

**NHS TERMS AND CONDITIONS FOR THE PROVISION OF SE IMAGE TRAINING ACADEMY****ATAMIS CONTRACT REFERENCE C190112**

<b>The Authority</b>	<i>National Health Service England</i> <i>1<sup>ST</sup> FLOOR,</i> <i>BLenheim HOUSE,</i> <i>DUNCOMBE STREET,</i> <i>LEEDS</i> <i>LS1 4PL</i>
<b>The Supplier</b>	DETECTED X PTY LIMITED Studio 210, 134 -146 Curtain Road, London EC2A 3AR
<b>Date</b>	1 August 2023
<b>Type of Services</b>	Education and Training

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**

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Terms and Conditions
<b>Schedule 3</b>	Information and Data Provisions
<b>Schedule 4</b>	Definitions and Interpretations
<b>Schedule 5</b>	Specification and Tender Response Document
<b>Schedule 6</b>	Commercial Schedule
<b>Schedule 7</b>	Staff Transfer – Not Used
<b>Schedule 8</b>	Expert Determination
<b>Error! Reference source not found.</b>	Change Control Process



DocuSigned by:		Signature:	
<div></div>			<div></div>
<div></div>		Date	
Full Name: <div></div>			
Signed by the authorised representative of THE SUPPLIER			
Job Title/Role: <div></div>			
Date Signed:	<div></div>	Signature	
Name:	<div></div>	Date	<div></div>
	Director		

**Schedule 1**  
**Key Provisions**

**Standard Key Provisions**

**1 Application of the Key Provisions**

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 8 to 23 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 One **[1]** year from the Actual Services Commencement Date. The Term may be extended in accordance with Clause 15.2 of Schedule 2 pending confirmation of funding, provided that the duration of this Contract shall be no longer than **[3]** years in total.

**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]

4.1.2 for the Supplier:

[REDACTED]

## NSW 2006, Australia

**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		
3		

**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;
  - 6.1.2 Schedule 1: Key Provisions;
  - 6.1.3 Schedule 5: Specification and Tender Response Document;
  - 6.1.4 Schedule 2: General Terms and Conditions;
  - 6.1.5 Schedule 6: Commercial Schedule;
  - 6.1.6 Schedule 9: Change Control Process
  - 6.1.7 Schedule 3: Information Governance Provisions;
  - 6.1.8 Schedule 7: Staff Transfer;- Not Used
  - 6.1.9 Schedule 4: Definitions and Interpretations;
  - 6.1.10 the order in which all subsequent schedules, if any, appear; and
  - 6.1.11 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 – Not Applicable**

- 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.] [The Parties agree that the commencement of the provision of the Services under this Contract shall give rise to a relevant transfer as defined in TUPE and the provisions of Schedule 7 shall apply to such transfer.]

**Optional Key Provisions**

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**Implementation phase** ☒

- 8.1 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 5.

**9 Services Commencement Date** ☒

**9.1 The Services Commencement Date**

shall be **1 August 2023** and the Long Stop Date referred to in Clause 15.5.1 of Schedule 2 shall be **31<sup>st</sup> March 2024**.



**10 Induction training** ☐

- 10.1 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.



11

Quality assurance standards ☒

11.1 The following quality assurance standards shall apply, as appropriate, to the provision of the Services: **Schedule 5.**

12 Different levels and/or types of insurance ☒

12.1 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
[Public Liability]	[ £10,000,000]
[Professional Indemnity]	[£1,000,000]

13 Further Authority obligations Not Used

13.1 The Authority’s Obligations are set out in Schedule *[insert schedule number]*.

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

14.1 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 14 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 14 of this Schedule 1 shall continue notwithstanding the expiry or earlier termination of this Contract.



14.2 The Supplier is hereby granted a non-exclusive, non-transferable, royalty-free right and license to use all intellectual Property assigned to 14.1 for image sharing platform by a Trainer (user) providing education and training on behalf of HEE.

14.3 This is with the exception of images uploaded to the platform for the purpose of exam set preparation; the supplier would not gain the right to use this intellectual property.

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- 14.4 All intellectual Property Rights used or owned by a Party prior to the Commencement Date (Background IP) shall remain the exclusive property of the Party owning it (or where applicable, the third party from whom its right to use the Background IP has derived).

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#### Inclusion of a Change Control Process ☒

- 15.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in Schedule 9.

#### 16 Authority step-in rights Not Used

- 16.1 If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights set out in Schedule *[insert schedule number]*.

#### 17 Grant of licence ☒

- 17.1 Promptly following execution of this Contract, the Supplier shall enter into the **licence**. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.



#### 18 Guarantee Not Used

- 18.1 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.

#### 19 Supplier as Data Processor

- 19.1 The Parties acknowledge that the ☒ Authority is the Controller and the Supplier is the Processor in respect of Personal Data Processed under this Contract and that paragraph 2.2 of Schedule 3 and the provisions of the Data Protection Protocol must be complied with by the Parties as a term of this Contract.

#### 20 Purchase Orders

- 20.1 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.



21.1 The payment profile for this Contract shall be quarterly in arrears.



**22 Termination for convenience**

22.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on **One (1) written** notice.

**22.2 Right to terminate following a specified number of material breaches** ☒

22.3 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 One1) 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 three (3) month rolling period is the three (3) months immediately preceding the date of the [third] Breach ☒ Notice.

**23 Expert Determination**

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

23.2 For the avoidance of doubt, where this Clause 23 of this Schedule 1 is checked, all Disputes shall be dealt in accordance with Clause 23.1 of this Schedule 1 above and the entirety of Clause 23 of Schedule 2 shall be deemed not to apply and deleted in its entirety from this Contract.



## **Schedule 2**

### **General Terms and Conditions**

#### **Contents**

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

28. Assignment, novation, and Sub-contracting

29. Prohibited Acts

30. General

## **1 Provision of Services**

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

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

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

- 1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document., Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 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**"), Shall be subject to the service provisions in Schedule 5
- 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 22 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 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 quarterly 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.

Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.

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 this Clause 9.5 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 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 and/or Guidance and shall at all times comply with such quality controls and processes;
- 10.1.4 it shall not make any significant changes to its system of quality controls and processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.5 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.6 receipt of the Services by or on behalf of the Authority and use of the deliverables or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.7 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the provision of the Services;
- 10.1.8 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.9 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.10 without limitation to the generality of Clause 10.1.7 of this Schedule 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 and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.13 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant products being purchased;
- 10.1.14 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.15 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.16 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.16 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;
- 10.1.17 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.18 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document and 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, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, 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, 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 12.1.4 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(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial



Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

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

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

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

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

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

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

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

15.5.1 the Supplier does not commence delivery of the Services by any Long Stop Date;

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

15.5.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority,

the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;

15.5.4 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 29.1 of this Schedule 2;

15.5.5 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, 24.8; 26.2; 26.4 and 30.2 of this Schedule 2; or

15.5.7 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.

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(i) of this Schedule 2.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable

and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:

15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;

15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;

15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or

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

15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 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 25.1 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 – Not Applicable**

**18**

18.1 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.

- 18.2 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.
- 18.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 18.1 and 18.2 of this Schedule 2, the Authority may withhold payment under Clause 9 of this Schedule 2.
- 18.4 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 18.1 and 18.2 of this Schedule 2.
- 18.5 Subject to Clauses 18.6 and 18.7 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:
- 18.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
  - 18.5.2 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;
  - 18.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
  - 18.5.4 deploy any person other than the Supplier Personnel to perform the Services;
  - 18.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
  - 18.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
  - 18.5.7 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.
- 18.6 Clause 18.5 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.
- 18.7 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.

- 18.8 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.
- 18.9 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 18.11 to Clause 18.14 of this Schedule 2 and (where relevant) the provisions of Clause 1.15 of Part D of Schedule 7 shall apply.
- 18.10 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.
- 18.11 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.
- 18.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:
- 18.12.1 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;
  - 18.12.2 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;
  - 18.12.3 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;
  - 18.12.4 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

- 18.12.5 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.
- 18.13 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:
- 18.13.1 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 18.12 of this Schedule 2;
- 18.13.2 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;
- 18.13.3 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;
- 18.13.4 any emoluments payable to a person employed or engaged by the Supplier or Subcontractor (including without limitation all wages, accrued 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;
- 18.13.5 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
- 18.13.6 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.
- 18.14 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 18.13 of this Schedule 2 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 18.15 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.

18.16 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:

18.16.1 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;

18.16.2 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;

18.16.3 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

18.16.4 if after the period in Clause 18.16.2 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.

## **19 Complaints**

19.1 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.

19.2 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.

## **20 Sustainable development**

20.1 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:

20.1.1 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;

- 20.1.2 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
  - 20.1.3 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 20.1.2 of this Schedule 2.
- 20.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 20 of this Schedule 2.

## **21 Electronic services information**

- 21.1 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.
- 21.2 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 21 of this Schedule 2.
- 21.3 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.
- 21.4 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 21.5 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 21.4 of this Schedule 2.
- 21.5 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.
- 21.6 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 21.6 of this Schedule 2 or otherwise under the terms of this Contract.
- 21.7 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.

## **22 Change management**

- 22.1 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.
- 22.2 Subject to Clause 22.3 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.
- 22.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

## **23 Dispute resolution**

- 23.1 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).
- 23.2 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 23.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 23.3 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.
- 23.4 If the procedure set out in Clause 23.3 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.
- 23.5 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.

**23.6 Nothing in this Contract shall prevent:**

23.6.1 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

23.6.2 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.

**23.7 Clause 23 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.**

**24 Force majeure**

24.1 Subject to Clause 24.2 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.

24.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 24 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:

24.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;

24.2.2 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

24.2.3 the Supplier has complied with the procedural requirements set out in Clause 24 of this Schedule 2.

24.3 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.

24.4 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.

24.5 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.

- 24.6 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.
- 24.7 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.
- 24.8 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.
- 24.9 Following such termination in accordance with Clause 24.8 of this Schedule 2 and subject to Clause 24.10 of this Schedule 2, neither Party shall have any liability to the other.
- 24.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 24.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.

## **25 Records retention and right of audit**

- 25.1 Subject to any statutory requirement and Clause 25.2 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.
- 25.2 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.
- 25.3 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.
- 25.4 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.

- 25.5 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:
- 25.5.1 the examination and certification of the Authority's accounts; or
  - 25.5.2 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.
- 25.6 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 25 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.
- 25.7 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.
- 25.8 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.

## **26 Conflicts of interest and the prevention of fraud**

- 26.1 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.
- 26.2 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 26.2 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.
- 26.3 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.
- 26.4 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.

## **27      Equality and human rights**

### **27.1      The Supplier shall:**

27.1.1            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;

27.1.2            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

27.1.3            the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 27 of this Schedule 2.

27.2      The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 27 of this Schedule 2.

## **28      Notice**

28.1            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.

28.2      A notice shall be treated as having been received:

28.2.1 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

28.2.2 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

28.2.3 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.



## 29 Assignment, novation, and Sub-contracting

- 29.1 The Supplier shall not, except where Clause 29.2 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.
- 29.2 Notwithstanding Clause 29.1 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 29.2 of this Schedule 2 shall be subject to:
- 29.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.8 of this Schedule 2;
  - 29.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
  - 29.2.3 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;
  - 29.2.4 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
  - 29.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.
- 29.3 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.
- 29.4 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:
- 29.4.1 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;
  - 29.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
  - 29.4.3 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);
- 29.4.4 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;
- 29.4.5 requires the Supplier or other party receiving services under the contract to consider and verify invoices under that contract in a timely fashion;
- 29.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;
- 29.4.7 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;
- 29.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;
- 29.4.9 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
- 29.4.10 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.
- 29.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 29.5.1 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
- 29.5.2 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.
- 29.6 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.
- 29.7 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.

- 29.8 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.

### **30 Prohibited Acts**

- 30.1 The Supplier warrants and represents that:

30.1.1 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

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

- 30.2 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:

30.2.1 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;

30.2.2 any termination under Clause 30.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

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

(i) the interpretation of Clause 30 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.

### **31 General**

31.1 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.

31.2 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.

31.3 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.

31.4 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.

31.5 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.

31.6 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.

31.7 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 31.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.

- 31.8 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.
- 31.9 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.
- 31.10 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.
- 31.11 Subject to Clause 23 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.
- 31.12 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 under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:
- 2.4.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;
  - 2.4.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance 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/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, 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.

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## **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:

<b>“Actual Services Commencement Date”</b>	means the date the Supplier actually commences delivery of the Services;
<b>“Actuary”</b>	means a Fellow of the Institute and Faculty of Actuaries;
<b>“Authority”</b>	means the authority named on the form of Contract on the first page;
<b>“Authority’s Actuary”</b>	means the Government Actuaries Department;
<b>“Authority’s Obligations”</b>	means the Authority’s further obligations, if any, referred to in the Key Provisions;
<b>“Breach Notice”</b>	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;
<b>“Broadly Comparable”</b>	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;
<b>“Business Continuity Event”</b>	means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event;
<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Cabinet Office Statement”</b>	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
<b>“Change Control Process”</b>	means the change control process, if any, referred to in the Key Provisions;

<b>“Codes of Practice”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Commencement Date”</b>	means the date of this Contract;
<b>“Commercial Schedule”</b>	means the document set out at Schedule 6;
<b>“Confidential Information”</b>	<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"> <li>(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;</li> <li>(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</li> <li>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;</li> </ul>
<b>“Contract”</b>	means the form of contract at the front of this document and all schedules attached to the form of contract;
<b>“Contracting Authority”</b>	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
<b>“Contract Manager”</b>	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;
<b>“Contract Price”</b>	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;
<b>“Controller”</b>	shall have the same meaning as set out in the GDPR;
<b>“Convictions”</b>	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);
<b>“Cost Increase”</b>	shall have the meaning given to the term in Clause <b>1.3.2</b> of Part D of Schedule 7;
<b>“Cost Saving”</b>	shall have the meaning given to the term in Clause <b>1.3.4</b> of Part D of Schedule 7;

<b>“Data Protection Legislation”</b>	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Protection Protocol”</b>	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;
<b>“Direction Letter”</b>	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 Subcontractor in the NHS Pension Scheme in respect of the Eligible Employees;
<b>“Dispute(s)”</b>	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;
<b>“Dispute Notice”</b>	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
<b>“Dispute Resolution Procedure”</b>	means the process for resolving Disputes as set out in Clause 23 of Schedule 2 or, where Clause 23 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 30.2.3 of Schedule 2;
<b>“DOTAS”</b>	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;

<b>“Electronic Trading System(s)”</b>	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;
<b>“Eligible Employees”</b>	<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>
<b>“Employee Transfer Date”</b>	means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor);
<b>“Employment Liabilities”</b>	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;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“eProcurement Guidance”</b>	means the NHS eProcurement Strategy available via: <a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a>
	together with any further Guidance issued by the Department of Health in connection with it;
<b>“Equality Legislation”</b>	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;
<b>“Exit Requirements”</b>	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;
<b>“Fair Deal for Staff Pensions”</b>	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);
<b>“FOIA”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Force Majeure Event”<sup>1</sup></b>	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) acts of terrorism;</li> <li>(c) flood, storm or other natural disasters;</li> <li>(d) fire;</li> <li>(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;</li> <li>(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;</li> <li>(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;</li> <li>(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</li> <li>(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;</li> </ul>

	but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes, or requirements;
<b>“Fraud”</b>	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;
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>“General Anti-Abuse Rule”</b>	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>“Good Industry Practice”</b>	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;
<b>“Guidance”</b>	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HM Government Cyber Essentials Scheme"</b>	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ;
<b>“Implementation Plan”</b>	means the implementation plan, if any, referred to in the Key Provisions;
<b>“Implementation Requirements”</b>	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;
<b>“Intellectual Property Rights”</b>	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;
<b>“Interested Party”</b>	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;
<b>“Key Provisions”</b>	means the key provisions set out in Schedule 1;
<b>“KPI”</b>	means the key performance indicators as set out in Schedule 5;
<b>“Law”</b>	<p>means any applicable legal requirements including, without limitation,:</p> <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</li> <li>(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);</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</li> <li>(e) requirements set by any regulatory body as applicable in England and Wales;</li> <li>(f) any relevant code of practice as applicable in England and Wales; and</li> <li>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</li> </ul>
<b>“Long Stop Date”</b>	means the date, if any, specified in the Key Provisions;
<b>“Losses”</b>	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;

<b>“Measures”</b>	means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE;
<b>“NHS”</b>	means the National Health Service;
<b>“HEE”</b>	means National Health Service England;
<b>“NHS Body”</b>	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;
<b>“NHS Pensions”</b>	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;
<b>“NHS Pension Scheme”</b>	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;
<b>“NHS Pension Scheme Arrears”</b>	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;
<b>“NHS Pension Scheme Regulations”</b>	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;
<b>“Occasion of Tax Non-Compliance”</b>	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;
<b>“Party”</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>“Payment Date”</b>	means twenty (20) Business Days after the last of the conditions in Clause 1.7 of Part D of Schedule 7 has been satisfied;
<b>“Pension Benefits”</b>	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;
<b>“Personal Data”</b>	shall have the same meaning as set out in the GDPR;
<b>“Policies”</b>	means the policies, rules, and procedures of the Authority as notified to the Supplier from time to time;
<b>“Premature Retirement Rights”</b>	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;
<b>“Premises and Locations”</b>	has the meaning given under Clause 2.1 of Schedule 2;
<b>“Process”</b>	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
<b>“Processor”</b>	shall have the same meaning as set out in the GDPR;
<b>“Purchase Order”</b>	means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions;
<b>“Relevant Tax Authority”</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Remedial Proposal”</b>	has the meaning given under Clause 15.3 of Schedule 2;
<b>“Services”</b>	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);

<b>“Services Commencement Date”</b>	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;
<b>“Services Information”</b>	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 21 of Schedule 2 for inclusion in the Authority's services catalogue from time to time;
<b>“Specification and Tender Response Document”</b>	means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract;
<b>“Staff”</b>	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;
<b>“Step In Rights”</b>	means the step in rights, if any, referred to in the Key Provisions;
<b>“Sub-contract”</b>	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;
<b>Sub-contractor</b>	means a party to a Sub-contract other than the Supplier;
<b>“Subsequent Transfer Date”</b>	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;
<b>“Subsequent Transferring Employees”</b>	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;
<b>“Successor”</b>	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;
<b>“Supplier”</b>	means the supplier named on the form of Contract on the first page;
<b>“Supplier Code of Conduct”</b>	<p>means the code of that name published by the Government Commercial Function dated June 2023*, as may be amended, restated, updated, re-issued, or re-named from time to time;</p> <p>*Code of conduct version update from September 2017 to June 2023. [KD amended 25.7.23 ]</p>

<b>“Supplier Personnel”</b>	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;
<b>“Term”</b>	means the term as set out in the Key Provisions;
<b>“Termination Notice”</b>	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;
<b>“Third Party”</b>	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
<b>“Third Party Body”</b>	has the meaning given under Clause 8.5 of Schedule 2;
<b>“Third Party Employees”</b>	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;
<b>“Transfer Amount”</b>	an amount paid in accordance with Clause <b>1.7</b> of Part D of Schedule 7 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause <b>1.6</b> 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;
<b>“Transfer Date”</b>	means the Actual Services Commencement Date;
<b>“Transfer Option”</b>	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);
<b>“Transfer Option Deadline”</b>	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;
<b>“Transferred Staff”</b>	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;
<b>“Transferring Employees”</b>	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;
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
<b>“VAT”</b>	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 31.6 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.

**Schedule 5**

**Specification and Tender Response Document**

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**References – NOT WEIGHTED**

**Please list reference details [up to three years previously] of similarly sized organisations that you have previously worked with/for. Please include names and contact details**

**Maximum narrative word Limit: n/a**



**Governance – NOT WEIGHTED****What will your project governance structure look like and how will you ensure HEE is part of the process?****Maximum narrative word Limit: 800**

Governance structure and terms of reference will reflect procedures under which this Image Sharing project functions. These will be defined by the Management Group set up in the first month of the arrangement (section 6) as part of the project plan and delivery timeline. The governance committee will be composed of multi-professional representation from:

1. SE Imaging Academy Board – covering Wessex, Oxford, Surrey, Sussex, and Kent
2. HEE
3. DetectedX Pty Ltd
4. UK Radiology Educational Program (Dr. Ian Francis)

It will be chaired by a representative from the SE Imaging Academy Board.

The over-arching governance framework will clearly articulate processes necessary for the project, as well as relationships between all stakeholders involved. It will include necessary project information to all stakeholders to undertake review and subsequent approval at appropriate stages of the project. A communications strategy will be essential to ensure good uptake and usage of the system: this and the timing of the reviews are outlined in Section 6.

Project governance will not only provide a framework for the organisation of responsibilities and decision-making capabilities, but it will also ensure that the project is smoothly implemented and executed as well as adhering to the specified project milestones.

The key aims of the governance process will be to:

- set up the Management Group (See Section 6 below)
- set out the lines of responsibility and accountability for the delivery of the project
- give stakeholders responsibility for managing their interest in the project
- support the project team in delivering the required outcomes by providing resources, giving direction and enabling trade-offs and timely decision making
- provide an effective communication and feedback system for all users
- provide a forum for issue resolution
- ensure equality impact assessments are completed at the relevant stages
- provide access to best practice and independent expert advice
- disseminate information through regular reporting so roles are fulfilled effectively
- manage risk according to the Risk Register (See Section 8 below).

*Finally, to ensure that our solution is exactly designed to suit the SE Imaging Academy and the UK Imaging workforce, we will continue to work in partnership with the UK Radiology Educational Network, led by Dr. Ian Francis (Sussex: see above) and DetectedX. This partnership has been in place for a year and currently involves radiological experts in breast, chest, prostate, dental, MSK physics, undergraduate requirements etc from the UK, e.g. S*

[Redacted]

WORD COUNT 391

**Management – NOT WEIGHTED**

**Please provide a named contact within your organisation, and their contact details, who will act as the project manager for this service (for information only).**

[Redacted]

[Redacted]

**Evidence of past performance**

**Please demonstrate your past performance in this sector, particularly in relation to the development of image sharing platforms for education and teaching purposes, and successful utilisation and access. Please detail evidence of sector experience and knowledge of education and training within the [England only] healthcare sector**

**Maximum narrative word Limit: 800**

[Redacted content]

teaching. We partner with an NHS endorsed UK-cloud-hosting company [3verest](#) to facilitate ubiquitous and scalable access.

#### **Recent and current performance.**

We have applications within:

- National Screening agencies in Europe, Middle East, Asia, Australia and New Zealand; Use by Dutch and Canadian authorities is currently being finalised
- Universities across Europe, Middle East, Asia, Australian and New Zealand. The Platform is currently being used for the UK's largest study on enhancing the interpretive skills of radiography advanced practitioners: led out of Suffolk University
- Radiologist training offered by major manufacturers including GE HealthCare, Fujifilm, Siemens, Volpara Health. Our systems have a proven track record of handling complex 3D image files more rapidly and efficiently than even these accomplished vendors. For this reason, along with general user experience the new global GE Premium Cares Platform, DetectedX has become the chosen educational supplier. In recent times, we have worked with other accomplished globally radiology training centres, such as University of Pittsburgh Medical Centre, MD Anderson, and Duke University
- Professional imaging bodies in Europe and Australia
- Educators involved with charitable agencies (such as Radiology Across Borders) who wish to provide global courses or webinars to world-wide populations; We have delivered these programs to over 100 countries
- Private radiology providers in Australia and New Zealand.

References from any of the above can be provided.

#### **Proven ability to improve performance and innovation.**

Our approach improves radiological performance as shown within the platform [1,2], and through clinical audit [3,4].



#### **Functionality**

**Pease describe how your product meets the demands of the specification: Image storage; Image Viewing; Other Functionality.**

Our Platform has been rigorously tested in many clinical/educational situations. Our system is image vendor-neutral and does not rely on particular PACs types.

(A Learner enterprise code is provided to assessors, with instructions given [Section 7] Enterprise code: **HEESE-200223-HLTHS**).

a) **Image Upload**

DetectedX Platform is a cloud-based application hosted on 3Verest servers within the UK, meaning that the user will open a browser, login and select “Create a new case” (Figure 1).

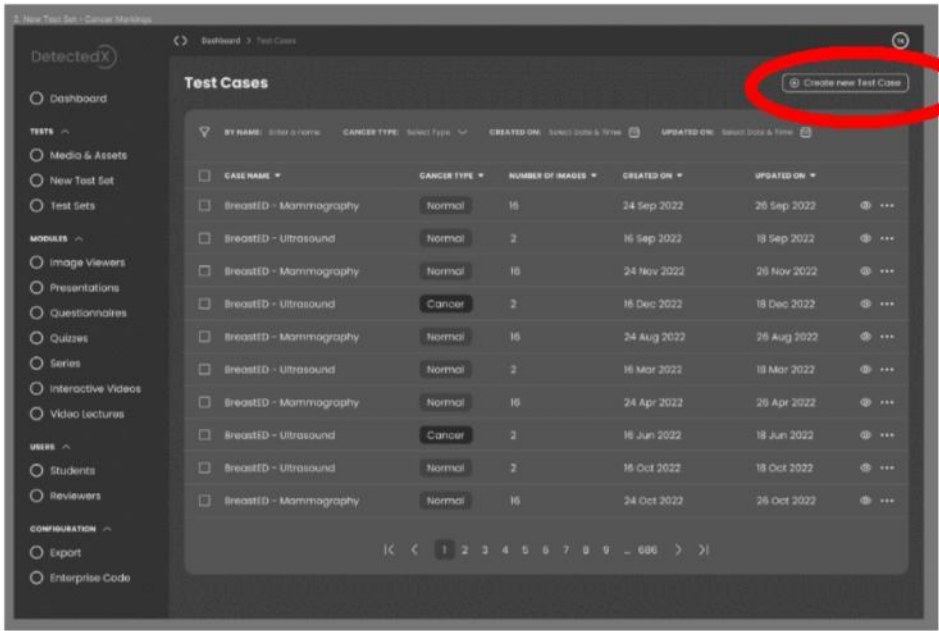


Figure 1 The DetectedX window for uploading new cases.

The uploader menu (Figure 2) will allow users to drag images or other patient data (reports, tags etc) from their workstation to the uploader screen or else navigate the uploader menu to the folder on their workstation where images are saved, select images, and click upload. All images are anonymised during upload: DICOM entries are removed, but images retain original resolution.

No user can ever download the images. Access is only given to registered users. Images are secured within our UK based servers, all using a HCSN-compliant cloud service provided by 3verest.

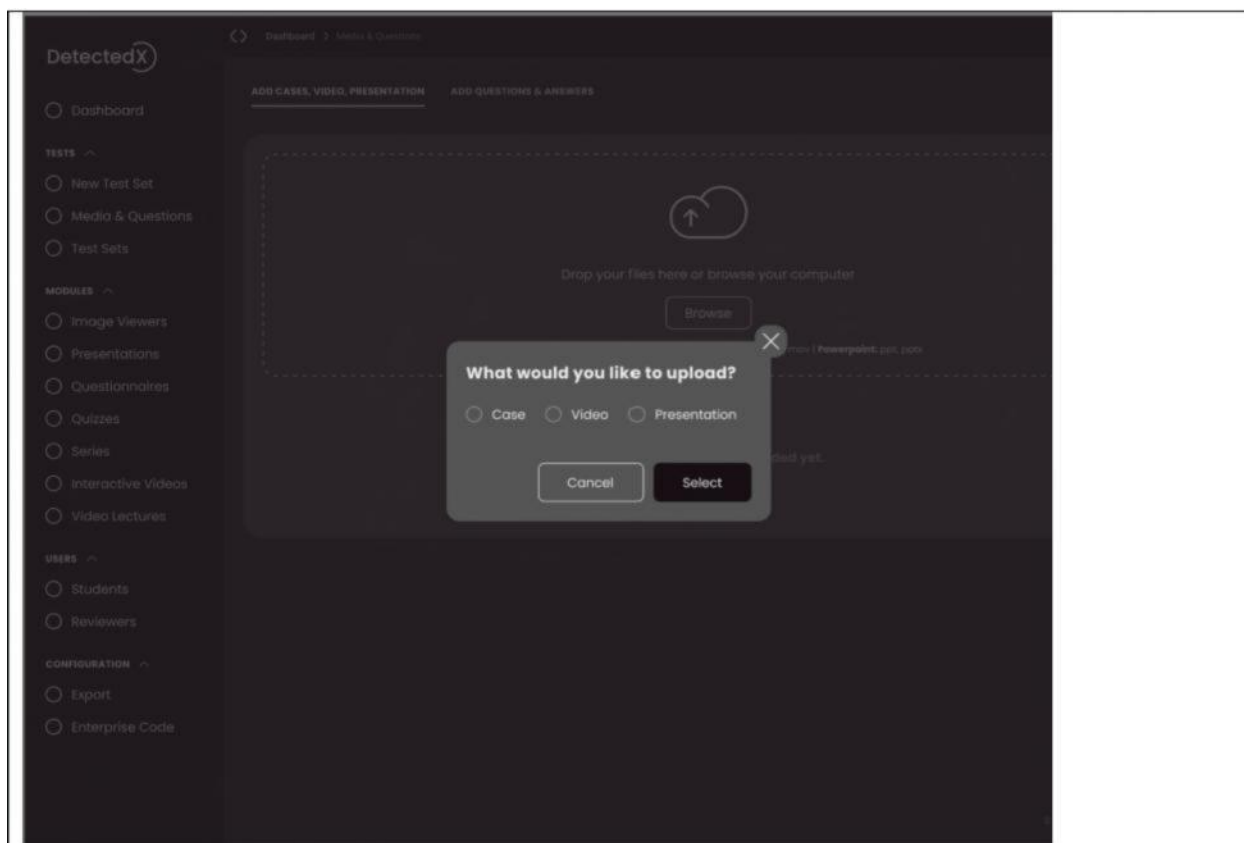


Figure 2 The DetectedX uploading window.

#### b. Image Storage

Data will be stored within UK based healthcare specialised cloud provider 3verest, within UK-based Tier 4 datacentres. 3verest is an ISO27001, HSCN connected, DSPT-compliant healthcare cloud provider, which for example actively provides the NHS Yorkshire Imaging Collaborative (<https://yorkshireimaging.nhs.uk>).

This facilitates rapid uploading of images and associated data such as reports from across the HEE SE region and equally rapid access to wherever the learner is located 24/7. The system will:

- Automatically deidentify the data (without any manual steps)
- Allow user to switch off/on annotations such as marks/measures
- Store/access images with/without annotations
- Construct an array of teaching materials in formats suitable for OSCE's e.g. quizzes, test sets (self-assessment modules) etc
- Organise data as required
- Search images/data according to body part, disease state etc etc.

It will be critically important however for individuals associated with this tender in the first few weeks to make explicit specific requirements. Rarely does a single off-the-shelf solution work in the most ideal way for end users, the solution will require some tailoring e.g. about report types or accessory information required with images. This is how we work with customers to date resulting in the highest quality service.

#### c. Image Viewing.

The Platform meets all requirements and offers all components of the best PACs viewer.

Figure 3 demonstrates the DetectedX Viewer into which any image set can be inserted. Here, axial slices (left) and sagittal sections (right) have been pulled from the thumbnails. *Simultaneous access* facilitates multiplanar/multimodality images viewing at one time. The image-processing tools seen (upper left) include zoom/windowing/measurement/rotation/panning/inversion/ROI (preset shapes or free-hand) etc. Full native resolution is always preserved.

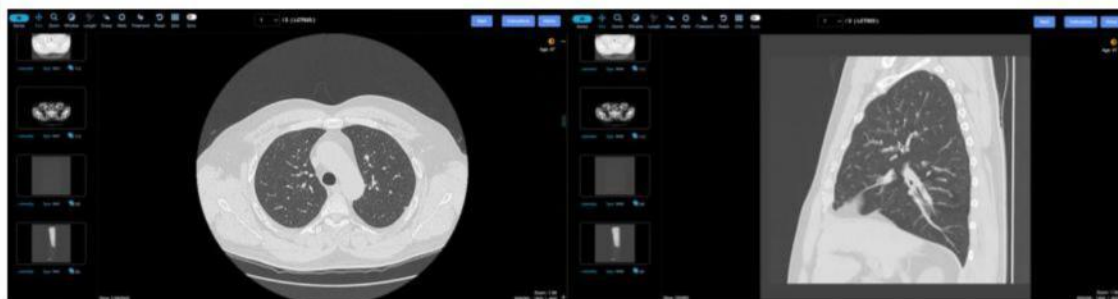


Figure 3 Viewer with lung images: axial & sagittal images.

In figure 4, the ability to teach image interpretation, split the screen, side by side viewing and many window settings is shown. A mammographic image (left) with priors underneath and current images on top is shown. Digital breast tomosynthesis cases can be pulled from the thumbnails, and drop-down protocols are available. The ability to report is shown using in this situation BIRADS classifications.

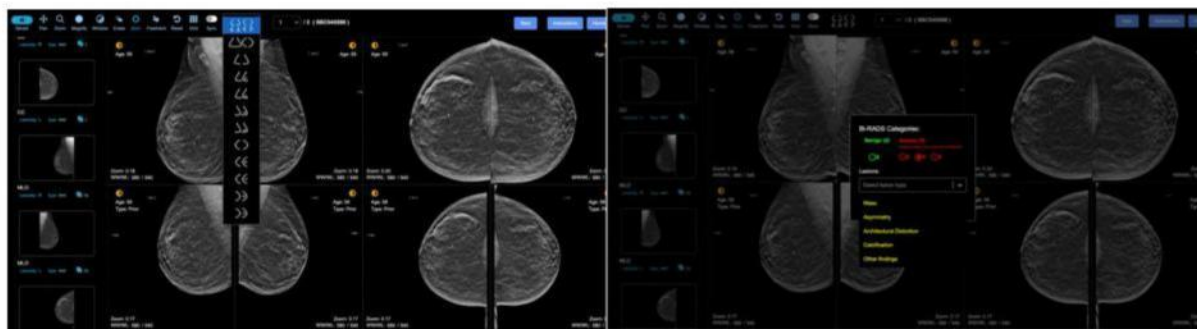


Figure 4 A breast case demonstrating ability to teach image interpretation.

Other imaging viewing and teaching requirements (Figure 5) are entirely adaptable to user needs.

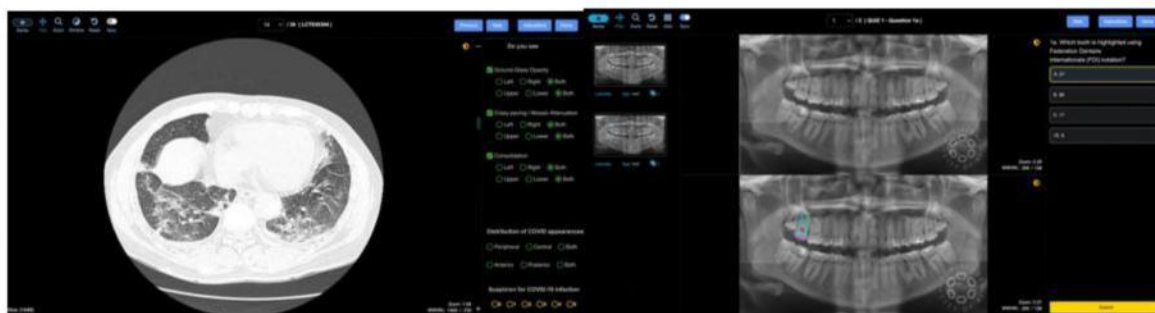


Figure 5 Example of COVID-19 and dental viewer

The DetectedX Platform provides:

- Multiplanar reformatting
- No resolution loss when zooming
- Simultaneous access to 1000s of users
- Accessibility anywhere at home, in the office, on the train etc
- Teacher control of who accesses what

- 1 business day response to any issues.

#### d. Other Functionality

Our system can provide immediate feedback to Learners: once learning/testing on cases is completed, algorithms provide immediate user scores (Figure 6) and error details (Figure 7). This deep functionality is unique to DetectedX.

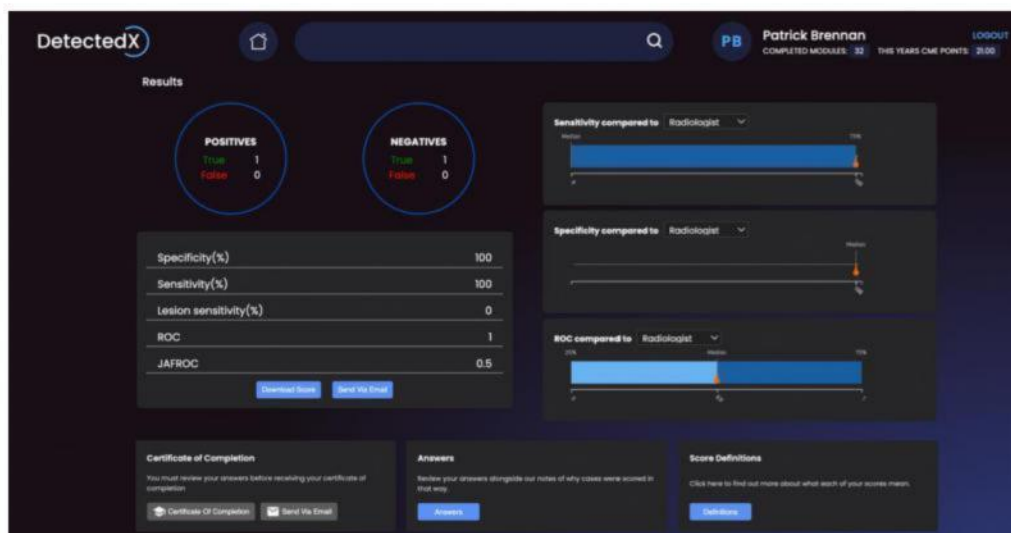


Figure 6. Learner scores. Scores are shown and one can download certificates (at bottom), as well as personalised records of CME/CPD points (upper right). Also on right, *personalised scores* shown by the orange marker can be benchmarked against populations such as Radiologists, Senior Registrars, Radiographers etc.

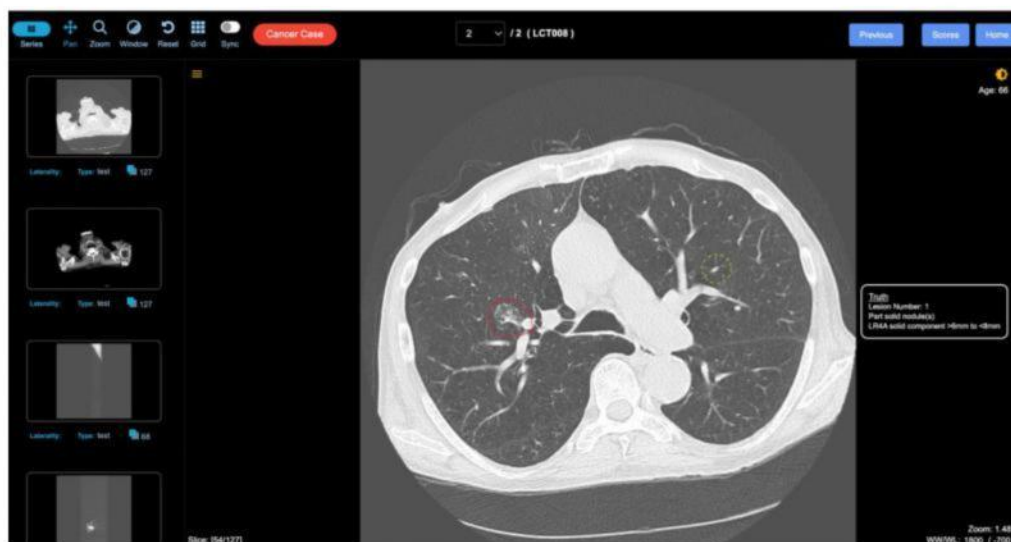


Figure 7 In the review section, Learners can now compare their decision (yellow) with that of truth (red). A commentary/report can be provided.

The Platform is:

- able by exception to access *all* user data such as time, number of clicks etc
- able to access all user and teacher statistics
- viewable during a Team or Zoom meeting
- compatible with any PACs workstation



- robust with larger populations than have been described here
- able to supply access to all users (free from user volume constraints)
- available during UK hours with a next day turn around
- able to incorporate user consent forms
- is able to manipulate images in any way
- able to collate images in to test sets or quizzes and such like
- able to deliver courses
- able to circulate cases for learner/expert commentary
- suitable for concurrent multiple access from multiple locations.

Planned downtime will be shared 3 months in advance with the HEE SE.

Looking to the future and possible collaborative enhancements, it should be noted that we have more data on learner interaction with radiological images than any other agency. Therefore, we are enhancing training through agreed AI algorithms to recognize individual-based error and provide instantaneous tailored solutions to achieve accelerated individual learning, an important value add to achieve workforce deployment and productivity. In Figure 8, based on our data and provided by DetectedX researchers, the area under the black curve represents the AI-tailored solution which is significantly greater than a normal educational regimen (red curve).

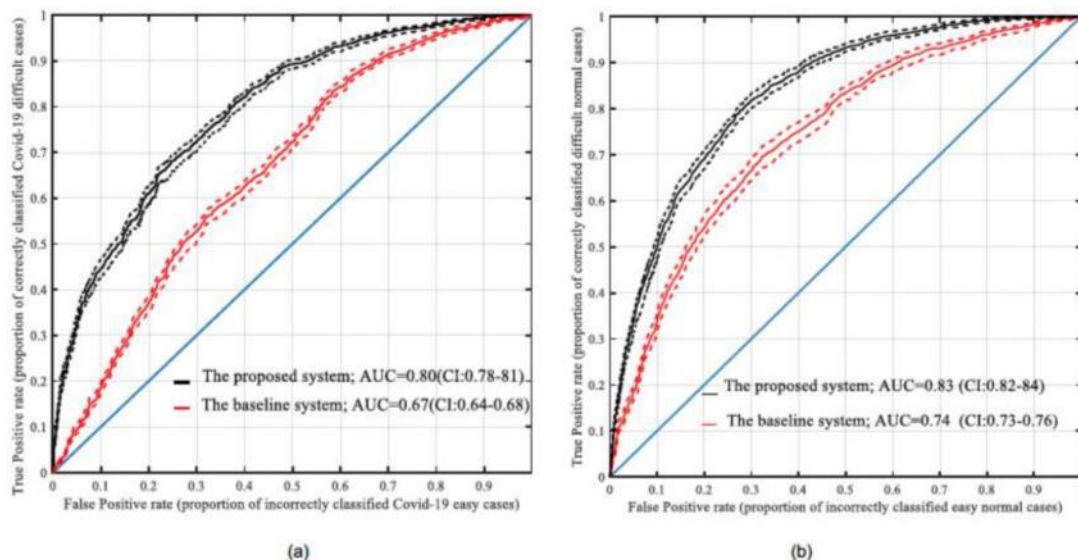


Figure 8. Area under the black curve (tailored solution) is significantly greater than normal educational regimen (red curve) for recognising (a) disease (in this case COVID-19 & lung CT) and (b) and normality.

#### e. Mandatory requirements.

Finally, we:

- provide expert technical support during UK hours with a next working day turn-around
- demonstrate completion of the NHS Data Security and Protection Toolkit
- demonstrate comprehensive security, privacy and disaster recovery protocols
- have an exit strategy complying with specified requirements.

Please describe your project plan and timetable for delivery. Please ensure the plan includes details on overarching aims and objectives, expected outcomes and a clear timeline for delivery, demonstrating how you would secure access to your Image Sharing Platform at the necessary scale and pace, highlighting any major risks involved.

Maximum Narrative Word Limit: 1000 [excluding the project plan]

Background

Effective imaging diagnosis facilitates effective management of disease, however mean values for diagnosis can be as low as 70% for experienced radiologists, dropping to below 60% for less-experienced individuals. Effective education is key to improving performance. For the last three decades, our team have been developing interactive education innovations embedded within Image Sharing Platforms. Educators and Clinicians can upload images for organised educational structures and Learners can engage with cases of known truth. Every single user interaction is recorded, and algorithms instantly inform the user of their scores, errors, and rank performances. Our systems cover the whole range of image interactions from judging patient positioning/image quality to diagnosis and have demonstrated for example 85% engagement, users in 150 countries and up to 50% improvement in reporting performance. We are utilised in screening programmes, radiological clinics, radiology training centres and Universities.

Aims and objectives

Our aim is in partnership with colleagues at the SE Imaging Academy, to have a world-class UK-first learning environment designed for *all* those working in in medical imaging. We will:

- a. Tailor a solution specifically for the HEE SE Academy
- b. Implement effective onboarding
- c. Optimise engagement with the Platform through monitoring usage and communication strategies
- d. Further tailor the solution based on feedback.

Plan

- a) Tailor a solution specifically for the HEE SE Academy

In essence the Platform can be switched on with immediate effect to allow usage across the SE Academy following registration and login. However, it is recommended that we ensure the solution exactly matches the Academy’s Educator and Learner needs. For example, details on exactly how Educators want to use the Platform are required to optimise the experience. We will need to establish:

- Type/format of patient data required to accompany images
- Types of learning experience preferred, e.g. is the focus on number of cases that can be judged in sequence, or around quizzes where one patient case with multiple modality images are displayed, or on webinars and full resolution image display during those webinars, or is there no structure at all and simply discuss image by image or is it all of the above and more? DetectedX can cater for these options, the requirements just need to be explicitly described
- Type of learning distribution: for example, is interaction between Learners always suitable for all experiences?
- What reporting data is required and to whom and how regularly.

The above is not a definitive list and decisions once made can be rapidly implemented within the DetectedX Platform, but requirements need to be specified to ensure the best experience. To this aim, the first step will be to establish a Management Group with representation from:

NHS Terms and Conditions for the Provision of Services (Contract Version) (January 2018)

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1. SE Imaging Academy Board – covering Wessex, Oxford, Surrey, Sussex, and Kent.
2. HEE
3. DetectedX
4. UK Radiology Education Network (Dr. Ian Francis)

This stage will also define specific responsibilities for specific stakeholders and detail the governance arrangement and framework necessary for the project to succeed. Ultimately, the project governance will outline the relationships between all stakeholders and chapters of the governance framework are listed under Section 2. The Management Group will meet as regularly as required during the implementation phase, although much of the collaborative working can be undertaken by targeted task and finish groups. Ultimately bi-monthly is usually sufficient once we have arrived at a steady state position.

b) Implement the solution and onboarding

Once requirements are defined, the solution can be implemented immediately. Although, a timetabled on-boarding process will be needed. DetectedX with representatives of the Working Group will provide webinars and reviews over a two-week period (See Section 7) between 8am and 7pm.

c) Optimise engagement with the Platform and monitor usage

Ongoing communication to promote active engagement with a new Platform is required: simply making available a solution does not ensure usage. Therefore, every 6-8 weeks (as we have done in other domains) we will issue a short newsletter to all users discussing items such as anonymised data from user-engagement, interesting case studies and information about new materials/learning initiatives. We will respond to any subsequent issues/questions users have within 24 hours. Our engagement strategies previously have resulted in 85-100% user uptake. CPD/CME points and personal CPD records will also encourage usage.

The system monitors every engagement with the Platform, so reports can be presented to the Management Group with recommendations and subsequent actions.

) Further tailor the solution based on feedback.

Feedback is critically important to Platform development so via the Management Group a questionnaire will be sent out to all users just prior to the 6- and 12-monthly review.

a) 6 and 12 monthly reviews.

This will be informed by the response to questionnaires, usage reports, any unsolicited comments, and any other available data. The outcome of these reviews and any actions will be minuted and revisited at subsequent Management Group meetings. An external advisor from within the UK, but outside the HEE SE academy will Chair the Review meetings.

**Time Frame**

April 1-May 12	Establish Working Group and define HEE SE Imaging Academy-specific requirements
May 15-26	Onboarding through webinars
May 29	Official system launch
May 29-	Issuance of newsletters and usage reports at intervals specified by the Management group.
May 29-	Ongoing development, acting on feedback
October	6 monthly Review

March (2024) 12 monthly review

#### Overall Outcomes

- An Image Sharing and Educational Platform designed with and tailored specifically for the HEE SE Academy, that rivals any other image education facility across the globe
- Achieve enthusiastic adoption of the solution\*
- Optimisation of engagement with the Platform
- Improved and accelerated learning

\*The substantial interaction of Learners with the Platform will yield powerful data that can be used for research. DetectedX would be delighted to collaborate with the SE academy to develop potential research projects with the faculty and learners. Such data for example at the University of Sydney alone have fed more than 20 PhD projects, 130 publications and well over 10 million dollars in grant income. The authors of this proposal would welcome research discussions.

#### Management and support

**Please describe how you would support the South East Imaging Academy and teaching faculty with the technical expertise necessary to fully utilise all functionality of the image sharing platform, including 24-hour turnaround time for issue resolution. Please evidence your experience of providing ongoing support for users, risk /issue management, and collaborative partnership working**

We have had users engage with the Platform from over 150 countries and to date we have had no issues with access to the system or competent using of the Platform. People use our system effectively within a couple of minutes of logging on. To achieve this level of efficiency we have a 5 layered support system:

- Onboarding: webinar and access to introductory video
- Registration and login instructions
- Instructional videos for all activities on the Platform
- Instructions link at every stage
- Help desk which is responded to in one working day

- Onboarding: webinar and access to introductory video

Over the period May 15-26th we will provide a minimum of four webinar sessions plus two review session: two webinars and one review for each of the teacher and learner groups. At these events, DetectedX will describe in detail the functionality of the Platform using Zoom or Teams video-conferencing with particular emphasis on what is most required by each of the two groupings. To cater for varying work shifts, the timing of the meetings will be such that these will take place at 8am and 6pm UK time. After each session, the user will be given a login to try out the system over the next few days. A review session will then occur where any difficulties or issues can be addressed.

- Registration and login instructions

Each user will be given instructions explicitly describing the registration and login process. A typical registration and login instruction sheet is shown in Figure 9 (*in fact these are the actual instructions for the login detailed above in Section 5 for any of the assessors of this response to Tender*).

c) Instructional videos for all activities on the Platform

For every activity that an educator or learner will be involved in, there is an explanatory video on the Platform. These can be accessed once logged on to the system (Figure 10). These videos are succinct, but explain in full the functionality of each activity.

d) Instructions link at every stage.

At any time when a learner is involved in an activity there is an instructions tab which the user can use (Figure 11).

e) Help desk which is responded to in one working day

Our London office will monitor all calls and will respond with 24 hours to each request. In addition to this we welcome all feedback whether unsolicited or via our questionnaire approach (see Section 6), to further improve our explanations.

Evidence of our excellent ongoing relations with providers not dissimilar to the SE Imaging Academy is extensive. Our Image Sharing and education Platform is being used across Screening Programs, Universities, training centres and by industry in Europe, UK, US, Middle East, Asia, Australia, and New Zealand. It is also delivered through charitable agencies such as Radiology Across Borders for free to countries in Africa and elsewhere. Our ongoing support with all these is excellent and we have never had a disappointed user. We have glowing testimonials from educational and clinical leaders from across the world and references can be sought from any of the individuals listed in Section 1 and indeed many more heads of services.

In addition to providing the Platform we have had collaborative arrangements around teaching and research that have led to our partners receiving sizeable grants (>\$10M) from funding bodies, governments, and charitable agencies. Our work has led to 100s of research papers, but possibly more importantly is having an impact on policy in countries such as Vietnam, UAE, New Zealand, and Ireland.

In summary we are the global leader around interactive and shared education in radiology. Testament to our excellent product and ongoing support are renewed contracts and upsales with existing customers and the enrolment of new customers on a weekly basis. Our biggest selling strategy is through word of mouth.

We have a 0% attrition rate. Any user to our Platform returns.

1. Go to <https://app.detectedx.com/signup> to create a new account.
2. Fill in the form, tick all 3 boxes at the bottom and click Register.

## DetectedX Sign Up

FIRST NAME \*

LAST NAME \*

EMAIL \*

PHONE

PASSWORD \*

CONFIRM PASSWORD \*

COUNTRY \*

STATE

JOB TITLE \*

or

☒ I have accepted the

☐ I allow DetectedX to contact me further about its services

☐ I have read and agree to the terms and conditions of our privacy policy

Register

On the next page, enter your code: **HEESE-200223-HLTHS** and **SUBMIT**.

DetectedX

YOU HAVE SUBMITTED

Enterprise

HEESE-200223-HLTHS

SUBMIT

FOR SUPPORT

support@detectedx.com

AU: 1300 816 631

DO NOT HAVE TO ENTER CONTACT INFO  
ENTER INFORMATION FOR ASSISTANCE

Powered by Forge Cyber | Sydney | Australia

L2 H04, Merewether Building, The University of Sydney, NSW 2006  
ABN: 59 631 121 170 [detectedx.com](http://detectedx.com)

Figure 9 Instructions for registration and login, that can actually be used by the assessors of this response.

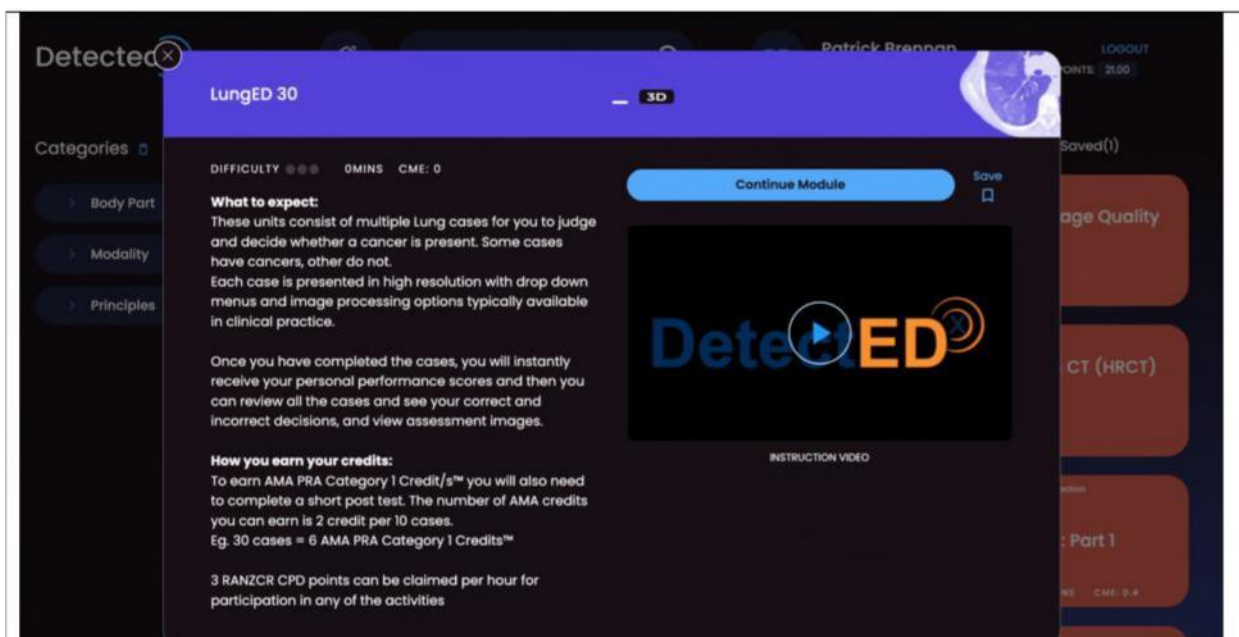


Figure 10 This is a module for educating around radiological image quality, please note the Instructions Video on the right.



Figure 11 This is a module for lung cancer screening, please note the Instructions tab encircled on the right and once activated, the instructions page on the right.

WORD COUNT 718

### Risk Management

Please detail risks involved with the ongoing delivery of the image sharing platform, and mitigating action you will take. Please submit a risk register as part of your project plan.

Maximum Narrative Word Limit: 700

As requested, the Risk Register is provided in Figures 12 and 13 below.





## Bidder Tender Response Q8: Risk Management

Risks associated with the ongoing delivery of the image sharing platform.

Risk Title	Impact	Likelihood	Overall Risk	Mitigation
Not able to get access to sufficient images to build required content.	Severe	Unlikely	Negligible	A range of agreements are in place with clinics and screening services to supply the necessary range of images.
Server hosting farm goes down resulting in lack of access to the platform – unplanned downtime exceeds 1%.	Severe	Unlikely	Negligible	Our platform is hosted with a highly reputable and experienced hosting facility. Backups and contingency plans are in place as well as Business Continuity plans.
Loss of key leadership staff	Moderate	Unlikely	Low	All policies and procedures are documented and in place in a shared drive. All meetings have thorough notes and actions recorded, shared and stored in share drive. Key strategies and decisions are recorded and stored.
Absence of technical staff may impact on delivery or ongoing support and development	Severe	Unlikely	Negligible	Constant monitoring of the technical team including monitoring performance and providing coaching and supervision. Team size and capacity is regularly assessed.
Loss of data uploaded to the DetectedX platform	Severe	Unlikely	Negligible	Data will be hosted on a HCSN compliant cloud service

DetectedX Risk Register for Imaging Tender

1 | Page

Figure 12. Risk Register.

		IMPACT			
		1 Minor	2 Moderate	3 Severe	4 Catastrophic
LIKELIHOOD	5 Certain	Negligible	Serious	High	High
	4 Likely	Negligible	Serious	High	High
	3 Possible	Low	Negligible	Serious	High
	2 Unlikely	Low	Low	Negligible	Serious
	1 Rare	Low	Low	Negligible	Serious

**Impact:**

1. Minor: Minor or negligible impact or disruption to SPI operations.
2. Moderate: Involves minor disruptions to a few essential operations or substantial disruption of an essential operation.
3. Severe: Major disruption to one essential operation or substantial disruptions to a few essential operations.
4. Catastrophic: Major disruption of a few essential operations.

**Likelihood of occurrence:**

1. Rare: 5% or less chance of occurring or may occur once in every 10 or more years.
2. Unlikely: 30% or less chance of occurring but more than 5%. May occur once every 3 to 5 years.
3. Possible: 50% or less chance of occurring but more than 30%. May occur once every 2 to 3 years.
4. Likely: 90% or less chance of occurring but more than 50%. May occur once every 1 to 2 years.

DetectedX Risk Register for Imaging Tender

2 | Page

Figure 13. Risk Matrix.

### Quality, useability, and product effectiveness

How will the platform cater for undergraduate and postgraduate learners across a range of professional groups? How will you ensure that the image sharing platform meets all the requirements of trainers and learners across the academy?



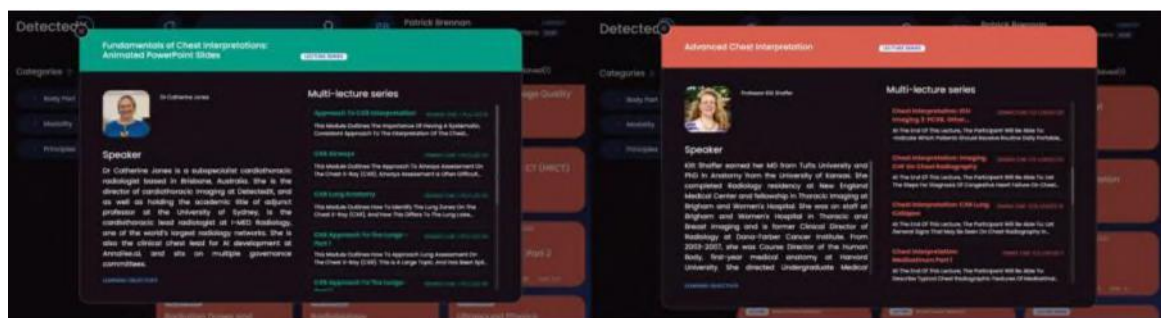


## The Platform

Our Platform caters for all Learners with an interest in medical imaging and radiology. We note that training academies provide:

*high quality multi-professional training for medical, clinical and support staff*

We cater for undergraduate students, radiographers, junior doctors, junior and senior radiology registrars, fully registered radiologists, and other health professionals. Anyone is facilitated despite their profession, level of training or previous knowledge. For example we work with [REDACTED], co-author of the RCR *Undergraduate Radiology Curriculum* (2022) to ensure we cater for medical undergraduate programs (assuming no/limited previous knowledge); we are working with [REDACTED] who is leading several workstreams with radiology/AHP educators from the UK to gain insight of the educational needs of under- and post graduate training across the UK imaging workforce; we work with [REDACTED] to make sure the Platform suits registrars; we work with [REDACTED] from Sweden so our Platform suits leading breast radiologists. This small fraction of our Faculty/experts demonstrates how we cater for anyone in the imaging workforce. Figures 14 & 15 show materials for the same topic (chest imaging) but designed for medical students and radiology registrars separately. Our systems have catered for well over 1000 Learners at one time, so the numbers described in this call are easily facilitated.



Figures 14 & 15 The Platform caters for Learners of all levels: on the left [REDACTED] undergraduates; on the right [REDACTED] registrars.

## Adaptable and flexible learning templates

In a nutshell, our Image Sharing solution provides the ability to upload, store, view, manipulate and report on images. However, the emphasis here is on education and training – the *raison d'être* of the Imaging Academies. DetectedX has been designing the most evidence-based teaching strategies for the imaging workforce for years and as a result we have teaching templates for image uploading, assembling, and distributing to Learners with seamless user image-interactive facilities. For example we have:

- Diagnostic self-assessment modules, shown to improve the most senior clinician's diagnostic abilities, involves the user looking at a predefined number of cases with known truth and diagnosing the image
- Image quality self-assessment modules: junior radiologists/radiographers/students can test themselves on judging diagnostic image quality/positioning against experts
- Quizzes: single patient cases can be shown, often with multi-modality images: users are tested on image appearances
- MCQs/multiple answer choices: any is image uploaded with immediate truth provided
- Videos/presentations: interactions can be built into the delivery with immediate truths given

Our system is vendor neutral (it stores and presents images from any vendor) and does not rely on a particular PACs type.

When the Learner finishes any of the above they can get: a range of performance scores that can be compared (anonymously) with their peers; detailed demonstration of any errors; certificates of completion; a personalised record of CPDs/CMEs accumulated. We find that certain templates are often more suitable for certain Learner stages: for e.g. the self-assessment modules are helpful for more advanced Learners; videos and interactive presentations are useful for more junior individuals but this is not a firm rule.

These are just a sample of the templates available to Educators at the academy and we are happy to explore tailored alternatives as required. We can say that no-one has the range or sophistication of on-line teaching approaches in radiology that DetectedX has, along with the evidence showing impact.

In addition, our real-time dashboard means the Educator/clinician as well as Learners can receive personalised auditable outputs looking at interactivity with the Platform, performance scores, time spent as well as plethora of other user data.

Finally, as a further added value available to all users on the Platform there is an ever-growing repository of hundreds of image-focussed lectures by the world-leading radiology/radiography faculty delivered specifically to DetectedX ranging from imaging physics and AI to image interpretation. These lectures are provided exclusively for DetectedX from places such as Harvard University and University of Oxford, as well as from individuals such as Nobel nominee Prof Laszlo Tabar.

#### **The value of our system across domains**

Historically, we have developed lots of evidence that our Platform supports all levels of learner. In a short period of time after the launch of our approach, 85% of relevant junior and senior Clinicians in Australia used it, it had won 17 teaching and research awards and it was mandatory in a number of jurisdictions including New Zealand. This early version, which formed the basis of our current version has been published in over 100 scientific journals, has supported well over 20 PhD students, and showed that engagement with our Platform improved clinical performance rapidly across all levels of experience (1,2).

1

2

In Figures 16-18 we show comments from different users. The comments for Figure 17 & 18 have been anonymised, but the sources (educational centres) of the quotes can be provided.

#### **Examples of very recent DetectedX innovations in teaching across groups with different levels of education or experience.**

1. Multilevel learning: As an example of our desire to provide for various types of Learners, we are working with to have a completely unique multi-level module, which with a single case, we can ask different levels of questions. This innovation allows education to be delivered with the same case to up to four audiences: high school students\*; undergraduate medical or radiography students; junior radiology registrars/radiographers; senior registrars

*\*In partnership with the Dept of Education DetectedX staff led a STEM program across rural high schools in Australia.*

2. AI-powered learning: Our AI-based algorithms specifically cater for Learners with different abilities. Like Netflix, by profiling the Learner and user-image interactions we can provide recommendations/images/modules for each user. This unique system significantly improves learning outcomes (Figure 8).

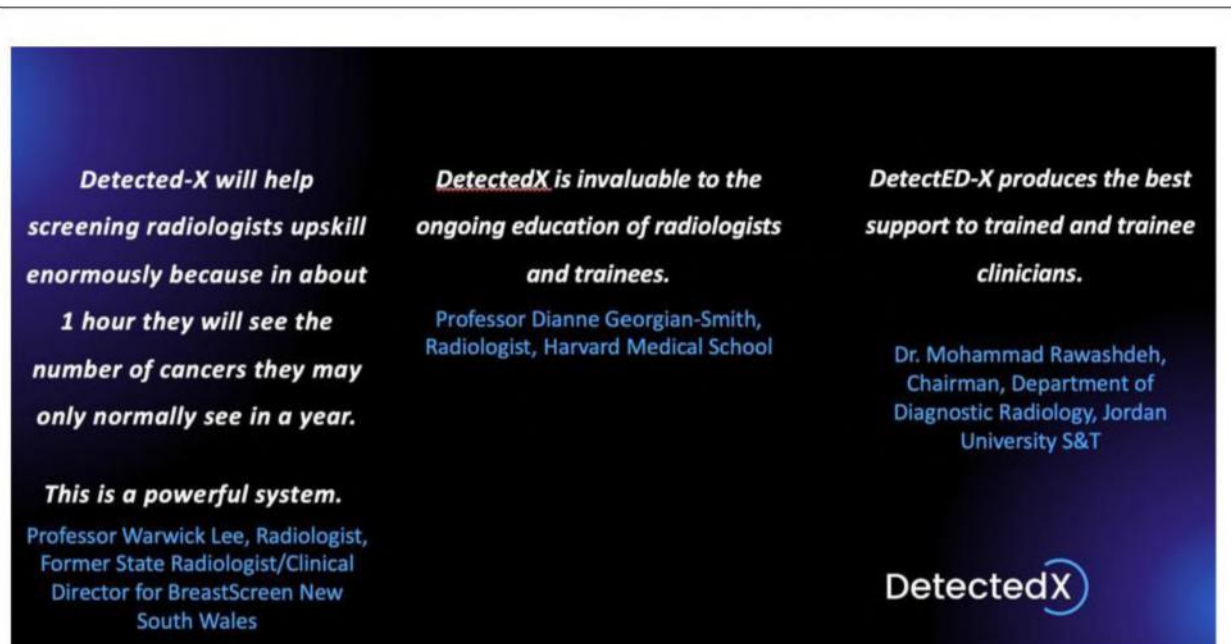


Figure 16 Comments from leaders teaching radiology trainees

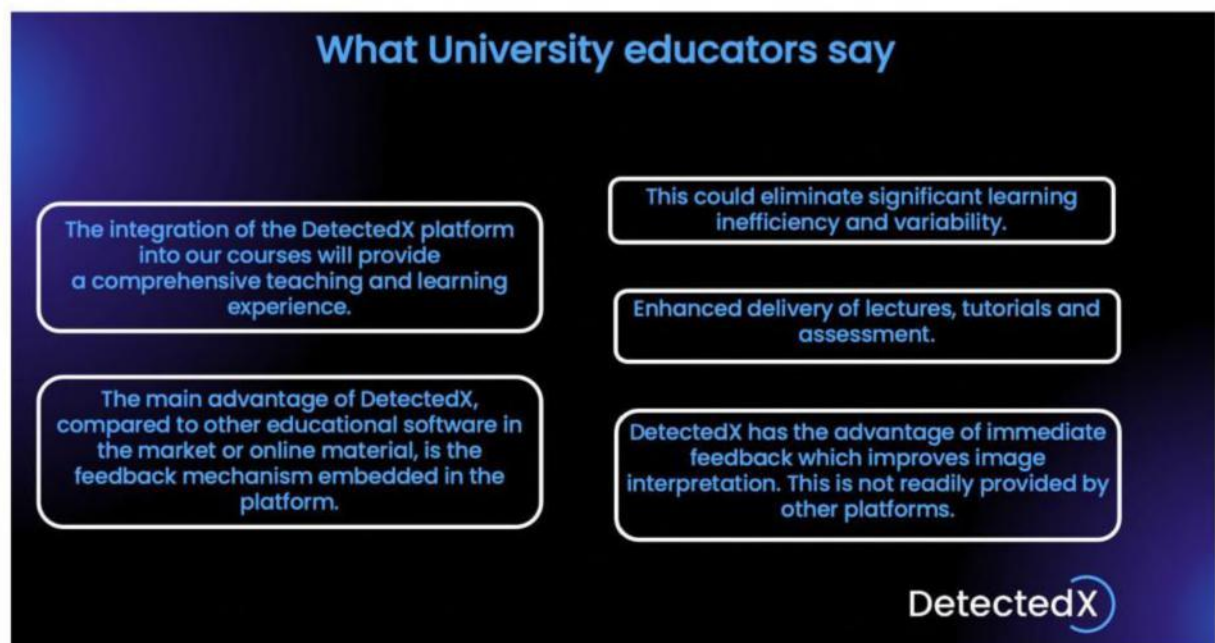


Figure 17 Comments from University Educators teaching under- & postgraduate students

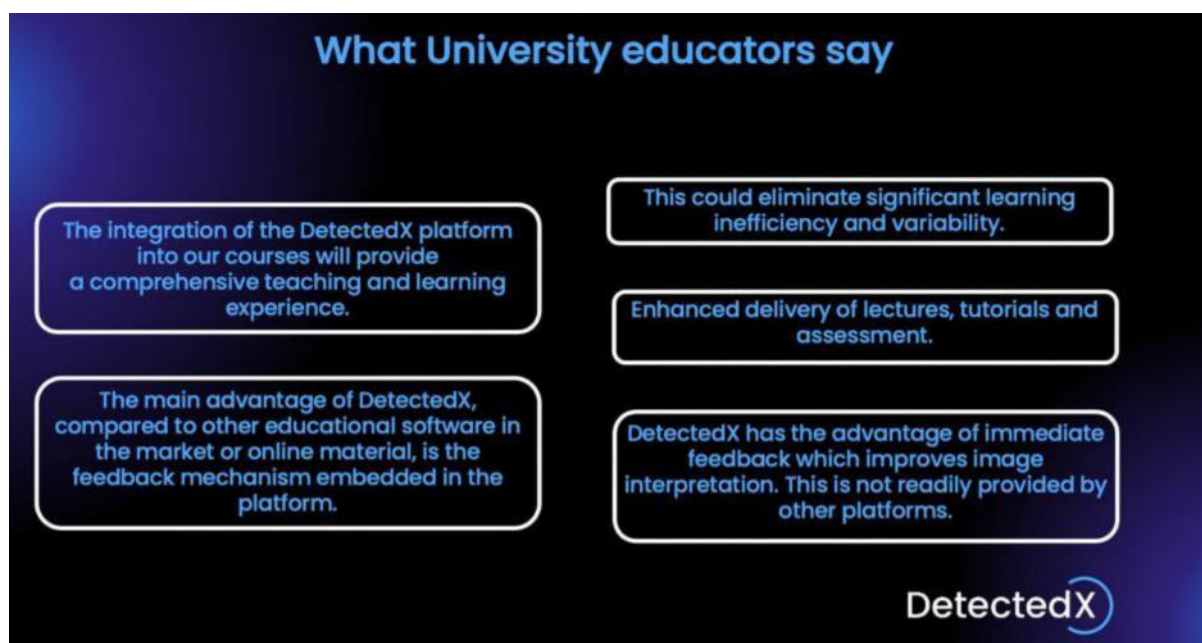


Fig 18 Comments from Medical & Radiography students from two high ranking (red brick) universities

#### Sustainability and Growth

**How will you accommodate a degree of uncertainty relating to the numbers of learners we want to access the image sharing platform, recognising that we want to grow cohort numbers in-year?**

We are entirely scalable. Since the Image Sharing Platform is cloud-based using UK-based hosting, we can deliver to 10,000 users as easily as 10. There is no issue with 225 concurrent users from the SE Imaging Academy and if this number should even double within the first 6 months, this is not an issue. An automated system can be set up that if or when there are additional users, registration and login details are immediately sent out to each individual.

An example of how we are scalable might be useful. In March 2020, at the start of the COVID-19 outbreak, the DetectedX team worked with leading cardiopulmonary radiologists in Australia and Italy to create a COVID solution that would facilitate any clinician anywhere in the world: an example of our viewer is shown in Figure 5. This cloud-based Platform which became available in April 2020 and was free to everyone, allowed the uploading of high-resolution lung CT cases with a series of questions, which were then available to anyone anywhere 24/7. The Platform outputted a series of performance scores and the algorithms explained any diagnostic errors to the users. Within days of launching we had over 1000 users from over 100 countries with no downtime ever been recorded. Many unsolicited testimonials came in from that activity and are available if required.

*Incidentally this COVID-19 experience is an example where effective collaboration between DetectedX and a clinical/academic department led to a \$1M+ grant to support the development of an innovative teaching tool. This is in line with early Sections of this response describing how partnerships between DetectedX and clinical/academic partners can yield significant research outputs including substantial grant awards.*

**Intellectual property:**

**Please explain how you will ensure NHS and/or HEE-owned images can be uploaded directly on to the platform and what arrangements you will put in place to ensure respective intellectual property rights are retained?**

At all times the Intellectual Property of any uploaded material remains the property of the uploading institution or uploading individual. DetectedX has no ownership of these materials and all materials will be removed from the host servers once the contract is terminated. The system of uploading describes below underpins this IP arrangement.

The uploading arrangement is described in Section 5 above with supporting images (Figures 1&2). Since the DetectedX Platform is a cloud-based system hosted on servers within the UK, the uploader is browser-based meaning that on whatever Platform the user is using, the process will start with opening a browser and logging on to the Platform. Once logged into the Platform the user will select "Create a new case" (Figure 1) and immediately the uploader window will appear with the pop-up menu (Figure 2). At this stage and cases, videos, presentations etc or any other patient information (reports, tags etc) will be uploaded rapidly by simply dragging the NHS & HEE owned materials from their workstation or computer to the uploader screen. Otherwise, the uploader menu can be moved to the folder on their workstation where the images are saved, relevant images/materials selected and upload button clicked.

Images are automatically processed and anonymised during the upload: all DICOM entries are removed, but images retain all the original resolution but with no DICOM header information.

The images/cases can be viewed only on our viewer and no user can ever download the images directly. Access will only be given to registered users, and all images are secured within our UK based servers, all of which use a HCSN compliant cloud service provided by 3verest a cloud-hosting company with an established NHS relationship. Data security is further discussed in the next Section.

## **12. Data security**

**i. Please confirm you have completed the NHS Data Security and Protection toolkit and that your organisation is compliant up to Level 2.**

**. Please describe your data protection and information security protocols and processes.**

**i. Please describe your business continuity and disaster recovery plan.**

**ii. please describe the process for notifying HEE of any incidents.**

**i. Please confirm you have completed the NHS Data Security and Protection toolkit and that your organisation is compliant up to Level**

We confirm DetectedX has completed the NHS DSPT and our organisation is compliant to the required Level 2 grade.

**. Please describe your data protection and information security protocols and processes.**

From an IT and infrastructure level, all data clinical, diagnostics or informational within the DetectedX platform is stored within Tier 4 UK based datacentres via our ISO27001 compliant cloud provider 3verest, the data stored at rest are encrypted to AES256 standards, all data transported across networks, and the internet are encrypted using TLS v1.3.

Only DetectedX approved administrators have logical system access to administer the platform, no other 3rd parties have access. Access to physical data centres will only be granted to individuals whose identities have been



verified by Data Centre security or management (such as Data Centre Operations Director or authorised designee).

Customer and any visitors must present valid government issued photo identification acceptable to the Data Centre for identity verification before being granted entry to the Data Centre. Acceptable identification is limited to valid, readily identifiable government issued photo identification such as: (a) a passport or (b) a driver's license or national identity card from the same country (UK) in which the Data Centre is located.

**. Please describe your business continuity and disaster recovery plan.**

We have a business continuity plan which covers our steps to deal with such scenarios, ensuring the functioning of our services, client environments, integrity of data and 24/7 reachability of our team is maintained. All Detected X touchpoints and entry points within the 3verest cloud environment are protected against DDOS attacks; a 24/7 centralised NOC team are ready to invoke pre-planned strategies based on the incident faced.

The Detected X platform resides within two 3verest cloud regions. Both of the regions are within tier 4 datacentre facilities which provide the highest levels of power, network, and environment fault tolerance / protection. Given the two-region setup, in the event of a region failure within one region, Detected X technologies continue to run from the available region. Each of the regions above are Tier 4 data centre facilities and have fire suppression systems, water pumps and are geographically disparate to protect against natural disasters within one region.

**i. Please describe the process for notifying HEE of any incidents.**

DetectedX is committed to ensuring that an incident reporting system is in place as part of its approach to risk management so that DetectedX can learn from incidents to improve safety within the organisation. In-line with Data Protection legislation, a personal data breach refers to a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored, or otherwise processed.

Our DPO will ensure that all staff members are made aware of, and understand, what constitutes a data breach as part of their mandatory. Where a breach is likely to result in a risk to the rights and freedoms of individuals, the relevant supervisory authority will be informed, including HEE. All incidents are graded according to the significance of the breach and the likelihood of those serious consequences occurring. Incidents are also graded according to the impact on the individual or groups of individuals and not the organisation. All notifiable breaches (including Serious Incidents Requiring Investigation) will be reported to the relevant supervisory authority and HEE within 72 hours of DetectedX becoming aware of it.

All IG and cyber security incidents will be investigated, assessed, categorised, and reported by the DetectedX IG Team [with delegated responsibility of the Data Protection Officer (DPO)] using the NHS Digital Guide to the Notification of Data Security and Protection Incidents. The DetectedX IG team will ensure that all members of staff are made aware of, and understand, what constitutes a data breach as part of their mandatory training and via ad-hoc training sessions as requested.

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**Social mobility/widening participation and diversity and inclusion**

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**Please demonstrate how your proposal links to the wider social mobility/widening participation and diversity and inclusion agendas of Health Education England.** [www.hee.nhs.uk/our-work/talent-care-widening-participation/widening-access-participation-wap](http://www.hee.nhs.uk/our-work/talent-care-widening-participation/widening-access-participation-wap)

DetectedX and Health Education England's approach to social mobility/widening participation, diversity and inclusion are completely aligned. Both parties are committed to:

- Building a healthcare workforce that is representative of the communities they serve
- Widening access to those who are underrepresented, particularly from lower socioeconomic or minoritized backgrounds.

These commitments are beautifully represented in the DetectedX Image Sharing Platform described in this proposal. Our scalable solution is available to anyone who the SE Imaging Academy gives access to, meaning that the very best education is available to everyone who needs it regardless of who they are, where they are based and where they come from. Equity is guaranteed; all the user needs is an internet connection.

It may be worthwhile providing a couple of examples of recent projects that demonstrate DetectedX's complete commitment to wider social mobility/widening participation, diversity, and inclusion.

1. DetectedX has been involved in a number of projects serving under-represented or under-served populations. For example, we partner with charitable organisations such as Radiology Across Borders to ensure (without any charge) that any individual who needs educational Platforms to better serve their populations are facilitated regardless of where they are based. To date this initiative has served individuals from over 100 countries. In addition, our own work with ministries such as the Vietnamese Ministry of Health has resulted in nationwide initiatives such as VIETRAD which is transforming radiologists' abilities to detect for example breast cancer in major cities such as Hanoi and Ho Chi Minh and policy papers around widening screening participation amongst women in Ras Al Khaimah.

2. We created and led a STEM initiative where rural high school students engage with technologists, scientists, and Clinicians. Using the DetectedX Platform, these students perform activities typical of University research students such as statistical analysis, regular research meetings and laboratory placements. Within a year of this initiative and through innovative funding, one group of students from a rural NSW high school performed experiments with radiologists in Trieste, Italy, had a paper presented at the largest scientific conference in the world (Radiological Society of North America, Chicago) and had a full article accepted in a leading international journal. In subsequent years students have performed work in Vietnam and demonstrated several other typical research outputs. The innovation and impact of this project led to it being covered several times by national press.

#### **Finally diversity in everything we do**

##### The Team

DetectedX practices what it preaches: the team itself demonstrates an array of diversity and creativity arising from a variety of career stages, experiences and skills, linguistic and cultural backgrounds, and genders. We have senior scientists and early- to mid-career researchers, clinical professors and junior doctors, clinical and consumer experts on our advisory panel and we hail from diverse backgrounds – Australia, New Zealand, England, Ireland, Jordan, Iran, Korea, and Argentina.

##### Language

Our Platform demonstrates multi-lingual translation where our solutions are available for Clinicians in languages including Mandarin, Vietnamese, Spanish and French.

##### Capacity Building



Capacity building and career development for everyone but particularly those from diverse backgrounds is important to us. Members of our leadership team has successfully supervised over 120 research students and mentored 20 postdoctoral fellows, coming from every continent. We do this through:

- a) working with new research students,
- b) cultivating new young research talent,
- c) employing outstanding early-career researchers
- d) supporting and nurturing our younger staff

A number of the projects studied by these individuals has specifically focussed on minority populations such as indigenous women, non-Han populations and other ethnic groupings from Asia and the Middle East.

### Demo Presentation Questions and Detected Answers

#### 1. Questions for all bidders

1	Infrastructure	We are looking for a cloud-based solution which minimises the need for local installation of servers, interfaces, firewalls etc. Please clarify what infrastructure will be needed at each Trust/site level [if any] and why? Can installation be managed virtually? Please clarify how this supports both uploading of images from PACS systems and the access to the platform by learners from the PACs system of their training location. Please specify if Trust or 3 <sup>rd</sup> party costs relating to such installation and interfacing have been included in your financial submission. <b>The infrastructural requirements for uploading and access from any of your sites are either nothing or minimal depending on which of two ways we choose: the first is through a web browser, which only requires that each of your sites has access to the internet. The second is through an integration of our system with the PACs, which can be done virtually and with no additional cost. Possibly a hybrid system will be preferred where your key sites have integration, whilst others use a browser. All this will be decided by the Management Group in the first 5-6 weeks. No extra hardware will be required.</b>
2	Access and uploading images	There would need to be user access [learner and training faculty], and upload connections from <b>all Trusts</b> within the South East, not just those who have been identified as Hub Sites. Can this be done at any of the PACS workstations and servers being used across the SE? <b>Yes, all sites will have access.</b> Does this affect the costings of your bid? <b>No.</b> Will there be any associated costs for Trusts? [including time and resource]. <b>No financial costs, but if integration is required, we will require some interactions with your IT team.</b> The expectation is that educators will be able to directly push images to the platform from their PACS workstation. Please include details of how this will work with your system in your demo. <b>This will be discussed in the demo, but</b>

		this can be done via a web browser in the way described in the response, or it can be a single <i>push</i> manoeuvre following the integration option.
3	Downloading Images	Please clarify if your system is compatible with users downloading images across all platforms including phones/laptops/ ipads and operating systems, MS, Mac IOS, android etc. <b>Yes, our system has always been compatible with all platforms.</b>
4	Interface with Microsoft Teams	Please clarify if your platform can interface and be used seamlessly with Microsoft Teams. <b>Yes. This regularly happens.</b>
5	End of contract	<p>Please describe what will happen at the end of the contract, in terms of repatriation of data and/or images? Are there options for images to be archived with continued access to them? <b>Yes we can do this.</b> what solution do you have to create permanent 'vendor neutral' cloud access for future migration to an unspecified future provider. <b>We can arrange with any future vendor the transfer of all images and data once specified and agreed by the Academy. We already do extensive transfers between DetectedX and other vendors, whether these vendors are OEMs such as GE HealthCare or smaller companies such as Volpara Health.</b></p> <p>What [if any] would the associated costs of this be? <b>This would be part of the current contract.</b></p> <p>What would an approximate cost be to return or destroy data at the end of the contract? <b>No additional cost.</b></p>
6	Data Security	what options are there for multi-factor authentication? How straightforward is this? Especially for users logging in remotely and from Wi-Fi. If it is felt to be too intrusive or 'clunky' would there be any reason from the supplier point of view to proceed without it? <b>At the moment with our current clients we have a login system where users given permission by our clients can register and subsequently login. This is a very rapid and easy process requiring a couple of minutes the first time and then a couple of seconds after that. We can offer more complex multi-level authentication if required. Again, this will be decided by the Management Group at the start of the project.</b>

**DetectedX**

Questions to the supplier		
1	Functionality	Please can you go through explicit requirements set out in the spec and show that you meet all of the areas outlined? <b>We will do this during the demonstration as far as time will permit. But we are confident we can meet every one of your requirements.</b>
2	Functionality	Please clarify what you mean by the platform being available during 'UK hours'. <b>The platform will be available 24 hours a day, 365 days per year.</b>
3	Functionality	Does your product support video e.g., for fluoro and ultrasound? <b>Yes.</b>
4	Management and support	<p>We note that HEE SE/ SEITA would be responsible for adding and fully maintaining users; we are not in a position to accommodate this straight away and would expect the supplier to manage this. Please comment on your ability to manage this aspect. <b>We always undertake this for our clients, once we know who those additional users are.</b></p> <p>Please also update your risk register outlining potential risks associated with you holding user and [potential] patient data, and what steps you will</p>

		take to mitigate against these risks occurring. Holding patient data is managed by ISO27001 compliant cloud provider 3verest, the CEO of which you will meet at the demonstration. 3Verest uses the highest level of security protocol and all data are stored within Tier 4 UK based datacentres: the data stored at rest are encrypted to AES256 standards, all data transported across networks, and the internet are encrypted using TLS v1.3. This level of security is sufficiently high to support 3verest being the storage partner of the NHS Yorkshire Imaging Collaborative and Humbervale.
5	Management and support	Please clarify what ongoing support will be available to the team, in addition to the 'super users'. Support is ongoing throughout the length of this project whether 1-3 years to all users. Within the Platform we have help features which consist of instructions and videos on how to use the platform at every stage from login to understanding performance data. If there are any issues we will respond to these and find a solution within 1 business day. To date this time-period has not been exceeded. Although unusual, from experience 90% of any difficulties encountered by the user will be at the login stage; after that any problems are extremely rare.
6	Management and support	Please clarify whether unplanned downtime will be 'rectified' within 24 hours, or just 'responded to'. Rectified. It should be acknowledged that we have never to date had any unplanned downtime.
7	Risk Management	Please confirm if the risks you have set out are specific to this project, or generic? These are specific to the project, but this matrix will be developed following the early meetings via the Management Group.
8	Sustainability	Please clarify how access to your product can be scaled up? Is there an additional cost associated with an increase in learners? We are entirely scalable. Our systems can facilitate 225 users or 2,225. This agility was shown when we provided our COVED tool.
<b>Clarification for the Supplier</b>		
1	Governance	We would expect chairing of meetings and leadership to come from the supplier and not from the HEE SE team/ITA team. This function will be provided by the Supplier.
2	Project Plan	We would expect a more detailed project plan to be worked up, including time for gathering user feedback and allowing time for any alterations. We agree and the initial detailed project plan will be provided following the Management Group discussions. It should be stressed however that this plan will need to demonstrate flexibility, since the Academy's requirement will change and build through time and the plan must reflect this.
3	Management and support	As educators change relatively frequently, we would need on-boarding sessions to be offered outside of the proposed May 15th - 26th timeframe. This is fine and fits in with our normal practice.

## 2. Information for all bidders on their demos

Demonstration of your product must specifically relate to its application within education, training, and teaching. Please include reference to the creation of lecture content

If your product can meet some of the non-essential parts of our specification, please cover this during your demo.

NHS Terms and Conditions for the Provision of Services (Contract Version) (January 2018)

### 3. Questions for all bidders

1	<b>Infrastructure</b>	We are looking for a cloud-based solution which minimises the need for local installation of servers, interfaces, firewalls etc. Please clarify what infrastructure will be needed at each Trust/site level [if any] and why? Can installation be managed virtually? Please clarify how this supports both uploading of images from PACS systems and the access to the platform by learners from the PACs system of their training location. Please specify if Trust or 3 <sup>rd</sup> party costs relating to such installation and interfacing have been included in your financial submission.
2	<b>Access and uploading images</b>	There would need to be user access [learner and training faculty], and upload connections from <b>all Trusts</b> within the South East, not just those who have been identified as Hub Sites. Can this be done at any of the PACS workstations and servers being used across the SE? Does this affect the costings of your bid? Will there be any associated costs for Trusts? [including time and resource] The expectation is that educators will be able to directly push images to the platform from their PACS workstation. Please include details of how this will work with your system in your demo.
3	<b>Downloading Images</b>	Please clarify if your system is compatible with users downloading images across all platforms including phones/laptops/ ipads and operating systems, MS, Mac IOS, android etc
4	<b>Interface with Microsoft Teams</b>	Please clarify if your platform can interface and be used seamlessly with Microsoft Teams.
5	<b>End of contract</b>	Please describe what will happen at the end of the contract, in terms of repatriation of data and/or images? Are there options for images to be archived with continued access to them? what solution do you have to create permanent 'vendor neutral' cloud access for future migration to an unspecified future provider. What [if any] would the associated costs of this be?  What would an approximate cost be to return or destroy data at the end of the contract?
6	<b>Data Security</b>	what options are there for multi-factor authentication? How straightforward is this? Especially for users logging in remotely and from Wi-Fi. If it is felt to be too intrusive or 'clunky' would there be any reason from the supplier point of view to proceed without it?

#### DetectedX

Questions to the supplier		
1	Functionality	Please can you go through explicit requirements set out in the spec and show that you meet all of the areas outlined?
2	Functionality	Please clarify what you mean by the platform being available during 'UK hours'
3	Functionality	Does your product support video e.g., for fluoro and ultrasound?
4	Management and support	We note that HEE SE/ SEITA would be responsible for adding and fully maintaining users; we are not in a position to accommodate this straight away and would expect the

		supplier to manage this. Please comment on your ability to manage this aspect. Please also update your risk register outlining potential risks associated with you holding user and [potential] patient data, and what steps you will take to mitigate against these risks occurring.
5	Management and support	Please clarify what ongoing support will be available to the team, in addition to the 'super users'
6	Management and support	Please clarify whether unplanned downtime will be 'rectified' within 24 hours, or just 'responded to'
7	Risk Management	Please confirm if the risks you have set out are specific to this project, or generic?
8	Sustainability	Please clarify how access to your product can be scaled up? Is there an additional cost associated with an increase in learners?
<b>Clarification for the Supplier</b>		
1	Governance	We would expect chairing of meetings and leadership to come from the supplier and not from the HEE SE team/ITA team.
2	Project Plan	We would expect a more detailed project plan to be worked up, including time for gathering user feedback and allowing time for any alterations.
3	Management and support	As educators change relatively frequently, we would need on-boarding sessions to be offered outside of the proposed May 15th - 26th timeframe

### NHS England Detailed Requirement Service Provisions Key Performance Indicators (KPIs)

#### **Functional Requirements**

#### **Image storage:**

- Ability to directly upload images, image data sets and videos from the whole range of diagnostic imaging modalities onto an image sharing platform. This should support full DICOM functionality.
- Automated anonymisation of images on point of upload i.e., no manual step.
- A supplier solution for 'burnt in' image pixel data, especially patient identifiable information
- Ability to save ultrasound images with 'burned in identifiers' removed
- Ability to switch on/off annotation [markers/measures etc]:
  - To support sharing of cases with findings/diagnosis
  - To use images without annotations for teaching/exam purposes
- Ability to store cross sectional imaging stacks and data volumes
- Ability to remove images as determined by faculty/trainers
- Structured library with agreed taxonomy for image storage to support ready access to particular imaging modalities, anatomic regions, patient types [especially paediatric patients] or type of pathology.
- For reports to be uploaded anonymously as part of the examination data.
- The ability to hide exam preparation images, report and data.
- Extended request context [anonymised ERP extract] to be uploaded
- Without the need of assistance or action by the supplier, the ability for administrators to independently:
  - Construct objective structured clinical examinations [OSCEs] and other tests for users
  - Organise the image bank into folders, sub-folders, and categories based on body part/pathology/subject matter

**Image viewing:**

*The elements below need to apply for multiple users accessing the platform simultaneously from multiple locations*

- Ability to undertake multiplanar reformats as if in a 'native best of breed' PACs.
- Ability to show selected images within a case with ready access to other images to support learning e.g., plain film followed by CT, followed by MRI. Access needs to be sequential not simultaneous [desirable] with restricted display.
- Ability to teach image interpretation for molecular imaging e.g., PET CT
- Interface for comparing imaging side by side
- At least six standard window settings with short keys so that users can move between image settings.
- Ability to split the screen for viewing of more than one radiographic image simultaneously
- Zoom/windowing/rotation/measurement functionality for fully manipulating j-peg or DICOM imaging
- Image manipulation: ability to window level, zoom, pan, density value, image pre-sets, invert/revert, sharpness altering, edge enhancement, horizontal flip, vertical flip, rotate, magnifying glass, zoom in/out, ruler, text annotation, arrow, angle, circle, ROI [elliptical, free hand, rectangular].
- Multi-planar reformatting tools
- Capable of zooming without major resolution loss
- Simultaneous access for multiple learners to view and manipulate images during teaching.
- Learners to simultaneously access images to report on for exam purposes.
- Accessible in both home and work environments
- Control access to image files such as mock exam sets
- Basic measurement and annotation packages [essential]. Complex measurement and other tools [e.g., Cobb angle, curved reformat etc] is desirable
- Ability to run cine loops
- Ability to access video e.g., fluoroscopy ultrasound [e.g., contrast enhanced ultrasound/dynamic ultrasound] in a similar way to that available on an NHS Trust PACs.
- Users should be able to manipulate images within 5 seconds when accessing from a current standard broadband connection [20 Mbps].

**Other functionality:**

- Ability to access, **by exception**, specific named learner access data including data and time of login, length of time on the site, number of clicks on specific pages.
- Ability to access usage statistics; general, anonymised user data, by date and time.
- The image sharing platform must be suitable to be viewed during a Microsoft teams call/ must suitably interface with Microsoft Teams.
- The image sharing platform must be compatible with the range of PACS workstations being used across the region, with teaching faculty from across the region able to upload images
- HEE SE would expect providers to demonstrate that they have completed load testing and are able to confirm system resilience in place to manage multiple learner access.
- HEE would expect providers to have established procedures and processes to overcome constraints relating to internet access when concurrent users are on the platform.
- We would want the provider to ensure there is platform/tech support available to HEE SE and teaching faculty to resolve issues/concerns. Support should be available in UK core working hours 9:00 – 17:00 with a 'next working day' turnaround time for issue resolution.

- User consent: the successful provider must ask all users to give consent to monitoring usage prior to being granted logins. This should be achieved by publishing a privacy statement and issuing consent forms. The consent form must outline how their data will be used; We would want to be able to access, **by exception**, specific named learner access data including dates they logged in, length of time they stayed on the site, clicks on specific pages. We would want to access general, anonymized user data, by date and time. We are committed to ensuring access to the platform is inclusive and would want to utilise access data to ensure this is measurable
- We would expect the provider have considered standards for accessibility and the platform should have the means for users to amend image size, contrast levels, fonts, zoom in.

**The following would be desirable additional functionality but is not essential and should not be considered as part of the core brief:**

- Ability to collate images into exam sets with test answer papers
- Ability to create/deliver courses using cases or presentations [desirable]
- Ability to share cases where diagnosis is uncertain for expert opinions [and collate feedback]

### **Performance Requirements**

- Users would have individual, unique logins, supplied and managed by the provider.
- Our preferred model is a **concurrent user model** [or equivalent], able to support up to **225** south east users in any given teaching session.
- The number of issued logins would exceed this; given the role of academies to increase the number of learners, we would want to be able to increase the number of users with unique logins within year, within the existing funding envelope.
- multiple users must be able to access the platform simultaneously from multiple locations
- Users will need to ongoing, continued access to the image sharing platform to continue personal study time.
- Planned downtime details must be shared with HEE SE three months in advance
- Providers must share details of their response protocols to unplanned downtime.
- Providers must share details of their response protocols for substandard user feedback.

### **Mandatory Requirements**

- **Hours of Service/Delivery:** We would want the provider to ensure there is expert platform technical support available to HEE SE and teaching faculty to resolve technical issues as and when they arise. Support should be available in UK core working hours 9:00 – 20:00 with a 'next working day' turnaround time for issue resolution. Upgrades/system administration should only occur out of hours [UK midnight – 4am]. We would
- **Security of data** – We would expect the provider to have completed the NHS Data Security and Protection Toolkit and be compliant with it to Level 2. We would expect the provider to have robust processes with regard to data protection and information security. We would expect robust processes to be in place to ensure HEE SE is notified of any incidents, and we would expect the provider to have a business continuity and disaster recovery plan in place. We would expect the provider to have a mechanism in place for removing data when user consent is withdrawn. Confirmation of tender approval will be subject to a number of



contractual steps, one of which will be completion of the HEE Third Party Assurance Form and HEE Information Governance approval of the privacy statement and consent form.

- **Exit Strategy** – Full details of contract termination will be set out in the contract. Having awarded the contract, HEE may terminate the contract by issuing a termination notice to the provider at any time on three months written notice. Immediately following expiry or earlier termination of the Contract and/or in accordance with any timescales as set out in the agreed exit plan any Personal Data Processed by the provider on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.

### ***Service Levels and Key Performance Indicators (KPIs)***

**The provider will be measured against the following:**

- Rapidity of access to images: Users should be able to manipulate images within **5 seconds** when accessing from a current standard broadband connection [20mb].
- Image manipulation: users must be able to do 90% or more of the following: ability to window level, zoom, pan, density value, image pre-sets, invert/revert, sharpness altering, edge enhancement, horizontal flip, vertical flip, rotate, magnifying glass, zoom in/out, ruler, text annotation, arrow, angle, circle, ROI [elliptical, free hand, rectangular].
- Evaluation: HEE SE would expect 80% + of users to confirm ease of access and will measure the extent to which the product complements the provision of high-quality teaching, education and training. The method for evaluation will be determined between the provider and HEE SE. Should we reach agreement that the provider can ask HEE users to evaluate their platform, there just be an opt out/unsubscribe procedure in place.
- Speed of response: if 50% or more of the users can't access the platform, we would expect this to be resolved by the next working day.
- Unplanned downtime: the occurrence of this should be less than 1%. If unplanned downtime does occur, HEE will want statistics showing the scale of the impacted areas [e.g., the full platform, e.g., one section] and the scale of concurrent users impacted.
- Notice of planned downtime must be shared with HEE SE three months in advance.

### **Provider KPI Monitoring**

- The provider will be monitored against the above KPIs through a weekly operational meeting during the implementation phase and at a monthly project Board between the provider and NHSE England South East Imaging Training Academy. Escalations to compliance of the KPIs will be reviewed in these meetings.
- The provider compliance will be accountable to the Senior Responsible Officer for Cancer and Diagnostics in NHS England South East, as well as escalated via NHS England South East governance routes.

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## Schedule 6

### Commercial Schedule

#### Value for Money - Costings

**What are the indicative costs for each stage of the project? Please provide a detailed breakdown of the costings for providing the service, inclusive of VAT, for 12 months. The breakdown should demonstrate value for money. The maximum financial envelope is £100,000 including VAT. Any bids received above this amount will be excluded from the procurement process.**

**Table: Milestones and cost.**

Milestone	Dates	Cost
a. Ensure a DetectedX solution specifically designed for the HEE SE academy	1st April 2023 onwards	included
b. Implementation of the solution and onboarding	April to May 2023	£329 (ex-vat) /user/year
c. Encouraging engagement with the Platform and monitoring usage	April 2023-April 2024	included
d. Further tailor the solution based on learner, educator, and leader feedback.	May 2023-April 2024	Included
. 12-month support	1st August 2023 – 31st August 2024	included

The cost described in the table, represents a significant discount. A single subscription normally is \$US990 dollars per annum and this would be for limited access relating to the Clinicians' or Educators' area of specialisation or particular teaching approaches. In this tender, we will give all Platform functionality to the Educators and Learners so they can create and receive the most innovative educational strategies. We would really like to work in *partnership* with the SE Imaging Academy as we know that academic, clinical, and other outputs could vastly exceed those simply listed in the Specifications document. This is a very exciting opportunity for both parties that could have a substantial impact on radiology education (and research) in the UK and beyond.

As described within the plan above (Section 6), we will provide the most comprehensive onboarding and training. Whilst access to, and usage of our Platform is very straightforward, to ensure that all users demonstrate familiarity and confidence, our regimen of training, review, ongoing instructions/videos embedded within the Platform and 24-hour support will ensure that usage is optimised, maximised and evident across the whole region.

As discussed in an earlier Section, it is never enough to simply introduce a solution (of any type) and simply expect enthusiastic usage. We as part of the Management Group will on a weekly basis monitor usage and adjust our communications strategies to further encourage support. As evidenced above, our ongoing usage strategies to date has resulted in 85-100% usage by users as can be shown through testimonials if required from heads of national screening bodies.

Also as described above, no single off-the-shelf system will satisfy the user at SE Imaging Academy. Always there is tailoring required to suit the specific users of any specific Platform. For example, radiologists in New Zealand require different protocols from radiologists in Ireland, lecturers at Monash University required a slightly different solution to those at the University College Cork. Our system is rapidly adaptable to the need of any location and again as described in the plan, the first few weeks will tweak the Platform to optimise the SE Imaging Academy

experience. The tailoring will not end there and through the documented actions arising from the Management Group meetings, other required changes will be identified and implemented.

**15. Total Cost of the Service**

Please provide one figure that is the total cost of the service, including VAT, for 12 months.

The maximum financial envelope is £100,000 including VAT. Any bids received above this amount will be excluded from the procurement process.

Total cost for 225 users is £74,025 plus VAT.

## **Schedule 7**

### **Staff transfer – Not Applicable**

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**

- 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**

- 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 Subcontractor 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**

- 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 Subcontractor 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**

**Broadly comparable pension benefits** (Clause 1.4 of this Part D of Schedule 7 only applies to the Contract if this box is checked or Clause 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 Schedule 7 shall apply to this Contract except Clause 1.4 of this Part D of 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 1.6.2(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 setoff 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 Subcontractor) 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 paragraph 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 paragraph 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 paragraph 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 paragraph 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 paragraph 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 paragraph 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 paragraph 1.6.7 of this Schedule 8. The Parties will pay any such third party costs incurred pursuant to this paragraph 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 paragraph 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**

### **Change Control Process**

#### **1. Principles**

- 1.1 Where the Authority or the Supplier sees a need to change this Contract or the Services provided under it, the Authority may at any time request and the Supplier may at any time recommend, such change in accordance with the Change Control Process set out in paragraph 2 of this Schedule 7.
- 1.2 The parties agree that no change to the Contract shall occur or be deemed to have occurred through course of conduct or otherwise, but only through the application of the provisions of this Schedule 7. No amendments to the Contract shall be valid unless they have been agreed in writing on behalf of the Authority and the Supplier.
- 1.3 Until such time as a change is made in accordance with this Change Control Process, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms prior to such change.
- 1.4 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant change shall be without prejudice to the rights of either party.
- 1.5 Any work undertaken by the Supplier which has not been authorised in advance by a change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Supplier.

#### **2. Procedures**

- 2.1 Discussion between the Authority and the Supplier concerning a change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this Contract by the Authority; or
  - (c) a recommendation to change this Contract by the Supplier.
- 2.2 Where a written request for an amendment is received from the Authority, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Authority within three (3) weeks of the date of the request.
- 2.3 A recommendation to amend this Contract by the Supplier shall be submitted directly to the Authority in the form of two (2) copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three (3) weeks.
- 2.4 Each Change Control Note shall be in the form set out below.
- 2.5 For each Change Control Note submitted by the Supplier, the Authority shall within the period of the validity of the Change Control Note:
  - (a) allocate a sequential number to the Change Control Note; and

(b) evaluate the Change Control Note and, as appropriate:

(i) request further information; or

(ii) arrange for two (2) copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or

(iii) notify the Supplier of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this Contract.

2.7 The final decision as to whether to accept or reject a Change Control Note will rest with the Authority provided that the Authority will act reasonably and in good faith when making such determination and decision.

Any changes to this Contract, including to the Services, shall be recorded, and agreed in the Change Control Notification form detailed below:

**DN Number:**

<b>Title of Change</b>	
<b>Service Line</b>	
<b>Operations Lead</b>	
<b>HEE originator</b>	

**Change Control Notice (CCN to the following agreement:**

Agreement name		Date of Agreement
Date Change Requested	Date CCN Raised	Expiry date of CCN

Contact Information for the proposed change	
Originator	Other Party
<b>Name:</b>	<b>Name:</b>
<b>Company:</b>	<b>Company:</b>
<b>Telephone:</b>	<b>Telephone:</b>
<b>Email:</b>	<b>Email:</b>

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**Clauses and Schedules affected**

NHS Terms and Conditions for the Provision of Services (Contract Version) (January 2018)

**Associated Change Control Notices**

<b>DN No .</b>	<b>Name of Agreement</b>	<b>Date of Agreement</b>

**Reason for change**

--

**Description of Change**

--

**Changes to contract charges and revised payment schedules**

--

**Price to implement change**

--

**Impact of change on other agreement provisions**

--

**Timetable for implementation**

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Acceptance	
<b>Signed for and on behalf of:</b> Health Education England	<b>Signed:</b>  <b>Print Name:</b>  <b>Title:</b>  <b>Date:</b>
<b>Signed for and on behalf of:</b>	<b>Signed:</b>  <b>Print name:</b>  <b>Title:</b>  <b>Date:</b>

