in coordination of the programme.

51. Following each intake of the programme, written feedback containing insights collected as part of the debriefing will be required to be submitted to the MTP Culture and Leadership Team.

52. Performance and Measurement

53. We intend to measure the deliverables outlined in section 2 through a range of metrics including attendance in debriefing sessions, surveys and feedback from those involved in the

- sessions, as well as those facilitating the debriefing. We will agree an appropriate range of metrics and KPIs with the supplier as part of the further design of the programme.
54. An independent evaluation of the whole programme will be commissioned and there is expectation that the appointed supplier will be involved in this work.
55. Contract Term
56. It is anticipated that this work will be completed by 31st March 2024, however there will be the option to extend, in multiple periods, for up to six months at no additional cost to the Authority, should programme timelines slip, outside of the appointed suppliers control.
57. The MTP Team have secured funding for the lifetime of the proposed contract, however this is subject to annual review/approval. Due to this, there will be a break clause in the contract at the end of March 2023 in case of any disruption to funding.
58. Budget
59. The maximum amount available for this work is £2,731,237 + VAT.
60. £150,000 + VAT is available in FY2022/23 and £2,581,237 + VAT is available in FY2023/24.
61. Payment will be made monthly in arrears.
62. Subsistence and travel expenses will not be paid by NHSE to participants or suppliers outside of the funding available above.

62.1. Appendices

63. Appendix 1 – Perinatal Culture & Leadership Development Programme – ‘Quad’ programme
64. Appendix 2 – Overview of debriefing training project;

Appendix 1 – Perinatal Culture and Leadership Development Programme “Quad” Programme

The perinatal quadrumvirate ‘quad’ programme is designed to support perinatal teams to create and craft the conditions for a positive culture of safety and continuous improvement, which will have a positive impact on the experiences for women, families and babies and a more collaborative, supportive workplace for perinatal leaders and wider teams.

The programme is built around the perinatal quad group of senior leaders (including senior midwifery, obstetric, neonatal and operational representation) and has been co-designed with quad teams to have three main aims:

- nurture a positive safety culture
- enable psychologically safe working environments
- build compassionate leadership to make work a better place to be

The quad will be invited to a series of workshops and action learning sets which aim to enable them to shape a positive culture of care.

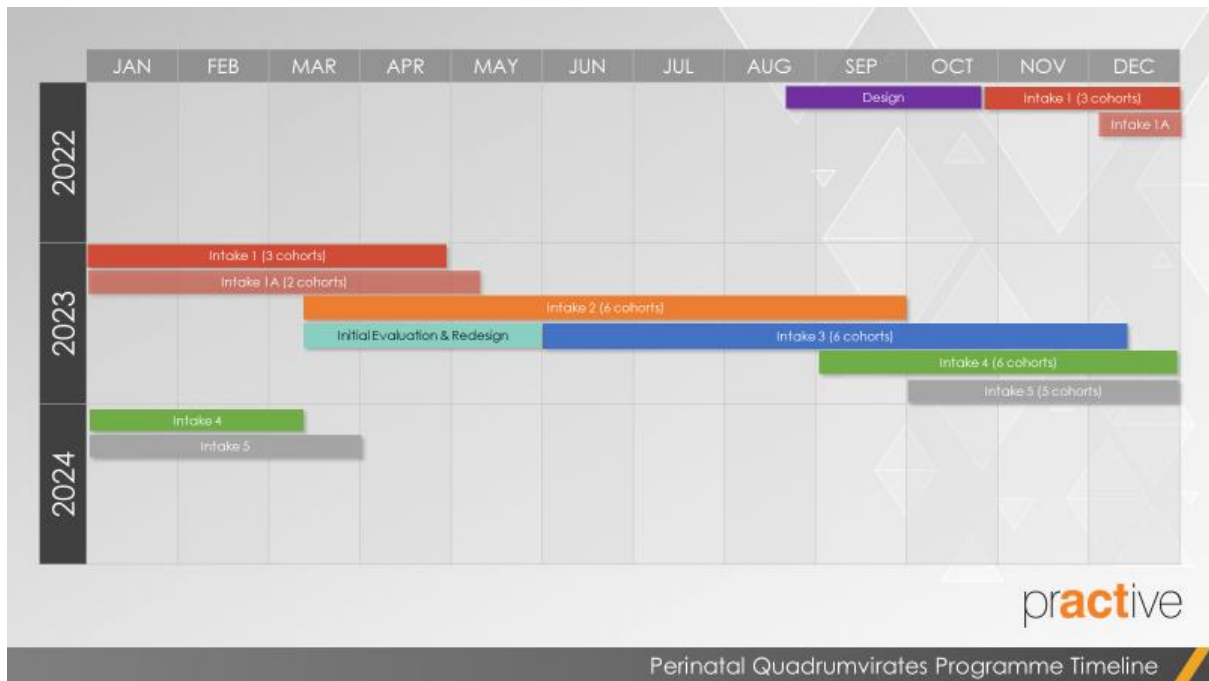
The programme is designed to give the quad dedicated time within the modules to work and learn together as a quadrumvirate, accompanied by individual time to focus on their personal development needs.

Aligned to this programme, participants will be encouraged to:

- Undertake local diagnostics (a culture survey) to gain a meaningful understanding of the culture in their unit
- Complete an individual 360' diagnostic, with a facilitated feedback session

The consortium of well-regarded healthcare leadership developers delivering this programme is led by Practive. Practive has a 20-year track record of providing experiential and impactful leadership development to the NHS.

Below is the programme timeline for the quad programme, coordination of debriefing training, debriefing delivery and individual leadership assessments will be aligned with this timeline:



Each cohort will be made up of 24-32 participants (6-8 quads), with smaller action learning sets of 4 participants.

Appendix 2 - Overview of debriefing training project

The MTP are commissioning a supplier to deliver a 'train the trainer' course to approx. 50 identified Debriefing Leads by 31st March 2023, so that they are equipped with the skills to both deliver an effective SCORE debriefing session and to train someone else to have those skills. This will facilitate our 'cascade' model to enable debriefing skills to be embedded more widely across the system.

This training will enable Debriefing Leads to gain a theoretical and practical foundation in understanding the SCORE survey process, as well as providing deeper insights into cultural data and the ability to effectively de-brief the survey results.

The training will focus on the following areas, in a train the trainer model:

- The unique purpose of the perinatal quadrumvirate within a cultural context and it's leadership agenda
- Accountabilities and behaviours expected of the quadrumvirate, individually and collectively
- Working with local teams to analyse and understand their SCORE results, with a view to developing a plan for organisational debriefing and enacting this with the teams and units within their maternity and neonatal site
- Holding SCORE debriefing sessions, with the ability to navigate challenging conversations with culturally competent inquiry
- The support process of formulating improvement plans for improving the environment of work
- Addressing issues of wellness within staff
- Working with the quadrumvirate to agree accountability going forward
- Preparing the quadrumvirate to submit progress reports to the Trust Board / ICB

The train the trainer model will ensure Debriefing Leads are skilled to equip future Debriefing Leads with the skills listed above, provide guidance and support to manage difficult situations and share an understanding of the culture survey and debriefing process with wider audiences.

There will also be a requirement for some ongoing support in 2023/24 to the Debriefing Leads to ensure they are confident in their roles as Debriefing Leads but also as future trainers. This will include virtual sustainability coaching, offering guidance, troubleshooting support and group coaching offered on a flexible basis.

Invitation to Tender (ITT)

Introduction

1.1 NHS England

The National Health Service Commissioning Board was established on 1 October 2012 as an executive non-departmental public body.

Since 1 April 2013, the National Health Service Commissioning Board has used the name NHS England for operational purposes.

[NHS Terms and Conditions for the Provision of Services \(Contract Version\) \(August 2022\)](#)

NHS England plays a key role in the Government's vision to modernise the health service, as described by the Health and Social Care Act, 2012. NHS England's key roles are to:

- allocate resources to Clinical Commissioning Groups and support them to commission services on behalf of their patients, according to evidence-based quality standards;
- directly commission primary care, military and offender health and specialised services including high security psychiatric services;
- take autonomous decisions about how best to allocate commissioning resources, remaining accountable for ensuring expenditure remains within limits set by the Secretary of State for Health;
- focus on achieving equal access to health services, designed around the needs of the patient, for which we will be held to account by Ministers and Parliament; and
- deliver improved patient outcomes.

The work of NHS England is monitored and held accountable for the delivery of agreed goals and objectives contained in a range of governing frameworks including: the NHS Constitution, the NHS outcomes framework, and the NHS Mandate (for further information: <http://www.england.nhs.uk>).

1.2 Use of electronic Tendering system

NHS England is utilising an electronic Tendering system to manage this procurement and communicate with Tenderers. Accordingly, there will be no hard copy documents issued to Tenderers and all communications with NHS England including the submission of Tenderers responses will be conducted via the following link:

<https://health-family.force.com/s/Welcome>

Unless stated otherwise in these Instructions or in writing from NHS England, all communications from Tenderers (including their sub-contractors, consortium members, consultants and advisers) during the period of this procurement exercise must be directed via the messaging service on the e-Tendering system detailed in this paragraph.

Tender Particulars

1.3 Contents of the Invitation to Tender

The information contained in the ITT is designed to ensure that all Tenders are given equal and fair consideration. It is important that Tenderers provide all the information asked for in the format and order specified.

1.4 The ITT Pack

The ITT Pack comprises the following sections:

Document 1 – Instructions and Guidance (this document)

Document 1 provides Tenderers with instructions for the preparation of submissions. It includes an outline of the procurement process; the requirements for Tender submission and the approach to Tender evaluation. Tenderers should note that Document 1 should be read in conjunction with the other documents comprising this ITT Pack and any other information provided by NHS England.

The Tender must be submitted in the form specified in all documents issued by NHS England as part of this ITT Pack.

Failure to do so may render the response non-compliant and it may be rejected.

Document 2 – Statement of Requirements

This contains the specification for the Contract, which sets out the scope and minimum standards that Tenderers will be expected to meet in their Tenders.

Please note that there are individual Statement of Requirements for each individual Lot.

NHS England reserves the right to issue supplementary documentation at any time during the Tendering process to clarify any issue or amend any aspect of the ITT. All such further documentation shall be deemed to form part of the ITT and shall supersede any part of the ITT to the extent indicated. NHS England may, in its absolute discretion, exercise the option to extend the Tendering period and postpone or change the closing date, in the event that subsequent documentation is issued or for any other reason.

Document 3 – Form of Tender

The Form of Tender must be downloaded, signed, scanned and uploaded into NHS England's e-tendering portal, Atamis.

It must be signed:

- where the Tenderer is an individual, by the individual; or
- where the Tenderer is a partnership, by two partners, such persons being duly authorised for the purpose by the firm; or
where the Tenderer is a company, by two Directors or one Director and the Company Secretary, such persons being duly authorised for the purpose.

Appendix 1 to Document 3 – Tenderer Declarations

Appendix 1 to Document 3 contains declarations made by the Tenderer at the time of submitting their Tender. Tenderers must ensure that they have completed all sections in accordance with instructions provided by NHS England.

Appendix 2 to Document 3 – Terms and Conditions of Contract

Appendix 2 to Document 3 sets out NHS England's Terms and Conditions of Contract. Upon conclusion of this procurement process the resultant Supplier(s) will be required to sign two copies of the Contract provided in the form set out within the Appendix.

The resultant Supplier(s) shall also send the Authority a redacted signed copy for publication.

Qualification Questionnaire

The Qualification Questionnaire requires every Tenderer to complete and return this form. It contains Pass/Fail questions; Tenderers should note that certain sections contains questions that, where the Tenderer's response is 'No', then the Authority must, by law, exclude them from continuing with the procurement. These questions are clearly indicated.

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Technical Envelope (All Lots)

The Technical Envelope contains the mandatory Technical questions to which Tenderers are to provide their responses to questions within the Authority's e-tendering portal no matter which Lot they are bidding for; Tenderer responses to the specific questions relating to the Contract must also be made in accordance with the instructions provided in the document.

Social Value Envelope

The Social Value Envelope contains the mandatory Social Value questions to which Tenderers are to provide their responses to questions within the Authority's e-tendering portal no matter which Lot they are bidding for; Tenderer responses to the specific questions relating to the Contract must also be made in accordance with the instructions provided in the document.

Lot 1 - PCLDP Debriefing Delivery

Tenderers must indicate if they are bidding for this particular Lot by ticking the checkbox via the Authority's e-tendering portal This section contains the Technical questions and the Commercial Envelope specific to this particular Lot. Tenderers are to provide their responses to these questions within the Authority's e-tendering portal.

Lot 2 - PCLDP Debriefing Training

Tenderers must indicate if they are bidding for this particular Lot by ticking the checkbox via the Authority's e-tendering portal This section contains the Technical questions and the Commercial Envelope specific to this particular Lot. Tenderers are to provide their responses to these questions within the Authority's e-tendering portal.

Lot 3 - PCLDP individual Assessments

Tenderers must indicate if they are bidding for this particular Lot by ticking the checkbox via the Authority's e-tendering portal This section contains the Technical questions and the Commercial Envelope specific to this particular Lot. Tenderers are to provide their responses to these questions within the Authority's e-tendering portal.

Evaluation of Tenderer responses is described fully in section 4 of this instructions document.

1.5 Background

This Invitation to Tender (ITT) has been prepared by NHS England.

NHS England is looking for a Supplier(s) for the Services described in the Statements of Requirements (Document 2 of this ITT Pack).

NHS England placed an advertisement in Contracts Finder on 8 December 2022 inviting expressions of interest from parties wishing to be considered and enter into a contract with NHS England.

This procurement exercise is being carried out in accordance with the Open Procedure as set out in the Public Contracts Regulations 2015.

Parties expressing an interest were given access to this ITT Pack on the Authority's e-Tendering portal.

NHS England has taken reasonable care to ensure that the information provided is accurate in all material respects. However, the Tenderer's attention is drawn to the fact that no

[NHS Terms and Conditions for the Provision of Services \(Contract Version\) \(August 2022\)](#)

representation, warranty or undertaking is given by NHS England in respect of the information provided in respect of this transaction and/or any related transaction.

NHS England does not accept any responsibility for the accuracy or completeness of the information provided and shall not be liable for any loss or damage arising directly or indirectly as a result of reliance on this ITT or any subsequent communication.

No warranties or opinions as to the accuracy of any information provided in this ITT Pack shall be given at any stage by NHS England.

Any person considering making a decision to enter into contractual relationships with NHS England or any other person on the basis of the information provided should make their own investigations and form their own opinion of NHS England. The attention of Tenderers is drawn to the fact that, by issuing this ITT, NHS England is in no way committed to awarding any contract and that all costs incurred by Tenderers in relation to any stage of the Tender process are for the account of the relevant Tenderer only.

In accordance with NHS England's internal financial instructions and general principles applicable to public procurement, NHS England seeks best value for money in terms of the Contract reached with the successful Tenderer.

NHS England has endeavoured, therefore, to express as clearly as possible in this ITT the terms on which it would propose to contract with the successful Tenderer and in particular the obligations, risks and liabilities which it expects to become the responsibility of the successful Tenderer.

Value of the Contract

The estimated service handles work to a maximum value of £3,447,737 within 14 months. Details of the estimated expenditure or potential future uptake are given in good faith as a guide to past purchasing and current planning to assist you in submitting your Tender. They should not be interpreted as an undertaking to purchase any goods or services to any particular value and do not form part of the Contract.

1.6 Lots

This procurement is divided into Lots

Lot 1 – PCLDP Debriefing Delivery: £2,731,237 (ex VAT)

Lot 2 – PCLDP Debriefing Training: £284,500 (ex VAT)

Lot 3 – PCLDP Individual Assessments: £432,000 (ex VAT)

NHS England anticipates that it will enter into a contract with a maximum of one Supplier for each of the Lots. Supplier may bid for, and win, more than one Lot.

Tenders must indicate on their response on the Authority's e-tendering portal which or all of the Lots they are Tendering for by ticking the checkbox via the Authority's e-tendering portal.

1.7 Variant Tenders

NHS England shall not accept Variant Tenders.

1.8 TUPE

The attention of suppliers is drawn to the provisions of the European Acquired Rights Directive EC77/187 and TUPE (Transfer of Undertakings Protection of Employment Regulations) 2006. TUPE may apply to the transfer of the contract from the present provider to the new one, giving the present provider's staff (and possibly also staff employed by any present sub-contractors) the right to transfer to the employment of the successful supplier on the same terms and conditions (other than in relation to rights under occupational pension schemes). The above does not apply to the self-employed.

Suppliers are advised to form their own view as to the extent of the application of TUPE and the costs associated with this. At the appropriate stage shortlisted suppliers will be asked to confirm their approach to TUPE transfers and how any costs have been addressed in their Tender.

To assist in this process, NHS England may publish workforce details obtained from the present provider, to all suppliers. This information will be supplied on the basis that it is treated as strictly confidential; and that the information is not disclosed except to such people within the receiving party's organisation, and to such extent, as is strictly necessary for the preparation of the offer; and that it is not used for any other purpose.

The successful supplier will be required to indemnify NHS England against all possible claims under TUPE.

It is a further requirement that the successful supplier will pass on all details of their own workforce towards the end of the Contract period so that this information can be passed to other bona fide suppliers to enable them to assess their obligations under TUPE in the event of a subsequent transfer.

1.9 Confidentiality

All information made available to the Tenderers by NHS England in any form relating to the Contract and the project shall be treated as confidential and shall not be disclosed to any third party without the consent of NHS England.

1.10 Transparency

Tenderers should be aware that the Government has set out the need for greater transparency in public sector procurement and that if they are awarded a Contract, these NHS England Tender documents and the resultant Contract (with appropriate redactions) will be published on the Contracts Finder website:

<https://www.gov.uk/contracts-finder>

NHS England is subject to the greater requirements for transparency across Government operations as updated from time to time. You are hereby formally notified that

NHS England may be obliged to publish the Contract resulting from this Tendering exercise.

1.11 Freedom of Information

The FOIA, EIR, and public sector transparency policies, including the placing of contract award notices on the Contracts Finder database, apply to NHS England (together the “Disclosure Obligations”).

You should be aware of NHS England’s obligations and responsibilities under the Disclosure Obligations to disclose information held by NHS England. Information provided by you in connection with this procurement process, or with any contract that may be awarded as a result of this exercise, may therefore have to be disclosed by NHS England under the Disclosure Obligations, unless NHS England decides that one of the statutory exemptions under the FOIA or the EIR applies.

If you wish to designate information supplied as part of your tender response or otherwise in connection with this tender exercise as confidential, using any template and/or further guidance provided in Appendix 2 to Document 3, you must provide clear and specific detail as to:

- the precise elements which are considered confidential and/or commercially sensitive;
- why you consider an exemption under the FOIA or EIR would apply; and
- the estimated length of time during which the exemption will apply.

The use of blanket protective markings of whole documents such as “commercial in confidence” will not be sufficient. By participating in this procurement process you agree that NHS England should not and will not be bound by any such markings.

In addition, marking any material as “confidential” or “commercially sensitive” or equivalent should not be taken to mean that NHS England accepts any duty of confidentiality by virtue of such marking. You accept that the decision as to which information will be disclosed is reserved to NHS England, notwithstanding any consultation with you or any designation of information as confidential or commercially sensitive or equivalent you may have made. You agree, by participating further in this procurement process and/or submitting your tender response, that all information is provided to NHS England on the basis that it may be disclosed under the Disclosure Obligations if NHS England considers that it is required to do so and/or may be used by NHS England in accordance with the provisions provision of this ITT.

Tender responses are also submitted on the condition that the appointed supplier will only process personal data (as may be defined under any relevant data protection laws) that it gains access to in performance of this Contract in accordance with NHS England’s instructions and will not use such personal data for any other purpose. The contracted supplier will undertake to process any personal data on NHS England’s behalf in accordance with the relevant provisions of any relevant data protection laws and to ensure all consents required under such laws are obtained.

Tenderers should not unreasonably mark complete sections as commercially sensitive and even where information is marked as such the Authority may still be under a duty to disclose.

1.12 Non-collusion and inducements

Any supplier which:

- fixes or adjusts its Tender by arrangement with any other person; or
- communicates to any person other than NHS England the details of its Tender; or

- enters into any arrangement with any other person that it will cease to negotiate with NHS England; or
- offers or agrees to pay or give or does pay or give any sum of money, other inducement or consideration, directly or indirectly, to any person in respect of its Tender or the Contract (excluding details communicated to its advisers and payments made in relation to the valid remuneration of its advisers);
will be disqualified from any further involvement in this process, without prejudice to any other civil remedy that may be available to NHS England and any criminal liability that may be incurred.

1.13 Canvassing

Any Tenderer who, in connection with the ITT:

- offers any inducement, fee or reward to any employee of NHS England or any person acting as an advisor for NHS England or in connection with the procurement process; or
- does anything which would constitute a breach of the Prevention of Corruption Acts 1889 to 1916; or
- contacts any employee of NHS England about any aspect of the procurement process, except through the agreed communication channel(s) authorised in this document;

will be disqualified from any further involvement in this process, without prejudice to any other civil remedies available to NHS England and without prejudice to any criminal liability which such conduct by a supplier may attract.

1.14 Copyright

The copyright in this ITT Pack is vested in NHS England.

Tenderers shall not reproduce any of the ITT Pack in any material form (including photocopying or storing it in any medium by electronic means) without the written permission of NHS England, other than for use strictly for the purpose of preparing their Tender in relation to the procurement process. This ITT Pack and any document at any time issued as supplemental to it are and shall remain the property of NHS England and may be used by a Tenderer solely for the purpose of this procurement process and must be returned upon demand.

1.15 Acceptance of Contract

By submitting a Tender, Tenderers are agreeing to be bound by the terms of this ITT and the Contract without further negotiation or amendment.

The Tenderer in submitting the Tender undertakes that in the event of the Tender being accepted by NHS England and NHS England confirming in writing such acceptance to the Tenderer, the Tenderer will execute the Contract prior to contract implementation.

1.16 NHS England's Employees

No employee of NHS England has the authority to give any undertaking, guarantee or warranty or make any representation (express or implied) in relation to this ITT or any other matter relating to the Contract.

1.17 Publicity

Tenderers must obtain the express written approval from NHS England before any disclosures are made to the press or in any other public domain relating to this ITT process or any subsequent contract. No Tenderer will undertake any publicity activities with any part of the media in relation to the project without the prior written agreement of NHS England, including agreement on the format and content of any publicity. NHS England wishes to make it clear that, prior to contract award, no publicity activities of the Tenderer shall be allowed.

1.18 Notification of Award and Standstill

NHS England will notify successful and unsuccessful Tenderers in accordance with the Regulations. A ten day standstill period will take effect in accordance with the Regulations before NHS England enters into any Contract(s).

1.19 Contract term

The Authority proposes to enter into Contract(s) for a maximum period of 20 months with the successful Tenderer(s).

The initial contract term shall be 14 months with the potential for 6 months in multiple extension periods at no extra cost to the Authority.

The anticipated service commencement date is 1 February 2023.

2.18 Payment and Invoicing

2.18.1 NHS England will pay correctly addressed and undisputed invoices within 30 days in accordance with the requirements of the Contract. Suppliers to NHS England must ensure comparable payment provisions apply to the payment of their sub-contractors and the sub-contractors of their sub-contractors. General requirements for an invoice for NHS England include:

- A description of the good/services supplied is included.
- NHS England's reference number/Purchase Order number is included.
- It must be addressed to:

NHS England
X24 Payables K005
Phoenix House, Topcliffe Lane
Wakefield
WF3 1WE

Tender Process

1.20 General

These instructions are designed to ensure that all Tenderers are given equal and fair consideration. Please contact NHS England via the messaging service on the e-Tendering system if you have any queries.

Tenderers should read these instructions carefully before completing the Tender documentation. Failure to comply with these requirements for completion and submission of the Tender response may result in the rejection of the Tender. Tenderers are advised therefore to acquaint themselves fully with the extent and nature of the Requirements and contractual obligations.

In particular, Tenderers must ensure that they have read and fully understand Document 2 (the Statement of Requirements) prior to committing their commercial offer to NHS England. Requests for Clarifications on any aspect of this ITT can be made by following the instructions in paragraph 3.3.

These instructions, with other instructions issued in connection with it, constitute the conditions of the ITT. Participation in the Tender process automatically signals that the Tenderer accepts this.

The Tenderer shall ensure that each and every sub-contractor, consortium member and adviser abides by the terms of these conditions of the ITT Pack. By submitting a Tender, the Tenderer confirms that they will, and that they shall ensure that any consortium members and/or subcontractors will, comply with all applicable laws, codes of practice, statutory guidance and applicable NHS England policies relevant to the supplies and/or services being supplied.

NHS England shall not be committed to any course of action as a result of:

- issuing this ITT or any invitation to participate in this procurement exercise;
- an invitation to submit any response in respect of this procurement exercise;
- communicating with a Tenderer or a Tenderer's representatives or agents in respect of this procurement exercise; or
- any other communication between the NHS England and any other party.

Tenderers shall accept and acknowledge that by issuing this ITT, NHS England shall not be bound to accept any Tender and reserves the right not to conclude a contract for some or all of the Requirements for which Tenders are invited.

NHS England reserves the right to vary, suspend or cancel the procurement process at any time without explanation. As stated in section 3.4.2, the Authority is not responsible for any costs incurred by Tenderers.

Tenderers should be aware that by submitting a response to this Tender they are agreeing that they are capable of performing, as a minimum, the mandatory requirements as detailed within this ITT Pack at Document 2: Statement of Requirements. Failure to comply with one or more mandatory requirements or constraints shall entitle NHS England to reject a Tender in Full.

Further, the requirements detailed within the ITT Pack and any elements of a successful Tenderers response to these requirements which are additional and not contradictory to the Requirements will form part of the Contract between the Service Provider and NHS England. This covers all mandatory requirements as well as any desirable requirements to which the Tenderer responds.

1.21 Timetable

Set out below is the proposed procurement timetable. This is intended as a guide and whilst NHS England does not intend to depart from the timetable it reserves the right to do so at any stage.

Stage	Date/Time
Issue of the ITT to Tenderers	08/12/22

Deadline for receipt of Tenderer clarifications	12pm 28/12/22
Target date for final responses to Tenderer clarifications	04/01/23
Deadline for receipt of Tenders	10am 09/01/23
Evaluation of Tenders	From 09/01/23
	To 19/01/23
Notification of contract award decision pre Standstill	19/01/23
"Standstill" period	From 19/01/23
	To 12am 30/01/23
Target Contract Commencement	01/02/23

1.22 Clarifications relating to this Tender

Please read this ITT carefully. All requests for clarification about the requirements or the process of this procurement exercise shall be made in accordance with this section.

NHS England will endeavour to answer all questions as quickly as possible but cannot guarantee a minimum response time.

Clarification requests must be submitted via the messaging service on the Authority's e-Tendering portal.

No further requests for clarifications, unless considered by the Authority to be fundamental to the procurement, will be accepted after the query submission Deadline specified in the timetable at paragraph 3.2 'Timetable'.

In order to ensure equality of treatment of Tenderers, NHS England intends to publish the questions and clarifications raised by Tenderers together with NHS England's responses (but not the source of the questions) to all participants on a regular basis.

Tenderers should indicate if a query is of a commercially sensitive nature – where disclosure of such query and the answer would or would be likely to prejudice its commercial interests. However, if NHS England at its sole discretion does not either; consider the query to be of a commercially confidential nature or one which all Tenderers would potentially benefit from seeing both the query and NHS England's response, NHS England will:

- invite the Tenderer submitting the query to either declassify the query and allow the query along with NHS England's response to be circulated to all Tenderers; or
- request the Tenderer, if it still considers the query to be of a commercially confidential nature, to withdraw the query.

NHS England reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that request would or would be likely to prejudice its commercial interests.

1.23 Preparation of Tender

Information that is supplied to Tenderers as part of the procurement exercise is supplied in good faith. Tenderers must satisfy themselves as to the accuracy of such information and no responsibility is accepted for any loss or damage of whatever kind or howsoever caused arising from the use by the Tenderers of such information.

Tenderers must obtain for themselves at their own responsibility and expense all information necessary for the preparation of Tenders, whether before or after the closing date and whether incurred directly by them or their advisers and regardless of whether such costs arise as a consequence directly or indirectly of any amendments made to this ITT by NHS England at any time. Tenderers are solely responsible for the costs and expenses incurred in connection with the preparation and submission of their Tender and all other stages of the selection and evaluation process. Under no circumstances will NHS England, or any of their advisers, be liable for any costs or expenses borne by Tenderers, sub-contractors, suppliers or advisers in this process.

For the avoidance of doubt, NHS England shall have no liability whatsoever to Tenderers for the costs of Tendering.

1.24 Submission of Tenders

Tenderers must ensure that their Tender covers all the information required by this ITT. A check list of return requirements is set out in paragraph 3.8.

Tenderers must complete their Tenders within the Bravo Solutions portal set out in the "Supplier Response Form". Failure to do so may render the response non-compliant and it may be rejected.

In evaluating Tenders, NHS England will only consider information provided in the Supplier Response Form.

Tenderers should not assume that NHS England has any prior knowledge of the Tenderer, its practice or reputation, or its involvement in existing services, projects or procurements.

If there are any questions that do not apply to a Tenderer, please answer with a N/A with an explanation where appropriate.

Where any section of the ITT indicates a word limit, any response will be reviewed to that word limit and any additional information beyond that word limit will not be considered.

Tenderers must provide a word count for each question response

Tenders must not be qualified in any way. Any attempt to qualify any of the provisions of this ITT including its schedules may result in a Tenderer being disqualified as non-compliant.

The word counts to the technical and social value questions are communicated via the Atamis tender portal.

NHS England may at its own absolute discretion extend the Deadline for receipt of Tenders specified in the timetable. Any extension to the Deadline granted under this paragraph will apply to all Tenderers.

Tenders must be submitted via NHS England's e-Tendering portal no later than the ITT submission Deadline specified in paragraph 3.2 'Timetable'. Tenders may be submitted at any time before the Deadline.

Tenders received before this Deadline will be retained unopened until the opening date.

All tender submissions must be in the English language.

Price and any financial data provided must be submitted in or converted into pounds sterling. Where official documents include financial data in a foreign currency, a sterling equivalent must be provided. Tender pricing must be provided excluding Value Added Tax.

NHS England does not accept responsibility for the premature opening or mishandling of Tenders that are not submitted in accordance with these instructions.

NHS England requires the following documents to be submitted as a minimum for your Tender to be accepted:

- Completed and signed Document 3: Form of Tender
- Completed and signed Appendix 1 to Document 3: Tenderer Declarations
- Completed and signed Supplier Code of Conduct
- Responses to the Qualification, Technical and Social Value envelopes
- Responses to the Checklist, Technical and Commercial sections for the relevant Lot(s) that you are bidding for
- Any other information required by NHS England to be submitted as part of the Tender

Tenderers should not include in the Tender any extraneous information which has not been specifically requested in the ITT including, for example, any sales or marketing literature, standard terms of trading etc.

Your tender response is submitted on the basis that you consent to NHS England carrying out all necessary actions to verify the information that you have provided; and the

analysis of your tender response being undertaken by one or more third parties commissioned by NHS England for such purposes.

A Tender or any other document requested by NHS England may be rejected which:

- contains gaps, omissions, misrepresentations, errors, uncompleted sections, or changes to the format of the tender documentation provided;
- contains hand written amendments which have not been initialled by the authorised signatory;
- does not reflect and confirm full and unconditional compliance with all of the documents issued by NHS England forming part of the ITT;
- contains any caveats or any other statements or assumptions qualifying the tender response that are not capable of evaluation in accordance with the evaluation model or requiring changes to any documents issued NHS England in any way;
- is not submitted in a manner consistent with the provisions set out in this ITT;
- is received after the Deadline.

NHS England shall have the right to disqualify you and your tender response from the procurement process at any stage if it becomes aware of any omission or misrepresentation in your response to any question or in the event that there are material changes to a position/information set out in any aspect of your response to the Supplier Information Questionnaire, tender response or other response made following a request by NHS England. For the avoidance of doubt, NHS England may check that there has not been any material changes to the information provided or the positions outlined in your response at any stage and, in the event of any change, NHS England reserves the right to disqualify you based on an assessment of the updated information.

NHS England may, at any stage in the procurement process, require you to provide evidence to verify statements made by you in any response to the Supplier Information Questionnaire, tender response or other response made following a request by NHS England and reserves the right to disqualify you where such evidence and verification cannot be provided or is not provided within the timescale specified by NHS England.

1.25 Amendments to Tender documents

At any time prior to the Deadline for the receipt of Tenders, NHS England may amend the information provided to, or to be submitted by, Tenderers. In order to give Tenderers reasonable time in which to take the amendment into account in preparing their submissions, NHS England may, at its sole discretion, extend the Deadline for receipt of Tender submissions.

NHS England reserves the right to:

- amend the ITT documents or requirements on Tenderers;
- cancel the procurement process at any stage; and/or
- require the Tenderer to clarify its Tender submission in writing and/or provide additional information (See paragraph “Clarifications of ITT questions by Tenderers” for more details).

1.26 Tender validity

Tenders shall remain valid for 90 days from the Deadline for Tender submission.

1.27 Tender Return Checklist

Tenderers must ensure that they have returned the following documents:

- Document 3: Form of Tender
- Appendix 1 to Document 3: Tenderer Declarations
- Supplier Code of Conduct
- Response to the Qualification Envelope
- Response to the technical questions via the Technical Envelope
- Response to the social value question via the Social Value Envelope
- Responses to the checklist, technical and commercial questions for the relevant Lot via the specific Lot section in the Atamis Portal

Tender Evaluation

1.28 Introduction

Tenders will be evaluated according to the methodology set out below to ensure that Tenders are evaluated fairly in ascertaining the most economically advantageous Tender.

1.29 Evaluation of Tenders

The overall aim of the evaluation process is to select the Tender that is the most economically advantageous to NHS England, having regard to NHS England's overall objectives and the criteria set out below.

Criterion	% weighting
Cost	30%
Social Value	10%
Quality / Technical, consisting of;	60%
<i>Stakeholder Management</i>	12.5%
<i>Challenges and Ways of Working</i>	12.5%
<i>Design & Delivery</i>	20%
<i>Expertise & Experience</i>	15%

The following evaluation methodology will be used against scoring questions on the Questionnaire:

1.30 Scoring Criteria

Score	Interpretation
4 Excellent	The Tenderer's response provides full confidence that the Tenderer understands and can deliver the Requirements well and addresses all of the requirements set out in the question. The Tenderer's response includes value add elements of benefit to the Requirement..
3 Good	The Tenderer's response provides a good level of confidence that the Tenderer understands and can deliver the services and the Tenderer's response addresses all or most of the requirements set out in the question.
2 Satisfactory	The Tenderer's response provides a satisfactory level of confidence that the Tenderer understands and can deliver the services and the Tenderer's response addresses at least some of the requirements set out in the question. However, the response is lacking in some areas.
1 Poor	There are weaknesses (or inconsistency) in the Tenderer's understanding of the services and the Tenderer's response fails to address some or all of the requirements set out in the question.
0 Unacceptable	No response and/or information provided is deemed inadequate to merit a score.

1.31 Methodology

The following evaluation methodology will be used to score Tenders:

A minimum pass mark of “2” or “Satisfactory” (Threshold) applies to the Evaluation Criteria. The Authority shall reject any Tender which does not meet the relevant Threshold in respect of one or more criteria unless no Tenderer achieves these criteria. If no Tenderer achieves the minimum pass mark then NHS England reserves the right to revoke the minimum pass mark and award the Contract to the Tenderer with the highest overall score for Quality and Price.

Total Score

Total Score = Quality Weighted Score + Social Value Score + Financial Weighted Score. The total score is out of a maximum total of 100.

Quality Weighted Score

The quality weighted score is established by the evaluation of Tender responses against the award criteria and weightings stated above, applying the following formula:

$$\text{Quality Weighted Score} = \frac{\text{Tenderer Quality Score} \times \text{Quality Weighting}}{\text{Highest Quality Score}}$$

Financial Weighted Score

Tender prices will be scored:

On a comparative basis with the lowest Tender receiving 100% of the available marks (30% following weighting). All other Tenders will be compared against that lowest Tender.

The financial weighted score is calculated by using the following formula:

$$\text{Financial Weighted Score} = \frac{\text{Lowest price} \times \text{Financial Weighting}}{\text{Tenderer price}}$$

The evaluation panel's decision will be final.

Schedule 6

Commercial Schedule

Redacted

Schedule 7

Staff transfer

The optional parts of this Schedule 7 below shall only apply to this Contract where such parts have been checked.

Part A ☒ No staff transfer to the Supplier under TUPE (only applicable to the Contract if this box is checked)

- 1.1 The Parties agree that at the commencement of the provision of Services by the Supplier TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.
- 1.2 If any person who is an employee of the Authority or a Third Party claims, or it is determined, that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
 - 1.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;
 - 1.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;
 - 1.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment;
 - 1.2.4 if after that period specified in Clause 1.2.2 of Part A of this Schedule 7 has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the provisions of Part D of this Schedule 7.

Part B ☐ Staff transfer from the Authority under TUPE (only applicable to the Contract if this box is checked)

- 1.1 The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Transferring Employees will transfer on the Transfer Date to the Supplier or any Sub-contractor pursuant to TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions.
- 1.2 The Supplier agrees, or shall ensure by written agreement that any Sub-contractor shall agree, to accept the Transferring Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (including the right to continued access to the NHS Pension Scheme or access to a Broadly Comparable pension scheme which shall be dealt with in accordance with Part D of this Schedule 7) and with full continuity of employment.
- 1.3 The Supplier's agreement in Clause 1.2 of Part B of this Schedule 7 (and any subsequent agreement by any Sub-contractor), is subject to the right of any employee

identified as a Transferring Employee to object to being transferred to the Supplier or any Sub-contractor.

- 1.4 The Supplier will, or shall ensure by written agreement that any Sub-contractor will:
 - 1.4.1 not later than twenty eight (28) days after issue of a written notice in writing to it from the Authority, provide the Authority with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
 - 1.4.2 provide such assistance and information to the Authority as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Supplier or any Sub-contractor (including attendance at any meetings with Transferring Employees, trade unions and employee representatives);
 - 1.4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and
 - 1.4.4 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Transferring Employees about any Measures in accordance with regulation 13(6) of TUPE.
- 1.5 The Authority will on or before the Transfer Date:
 - 1.5.1 pay all wages, salaries and other benefits of the Transferring Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Transferring Employees in respect of the period before the Transfer Date;
 - 1.5.2 procure that any loans or advances made to the Transferring Employees before the Transfer Date are repaid to it;
 - 1.5.3 account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Transferring Employees in the period before the Transfer Date; and
 - 1.5.4 pay the Supplier the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date.
- 1.6 The Authority will:
 - 1.6.1 provide such assistance and information to the Supplier as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Supplier or any Sub-contractor, including the provision of all employee liability information identified in regulation 11 of TUPE in relation to the Transferring Employees; and

- 1.6.2 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE.
- 1.7 The Authority shall indemnify and keep indemnified the Supplier in relation to any Employment Liabilities arising out of or in connection with any claim which arises as a result of any act or omission of the Authority in relation to the Transferring Employees prior to the Transfer Date save for where such act or omission results from complying with the instructions of the Supplier or Sub-contractor, including the Supplier or Sub-contractor failing to comply with its obligations under regulation 13 of TUPE, but only to the extent that such claim is brought by:
- 1.7.1 any of the Transferring Employees (whether on their own behalf or in their capacity as employee representatives); or
- 1.7.2 any trade union, staff association or staff body recognised by the Authority in respect of any of the Transferring Employees or any employee representatives acting on behalf of any of the Transferring Employees.
- 1.8 The Supplier shall be responsible for or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and other Staff.
- 1.9 The Supplier shall indemnify and will keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with:
- 1.9.1 any act or omission of the Supplier or Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Transferring Employee or Staff (including but not limited to any liability which arises because a Transferring Employee's employment with the Supplier or Sub-contractor is deemed to include their previous continuous employment with the Authority);
- 1.9.2 any act or omission of the Supplier or Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Authority's failure to comply with regulation 13 of TUPE;
- 1.9.3 any allegation or claim by a Transferring Employee or any other employee of the Authority that in consequence of the transfer of Services to the Supplier or Sub-contractor there has or will be a substantial change in such Transferring Employee's working conditions to their detriment within regulation 4(9) of TUPE; and
- 1.9.4 any allegation or claim that the termination of employment of any of the Transferring Employees or any other employee of the Authority whether on or before the Transfer Date which arises as a result of any act or omission by the Supplier or Sub-contractor save for where such act or omission results from complying with the instructions of the Authority.
- 1.10 If any person who is an employee of the Authority who is not a Transferring Employee claims or it is determined that their contract of employment has been transferred from

the Authority to the Supplier or any Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned:

- 1.10.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;
- 1.10.2 the Authority may offer employment to such person within twenty eight (28) days of the notification by the Supplier;
- 1.10.3 if such offer of employment is accepted, the Supplier or Sub-contractor shall immediately release the person from their employment; and
- 1.10.4 if after the period specified in Clause 1.10.2 of Part B of this Schedule 7 has elapsed, no offer of employment has been made by the Authority or such offer has been made by the Authority but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person from the Transfer Date.

Part C ☐ Staff transfer from a current provider under TUPE (only applicable to the Contract if this box is checked)

- 1.1 The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Third Party Employees will transfer on the Transfer Date to the Supplier or a Sub-contractor pursuant to TUPE, the Cabinet Office Statement and (where relevant) Fair Deal for Staff Pensions.
- 1.2 The Supplier agrees, or shall ensure by written agreement that any Sub-contractor shall agree, to accept the Third Party Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (and including (where relevant) the right to secure access or continued access to the NHS Pension Scheme or access or continued access to a Broadly Comparable pension scheme in accordance with Fair Deal for Staff Pensions (which shall be dealt with in accordance with Part D of this Schedule 7) and with full continuity of employment.
- 1.3 The Supplier's agreement in Clause 1.2 of Part C of this Schedule 7 (and any subsequent agreement by any Sub-contractor), is subject to the right of any Third Party Employee to object to being transferred to the Supplier or any Sub-contractor.
- 1.4 The Supplier will, or shall ensure by written agreement that any Sub-contractor will:
 - 1.4.1 not later than twenty eight (28) days after issue of a written notice in writing to it from the Authority, provide the Third Party with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority and any Third Party indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
 - 1.4.2 provide such assistance and information to the Third Party as it may reasonably request to facilitate a smooth and efficient handover of the Third Party Employees to the Supplier or any Sub-contractor (including attendance at any meetings with Third Party Employees, trade unions and employee representatives);
 - 1.4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and
 - 1.4.4 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Third Party Employees about any Measures in accordance with regulation 13(6) of TUPE.
- 1.5 The Supplier shall be responsible for, or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements and outgoings in respect of the Third Party Employees and other Staff.
- 1.6 The Supplier shall indemnify and will keep indemnified the Authority and any Third Party in relation to any Employment Liabilities arising out of or in connection with:
 - 1.6.1 any act or omission of the Supplier or a Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Third Party Employee or Staff (including but not limited to any liability which arises because a Third Party Employee's employment with the Supplier or a Sub-contractor is deemed to include their previous continuous employment with the Third Party);

- 1.6.2 any act or omission of the Supplier or a Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Third Party's failure to comply with regulation 13 of TUPE;
 - 1.6.3 any claim or allegation by a Third Party Employee or any other employee of the Authority or Third Party that in consequence of the transfer of Services to the Supplier or a Sub-contractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and
 - 1.6.4 any claim or allegation that the termination of employment of any of the Third Party Employees or any other employee of the Third Party whether on or before the Transfer Date or not which arise as a result of any act or omission by the Supplier or a Sub-contractor save for where such act or omission results from complying with the instructions of the Authority.
- 1.7 The Authority shall use reasonable endeavours to transfer to the Supplier or any Sub-contractor the benefit of any indemnity it has from the Third Party.

Part D ☐ Provisions regarding pensions (only applicable to the Contract if this box is checked or Clause 1.2.4 of Part A of this Schedule 7 applies)

Broadly comparable pension benefits ☐ (Clause 1.4 of this Part D of this Schedule 7 only applies to the Contract if this box is checked or 1.2.4 of Part A of this Schedule 7 applies. For the avoidance of doubt, where this box is not checked, but the Part D box above is checked all of the provisions of this Part D of this Schedule 7 shall apply to this Contract except Clause 1.4 of this Part D of this Schedule 7)

1 Pension protection for Eligible Employees

1.1 General

- 1.1.1 The Supplier shall procure that, if relevant, each of its Sub-contractors shall comply with the provisions in this Schedule 7 as if references to the Supplier were to the Sub-contractor.

1.2 Membership of the NHS Pension Scheme

- 1.2.1 In accordance with Fair Deal for Staff Pensions, the Supplier to which the employment of any Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHS Pension Scheme, shall on or before the Employee Transfer Date, each secure a Direction Letter to enable the Eligible Employees to retain either continuous active membership of or eligibility for, the NHS Pension Scheme, or as appropriate rejoin or secure eligibility for the NHS Pension Scheme for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 1.2.2 The Supplier must supply to the Authority a complete copy of the Direction Letter as soon as reasonably practicable after the Employee Transfer Date.
- 1.2.3 The Supplier shall comply with the terms of the Direction Letter (including any terms which change as a result of changes in Law) for so long as it remains bound by the terms of the Direction Letter.
- 1.2.4 Where any Staff (including any Transferred Staff) omitted from the Direction Letter supplied in accordance with Part D of this Schedule 7 is subsequently found to be an Eligible Employee, the Supplier (or its Sub-contractor if relevant) will ensure that that person is treated as an Eligible Employee from the Employee Transfer Date so that their Pension Benefits and Premature Retirement Rights are not adversely affected.
- 1.2.5 The Supplier shall ensure that all data relating to the Eligible Employees and the NHS Pension Scheme is up to date and is provided to the Authority as requested from time to time.

1.3 Contributions payable

- 1.3.1 The Supplier shall pay to the NHS Pension Scheme all such amounts as are due under the Direction Letter and shall deduct and pay to the NHS Pension Scheme such employee contributions as are required by the NHS Pension Scheme.
- 1.3.2 Where during the Term the standard employer contribution rate which the Supplier is required to pay into the NHS Pension Scheme pursuant to the terms of its Direction Letter is increased to a rate which is over and above the rate which was applicable to the Supplier as at the date of this Contract

and such rate increase results in an increased cost to the Supplier overall in relation to the provision of the Services ("Cost Increase"), the Supplier shall (subject to Clause 1.3.3 of Part D of this Schedule 7 and the provision of supporting information) be entitled to recharge a sum equal to the Cost Increase to the Authority. The Supplier shall only be entitled to recharge any Cost Increase to the Authority pursuant to this Clause 1.3.2 of Part D of this Schedule 7 in circumstances where the Cost Increase arises solely as a direct result of a general increase in the employer contribution rate applicable to all employers participating in the NHS Pension Scheme and not in circumstances where the employer contribution rate applicable to the Supplier is increased for any other reason, including as a result of any acts or omissions of the Supplier which give rise to any costs or additional charges (including interest) being charged to the Supplier which are over and above the minimum employer contributions payable by an employer in the NHS Pension Scheme (including as a result of a failure by the Supplier to comply with the terms of its Direction Letter or to meet its obligations to the NHS Pension Scheme).

1.3.3 The Supplier must supply all such information as the Authority may reasonably request from time to time in order to support any claim made by the Supplier pursuant to Clause 1.3.2 of Part D of this Schedule 7 in relation to a Cost Increase.

1.3.4 Where during the Term the standard employer contribution rate which the Supplier is required to pay in relation to the NHS Pension Scheme pursuant to the terms of its Direction Letter is decreased as part of a general reduction in the standard employer contribution rate applicable to all employers participating in the NHS Pension Scheme to a rate which is lower than that which was applicable as at the date of this Contract and such decrease results in a cost saving for the Supplier (a "Cost Saving"), the Authority shall be entitled to reduce the amounts payable to the Supplier under this Contract by an amount equal to the Cost Saving. The Authority shall be entitled to deduct any Cost Saving from sums otherwise payable by the Authority to the Supplier under this Contract.

1.4 Broadly Comparable Pension Benefits

1.4.1 If the Authority in its sole discretion agrees that the Supplier or Sub-contractor need not provide the Eligible Employees with access to the NHS Pension Scheme, the Supplier must ensure that, with effect from the Employee Transfer Date until the day before the Subsequent Transfer Date, the Eligible Employees are offered access to a scheme under which the Pension Benefits are Broadly Comparable to those provided under the NHS Pension Scheme.

1.4.2 The Supplier must supply to the Authority details of its Broadly Comparable scheme and provide a full copy of the valid certificate of Broad Comparability covering all Eligible Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Employee Transfer Date.

1.5 Transfer Option where Broadly Comparable Pension Benefits are provided

1.5.1 As soon as reasonably practicable and in any event no later than twenty (20) Business Days after the Employee Transfer Date, the Supplier must provide the Eligible Employees with the Transfer Option, where a Third Party offered, or the Supplier offers, a Broadly Comparable scheme.

1.6 Calculation of Transfer Amount

- 1.6.1 The Authority shall use reasonable endeavours to procure that twenty (20) Business Days after the Transfer Option Deadline, the Transfer Amount is calculated by the Third Party's Actuary or the Authority's Actuary (as appropriate) on the following basis and notified to the Supplier along with any appropriate underlying methodology.
- 1.6.2 If the Third Party offers a Broadly Comparable scheme to Eligible Employees:
- (i) the part of the Transfer Amount which relates to benefits accrued in that Broadly Comparable scheme other than those in Clause (ii) of Part D of this Schedule 7 below must be aligned to the funding requirements of that scheme; and
 - (ii) the part of the Transfer Amount which relates to benefits accrued in the NHS Pension Scheme (having been previously bulk transferred into the Third Party's Broadly Comparable scheme), must be aligned to whichever of:
 - (A) the funding requirements of the Third Party's Broadly Comparable scheme; or
 - (B) the principles under which the Third Party's Broadly Comparable scheme received a bulk transfer payment from the NHS Pension Scheme (together with any shortfall payment),
gives the higher figure, provided that where the principles require the assumptions to be determined as at a particular date, that date shall be the Employee Transfer Date.
- 1.6.3 In the case of Transferring Employees or any Third Party Employees who have access to the NHS Pension Scheme (and who are classed as Eligible Employees), the Transfer Amount shall be calculated by the NHS Pension Scheme's Actuary on the basis applicable for bulk transfer terms from the NHS Pension Scheme set by the Department of Health from time to time.
- 1.6.4 Each Party shall promptly provide to the Actuary calculating or verifying the Transfer Amount any documentation and information which that Actuary may reasonably require.

1.7 Payment of Transfer Amount

Subject to:

- 1.7.1 the period for acceptance of the Transfer Option having expired; and
- 1.7.2 the Supplier having provided the trustees or managers of the Third Party's pension scheme (or NHS Pensions, as appropriate) with completed and signed forms of consent in a form acceptable to the Third Party's pension scheme (or NHS Pensions) from each Eligible Employee in respect of the Transfer Option; and
- 1.7.3 the calculation of the Transfer Amount in accordance with Clause 1.6 of Part D of this Schedule 7; and

- 1.7.4 the trustees or managers of the Supplier's (or any Sub-contractor's) Broadly Comparable scheme (or NHS Pensions, as appropriate) having confirmed in writing to the trustees or managers of the Third Party's pension scheme (or NHS Pensions, as appropriate) that they are ready, willing and able to receive the Transfer Amount and the bank details of where the Transfer Amount should be sent, and not having revoked that confirmation,

the Authority will use reasonable endeavours to procure that the Third Party's pension scheme (or the NHS Pension Scheme, as appropriate) shall, on or before the Payment Date, transfer to the Supplier's Broadly Comparable scheme (or NHS Pension Scheme) the Transfer Amount in cash, together with any cash or other assets which are referable to additional voluntary contributions (if any) paid by the Eligible Employees which do not give rise to salary-related benefits.

1.8 Credit for Transfer Amount

- 1.8.1 Subject to prior receipt of the Transfer Amount, by the trustees or managers of the Supplier's Broadly Comparable scheme (or NHS Pensions, as appropriate), the Supplier must procure that year-for-year day-for-day service credits are granted in the Supplier's (Broadly Comparable scheme (or NHS Pension Scheme), or an actuarial equivalent agreed by the Authority's Actuary (and NHS Pension Scheme Actuary) in accordance with Fair Deal for Staff Pensions as a suitable reflection of the differences in benefit structure between the NHS Pension Scheme and the Supplier's pension scheme.
- 1.8.2 To the extent that the Transfer Amount is or shall be insufficient to provide benefits in the receiving scheme on the basis set out in Clause 1.8.1 above, the Supplier shall be liable to make a top-up payment into the receiving scheme such that benefits shall be provided by the receiving scheme on the basis set out in Clause 1.8.1 above.

1.9 Premature Retirement Rights

- 1.9.1 From the Employee Transfer Date until the day before the Subsequent Transfer Date, the Supplier must provide Premature Retirement Rights in respect of the Eligible Employees that are identical to the benefits they would have received had they remained employees of an NHS Body or other employer which participates automatically in the NHS Pension Scheme.

1.10 Breach and Cancellation of any Direction Letter(s) and Right of Set-Off

- 1.10.1 The Supplier agrees that it shall notify the Authority if it breaches the terms of the Direction Letter. The Supplier also agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier breaches the terms of this Direction Letter.
- 1.10.2 If the Authority is entitled to terminate this Contract pursuant to Clause 15.5.5 of Schedule 2, the Authority may in its sole discretion instead of exercising its right under Clause 15.5.5 of Schedule 2 permit the Supplier to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority.
- 1.10.3 If the Authority is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Authority shall be entitled to deduct all or part of those arrears from any amount due to be paid by the Authority to the Supplier having given

the Supplier five (5) Business Days' notice of its intention to do so, and to pay any sum deducted to NHS Pensions in full or partial settlement of the NHS Pension Scheme Arrears. This set-off right is in addition to and not instead of the Authority's right to terminate the Contract under Clause 15.5.5 of Schedule 2.

1.11 Compensation

- 1.11.1 If the Supplier is unable to provide the Eligible Employees with either:
- (i) membership of the NHS Pension Scheme (having used its best endeavours to secure a Direction Letter); or
 - (ii) a Broadly Comparable scheme,
- the Authority may in its sole discretion permit the Supplier to compensate the Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier having consulted with a view to reaching agreement any recognised trade union or, in the absence of such body, the Eligible Employees. The Supplier must meet the costs of the Authority in determining whether the level of compensation offered is reasonable in the circumstances.
- 1.11.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract under Clause 15.5.5 of Schedule 2.

1.12 Supplier Indemnities Regarding Pension Benefits and Premature Retirement Rights

- 1.12.1 The Supplier must indemnify and keep indemnified the Authority and any Successor against all Losses arising out of any claim by any Eligible Employee that the provision of (or failure to provide) Pension Benefits and Premature Retirement Rights from the Employee Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
- 1.12.2 The Supplier must indemnify and keep indemnified the Authority, NHS Pensions and any Successor against all Losses arising out of the Supplier (or its Sub-contractor) allowing anyone who is not an Eligible Employee to join or claim membership of the NHS Pension Scheme at any time during the Term.
- 1.12.3 The Supplier must indemnify the Authority, NHS Pensions and any Successor against all Losses arising out of its breach of this Part D of this Schedule 7 or the terms of the Direction Letter.

1.13 Sub-contractors

- 1.13.1 If the Supplier enters or has at the Commencement Date entered into a Sub-contract for delivery of all or part of the Services it shall impose obligations on its Sub-contractor in the same terms as those imposed on the Supplier in relation to Pension Benefits and Premature Retirement Benefits by this Part D of this Schedule 7, including requiring that:
- (i) if the Supplier has secured a Direction Letter, the Sub-contractor also secures a Direction Letter in respect of the Eligible Employees for their future service with the Sub-contractor as a condition of being awarded the Sub-contract; or

- (ii) if the Supplier has offered the Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHS Pension Scheme, the Sub-contractor either secures a Direction Letter in respect of the Eligible Employees or provides Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHS Pension Scheme and in either case the option for Eligible Employees to transfer their accrued rights in the Supplier's pension scheme into the Sub-contractor's Broadly Comparable scheme (or where a Direction Letter is secured by the Sub-contractor, the NHS Pension Scheme) on the basis set out in Clause 1.8 of Part D of this Schedule 7, except that the Supplier or the Sub-contractor as agreed between them, must make up any shortfall in the transfer amount received from the Supplier's pension scheme.

1.14 Direct Enforceability by the Eligible Employees

- 1.14.1 Notwithstanding Clause 30.8 of Schedule 2, the provisions of this Part D of this Schedule 7 may be directly enforced by an Eligible Employee against the Supplier and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to him or her by the Supplier under this Part D of this Schedule 7 in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 1.14.2 Further, the Supplier must ensure that the Contracts (Rights of Third Parties) Act 1999 shall apply to any Sub-contract to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

1.15 Pensions on Transfer of Employment on Exit

- 1.15.1 In the event of any termination or expiry or partial termination or expiry of this Contract which results in a transfer of the Eligible Employees, the Supplier must (and if offering a Broadly Comparable scheme, must use all reasonable efforts to procure that the trustees or managers of that pension scheme must):
 - (i) not adversely affect pension rights accrued by the Eligible Employees in the period ending on the Subsequent Transfer Date;
 - (ii) within thirty (30) Business Days of being requested to do so by the Authority or Successor, (or if the Successor is offering Eligible Employees access to the NHS Pension Scheme, by NHS Pensions), provide a transfer amount calculated in accordance with Clause 1.6 of this Part D of this Schedule 7; and
 - (iii) do all acts and things, and provide all information and access to the Eligible Employees, as may in the reasonable opinion of the Authority be necessary or desirable and to enable the Authority and/or the Successor to achieve the objectives of Fair Deal for Staff Pensions.

Schedule 8

Expert Determination

1 Dispute Process

- 1.1 During any Dispute, including a Dispute as to the validity of the Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 1.2 In the case of a Dispute the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and shall follow the procedure set out in this Schedule 8.
- 1.3 In the event of a Dispute either Party may serve a Dispute Notice on the other Party to commence formal resolution of the Dispute. The Dispute Notice shall set out:
 - 1.3.1 the material particulars of the Dispute; and
 - 1.3.2 the reasons why the Party serving the Dispute Notice believes the Dispute has arisen.
- 1.4 Following the service of a Dispute Notice the Parties shall first seek to resolve the Dispute by convening a meeting between the Authority's Contract Manager and the Supplier's Contract Manager (together the "**Contract Managers**").
 - 1.4.1 The meeting of the Contract Managers must take place within five (5) Business Days of the date of the Dispute Notice (the "**Dispute Meeting**").
 - 1.4.2 The Contract Managers shall be given ten (10) Business Days following the date of the Dispute Meeting to resolve the Dispute.
 - 1.4.3 The Contract Managers can agree to further meetings at levels 2 and/or 3, as referred to at Clause 5.1 of the Key Provisions in Schedule 1, in addition to the Dispute Meeting, but such meetings must be held within the ten (10) Business Day timetable set out in Clause 1.4.2 of this Schedule 8.
 - 1.4.4 If at any point it becomes clear that the timetable set out cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the timetable. Any agreed extension to the timetable shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
- 1.5 If the procedure set out in Clause 1.4 of this Schedule 8 has been exhausted and fails to resolve the Dispute either Party may request the Dispute be resolved by way of a binding expert determination (pursuant to Clause 1.6 of this Schedule 8). For the avoidance of doubt, the Expert shall determine all matters (including, without limitation, matters of contractual construction and interpretation) in connection with any Dispute referred to binding expert determination pursuant to Clause 1.6 of this Schedule 8.
- 1.6 Where the Dispute is referred to binding expert determination the following process will apply:
 - 1.6.1 The Party wishing to refer the Dispute to expert determination shall give notice in writing to the other Party informing it of its wish to refer the Dispute to expert determination and giving brief details of its position in the Dispute.
 - 1.6.2 The Parties shall attempt to agree upon a single expert (who must have no connection with the Dispute unless both Parties have consented in writing) (an "**Expert**"). For the avoidance of doubt, where the Dispute relates to contractual interpretation and construction, the Expert may be Queen's Counsel. In the event that the Parties fail to agree upon an Expert within five

- (5) Business Days following the date of the notice referred to in Clause 1.6.1 of this Schedule 8 (or if the person agreed upon is unable or unwilling to act), the Parties agree that the Expert will be nominated and confirmed to be appointed by the Centre for Effective Dispute Resolution.
- 1.6.3 The Expert must be willing and able to complete the expert determination process within thirty (30) Business Days of the Date of Final Representations (as defined in Clause 1.6.5 of this Schedule 8).
- 1.6.4 The Expert shall act as an expert not as an arbitrator or legal advisor. There will be no formal hearing and the Expert shall regulate the procedure as he sees fit.
- 1.6.5 The Parties shall each have the right to make written representations to the Expert and will, with reasonable promptness, provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision. Such representations must be made within twenty eight (28) Business Days of the Expert being appointed, or fourteen (14) Business Days after the last documents requested by the Expert have been provided to the Expert, whichever is the later ("**Date of Final Representations**"). Any documents provided to the Expert and any correspondence to or from the Expert, including email exchanges, shall be copied to the other Party simultaneously.
- 1.6.6 The Expert shall have the power to open up, review and revise any certificate, opinion, requisition or notice and to determine all matters in Dispute (including his jurisdiction to determine matters that have been referred to him).
- 1.6.7 The Expert may take such advice and assistance from professional advisers or other third parties as he reasonably considers appropriate to enable him to reach a determination of the Dispute and may issue orders that one or both of the Parties are to pay such third party costs, stating the proportion. For the avoidance of doubt, where the Expert is not Queen's Counsel, and the Expert requires advice or assistance on matters of contractual interpretation and construction, the expert may take such advice and assistance from a third party Queen's Counsel of their choosing under this Clause 1.6.7 of this Schedule 8. The Parties will pay any such third party costs incurred pursuant to this Clause 1.6.7 of this Schedule 8 in such proportions as the Expert shall order. In the absence of such order such third party costs will be paid equally.
- 1.6.8 The Expert shall provide the Parties with a written determination of the Dispute (the "**Expert's Decision**") within thirty (30) Business Days of the Date of Final Representations, which shall, in the absence of fraud or manifest error, be final and binding on the Parties.
- 1.6.9 The Expert's Decision shall include reasons.
- 1.6.10 The Parties agree to implement the Expert's Decision within five (5) Business Days of the Expert's Decision being provided to them or as otherwise specified as part of the Expert's Decision.
- 1.6.11 The Parties agree that the Expert shall be entitled to proceed to give his binding determination should one or both Parties fail to act in accordance with the procedural timetable set out above.

- 1.6.12 The Parties will pay the Expert's costs in such proportions as the Expert shall determine. In the absence of such determination such costs will be shared equally.
- 1.6.13 The Parties agree to keep confidential all information arising out of or in connection with the expert determination, including details of the underlying Dispute, except where disclosure is required by Law.
- 1.7 Nothing in this Contract shall prevent:
 - 1.7.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
 - 1.7.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party (including Intellectual Property Rights) or which relates to the safety of patients and other service users or the security of Confidential Information, pending the resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 1.8 Subject to Clause 1.7 of this Schedule 8 neither Party may commence legal proceedings in relation to a Dispute until the dispute resolution procedures set out in this Schedule 8 have been exhausted. For the avoidance of doubt, either Party may commence legal proceedings to enforce the Expert's Decision.
- 1.9 This Schedule 8 shall survive the expiry of or earlier termination of this Contract for any reason.

Schedule 9

Key Performance Indicators (KPIs)

- Weekly meetings until the end of the training period; following this, future meeting timing/format can be mutually agreed
- Monthly reports to reflect on deliverables. Report format to be co-developed.