

NHS TERMS AND CONDITIONS FOR THE PROVISION OF LEAD EMPLOYER SERVICE

The Authority	Health Education England, 3 Piccadilly Place, Manchester, M1 3BN
The Supplier	St Helens & Knowsley Teaching Hospitals NHS Trust, WHISTON HOSPITAL, WARRINGTON ROAD, PRESCOT, MERSEYSIDE, L35 5DR
Date	30/09/2022
Type of Services	Health Education England North West The provision of a single Lead Employer Service for doctors and dentists in postgraduate training in the area covered by HEE NW as set out in the service specification.

Background to the Contract

- (A) The Authority is the national leadership organisation which exists to support the delivery of excellent healthcare and health improvement to the patients and public of England by ensuring that the workforce of today and tomorrow has the right numbers, skills, values and behaviours, at the right time and in the right place.
- (B) One of the responsibilities of the Authority is the organisation, management and quality assurance of postgraduate training to doctors and dentists in regulatory (General Medical Council or General Dental Council) approved training posts.
- (C) When trainees are appointed to a training programme either through a national application and appointment process or local recruitment exercise, they need to be employed to undertake their role. Since 1997 the North West has operated a lead employer model to remove the need for a trainee to change employer and alleviate the duplication of additional employment checks. It has the added benefit of developing expertise in human resources management services, aligning with other streamlining programmes and ensuring the provision of a single employment framework across what is now a single PGMDE function.
- (D) In providing the Services, the key responsibilities of the Supplier, as more fully described in this Contract, are:
- Employment checks – to undertake the necessary employment checks required to meet legal requirements, NHS Employers guidelines and any specific local requirements;
 - Contractual - issuing and managing appropriate contracts to meet the requirements of employment legislation. Management of the apprenticeship levy on behalf of all host trusts;
 - Guardian of Safe Working responsibilities for GP Practices and overarching Guardian of Safe Working for host trusts;

- Employment Issues – (e.g. statutory leave, employee health and wellbeing, and disciplinary issues – this is not an exhaustive list); and
 - Payroll and Recharge – management of the payroll function for the employees of the Supplier and recharging arrangements to each host training organisation.
- (E) The Authority carried out a procurement exercise to identify a supplier of the Services and has selected the Supplier as its preferred supplier.
- (F) This Contract sets out the terms on which the Supplier will deliver lead employer services.
- (G) The Contract also sets out the specific obligations and responsibilities that will be performed by both the Authority and the Trust (being one of 37 host organisations who, collectively, are the principal beneficiaries and funders of the Services) in relation to the Supplier’s provision of the Services.

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

The Supplier shall supply to the Authority, and the Authority shall receive and make certain payments for, the Services on the terms of this Contract. The Trust also agrees to perform the obligations and responsibilities allocated to it within the Contract (including, without limitation, those relating to its own payment obligations for the provision of the Services).

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

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations
Schedule 5	Specification and Tender Response Document
Schedule 6	Commercial Schedule
Schedule 7	Staff Transfer
Schedule 8	Expert Determination
Schedule 9	Data Protection Protocol
Schedule 10	Change Control Process
Schedule 11	Host Organisation Obligations
Schedule 12	Authority’s Obligations
Schedule 13	Implementation Plan

Signed by the authorised representative of THE AUTHORITY

Name:	██████████	THE AUTHORITY
Position:	██████████	Signature: ██████████

Signed by the authorised representative of THE SUPPLIER

Name:	██████████	THE SUPPLIER
Position:	██████████	Signature: ██████████

Signed by the authorised representative of THE TRUST

Name:		THE TRUST
Position:		Signature:

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 24 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 three years from the Actual Services Commencement Date.
- 2.2 There will be a mobilisation period which will commence as soon as the contract is signed, the Commencement Date, which is expected to be in July. This will allow for an appropriate time for the mobilisation period of the contract prior to the Actual Services Commencement Date.

3 Contract Managers

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

- 3.1.1 for the Authority:

██████████

- 3.1.2 for the Supplier:

██████████

4 Names and addresses for notices

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

- 4.1.1 for the Authority:

██████████

- 4.1.2 for the Supplier:

██████████

- 4.1.3 for the Trust:

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	XXXXXXXXXX	XXXXXXXXXX
2	XXXXXXXXXX	XXXXXXXXXX
3	XXXXXXXXXX	XXXXXXXXXX

For the avoidance of doubt, the Trust shall be represented by the Authority within any Dispute Resolution Procedure conducted in connection with the Contract. The Authority will defend the Trust's interests within any such procedure (in consultation with the Trust where applicable) but the Trust will not (for so long as the Authority follows the agreed governance framework implemented in respect of this arrangement) actively participate unless expressly requested by the Authority to do so.

The above provisions are without prejudice to any more specific requirements of or procedures set out within the Specification documents in respect of the resolution of disputes or claims (eg the agreed Protocol for Handling of Employment Tribunal and other Claims) which shall take precedence over the application of the general Dispute Resolution Procedure.

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 3: Information Governance Provisions;

6.1.7 Schedule 7: Staff Transfer;

- 6.1.8 Schedule 4: Definitions and Interpretations;
 - 6.1.9 the order in which all subsequent schedules, if any, appear; and
 - 6.1.10 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.
- 6.2 For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 5. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.
- 7 Application of TUPE at the commencement of the provision of Services**
- 7.1 The Parties agree that 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

- 8 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 13.
- 9 Services Commencement Date**
- 9.1 The Services Commencement Date shall be **1st October 2022** and the Long Stop Date referred to in Clause 15.5.1 of Schedule 2 shall also be **1st October 2022**.
- 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 Not Used

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
[Employer's Liability]	[]
[Public Liability]	[]
[Professional Indemnity]	[]

13 Further Authority obligations

13.1 The Authority's Obligations are set out in **Schedule 12**.

13.2 The Trust's Obligations are set out in **Schedule 11**.

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.

15 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 10**.

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 lease or licence Not Used

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

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 Monthly payment profile

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

22 Termination for convenience Not Used

22.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on **six (6) months'** written notice. Such notice shall not be served within one (1) year of the Actual Services Commencement Date.

22.2 Should the Authority terminate this Contract in accordance with Clause 22.1 of this Schedule 1, then the Authority shall pay to the Supplier the termination sum calculated in accordance with Schedule 6.

23 Right to terminate following a specified number of material breaches

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

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

23.3 For the avoidance of doubt, the Host shall not have an independent right to terminate the Contract but will be entitled to make representations to the Authority in this regard, though any final determination on such Contract termination will remain with the Authority at its sole discretion.

24 Expert Determination

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

24.2 For the avoidance of doubt, where this Clause 24 of this Schedule 1 is checked, all Disputes shall be dealt in accordance with Clause 24.1 of this Schedule 1 above and the entirety of Clause 22 of Schedule 2 shall be deemed not to apply and deleted in its entirety from this Contract.

Schedule 2

General Terms and Conditions

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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**").

- 2.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 2.3 Subject to Clause 2.4 of this Schedule 2, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 2.
- 2.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 2, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.
- 2.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 2.4 of this Schedule 2. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

3 Cooperation with third parties

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

4 Use of Authority equipment

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

damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

5 Staff and Lifescience Industry Accredited Credentialing Register

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
 - 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
 - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
 - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
 - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with

children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:

- 5.7.1 are questioned concerning their Convictions; and
 - 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
- 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2;
 - 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2; or
 - 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
- 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
 - 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
 - 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall

only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.

- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 have been met.
- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
- 5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

6 Business continuity

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the provision of the Services. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.
- 6.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 6.2.1 the criticality of this Contract to the Authority; and
- 6.2.2 the size and scope of the Supplier's business operations,
- regarding continuity of the provision of the Services during and following a Business Continuity Event.
- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier

shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

- 6.4 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.
- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

7 The Authority's obligations

- 7.1 Subject to the Supplier providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2.
- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
- 7.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.
- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.

- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
 - 8.3.2 details of any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification and Tender Response Document;
 - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Services purchased, any payments made

under this Contract, and any other information relevant to the operation of this Contract.

8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:

8.6.1 storing and analysing the management information and producing statistics; and

8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.

8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

9 Price and payment

9.1 The Contract Price shall be calculated as set out in the Commercial Schedule.

9.2 Unless otherwise stated in the Commercial Schedule the Contract Price:

9.2.1 shall be payable from the Actual Services Commencement Date;

9.2.2 shall remain fixed during the Term; and

9.2.3 is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.

9.3 Unless stated otherwise in the Commercial Schedule:

9.3.1 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or

9.3.2 where Clause 9.3.1 of this Schedule 2 does not apply, the Supplier shall invoice the Authority for Services at any time following completion of the provision of the Services in compliance with this Contract.

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 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 17.13 of this Schedule 2 and Clause 2.6 of Schedule 3 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.
- 12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
- 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
- 12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

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

13 Limitation of liability

- 13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
- 13.1.2 for fraud or fraudulent misrepresentation; or
- 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include

under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

- 13.3.1 extra costs incurred purchasing replacement or alternative services;
- 13.3.2 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
- 13.3.3 the costs of extra management time; and/or
- 13.3.4 loss of income due to an inability to provide health care services,

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

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

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

13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);

13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);

13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and

13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

13.6 Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in

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

- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 Term and termination

- 15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this

Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.

15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.6 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(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 28.1 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, 23.8; 25.2; 25.4 and 29.2 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 24.1 of this Schedule 2.
- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
- 16.6 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.7 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

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

- 17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by Law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
- 17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-contractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 17.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2, the Authority may withhold payment under Clause 9 of this Schedule 2.
- 17.4 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2.
- 17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-contractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:
- 17.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
 - 17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
 - 17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
 - 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
 - 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
 - 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or

- 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 are subject to the Data Protection Legislation, the Supplier will, and shall procure that any Sub-contractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 17.8 Having as appropriate gained permission from any Sub-contractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.
- 17.9 The Parties agree that where a Successor or the Authority provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 17.11 to Clause 17.14 of this Schedule 2 and (where relevant) the provisions of Clause 1.15 of Part D of Schedule 7 shall apply.
- 17.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-contractor as appropriate. The Supplier will, and shall procure that any Sub-contractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 17.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 17.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:
- 17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;

- 17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
 - 17.12.3 pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
 - 17.12.4 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
 - 17.12.5 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any Sub-contractor warrant that such records are accurate and up to date.
- 17.13 The Supplier will and shall procure that any Sub-contractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 17.13.1 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.12 of this Schedule 2;
 - 17.13.2 any act or omission by the Supplier or Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
 - 17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;
 - 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or Sub-contractor (including without limitation all wages, 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;
 - 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and

- 17.13.6 any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Authority's failure to comply with regulation 13(4) of TUPE.
- 17.14 The Supplier will, or shall procure that any Sub-contractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 17.15 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 17.16.1 the Authority will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
 - 17.16.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by the Authority or Successor;
 - 17.16.3 if such offer of employment is accepted, the Authority will, or shall procure that the Successor will, immediately release the person from their employment; and
 - 17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

18 Complaints

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

19 Sustainable development

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

20 Electronic services information

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 20.2 The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.
- 20.3 If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.
- 20.5 The Authority may reproduce for its sole use the Services Information provided by the Supplier in the Authority's services catalogue from time to time which may be made

available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.

- 20.6 Before any publication of the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Contract.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

21 Change management

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next levels until all level have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of

the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.

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

23 Force majeure

- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;

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

24 Records retention and right of audit

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

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

25 Conflicts of interest and the prevention of fraud

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

- 25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

26 Equality and human rights

- 26.1 The Supplier shall:
- 26.1.1 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
 - 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
 - 26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.
- 26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

27 Notice

- 27.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
- 27.2 A notice shall be treated as having been received:

- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
- 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

28 Assignment, novation and Sub-contracting

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 2, the Supplier may assign to a third party (“**Assignee**”) the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 shall be subject to:
 - 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.8 of this Schedule 2;
 - 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
 - 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee’s contact information and bank account details to which the Authority shall make payment;
 - 28.2.4 the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
 - 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority’s obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform

the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.

28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:

28.4.1 contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such Sub-contracting;

28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;

28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);

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

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

28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;

28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;

28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and

28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.

28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:

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

29 **Prohibited Acts**

- 29.1 The Supplier warrants and represents that:
- 29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
 - (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

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

30 General

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

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

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

Schedule 3

Information and Data Provisions

1 Confidentiality

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

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

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

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

2 Data protection

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable

each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.

- 2.2 Where the Supplier is Processing Personal Data 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.

Schedule 4

Definitions and Interpretations

1 Definitions

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

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

“Codes of Practice”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Commencement Date”	means the date of this Contract;
“Commercial Schedule”	means the document set out at Schedule 6;
“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is: <ul style="list-style-type: none"> (a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;
“Contract”	means the form of contract at the front of this document and all schedules attached to the form of contract;
“Contracting Authority”	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
“Controller”	shall have the same meaning as set out in the GDPR;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“Cost Increase”	shall have the meaning given to the term in Clause 1.3.2 of Part D of Schedule 7;

“Cost Saving”	shall have the meaning given to the term in Clause 1.3.4 of Part D of Schedule 7;
“Data Protection Legislation”	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;
“Direction Letter”	means an NHS Pensions Direction letter issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHS Pension Scheme in respect of the Eligible Employees;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 or, where Clause 24 of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in Schedule 8. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of Schedule 2;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance

	Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
“Eligible Employees”	<p>means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the Authority (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services.</p> <p>For the avoidance of doubt a member of Staff who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an “open” Direction Letter or other NHS Pension Scheme “access” facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection under Part D of Schedule 7;</p>
“Employee Transfer Date”	means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor);
“Employment Liabilities”	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“eProcurement Guidance”	<p>means the NHS eProcurement Strategy available via:</p> <p>http://www.gov.uk/government/collections/nhs-procurement</p> <p>together with any further Guidance issued by the Department of Health in connection with it;</p>
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term

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

	<p>qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
“Fraud”	<p>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;</p>
GDPR	<p>means the General Data Protection Regulation (Regulation (EU) 2016/679);</p>
“General Anti-Abuse Rule”	<p>means</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
“Good Industry Practice”	<p>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;</p>
“Guidance”	<p>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;</p>
“Halifax Abuse Principle”	<p>means the principle explained in the CJEU Case C-255/02 Halifax and others;</p>
"HM Government Cyber Essentials Scheme"	<p>means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview;</p>
“Implementation Plan”	<p>means the implementation plan, if any, referred to in the Key Provisions;</p>

“Implementation Requirements”	means the Authority’s implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
“Interested Party”	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
“Key Provisions”	means the key provisions set out in Schedule 1;
“KPI”	means the key performance indicators as set out in Schedule 5;
“Law”	<p>means any applicable legal requirements including, without limitation,:</p> <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
“Long Stop Date”	means the date, if any, specified in the Key Provisions;

“Losses”	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law;
“Measures”	means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE;
“NHS”	means the National Health Service;
“NHS Body”	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
“NHS Pensions”	means NHS Pensions (being a division of the NHS Business Services Authority) acting on behalf of the Secretary of State as the administrators of the NHS Pension Scheme or such other body as may from time to time be responsible for relevant administrative functions of the NHS Pension Scheme, including the Pensions Division of the NHS Business Services Authority;
“NHS Pension Scheme”	means the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
“NHS Pension Scheme Arrears”	means any failure on the part of the Supplier or any Sub-contractor to pay employer’s contributions or deduct and pay across employee’s contributions to the NHS Pension Scheme or meet any other financial obligations under the NHS Pension Scheme or any Direction Letter in respect of the Eligible Employees;
"NHS Pension Scheme Regulations"	means, as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) and any subsequent regulations made in respect of the NHS Pension Scheme, each as amended from time to time;
“Occasion of Tax Non-Compliance”	means: (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been,

	<p>notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Payment Date”	means twenty (20) Business Days after the last of the conditions in Clause 1.7 of Part D of Schedule 7 has been satisfied;
“Pension Benefits”	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme;
“Personal Data”	shall have the same meaning as set out in the GDPR;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Premature Retirement Rights”	rights to which any Transferred Staff (had they remained in the employment of an NHS Body or other employer which participates automatically in the NHS Pension Scheme) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
“Premises and Locations”	has the meaning given under Clause 2.1 of Schedule 2;
“Process”	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the GDPR;
“Purchase Order”	means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2;

“Services”	means the services set out in this Contract (including, without limitation, Schedule 5 which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date;
“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's services catalogue from time to time;
“Specification and Tender Response Document”	means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Step In Rights”	means the step in rights, if any, referred to in the Key Provisions;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
Sub-contractor	means a party to a Sub-contract other than the Supplier;
“Subsequent Transfer Date”	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
“Subsequent Transferring Employees”	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
“Successor”	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
“Supplier”	means the supplier named on the form of Contract on the first page;

“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Supplier Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
“Term”	means the term as set out in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Third Party”	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2;
“Third Party Employees”	means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
“Transfer Amount”	an amount paid in accordance with Clause 1.7 of Part D of Schedule 7 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause 1.6 of Part D of Schedule 7 in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or a Third Party’s Broadly Comparable scheme and elected to transfer them to the Supplier’s Broadly Comparable scheme or the NHS Pension Scheme under the Transfer Option;
“Transfer Date”	means the Actual Services Commencement Date;
“Transfer Option”	an option given to each Eligible Employee with either: (a) accrued rights in the NHS Pension Scheme; or (b) accrued rights in a Broadly Comparable scheme, as at the Employee Transfer Date, to transfer those rights to the Supplier’s (or its Sub-contractor’s) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes);

“Transfer Option Deadline”	the first Business Day to fall at least three (3) months after the notice detailing the Transfer Option has been sent to each Eligible Employee;
“Transferred Staff”	means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a Sub-contractor by operation of TUPE, the Cabinet Office Statement or for any other reasons, as a result of the award of this Contract;
“Transferring Employees”	means all those employees, if any, assigned by the Authority to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

- 1.10 Where there is a conflict between the Supplier's responses to the Authority's requirements (the Supplier's responses being set out in Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 1.13 Any guidance notes in grey text do not form part of this Contract.
- 1.14 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.15 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

Schedule 5

Specification

Background to Health Education England (working across the North West)

Health Education England working across the North West (HEE NW) is a Local Office of Health Education England (HEE). HEE is the national leadership organisation which exists to support the delivery of excellent healthcare and health improvement to the patients and public of England by ensuring that the workforce of today and tomorrow has the right numbers, skills, values and behaviours, at the right time and in the right place. Originally established as a Special Health Authority in 2012, HEE is now a Non-Departmental Public Body (NDPB), as of 1 April 2015, under the provisions of the Care Act 2014.

HEE has thirteen local offices across England which are responsible for the training and education of NHS staff, both clinical and non-clinical, within their area. HEE NW aims to provide high quality education and training to all health professionals including the next generation of doctors, dentists and nurses across the area. To do this effectively and to ensure the best possible outcomes and experience for patients and people, we work closely with local healthcare providers and key stakeholders so that our work is driven by patient needs.

HEE NW is conducting this procurement using a process akin to the open procedure in accordance with the requirements of the Public Contracts Regulations 2015 for the purpose of procuring the requirements set out in the Specification.

Background to Requirement

HEE NW would like to invite potential service providers to respond to the Invitation to Tender (ITT) for the provision of a single Lead Employer Service for doctors and dentists in postgraduate training in the area covered by HEE NW as set out in the service specification.

This document sets out the requirements and the criteria to be used in the evaluation and provides information for the bidders. The information provided in the specification will help bidders to evaluate their suitability and assess if the bidder meets HEE NW specific requirements. HEE NW reserves the right not to award the contract.

Service Overview

One of the responsibilities of HEE NW is the organisation, management and quality management of postgraduate training to doctors and dentists in regulatory (General Medical Council or General Dental Council) approved training posts.

HEE NW is currently responsible for approximately 8250 medical and dental trainees as detailed below and can increase year on year in line with national expansion:

- Foundation Programme (FP) – this is a two-year medical programme which currently has approximately 1684 trainees. Trainees are predominantly based in one trust within the region for their two-year period with usually one placement in a community setting (e.g., GP practice or Mental Health Trust). These doctors are currently employed by Trusts and excluded from this contract.

[NHS Terms and Conditions for the Provision of Services \(Contract Version\) \(January 2018\)](#)

- General Practice (GP) – this is a three-year medical programme which currently has approximately 1996 trainees. Trainees usually spend approximately 50% of their time in a general practice placement increasing to 66% by 2023 (there are currently over 500 approved training practices) and remainder of their time in an acute or mental health hospital placement; each placement usually lasts six months.
- Specialty Training – there are 82 specialties which are grouped into 13 Schools which currently have approximately 4218 trainees in total. The specialty programmes range from two to eight years; during the training programme trainees rotate to several of the 37 acute or mental health trusts/hospices across the North West (plus Local Authorities and Public Health England in the case of Public Health trainees). The frequency of the rotation is determined by the specific needs of that specialty and determined by clinicians with expertise in that specialty who undertake a Training Programme Director (TPD) role on behalf of HEE NW.
- Dental Core & Specialty Training – there are a variety of dental programmes which range between 2 and 5 years which currently include approximately 260 trainees. Depending on the training programme placements range between dental practices, local Trusts and primary care dental services organisations.
- Dental Foundation Training (DFT) is defined as “a relevant period (normally 12 months at full time) of employment (fully funded by the NHS) during which a dental practitioner is employed under a contract of service by an approved training practice to provide a wide range of dental care and treatment” (COPDEND -UK). Full time Foundation Dentists (FDs) will work in the practice for 35 hours per week under the national Dental Foundation Training contract, this includes clinical time, tutorials, and day release courses. These approximately 122 trainees are part of a nationally procured service and excluded from this contract.
- The current approximate number of trainees included within this specification is 6474, and this number is subject to annual fluctuations in line with nationally agreed expansion and distribution of training places.

When trainees are appointed to a training programme (either through a national application and appointment process or local recruitment exercise) they must be employed to undertake their role. The North West operates a Lead Employer model to remove the need for a trainee to change employer and alleviate the duplication of additional employment checks. It has the added benefit of developing expertise in human resources management services, aligning with other streamlining programmes and ensuring the provision of a single employment framework.

The Lead Employer service is for the provision of services to Specialty Trainees (funded by Host Organisations (except for Public Health training which will be funded by HEE)), General Practice Trainees (funded by HEE) and Dental Core & Specialty Trainees.

The Contract

The contract will be awarded in mid-July 2022, with a proposed commencement date of 1st October 2022, and the length of the contract will be three years.

The service contract is included within this ITT and bidders should ensure that they have agreed to the terms and conditions. They will be reviewed annually, and any changes shall be agreed by both parties. Bidders will be required to sign up to the contract requirements as laid out in this ITT.

Any reporting as per the contract must be in accordance with the requirements of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, the policy and procedures of the successful Lead Employer and HEE and/or any other appropriate legislation.

In addition, the Lead Employer, collaboratively with HEE NW, will agree a pre-defined set of Key Performance Indicators (KPIs) Annex 5. The details and reporting intervals of these KPIs will be agreed between both parties once agreed to determine the level of success as the contract progresses.

Underlying Principles of the Lead Employer Service

This commissioning ambition for a Lead Employer builds upon the recommendations that arise from the national Enabling Staff Movement Programme (ESM) which is jointly led by Health Education England, NHS England, and NHS Improvement (NHSEI). The aim of the ESM programme is to improve the induction and rotation process for all dentists and doctors in training, enabling rotations between NHS and non-NHS organisations to be efficient and to avoid unnecessary duplication of employment, deployment, and induction processes.

The following principles around this programme have been agreed and the expectation is that any successful Lead Employer(s) will be expected to be involved with the Enabling Staff Movement Programme and agree that any outcomes of the programme will be embedded within their service as required by HEE and NHSEI:

- Embed and respond to national work.
- Each trainee will have a single employer during their training programme.
- All payments made via payroll to trainees will be accurate and on time.
- Lead Employer(s) will implement employment contractual arrangements, operating to consistent statutory, regulatory and guidance standards with minimal variation.
- Cash will flow seamlessly through the system on a neutral basis.
- Any cost improvements achieved are for the benefit and interest of the NHS.
- Trainee information system and employment staff record system is compatible with HEE NW and NHS systems.
- All current and future interoperable technology will be used to agreed standards and specification.
- Effective stakeholder input to and influence of any procurement processes.
- Agreement of contracts which deliver demonstrable value for money.

- Clear, open, and transparent service specifications and quality standards.
- Effective stakeholder management of contract management processes.
- Consistent employment arrangements for doctors in training regardless of where individual trainees are working.
- Strong engagement and communication between Lead Employers, Host Organisations and the Postgraduate Dean (PGD) as Responsible Officer (RO), where there are performance issues with individual trainees that should be managed effectively, in a well-defined and consistent manner aligned to the requirements of any regulator.
- Aligned processes and ways of working with HEE Programme Support Teams – particularly accuracy and timeliness of rotation information to ensure compliance with the Code of Practice.
- Simple and transparent processes for recharging arrangements for trainee salaries, Lead Employer contract costs and other finance charges including clarity regarding the Apprenticeship Levy and any implications for Lead Employers and Host Organisations.
- Minimising disruption but not at the expense of best model implementation.
- Maximising technology to improve access to and efficiency of the Lead Employer service.
- Flexible and responsive arrangements for access to and charging for Occupational Health (OH) services which may involve procuring separately for OH services.
- Using the process as an opportunity to drive up standards and deliver best practice.

Key Responsibilities

The key responsibilities of the Lead Employer will be:

- Pre-employment Checks – to undertake the necessary employment checks required to meet legal requirements, NHS Employers guidelines and any specific local requirements, this would include Disclosure and Barring Service (DBS) and references
- Employment and Contractual – to directly employ the trainees and to issue appropriate contracts to meet the requirements of employment legislation. Ensuring Doctors/Dentists in Training (DiT) compliance of statutory and mandatory training. Management of the Apprenticeship Levy on behalf of all host trusts. Monitoring compliance with working time directives, including Guardian of Safe Working responsibilities for trainees working outside a trust setting
- Occupational Health – ensure trainees are fit to work and carry out all screening monitoring and immunisations relevant to the DiT role

- Management – the day-to-day management of employment issues (e.g., statutory leave, employee health and wellbeing, performance and disciplinary issues, grievances, etc – this is not an exhaustive list)
- Payroll and Recharge – management of the payroll function for the employees of the Lead Employer and recharging arrangements to each host organisation and HEE for employee pay and other costs
- Trainee Employment Experience & Wellbeing - to be responsible for the trainee employee experience and wellbeing at work, providing appropriate employment advice and guidance and include access to Occupational Health Services, if required

It is expected that the successful bidder will work with HEE NW, namely the Programme & Contract Manager, PGD and Postgraduate Schools and the existing Lead Employer Trust following the award of the contract until the contract commencement date, at the bidder's expense, to ensure an effective transition from one organisation to the other. This includes effective transfer of information between organisations at entry and exit and robust record keeping throughout the duration of the contract. The successful bidder will also need to carry out a robust review of the current Lead Employer's policies and guidance documents to highlight the differences between the employers' policies to both HEE NW and DiT when moving contract from one organisation to another.

The successful bidder will ensure that a high level of service is provided throughout the duration of the contract by ensuring their own employees have a robust Induction and thorough training plan when coming into the organisation and that when LE staff move roles or leave the organisation there is a thorough handover process carried out.

Arrangements that sit outside the Lead Employer obligations

The following responsibilities and duties sit outside the Lead Employer Service Specification:

- Recruitment to training posts (with the exception of pre-employment responsibilities outlined in the service specification below)
- Training programme design, development, and delivery
- Rotation planning
- Management and allocation of Inter-deanery transfers
- Progression assessments (ARCPs)
- Faculty recruitment & development
- Careers advice
- Trainee educational support and learning needs assessment need
- Approvals for Out of Programme (OOP) and Less than Full Time Training (LTFT)
- Policy, guidance, and information related to training programme management

Transfer of Undertakings Protection of Employment Regulations (TUPE)

The attention of Tenderers is drawn to the provisions of the European Acquired Rights Directive EC77/187 and TUPE. TUPE may apply to the transfer of the contract from the present supplier(s) to the new one, giving the present supplier's staff (and possibly also staff employed by any present sub-contractors) the right to transfer to the employment of the successful tenderer on the same terms and conditions. The above does not apply to the self-employed.

To assist in this process HEE NW is seeking workforce details from the present supplier. HEE NW provides no warranty as to the accuracy of any such information supplied and accepts no liability for any inaccuracies that are contained within it or for any omissions from such information. Tenderers must form their own view.

This information will be supplied to tenderers on request on the basis that it is treated as strictly confidential; that it is not disclosed, except to such people within the tenderer's organisation and to such extent as is strictly necessary for the preparation of the tender; and that it is not used for any other purpose. By requesting this information from HEE NW via the accompanying template attached to the ITT, a tenderer will be deemed to have agreed to abide by these obligations of confidentiality.

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

NB: In relation to the trainees employed by the current Lead Employer Service, there is an expectation that they will transfer to the new provider under TUPE regulations.

SINGLE LEAD EMPLOYER SERVICE IN THE NORTH WEST SERVICE SPECIFICATION

It is acknowledged that the ability of the Supplier to fully meet the specification and the associated Quality Standards and Key Performance Indicators (as set out in Annex 5) may be dependent upon either the Host Organisation or the Authority meeting their duties and obligations as set out in Schedules 11 and 12 respectively.

A. Pre-Employment Responsibilities

1. Once offers of training have been accepted, and names of successful applicants have been received via SharePoint, send out conditional offers of employment within agreed timeframes.
2. Ensure that all required pre-employment checks are carried out in line with current NHS Employment Check Standards and Performers list requirements prior to any trainee commencing in post including:
 - Verification of identity
 - Right to work
 - Enhanced criminal records background report including a check of adult and children Disclosure and Barring Service (DBS) barred lists
 - Obtaining appropriate medical clearance in accordance with NHS Code of Practice
 - Professional registration and qualification
 - Confirmation of acceptable fitness to practice declaration
 - Confirmation that conditions of deployment are met
 - Occupational Health clearance/fitness to work
3. Obtain and check standard national structured clinical references and application forms which have been uploaded to Oriel and seek, obtain, and check outstanding employment and character references.
4. Request pre-hire Inter Authority Transfer (AIT) details via the NHS Electronic Staff Record (ESR) applicant status as per the Enabling Staff Movement Programmes; actioning post-hire in ESR employee status for confirmation of previous employment and when returned, establishing the correct salary, taking into consideration salary pay protection issues.
5. Notify host organisations of trainee start dates and of trainees that are unable to start as planned, providing exception reports as determined by HEE NW detailing the reason for any delayed start dates. Also, notify the relevant specialty schools at HEE NW of any delayed start dates of trainees within their remit.
6. Notify host organisations of the basic salary payable to the trainee, including any pay protection to which they are entitled; and obtain from the host organisations the pay band supplement applicable to the individual on 2002 terms and conditions of service and Generic Work Schedule pay information for individuals on 2016 terms and conditions in the placement in accordance with HEE NW / national guidance.
7. Ensure appropriate 'on-boarding' of trainees before they start via the TIS/ESR Interface, including the provision of 'Starter Pack' information at least eight weeks prior to their

start date in line with the Code of Practice for the Provision of Information for Postgraduate Medical Training ('The Code of Practice).

8. Where the Lead Employer is notified by HEE NW of any 'Inter Deanery Transfer' trainee (including exceptional Dean to Dean Transfers) the Lead Employer is to ensure that all required pre-employment checks are carried out in line with current NHS Employment Check Standards prior to commencement in post and ensure bullet points 5 to 7 are undertaken as set out above.
9. For trainees transferring on health grounds, ensure that a management referral is made to OH and manage reasonable adjustments for trainees as required.

B. Contractual Employment

It is a requirement of the Lead Employer Service that all doctors in training are employed by a single legal entity.

1. Ensure that each trainee has a personnel file/employee record.
2. Ensure that relevant HR policies, procedures and guidelines are available to trainees either electronically or on an appropriate website.
3. Ensure all trainee details are entered on ESR, utilising any technology/IT software to maximise the benefits of 'interfaces'.
4. Issue contracts of employment to new starters by their first day of employment.
5. Ensure a process is in place whereby trainees are notified with either a Work Schedule (2016 Terms & Conditions (TCS)) or for the minimal number of trainees who remain on the 2002 TCS banding information, as applicable, at least 8 weeks prior to the commencement of each placement in line with the Code of Practice.
6. Ensure the nationally issued contract of employment templates are used, specifying any locally agreed terms and conditions.
7. Issue amendments to contract following receipt of written instructions from HEE NW (including OOP & LTFT changes).

C. Employee Services

1. Handle all terms and conditions of service and contract enquiries in accordance with the relevant policies and schemes of delegation.
2. Ensure appropriate access to ESR self-service for all trainees for appropriate management and administration of annual leave requests and changes to personal details, etc.
3. Process requests for maternity, paternity, adoption leave and any special leave in accordance with the relevant policy and scheme of delegation:

- Notify HEE NW (including the SuppoRTT team) and host organisation of a trainee's request to take maternity, paternity or adoption leave and the relevant dates of absence.
 - Notify HEE NW (including the SuppoRTT team) and the host organisation if the trainee's date of return changes.
 - Continue to action rotation details for trainees whilst on leave.
 - Notify Host Organisation of any approvals received from HEE NW in respect of OOP or LTFT applications.
 - Ensure trainees are supported in their return to training.
4. Maintain trainee personnel and payroll information on ESR and ensure that relevant information, records, and documentation held for Trainee personnel and payroll purposes are accurately maintained and validated, utilising any available interface with other systems (e.g., Trainee information System - TIS) through monthly reconciliation reports and payroll information.
 5. Ensure that trainee salary scales including work schedules and/or banding are correct at the time of issuing the contract of employment and upon subsequent rotation in line with the timelines set out in Section F and following receipt of information received by host organisations.
 6. Maintain accurate records for the purposes of employment law and its equality duties and to maintain an accurate minimum dataset.
 7. Ensure all requirements are met for capturing and publishing data to meet the requirements of the Equality Act 2010 and the public sector equality duty.
 8. Ensure all trainees employed are compliant with their requirements to maintain annual registration with the relevant regulator (GMC/GDC).
 9. Ensure all trainees satisfy current DBS Right to Work requirements.
 10. Continue to manage and employ trainees when acting up as a consultant (AuC) in the final year of their training.
 11. For GP trainees only: provide information for GP trainees to be included on the Performers List, including confirmation of all pre-employment checks and other information relevant to fitness to practice.

D. Resignations

1. Acknowledge individual trainee resignations in writing, copying in the host organisation for information and forwarding them to HEE NW for the final date of employment to be agreed in line with notice period/early resignation process arrangements.
2. On receipt of confirmation date of termination from HEE NW, issue acceptance letters to the trainee, ensuring copies are forwarded to HEE NW and the host organisation for their information.
3. When calculating final salary payments, take into account any annual leave entitlement that a trainee might have outstanding on termination and approve for payment and recharge to the host organisation.

4. Process any requests by HEE NW to extend contracts of employment, notifying the host organisation as appropriate.
5. Notify host organisations of trainees' Certificate of Completion of Training (CCT) dates if these will impact on rotation placements once these have been confirmed.
6. Process any applications for access to Period of Grace (PoG) at the completion of training in line with national policy and locally agreed procedure, notifying the host organisation as appropriate where this impacts upon rotation arrangements.
7. Process any requests, whereby following the termination of their employment, trainees request copies of payslips.

E. Policy Management

1. Maintain a single suite of employment policies and procedures for all trainees (subject to TUPE requirements) which meet all national guidelines and legislative requirements – a current list of policies is attached at Annex 1.
2. Ensure that any changes to these policies are negotiated, or consulted upon if non-contractual, with trainee representatives and recognised trade unions through a single Joint Local Negotiating Committee.
3. Ensure all policies are made available to stakeholders, i.e., trainees, HEE NW, and host organisations electronically (via a website).

F. Rotations

Ensure that appropriate provision of placement and rotation information is provided to trainees and host organisations in line with the Code of Practice and the HEE NW Allocations and Rotation Process, maximising the use of technology where this is available:

1. On receipt of rotational information from HEE NW 14 weeks in advance of the rotation start date, notify each host organisation of the expected trainees in each specialty a minimum of 12 weeks in advance of the rotation start date.
2. On receipt of rotational information from HEE NW 14 weeks in advance of the rotation start date, issue rotation placement details to trainees giving at least 12 weeks' notice of the rotation start date.
3. Provide updated rotational placement information to host organisations as required providing reasons for changes (e.g., LTFT/OOP arrangements being confirmed by HEE NW).
4. Ensure a process is in place with host organisations whereby trainees are issued with work schedules at least 8 weeks in advance of their rotation date.
5. Update pay banding/work schedule payments to be made to trainees following notification from host organisations to the Lead Employer of any pay band/work schedule changes at least 8 weeks in advance of the rotation start date.

6. Provide HEE NW and all host organisations with a monthly report setting out compliance with the issuing of rotation placement information in line with Code of Practice standards. A template is set out at Annex 2.
7. Ensure that the provision of rotation outputs containing trainee identifiable information to host organisations is managed in line with current data protection legislation, with host organisations only receiving information relating to the trainees they are hosting, utilising technology where possible.

G. Management of Attendance

1. Ensure accurate monitoring and recording of all sickness absence through ESR self-service for trainees in accordance with the relevant policy and process. Working with host organisation to ensure absence is reported in a timely manner.
2. Ensure host organisations have access to management information relating to trainees' absence prior to commencement of new rotation setting out triggers reached, restrictions and reasonable adjustments.
3. Ensure appropriate management of both short and long-term sickness absence in accordance with the relevant policy and procedure through the provision of Lead Employer Occupational Health service and through liaison with host organisations.
4. Continue to action rotation details for trainees whilst they are on sick leave.
5. Liaise with HEE NW and the host organisation regarding what action, if any, to be taken in relation to trainees who have been on sickness absence/other unscheduled leave for 2 weeks or more (e.g., days taken as a 2 working weeks (or more) block or days adding up to 2 working weeks (or more) taken over a 12-month period of time).
6. Provide HEE NW (including the SuppoRTT team) and host organisations with a monthly report of trainees (subject to information being available) who have been on sickness absence/other unscheduled leave, by name, host placement, programme, specialty, duration of unscheduled leave and action taken.
7. Manage requests for reasonable adjustments, including specialist equipment, based on recommendations from OH and agreed workplace assessments to enable trainees to undertake their roles effectively, liaising as required with both the host organisation and HEE NW.

H. Handling Concerns about the Conduct, Performance and Health of Trainees

Concerns about the conduct, performance, and health of trainees must be handled in accordance with the relevant HEE and Lead Employer policies and processes:

1. Manage trainees where there are concerns in a pro-active way. This should include trainees who have caused concern to their educational and clinical supervisors about the ability to carry out their duties, which has required unusual measures which involves anything outside the normal trainer-trainee processes where the TPD has been called

upon to take or recommend action. This will include access to specialist OH advice as appropriate in line with the agreed policy (see section Q).

2. Provide senior HR advice to HEE NW and the host organisation regarding the management of trainees where there are causes for concern and ensure that appropriate senior HR, and the Lead Employer Medical Director contribute to the HEE NW Doctors and Dentists Review Group (DDRG) and Responsible Officer (RO) Advisory Group (ROAG), which is the designated forum for multi-professional liaison between the Lead Employer and PGD as Responsible Officer (RO) to advise, discuss and manage HEE NW Trainees Requiring Enhanced Support (TRES).
3. Advise the PGD and/or the host organisation (as appropriate) who will be appointed to lead/case manage any investigation deemed necessary.
4. Ensure that the host organisation appoints an investigating officer if requested.
5. Ensure that any investigator, case manager or disciplinary panel member is appropriately trained.
6. Provide a HR representative to advise any Annual Review of Competence Progression Panel (ARCP), via written report, video conference or in attendance (as agreed appropriate) where an outcome of additional training or release from the training programme is anticipated (provided agreed timescales for notice are given). This is to ensure adequate support has been and is provided to the trainee and that ARCP panels have sufficient information about all mitigating circumstances which might inform progression assessments. Ensure the provision of advice to the panel regarding appropriate documentation and record keeping in relation to these issues.
7. Ensure a senior HR representative is present at all ARCP appeal panels, liaising with the Foundation School re appropriate employer representation in the case of Foundation Programme trainees.
8. Ensure that the PGD as Responsible Officer (RO) is consulted (pro-actively) regarding any decision to restrict the practice of a trainee or to exclude a trainee from work, liaising as appropriate with the host organisation.
9. Ensure the host organisation Medical Director (MD)/Director of Medical Education (DME) is informed about any decision to restrict the practice of/exclude a trainee who is working in their host organisation.

I. Grievances, Bullying & Harassment, and other Disputes

The Lead Employer holds employment responsibility for the trainees and will be responsible for all employment related issues including:

1. All grievances, bullying and harassment complaints and other disputes must be handled in accordance with the relevant policy.
2. Advise the PGD and/or the host organisation as required who will be appointed to lead and/or be involved in any investigation deemed necessary. Any investigator or grievance panel member must be appropriately trained.

3. Inform the PGD, via monthly Trainees Requiring Enhanced Support (TRES) reports of all grievances, bullying and harassment claims so that any impact on education and training can be considered.

J. Employment and Other Legal Claims

1. Where employment or other legal claims are submitted by trainees, ensure that the Protocol for Handling Employment Tribunal and other Legal Claims is followed as set out in Annex 3.

K. Medical Director (MD)

The Lead Employer will have a single named MD who will be responsible for:

1. Overseeing compliance with and progress of Maintaining High Professional Standards (MHPS) cases
 - Liaising with the PGD about any trainees of concern requiring enhanced support (TRES)
 - Attending monthly DDRG meetings (as requested)
 - Ensuring appropriately trained case management provision for MHPS Cases liaising with NHS Resolution, Practitioner Performance Advice (PPA) (formerly NCAS), GMC, PGD and Host Organisations as appropriate.
 - Attending HEE & GMC liaison meetings (as requested) and DDRG meetings as required.
2. Ensuring the Lead Employer has a Guardian of Safe Working appointed for all trainees (see section L below).

L. Guardian of Safe Working (“Guardian”)

The Lead Employer will have named Guardian(s) of Safe Working who will be responsible for:

1. Adhering to the requirements set out at Schedule 6 of Terms and Conditions of Service for Doctors & Dentists in Training 2016.
2. Working with host organisations to ensure that the Guardian role is established in their organisation.
3. Providing a Memorandum of Understanding which sets out responsibilities between the Lead Employer and the Host organisation.
4. Providing an annual report to the PGD by 31 July each year as set out in the requirements.
5. Ensuring that appropriate systems are in place to enable trainees to “exception report” as per the requirements.

6. Ensuring that appropriate management of the payment and recharging of penalties is in place for breaches of the requirements when required.

M. Revalidation

1. The PGD of HEE NW will be the RO for all doctors in training within the HEE NW region.
2. The Lead Employer and host organisations will comply with national requirements and HEE policies and processes to input data on the revalidation reporting system, upon which HEE may be required to act when assessing continuing fitness to practise which informs the revalidation recommendation by the PGD as RO.

N. Relocation and Associated Expenses

1. Provide advice on the HEE National Relocation and Travel Expenses framework and the Pennine Removal & Associated Expenses Policy and Procedure.
2. Manage applications for relocation expenses in line with the policies including appropriate payment upon approval by HEE.
3. Ensure appropriate recharges to HEE NW are actioned within three months of payment to the trainee.

O. Payroll

1. Ensure there is an appropriate payroll system to ensure all trainees are paid correctly on time in accordance with the communicated timetable and individual employment contracts, including electronic access to payslips (via ESR) and any required Her Majesty's Revenue & Customs (HMRC) documents.
2. Ensure the appropriate completion and processing of all documentation required to meet NHS Pension scheme and HMRC guidelines and statutory reporting requirements.
3. Ensure appropriate systems and processes are in place to ensure the necessary deductions and employer contributions are paid in relation to NHS Pensions scheme, Income Tax, National Insurance contributions and any salary sacrifice or other deductions.
4. Ensure there is an appropriate electronic expenses system to manage and process all expense claims for trainees in line with the relevant policy.
5. Ensure sufficient controls are in place to mitigate against the risk of overpayment of salaries and that these controls are subject to audit through agreed internal and external audit arrangements.
6. In the event of an overpayment, the Lead Employer will be required to identify the cause of the error; minimise the risk of reoccurrence and recover the funds. In the rare event that funds cannot be recovered, the identified culpable party (Lead Employer, host organisation, HEE, or trainee) will be liable for the unrecovered amount.

7. Ensure there is capacity, capability, and technology to deliver weekly payroll functionality to facilitate 'bank working'.
8. Reimburse trainees for expenses associated with Study Leave and SuppoRTT based on information supplied by HEE NW. Payment to be made within 1 month of approval of claim by HEE NW.

P. Recharges

1. Ensure the appropriate re-charging of host organisations (and HEE NW for centrally funded posts) for all associated salary and employer contribution costs for the actual trainees in their organisation each month.
2. Ensure agreed processes are in place to manage recharging and that these are clear on any implications in respect of late payment by host organisations.
3. Forecast salary and employer contribution costs for each month of the contract, raising estimated invoices for these forecasted amounts to host organisations and HEE NW by the end of the month preceding the payment due date such that funds are received in advance of the payment due date.
4. Ensure appropriate controls are in place which ensure that the estimated total invoiced amount is within an agreed variance of the actual cost.
5. Issue actual cost invoices and make any adjustments to payments made during the following month.
6. Provide an initial resolution response regarding recharge queries within an agreed timescale.
7. Ensure any dispute over invoicing charges with a host organisation is managed locally in the first instance, engaging the relevant Directors of Finance (DoF) if necessary, with the aim of reaching agreement without further action.
8. Where a disagreement with a host organisation cannot be resolved locally, allow HEE NW to work with both parties to agree a way forward, acting as arbiter to take appropriate intervention, action, or sanctions as appropriate.
9. Ensure that appropriate arrangements are in place for the collection of the Apprenticeship Levy, working with host organisations and HEE in line with agreed national policy to facilitate host organisations to access their levy funding from an appropriate digital fund.
10. Ensure that appropriate arrangements are in place to re-charge HEE NW for costs associated with Study Leave and SuppoRTT related expenses.
11. Ensure that appropriate arrangements are in place to re-charge host organisations for seconded trainees for all associated salary and employer contribution costs for trainees on secondment.

A schedule of recharges is set out in the Commercial Schedule at Schedule 6.

Q. Liaison, Communications and Stakeholder Engagement

With Host Organisations

1. Senior level LE representatives to attend a Lead Employer Service Board meeting no less than twice each calendar year to provide assurance to the Board on the performance of the service.
2. LE representatives to attend Lead Employer Service Performance & Contract Management and Operational Management Group meetings to present performance against agreed quality standards, review financial and governance issues, explore opportunities to make service improvements and interfaces between the parties, to seek formal customer feedback and discuss national and regional requirements and developments etc.
3. Provide a Relationship Manager for each host organisation for the management and oversight of service delivery, ensuring that meetings with host organisations take place no less than twice a year to discuss working practices and specific issues relating to trainees where these cannot be resolved through the day-to-day operation of the Lead Employer Service.
4. Identify named day to day contacts and management leads for each programme support team who can be contacted by host organisations as and when required.
5. Attend Medical Staffing and Medical Education Manager Network meetings, as required, to provide feedback to host organisations on service delivery.
6. Provide education and awareness updates electronically and via workshops on developments relevant to Doctors in Training and/or the Lead Employer Service as and when required.
7. Provide a handbook for host organisations which sets out in detail all duties and responsibilities of the Lead Employer, host organisations, HEE and trainees including details of all Lead Employer Officers.
8. Provide updates in a timely manner via website/portal.

With HEE NW

9. Liaise with HEE NW on a broad range of employment issues including rotation placements, movement of trainees at short notice utilising appropriate governance arrangements.
10. Provide guidance to HEE NW on the Terms and Conditions of Service for Trainees.
11. Provide Lead Employer representation at key HEE NW meetings which discuss the management and processes involved in training programmes for the trainees.

With Trainees

12. Ensure regular newsletters, updates and communications processes are provided to facilitate effective engagement with trainees.

13. Identify named day to day contacts for each specialty that trainees can contact as and when required.
14. Provide regular HR Surgeries for trainees and attend Trainee Inductions as requested.
15. Provide signposting, advice, and support, as appropriate to trainees involved in Significant Untoward Incidents (SUIs); including support where trainees are required to attend the Coroner's Court or give evidence to Her Majesty's Coroner (HM Coroner).

Call Centre & Customer Services

16. Maintain a telephone and electronic Call Centre/Help Desk which is available to all trainees, HEE NW, and host organisations.
17. The Call Centre must be staffed between the hours of 9am to 5pm Monday to Friday with an answering service outside of these times. Extended hours must be provided during rotation changeover dates (7am-10pm on the day of rotation and one day either side of rotation).
18. Help desk software technology must be utilised to ensure efficient recording and monitoring and management of all calls and emails.
19. All calls/emails must be logged and responded to within one working day (not including weekends and public holidays) providing a response wherever possible within this timescale. If the query cannot be fully resolved within this timeframe a courtesy holding call/personalised email must be provided, with a final response being provided within 5 working days of original call.
20. Ensure there is a Complaints policy and procedure in place. All complaints must be provided with a personal response (not automated acknowledgement) within 2 working days and a full response issued within 20 working days of receipt.
21. Ensure a system is in place to obtain formal customer feedback from trainees and host organisations on an annual basis which leads to demonstrable improvements in the delivery of this Service.

Other Stakeholders/Programmes

22. Maintain and develop effective working relationships with other stakeholders as appropriate for example GMC, GDC, Royal College contacts, recognised trade unions, and NHS Employers.
23. Facilitate the organisation and delivery of a Joint Local Negotiating Committee with recognised trade unions, ensuring that venues and technology available for meetings encourage best attendance from Place of Work Accredited Representatives (PoWAR) and that nominated host organisations and HEE NW are appropriately represented. This (J)LNC should also be open to trainees who are not a member of a trade union.
24. Ensure alignment and where required compliance with regional and national Enabling Staff Movement Programmes; working with partners, including host organisations and HEE NW to ensure that any relevant trainee information, including statutory and

mandatory training and other learning and development activities is recorded, stored, and accessed in line with agreed Enabling Staff Movement processes in order that host organisations can access updated records.

R. Reporting Arrangements / Management Information

The Lead Employer service will be evaluated against the agreed quality standards and key performance indicators (KPIs) by the Lead Employer Service Performance & Contract Management Group and Lead Employer Service Board as agreed in Annex 5.

1. Ensure that performance reports are provided to relevant meetings to demonstrate compliance or otherwise (including action plans to reach compliance) with the KPIs.
2. Ensure that trainee identifiable information which is exchanged between the Lead Employer and HEE NW or host organisations, or agencies complies with the existing data protection legislation, Information Sharing Agreements, and the Lead Employer's Information Governance protocols.
3. Ensure that appropriate internal and external audit controls are in place which meet the requirements of the Audit Standards for the NHS. Audit reports must be submitted to the Lead Employer's Audit Committee and a summary report provided to the Lead Employer Review Group.

S. Occupational Health & Wellbeing Services

The Lead Employer will ensure that all trainees are provided with appropriate access to SEQOHS accredited OH services for immunisations, vaccinations and regular health surveillance and support.

1. A detailed Service Level Agreement will be developed in consultation with host organisations which will set out what services will be provided and by whom, clarifying responsibilities of host organisations and the use of subcontracted services as agreed appropriate.
2. Provision should include:
 - Health assessment and clearance for new starters which are undertaken in line with 'NHS Standards'.
 - Services that comply with and support 'Access to Work Requirements'.
 - All immunisations, vaccinations and regular health surveillance in line with 'NHS Standards'
 - Assessment of Exposure Prone Procedures (EPP)
 - Access to Doctors, Nurses, Counsellors, Psychologists, Psychiatrists, Physiotherapists, and any other required health professional required to support the health and wellbeing of trainees.
 - Support for the agreed Attendance Management Policy, in line with the policy requirements.

- Provision of a dedicated, case-management process where required to support the management of trainees where concerns exist. A proactive approach to work with both the trainee, host organisation and HEE NW on ensuring that these cases are managed effectively.
3. The OH Service should have IT systems that comply and / or integrate with other systems such as ESR.

Glossary of Terms used in this Service Specification

AIT	Inter Authority Transfer
ARCP	Annual Review of Competence Progression
BMA	British Medical Association
CCT	Certificate of Completion of Training
DBS	Disclosure and Barring Service
DiT	Doctors/Dentists in Postgraduate Training
DoF	Director of Finance
ELA	Employer Liaison Advisor
EPP	Exposure prone procedure
ESR	Electronic Staff Record
GDC	General Dental Council
GMC	General Medical Council
HEE	Health Education England
HMRC	Her Majesty's Revenue and Customs
HO	Host Organisation
IAT	Inter Authority Transfer
IDT	Inter Deanery Transfer
IT	Information Technology
KPI	Key Performance Indicator
LE	Lead Employer
LTFT	Less than Full Time Training
MHPS	Maintaining High Professional Standards in the Modern NHS
NCAS	National Clinical Assessment Service (part of NHS Resolution)
NHS	National Health Service
NPML	National Performers List
NW	North West
OH	Occupational Health
OOP	Out of Programme
PG	Postgraduate
PGD	Postgraduate Dean
PoG	Period of Grace
PoWAR	Place of work accredited representative
RO	Responsible Officer
SEQOHS	Safe, Effective, Quality Occupational Health Service
SUI	Significant Untoward Incident
TCS	Terms and Conditions of Service
TIS	Trainee Information System
TPD	Training Programme Director
TRES	Trainee Requiring Extra Support
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014

Annex 1

Policy, Processes and Guidance Schedule for Doctors / Dentists in Training

Lead Employer should have the following in place. The below table shows those currently in place:

Responsible Organisation Policy	LEAD EMPLOYER (Supplier)	HOST TRUST	HEE (Authority)
Alcohol, Drugs and Substance Abuse Policy	<u>✓</u>		
Allocation and Rotation of Trainees Policy			✓
Annual Leave Policy	<u>✓</u>		
ARCP Protocol			<u>✓</u>
ARCP Formal Appeals Process Guidance			<u>✓</u>
Attendance Management Policy	<u>✓</u>		
HEE Complaints Procedure			<u>✓</u>
Domestic Abuse Policy	<u>✓</u>		
Employment Breaks Policy	<u>✓</u>		
Equality & Human Rights Policy	<u>✓</u>		
Flexible Working Policy	<u>✓</u>		
Grievance Policy and Procedure	<u>✓</u>		
Gold Guide 8			<u>✓</u>
Guidance re: Professional Requirements and a Criminal Offence			<u>✓</u>
Guidance for Trainees and Trainers re undertaking additional work			<u>✓</u>
Guidance for Trainees notified of a GMC investigation			<u>✓</u>
Guidance on Providing Pastoral Support			<u>✓</u>
Handling Concerns	✓		
Health & Safety Policy		✓	
Overpayments Underpayments Policy	<u>✓</u>		
Induction Policy		✓	
Intellectual Property Policy		✓	
Inter Deanery Transfer Policy			<u>✓</u>
Less than Full Time Training Policy			<u>✓</u>
Managing Organisational Change Policy	<u>✓</u>		

New Parent Support Policy (Maternity, Paternity and Infertility Treatment)	<u>✓</u>		
Non ARCP Appeals Process			<u>✓</u>
No Smoking Policy		✓	
Time out of Programme			<u>✓</u>
Partnership Agreement Facilities Framework	<u>✓</u>		
Period of Grace			<u>✓</u>
Raising Concerns/Whistleblowing Policy	<u>✓</u>		
Removal and Associated Expenses Policy and Procedure (including Travel Expenses) (Lead Employer policy applies only to group covered by historical TUPE arrangement – remainder of trainees are on HEE national policy)	✓		<u>✓</u>
Respect & Dignity at Work Procedure	<u>✓</u>		
Safer Employment Policy	<u>✓</u>		
Social Media Policy	<u>✓</u>		
Special Leave Policy	<u>✓</u>		
Stopping and Starting the Training Clock			<u>✓</u>
Study Leave Policy			<u>✓</u>
Trainees Requiring Extra Support			<u>✓</u>
Transgender Staff Support Policy	<u>✓</u>		
Whistleblowing Guidance			<u>✓</u>

Note: The above list is not exhaustive and is expected to change during the course of this agreement.

Protocol for Handling of Employment Tribunal and other Claims

The Parties (Lead Employer, host organisation and HEE) agree to follow the protocol below whenever a Trainee's grievance or grievances cannot easily be resolved through internal HR processes and when an employment tribunal or other claim is anticipated or received relating to a trainee.

1. The Party on which the claim/s is/are being served will notify the other Parties within 5 working days of service.
2. The Parties shall jointly consider the claims/allegations made and determine, following legal advice from HEE's solicitors, how best to proceed in relation to the claims, and the appropriateness of single/joint legal representation.
3. As part of this consideration of how to proceed in relation to the claims, HEE may decide that further exploration of the facts is necessary. Where this is deemed appropriate, HEE will convene a panel of senior faculty members (which may include the Medical Director for Lead Employer Services, or other representative of the Lead Employer Trust or Host). The Parties will be expected to agree the membership of the panel (Panel); where agreement is not reached HEE shall have final determination of its membership. The purpose of the Panel is to determine whether the allegations made have any substance, how to manage the claims and what legal support is appropriate. All Parties agree to co-operate fully with this process and provide any information or documents requested by HEE.
4. The Parties agree that where such proceedings include or consist of allegations of unlawful discrimination in relation to a Protected Characteristic, the process at 3 hereof is intended to demonstrate compliance with the obligations on public sector bodies to take steps to eliminate discrimination.
5. Should the Parties decide to explore a settlement of the claim(s), the Parties involved will endeavour to agree an apportionment of any settlement sum paid based first upon whether any liability for the matters complained of is admitted, or if not, by agreement. However, if agreement cannot be reached, then the final determination of how any settlement sum shall be apportioned shall be determined by an independent panel.
6. Should the Parties decide to continue to defend the claim(s) in an Employment Tribunal or Court, the Parties agree to cooperate to ensure the correct Respondent/s to any such claim is/are identified and that the claim(s) are defended appropriately.
7. Where the Tribunal or Court has published a decision in which any claims are upheld or partially upheld, the Party or Parties shall apportion and pay (or agree to the prior deduction of) any compensation payable and legal fees incurred in accordance with findings of fault within that published decision. Where agreement cannot be reached as to the meaning and effect of any Tribunal or Court findings, or where no apportionment is provided in the relevant judgment, the final determination of how any compensation or fees shall be apportioned shall be determined by an independent panel.
8. If the Tribunal or Court dismisses the claim or claims in their entirety, the Parties agree that any legal fees incurred will be apportioned between the parties in line with any findings of fault by the Panel. If the Panel is unable to identify any fault on behalf of the Parties, HEE will fund any legal fees, provided that HEE appointed its solicitors to represent all parties against the claim.

Where the Lead Employer and/or host organisation have appointed their own solicitors, they will normally be responsible for their own legal fees.

9. In the event that the apportionment of any compensation, payment or legal fees falls to be determined by HEE at a national level HEE's determination shall be binding on the Parties. Each Party agrees to pay the sums determined as due or in the alternative, agrees to deductions from sums due to it under this Agreement in satisfaction of any sums owed under this Protocol.

Schedule of Recharges to Host Organisations & HEE NW

REF	ACTIVITY	LEAD EMPLOYER TO RECHARGE	FREQUENCY
Trainees			
1	Contract Costs	Recharge host organisation (or in the case of GP trainees – HEE NW) for actual number of trainees in post at agreed contract rate	Quarterly payment on account by host organisation/receipt of actual invoice charge
2	Pay Costs	Recharge host organisation (or, in the case of GP placements – HEE NW) for pay costs in full (basic salary, banding/ or supplement, on costs, pensions) in accordance with rotation details provided by HEE NW	Monthly payment on account by Placement Provider /receipt of actual invoice charge
3	Family Pay (Maternity, Paternity and Adoption Leave) Sick Pay	Recharge host organisation (or in the case of GP placements – HEE NW) for pay costs in full (basic salary, banding/ or supplement, on costs) in accordance with rotation details provided by HEE NW and in accordance with legislation and NHS Terms and Conditions of Employment	Monthly payment on account by Placement Provider /receipt of actual invoiced charge
4	Supernumerary posts established for a specific educational purpose	Recharge HEE NW or host organisation as agreed	Monthly payment on account from the Authority based on estimates and payment/credit made on receipt of actual costs
5	Secondments of trainees	Recharge host organisations (outside trusts i.e., GMC) for agreed pay costs.	Monthly payment on account by host organisation/receipt of actual invoice.
Non-Pay Costs			
6	Study Leave	Pay approved study leave expenses to the trainee by the Lead Employer for all placements and recharge HEE NW	Monthly payment on account by host organisation/receipt of actual invoice charge
7	Mileage and Travel Allowance	Lead Employer to reimburse the Trainees when in GP placement and recharge HEE NW	Monthly payment on account by host organisation
Other Costs			
8	DBS Costs	Trainees to bear the costs	As per standards
9	Ad hoc Occupational Health Services that	Recharge the host organisation (or in the case	Recharge to respective host organisation as required

	fall outside of standard SLA service provision (Standard Occupational Health Service costs are charged as part of the Contract Costs listed in Reference 1)	of GP placements – HEE NW) for ad hoc occupational health costs over and above the standard SLA service provision	(HEE NW for GP placements).
10	Employment Tribunal Costs	Distribution or deduction of costs as per Annex 3	Distribution or deduction of costs as per Annex 3
11	Ad hoc requests from Trainees for specialised equipment to fulfil requirements of programme at the recommendation of Occupational Health	Agree provision with HEE NW then recharge	Invoice HEE NW as costs incurred
12	Relocation and Associated Expenses Excess Mileage	Recharge HEE NW	As per requests from Trainee
13	Apprenticeship Levy	Recharge the host organisations (or in the case of GP placements – HEE NW) for the nationally agreed Apprenticeship Levy	TBA as part of contract negotiations

Quality Standards & Key Performance Indicators – Subject to Review Post Contract Sign Off

This annex is intended to ensure that there are clear and measurable standards in place which demonstrate that the services set out in this Agreement are being delivered.

Where quality standards are not met, a remedial action plan will be required. A performance framework supported by robust governance arrangements will be used to monitor performance against this Agreement.

The performance management arrangements will be organised at a strategic and operational level to ensure the appropriate involvement of all the relevant parties.

Definitions:

5 working days = 1 working week (excludes weekends and bank holidays)

1 working day = 9am – 5pm

Ref No.	Pre-Employment
A1	LE to send out conditional offers of employment to all successful candidates for 100% of cases within 5 working days of notification from the agreed method/system used by HEE NW.
A2	LE is to commence pre-employment checks for all successful candidates for 100% of cases within 10 working days of offer being accepted by the doctors / dentists in training (DiT).
A3	LE to identify both to HEE NW and host organisation 100% of DiT with no previous UK training experience (for additional support/enhanced induction to be provided).
A4	LE to identify both to HEE NW and host organisation 100% of DiT with a significant break in clinical practice (more than 3 months).
A5	LE is to complete pre-employment checks for all successful candidates in 100% of cases within 20 working days of DiT providing satisfactory documentation (including IDTs) and where documentation is not provided by the DiT, LE will send targeted weekly reminders to the DiT asking to send documentation.
A6	LE is to inform HEE NW of confirmed non-starters within 5 working days in the case of 100% of relevant trainees.
A7	Host organisations informed of trainee start dates and those unable to commence on the planned start date in 100% of cases within 8 weeks of start date (subject to R2 recruitment timeframes) and any changes (non-starters/LTFT/maternity/sick leave etc) to expected rotation to be reported to host within 2 working days of information being received by LE. Weekly updates to host organisation re non-compliance with NHS Employment Standards.
A8	LE is to notify host organisations of the basic salary for trainees (including pay protection if applicable) in 100% of cases within 20 working days of start date.
A9	LE to provide starter pack in 100% of cases within 8 weeks of start date and 2 weeks of trainee accepting offer. Starter pack to include: 1. Offer letter 2. Induction presentation on the website 3. Agreed information for IMGs new to the UK - starter pack needs to be appropriate for individual. 4. Agreed information for DiT returning from break of greater than 3 months - starter pack needs to be appropriate for individual.
A10	100% of IDT's to have required reasonable adjustments in place within 4 weeks of start date. Also, follow up completed by HR or Occupational Health representative within 4 weeks of start date – dependent on individuals specific requirement.
Contracts of Employment	

B1	LE is to produce an Electronic Personal File (EPF) for each new starter in 100% of cases within 2 weeks of commencement in post.
B2	LE is to ensure all new starters are entered onto Electronic Staff Record (ESR) in the 13-week window prior to a trainee's post/placement start date via the TIS/ESR Interface. Exceptions or interface failures may need to be added manually.
B3	LE is to ensure trainee details are correct in the ESR. In 100% of cases LE is to maintain ESR records with any relevant changes to trainee details, which will then feed back into TIS via the interface e.g., changes to address or contact details.
B4	LE is to issue Contract of Employment to new starters in 100% of cases by first day of employment.
B5	Where a trainee's end of contract date is changed, LE is to issue amendments to contract following receipt of written instructions from HEE NW. Host organisation and trainee to be informed in 100% of cases within 4 weeks of receipt of written instructions.
Employee Services	
C1	LE is to respond to all Terms and Conditions of Service enquiries within 5 working days.
C2	LE is to respond to, discuss and agree actions in relation to pay protection and salary assessments above expected pay range within 5 working days.
C3	LE is to process all special, maternity, paternity and adoption leave application from all trainees and notify host organisation of trainees going LTFT or on OOP within 10 working days of receipt of fully completed application form and provision of all supporting documents.
C4	LE is to check GP trainees working in GP placements to ensure they are on the National Medical Performers List (NPML) (as requested by HEE NW) in 100% of cases within 5 working days of commencement in general practice.
Resignations	
D1	LE is to acknowledge all resignation requests submitted on a fully completed Early Resignation Form within 2 working days.
D2	LE is to notify the trainee and host organisation of early resignation acceptance and final date of employment / early release dates 2 working days after approval received from HEE NW.
Rotations	
E1	LE is to notify host organisations of the expected trainees in each specialty a minimum of 12 weeks in advance of the rotation start date in 100% of cases subject to receipt of information from HEE NW within 14 weeks. Weekly updates of any variations to the expected Rotation to be provided to host organisations.
E2	LE is to issue rotation placement details to trainees in 100% of cases within 12 weeks of rotation start date subject to receipt of information from HEE NW within 14 weeks.
E3	LE is to issue updated rotations information to host organisations in accordance with Code of Practice Standards within 2 working days of receipt of updated information from HEE NW, where this will result in any change in placement numbers in a host organisation.
E4	LE to have contacted 100% of hosts organisations to confirm work schedules have been issued to trainees within 8 weeks of rotation start date. LE to monitor, manage and report data of non-return.
E5	Update pay banding/work schedule payments to be made to trainees following notification from host organisations to the LE of any pay band/work schedule changes in 100% of cases within 8 weeks in advance of the rotation start date.
E6	LE have complied with the Code of Practice where the issuing of rotation placement information is concerned reporting to HEE NW monthly-via reporting template.

Management of Attendance	
F1	LE is to provide host organisations with management information relating to trainee absence prior to commencement of their new rotation (to incl. triggers, restrictions on practice and any reasonable adjustments agreed through OH) in 100% of cases within 4 weeks prior to rotation date.
F2	LE is to maintain an Absence Management Dashboard in 100% of cases in accordance with policy and update dashboard within 2 working days of being informed. To include quantitative data on the following: - Return to Work. - Long Term Sick (over 28 days). - Triggers.
F3	LE is to notify HEE NW regarding any individual absence exceeding 2 weeks or more. Within 2 working days of notification by the host organisation in 100% of cases.
F4	LE is to provide all host organisations and HEE NW with a monthly report of trainees who have been on sick leave / other absence.
Conduct Performance and Health of Trainees	
G1	LE is to meet agreed timescales for completion of investigations / hearings / appeals in 90% of cases (subject to host organisation completing investigation in line with agreed timeframes).
G2	LE is to meet agreed timescales and provide HR advice/reports regarding TRES to DDRG on a monthly basis where required.
G3	LE is to provide advice to ARCP panels with an anticipated ARCP outcomes which may require additional training time, when requested by HEE NW in 100% of cases. Usually this will be outcomes 3 & 4, however in a small number of cases where there are specific needs it may apply to outcome 2's.
G4	LE to provide data on how many ARCP appeals were attended by the Lead Employer, in 100% of cases.
Dignity at Work (Grievance, Bullying etc.)	
H1	LE to evidence that agreed timescales have been met for completion of investigations / hearings / appeals by providing figure and % achieved in 90% of cases (subject to host organisation completing investigation in line with agreed timeframes).
Guardian of Safe Working	
I1	LE is to carry out a quarterly review and provide an annual report to HEE NW and host organisations regarding compliance with Guardian of Safe Working Requirements.
I2	LE is to ensure that breach penalties are paid out and recharged to the host organisations in 100% of cases.
Relocation and Associated Expenses including Salary Payments	
J1	LE is to manage and process applications for relocation expenses within 20 working days of receipt of fully completed application in 100% of cases.
J2	LE is to recharge HEE NW for relocation expenses within 3 months of payment to trainee in 100% of cases.
J3	LE is to ensure that staff are paid on time in accordance with the agreed timetable in 100% of cases.
J4	LE is to ensure that trainees have electronic payslips in 100% of cases.
J5	LE is to ensure that relevant and statutory deductions (i.e., NI and tax) are provided to HMRC with monthly FPS and EPS information within the statutory timelines in 100% of cases.
J6	LE is to ensure that they provide HMRC with annual P60 and P11D information within the statutory timelines in 100% of cases within 2 months of receipt.
J7	LE to calculate, write to and propose a repayment plan in line with the LE's Overpayment Policy, within 1 month of identification of the overpayment to a trainee in 100% of cases.
Recharges	

K1	LE is to ensure that estimated invoices issued to host organisations for overall salary recharge is within 10% of actual invoices in 100% of cases by the 1st of each month.
K2	LE is to issue invoices to host organisations to reflect actual costs for overall salary recharge (incl. credit/debits) in 100% of cases by 5th of each month.
K3	Deductions taken from salaries will be paid over to host organisations as part of the reconciliation process by the 5th of the following month in 100% of cases.
K4	LE is to send a first resolution to any queries in relation to the actual invoice within 5 working days in 85% of cases.
K5	LE to calculate, write to and agree a repayment plan within 1 month of the overpayment (Host/HEE NW) in 100% of cases.
Liaison, Communications and Stakeholder Management	
L1	Carry out regular comms meeting as agreed with HEE NW with PGD, RO and HR of LE.
L2	LE is to undertake bi-annual meetings with all individual host organisations to discuss working practices and trainees.
L3	To carry out virtual events bi-annually with each training site for trainees to have the opportunity to feedback with process in place to feedback to HEE NW about quality and safety issues.
L4	LE is to maintain continuous engagement with trainees through a LE Helpdesk that provides reporting functionality through a dashboard. The LE to evidence 90% compliance with agreed response times.
L5	LE is to ensure that complaints are responded to in accordance with the complaint's framework in 100% of cases.
L6	LE is to complete an Annual Customer Feedback Survey with host organisations in September to capture August changeover feedback and provide written report of findings and action plan of any improvements to HEE NW by end of October.
Occupational Health	
M1	LE to ensure KPIs are agreed and adhered to with all LE OH service providers (including Hub & Spoke where applicable).
M2	LE OH to provide a NW relevant KPI report 2 weeks ahead of the Performance & Contract Management (P&CM) meeting that shows all LE OH service providers have met the required KPIs, with detail as to why not if not met and corrective action to resolve.
M3	OH senior level personnel to attend at least twice-yearly P&CM meetings to provide verbal update and answer queries from stakeholders.
M4	LE OH service to ensure (for both LE Hub & Spoke providers if applicable) the maximum time between referral and DiT being seen is up to 10 working days for urgent requests and 20 working days for non-urgent requests in 100% of cases.
M5	LE to ensure that OH appointments are changed a maximum number of once by the LE in 100% of cases (by both LE Hub & Spoke service providers if applicable).
M6	Generic consenting process to include OH service directly sharing information, that is related to any reasonable adjustments required, following OH review, with appropriate others (i.e., educators, relevant HEE NW school business manager) within 10 working days in 100% of cases.
M7	Initial appointment booking after commencing the referral pathway to be completed within 5 working days in 100% of cases.
M8	Follow up communication after initial assessment to be sent to both trainees and to HEE NW within 20 working days in 100% of cases.
M9	Closure communication to be sent to both the trainee and to HEE NW within 5 working days from OH case being closed in 100% of cases.
M10	Annual meeting to take place between OH service representatives and HEE NW DDRG group.

	Statutory & Mandatory Training Compliance
N1	Doctor and Dentist in Training statutory & mandatory training compliance to be monitored and at 95% compliance rate – with monthly report provided to HEE NW to show status.
	Reporting Arrangements and Management
O1	Quarterly report to be devised & follow up meeting to be managed by LE with HEE NW, LE programme & contract manager to report on performance against KPIs results and for LE to have an improvement plan in place where appropriate.

Tender Response Documents

As appendices to Schedule 5



STHK_Appendix
Appendix A – Bidder response template C_Bidder Response Te



STHK_Appendix
Appendix B - Implementation Plan and Risk Register C_Q2_Implementatio



STHK_Appendix
Appendix C – Pricing Schedule D_Pricing Schedule.doc



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Appendix D - Bidder Col Declaration E_Bidder Col Declarati



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Appendix E - Bidder Non-Canvassing and Non-Collusion F_Bidder Non Canvas:



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Appendix F - Bidder Confidential Information G_Bidder Confidential



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Appendix G - One Stage Compliance Questionnaire H_One Stage Complia



STHK_Appendix
Appendix H – Form of Offer K_Form of Offer.pdf



Clarification response
Appendix I - Clarification Question Log V1.xlsx

Schedule 6

Commercial Schedule

Part 1 Payment schedule

This Contract shall be payable based on volume of activity with a service delivery charge per trainee of [REDACTED] (inclusive of VAT) per annum.

Any inflationary uplift to be agreed between the Authority and the Provider.

Cost to Host organisations is anticipated to be [REDACTED]

Cost to HEE is anticipated to be [REDACTED]

Based on current number of trainees over the full duration of the contract.

Invoices should be made as per the table below.

REF	ACTIVITY	LEAD EMPLOYER TO RECHARGE	FREQUENCY
Trainees			
1	Contract Costs	Recharge host organisation (or in the case of GP trainees – HEE NW) for actual number of trainees in post at agreed contract rate	Quarterly payment on account by host organisation/receipt of actual invoice charge
2	Pay Costs	Recharge host organisation (or, in the case of GP placements – HEE NW) for pay costs in full (basic salary, banding/ or supplement, on costs, pensions) in accordance with rotation details provided by HEE NW	Monthly payment on account by Placement Provider /receipt of actual invoice charge
3	Family Pay (Maternity, Paternity and Adoption Leave) Sick Pay	Recharge host organisation (or in the case of GP placements – HEE NW) for pay costs in full (basic salary, banding/ or supplement, on costs) in accordance with rotation details provided by HEE NW and in accordance with legislation and NHS Terms and Conditions of Employment	Monthly payment on account by Placement Provider /receipt of actual invoiced charge
4	Supernumerary posts established for a specific educational purpose	Recharge HEE NW or host organisation as agreed	Monthly payment on account from the Authority based on estimates and payment/credit made on receipt of actual costs

5	Secondments of trainees	Recharge host organisations (outside trusts i.e., GMC) for agreed pay costs.	Monthly payment on account by host organisation/receipt of actual invoice.
Non-Pay Costs			
6	Study Leave	Pay approved study leave expenses to the trainee by the Lead Employer for all placements and recharge HEE NW	Monthly payment on account by host organisation/receipt of actual invoice charge
7	Mileage and Travel Allowance	Lead Employer to reimburse the Trainees when in GP placement and recharge HEE NW	Monthly payment on account by host organisation
Other Costs			
8	DBS Costs	Trainees to bear the costs	As per standards
9	Ad hoc Occupational Health Services that fall outside of standard SLA service provision (Standard Occupational Health Service costs are charged as part of the Contract Costs listed in Reference 1)	Recharge the host organisation (or in the case of GP placements – HEE NW) for ad hoc occupational health costs over and above the standard SLA service provision	Recharge to respective host organisation as required (HEE NW for GP placements).
10	Employment Tribunal Costs	Distribution or deduction of costs as per Annex 3	Distribution or deduction of costs as per Annex 3
11	Ad hoc requests from Trainees for specialised equipment to fulfil requirements of programme at the recommendation of Occupational Health	Agree provision with HEE NW then recharge	Invoice HEE NW as costs incurred
12	Relocation and Associated Expenses Excess Mileage	Recharge HEE NW	As per requests from Trainee
13	Apprenticeship Levy	Recharge the host organisations (or in the case of GP placements – HEE NW) for the nationally agreed Apprenticeship Levy	TBA as part of contract negotiations

Part 2 In order to be valid for payment invoices raised by the Supplier must:

1. Contain the following information as a minimum:
2. Name the Supplier;
3. Include the Purchase Order number;
4. The Supplier's bank details

5. The email address for financial correspondence;
6. Contain a brief description of Services provided.
7. Be sent by post and addressed to:

██████████

And;

8. be emailed to: ██████████

Schedule 7

Staff transfer

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

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

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

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

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

- 1.5 The Supplier shall be responsible for, or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements and outgoings in respect of the Third Party Employees and other Staff.
- 1.6 The Supplier shall indemnify and will keep indemnified the Authority and any Third Party in relation to any Employment Liabilities arising out of or in connection with:
- 1.6.1 any act or omission of the Supplier or a Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Third Party Employee or Staff (including but not limited to any liability which arises because a Third Party Employee's employment with the Supplier or a Sub-contractor is deemed to include their previous continuous employment with the Third Party);
 - 1.6.2 any act or omission of the Supplier or a Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Third Party's failure to comply with regulation 13 of TUPE;
 - 1.6.3 any claim or allegation by a Third Party Employee or any other employee of the Authority or Third Party that in consequence of the transfer of Services to the Supplier or a Sub-contractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and
 - 1.6.4 any claim or allegation that the termination of employment of any of the Third Party Employees or any other employee of the Third Party whether on or before the Transfer Date or not which arise as a result of any act or omission by the Supplier or a Sub-contractor save for where such act or omission results from complying with the instructions of the Authority.
- 1.7 The Authority shall use reasonable endeavours to transfer to the Supplier or any Sub-contractor the benefit of any indemnity it has from the Third Party.

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

Broadly comparable pension benefits (Clause 1.4 of this Part D of 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 set-off right is in addition to and not instead of the Authority's right to terminate the Contract under Clause 15.5.5 of Schedule 2.

1.11 Compensation

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

1.12 Supplier Indemnities Regarding Pension Benefits and Premature Retirement Rights

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

1.12.3 The Supplier must indemnify the Authority, NHS Pensions and any Successor against all Losses arising out of its breach of this Part D of this Schedule 7 or the terms of the Direction Letter.

1.13 Sub-contractors

1.13.1 If the Supplier enters or has at the Commencement Date entered into a Sub-contract for delivery of all or part of the Services it shall impose obligations on its Sub-contractor in the same terms as those imposed on the Supplier in relation to Pension Benefits and Premature Retirement Benefits by this Part D of this Schedule 7, including requiring that:

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

1.14 Direct Enforceability by the Eligible Employees

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

1.14.2 Further, the Supplier must ensure that the Contracts (Rights of Third Parties) Act 1999 shall apply to any Sub-contract to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

1.15 Pensions on Transfer of Employment on Exit

1.15.1 In the event of any termination or expiry or partial termination or expiry of this Contract which results in a transfer of the Eligible Employees, the Supplier must (and if offering a Broadly Comparable scheme, must use all reasonable efforts to procure that the trustees or managers of that pension scheme must):

- (i) not adversely affect pension rights accrued by the Eligible Employees in the period ending on the Subsequent Transfer Date;
- (ii) within thirty (30) Business Days of being requested to do so by the Authority or Successor, (or if the Successor is offering Eligible Employees access to the NHS

Pension Scheme, by NHS Pensions), provide a transfer amount calculated in accordance with Clause 1.6 of this Part D of this Schedule 7; and

- (iii) do all acts and things, and provide all information and access to the Eligible Employees, as may in the reasonable opinion of the Authority be necessary or desirable and to enable the Authority and/or the Successor to achieve the objectives of Fair Deal for Staff Pensions.

Schedule 8

Expert Determination

1 Dispute Process

- 1.1 During any Dispute, including a Dispute as to the validity of the Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 1.2 In the case of a Dispute the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and shall follow the procedure set out in this Schedule 8.
- 1.3 In the event of a Dispute either Party may serve a Dispute Notice on the other Party to commence formal resolution of the Dispute. The Dispute Notice shall set out:
 - 1.3.1 the material particulars of the Dispute; and
 - 1.3.2 the reasons why the Party serving the Dispute Notice believes the Dispute has arisen.
- 1.4 Following the service of a Dispute Notice the Parties shall first seek to resolve the Dispute by convening a meeting between the Authority's Contract Manager and the Supplier's Contract Manager (together the "**Contract Managers**").
 - 1.4.1 The meeting of the Contract Managers must take place within five (5) Business Days of the date of the Dispute Notice (the "**Dispute Meeting**").
 - 1.4.2 The Contract Managers shall be given ten (10) Business Days following the date of the Dispute Meeting to resolve the Dispute.
 - 1.4.3 The Contract Managers can agree to further meetings at levels 2 and/or 3, as referred to at clause 5.1 of the Key Provisions in Schedule 1, in addition to the Dispute Meeting, but such meetings must be held within the ten (10) Business Day timetable set out in 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

DATA PROTECTION PROTOCOL

Table A – Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the Processing	Employment services i.e., HR, payroll, and occupational health for postgraduate medical and dental trainees.
Duration of the Processing	As per the contract 1 October 2022 to 1 October 2025 with potential extension of 1 year and an additional year.
Nature and purposes of the Processing	<p>The purpose of the project is to establish a lead employer for postgraduate medical and dental trainees across the North-West region, there will be a contract between the successful lead employer (St. Helen's & Knowsley Teaching Hospitals NHS Trust) and Health Education England. The sharing of identifiable information will be done via the Electronic Staff Records (ESR) platform and Trainee Information System (TIS), and / or encrypted email and SharePoint platform.</p> <p>The lead employer will provide employment services, Human Resources, payroll and occupational health for postgraduate medical and dental trainees.</p>
Type of Personal Data	<p>Personal data</p> <ul style="list-style-type: none">• Forename• Middle name• Surname• Maiden name• GMC number• Email address• Home address• Contact numbers• Next of kin / emergency contact details• Qualifications• ID documents <p>Special category data</p> <ul style="list-style-type: none">• Religion• Ethnicity• Trade union membership• Sexual orientation• DBS• Health data, i.e., for occupational health purposes and sickness / absence monitoring• Biometric data – in terms of identification documents and right to live and work status
Categories of Data Subject	Post graduate medical and dental trainees.

<p>Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>All personal data is held on the ESR system after the contract has ended in line with National guidance, records are kept in line with employment legislation, and this can be for 50+ years for pensionable information. All of the data is electronically stored by the LET and they do not hold any paper files for any trainees.</p>
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Definitions

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

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

	evaluating the effectiveness of such measures adopted by it;
“Protocol” or “Data Protection Protocol”	means this Data Protection Protocol;
“Sub-processor”	means any third party appointed to Process Personal Data on behalf of the Supplier related to this Contract.

DATA PROTECTION

The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only Processing that the Supplier is authorised to do is listed in Table A of this Protocol by the Authority and may not be determined by the Supplier.

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

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

- 1.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
- 1.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
- 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:

- 1.4.1 process that Personal Data only in accordance with Table A of this Protocol, unless the Supplier is required to do otherwise by **Law**. **If it is so required the Supplier** shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
- 1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - nature of the data to be protected;
 - harm that might result from a Data Loss Event;
 - state of technological development; and
 - cost of implementing any measures;
- 1.4.3 ensure that :
 - the Supplier Personnel do not Process Personal Data except in accordance with this Contract (and in particular Table A of this Protocol);

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

are aware of and comply with the Supplier's duties under this Protocol;

are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

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

1.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by the Authority;

the Data Subject has enforceable rights and effective legal remedies;

the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data;

1.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination or expiry of the Contract unless the Supplier is required by Law to retain the Personal Data.

Subject to Clause 1.6 of this Protocol, the Supplier shall notify the Authority immediately if it:

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

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

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

- 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
- 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 1.5.6 becomes aware of a Data Loss Event.

The Supplier's obligation to notify under Clause 1.5 of this Protocol shall include the provision of further information to the Authority in phases, as details become available.

Taking into account the nature of the Processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 of this Protocol (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- 1.7.1 the Authority with full details and copies of the complaint, communication or request;
- 1.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- 1.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- 1.7.4 assistance as requested by the Authority following any Data Loss Event;
- 1.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Protocol. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- 1.8.1 the Authority determines that the Processing is not occasional;
- 1.8.2 the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- 1.8.3 the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.

The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:

- 1.11.1 notify the Authority in writing of the intended Sub-processor and Processing;
- 1.11.2 obtain the written consent of the Authority;
- 1.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Protocol such that they apply to the Sub-processor; and
- 1.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

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

The Authority may, at any time on not less than 30 Business Days' notice, revise this Protocol by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Business Days' notice to the Supplier amend this Protocol to ensure that it complies with any guidance issued by the Information Commissioner's Office.

The Supplier shall comply with any further instructions with respect to Processing issued by the Authority by written notice. Any such further written instructions shall be deemed to be incorporated into Table A above from the date at which such notice is treated as having been received by the Supplier in accordance with Clause 27.2 of Schedule 2 of the Contract.

Subject to Clauses 1.13, 1.14, and 1.15 of this Protocol, any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

Schedule 10
Change Control Process

<p>Change Control Note to [Insert “Type of Services” from front page of contract and any reference numbers] (the Contract) between: Health Education England (as the Authority); and [Name of Supplier] (as the Supplier).</p>		
<p>A. Title of the change: [Give brief description of change]</p>	<p>B. Change Request No: [x NB: changes should be numbered sequentially and a log of them kept with the Contract]</p>	
<p>C. Name of party originating the change: [insert Supplier or Authority]</p>	<p>D. Date of the request for the change: [insert date]</p>	
<p>E. The reason for the change: [Give brief reason for change i.e. additional services/extension of Term]</p>		
<p>F. Details of the change: [1. Specify what the change is intended to achieve/what has been agreed; and 2. Any consequential changes to the Specification/ Tender Response Document/Supplier’s proposal as a result of the change and the changes to the Services (if any)]</p>		
<p>G. Changes to the Contract Price: [Set out the agreed changes (if any) to the amount of the Contract Price]</p>	<p>H: Revised payment schedule [insert new payment dates/arrangements if any]</p>	
<p>I. Justification for a change in the Contract Price: [i.e. the Supplier will incur additional costs to deliver the increased scope of Services]</p>	<p>J. Implementation Timetable and estimated completion date (if applicable).</p>	
<p>Change Agreed by an authorised representative of the Supplier</p>		
<p>Signature:</p>	<p>Name and title:</p>	<p>Date:</p>
<p>Change Agreed by an authorised representative of the Authority</p>		
<p>Signature:</p>	<p>Name and title:</p>	<p>Date:</p>

Schedule 11

Host Organisation Obligations

Section A: Trust's Obligations

1. Day to Day Management

The Trust must:

- 1.1 Assume responsibility for the day-to-day management of trainees whilst on rotational placement.
- 1.2 Provide a safe working environment to look after the health, safety, and well-being of trainees whilst on rotational placement to the same extent as that if they were the Trust's own employees.
- 1.3 Conduct appropriate risk assessments to ensure a safe working environment is provided in line with the Lead Employer policies in conjunction with any other relevant local policies.
- 1.4 Ensure generic work schedules are available for all posts.
- 1.5 Trust to follow HEE NW policies related to Supported Return to Training (SuppoRTT) when trainees have had absence for over 3 months.

2. Induction, Statutory and Mandatory Training

The Trust is responsible for:

- 2.1 Ensuring that all trainees on rotation placement complete the organisation's local induction and training requirements.
- 2.2 Ensuring alignment with regional and national Enabling Staff Movement Programmes, working with partners, including the Supplier and the Authority to ensure that any relevant trainee information is recorded, stored, and accessed in line with agreed streamlining processes in order that future host organisations can access updated records.

3. Occupational Health (OH) & Well Being (WB)

- 3.1 The Trust will be responsible for flu jabs and emergency treatment following needlestick injuries.
- 3.2 If the Trust considers that additional health screening, monitoring or immunisation programmes are required beyond that provided by the supplier, the Trust will meet such costs and provide such additional programmes and screening and report on the outcome thereof to the supplier.

4. Employee Services

The Trust must use the relevant supplier policies and procedures to process day to day management of employee service issues:

- 4.1 Annual leave
 - Receive and process annual leave requests from trainees, utilising the ESR/Allocate Employee Self-Service facility.
 - Issue approval to requests as per local Trust guidelines.
 - Deal with any queries arising out of annual leave procedures within 5 working days.
- 4.2 Maternity, Paternity & Adoption Leave
 - Where a trainee notifies the Trust of an intention to take maternity, paternity, or adoption leave, direct the trainee to the supplier to complete the necessary application documentation.

- Undertake a pregnant worker formal risk assessment within 10 working days of notification of pregnancy. The trainee and supplier must be notified of risk assessment outcomes within 5 working days.

4.3 Special Leave

- Receive and process the relevant forms from the trainees.
- Send acknowledgement to the trainees when leave has been approved.
- Record leave via Manager Self Service on Electronic Staff Record (ESR) on a monthly basis, by the 3rd day of each month.
- Deal with queries arising out of special leave procedures within 5 working days.

4.4 Less Than Full Time (LTFT)

- The Trust should have a flexible training lead in place and a defined process in place for managing Less Than Full Time (LTFT) sign off.

5. Resignations

The Trust must:

- 5.1 Notify the supplier and the Authority within 3 days when any trainee seeks to resign or leaves their post without prior agreement.
- 5.2 Notify the supplier of any annual leave that is outstanding when a trainee resigns from their post within 2 weeks of the trainee resigning.

6. Policy Management

The Trust must:

- 6.1 Fulfil its obligations in line with the supplier, the Authority and the Trust policies listed within Part A of Schedule 5.
- 6.2 Ensure all Trust policies are compliant with employment law and other relevant legislation.

7. Rotations

The Trust must:

- 7.1 On receipt of rotational information from the supplier (which should be provided 12 weeks ahead of rotation date), provide pay banding / work schedule information to the supplier in order that all trainees are able to receive this information at least 8 weeks in advance of their rotation start date in line with the Code of Practice and the Authority's Allocations and Rotation Process.
- 7.2 Issue individual rota information and work schedules/ pay banding to all trainees at least 6 weeks in advance of their rotation date, including arrangements for LTFT trainees.
- 7.3 Notify the supplier if a trainee fails to start in post within 24 hours of the expected commencement date.

NB: The Trust is obliged to take any trainees who rotate to them. However, it has the right to refuse the opportunity to have a trainee where reasonable and legitimate grounds exist.

8. Revalidation

The Trust should follow the Authority's exception reporting process and ensure that where there is a serious untoward incident (SUI) involving a trainee or where a trainee is involved in a capability / conduct issue, that the Authority and the supplier are notified.

9. Management of Attendance

The Trust is responsible for:

- 9.1 Notifying the supplier of each and every absence from training (to include sickness, annual leave, or accident) for all trainees as follows:
 - Complete absence notification via the ESR Manager Self Service reporting module by the supplier's payroll deadline.
 - Send copies of the supplier's self-certified / doctor's certified certificates to the supplier within 5 working days of receipt.
- 9.2 Conducting return to work interviews for all trainees following any period of sickness absence. Complete return to work interview forms and provide confirmation via ESR within 5 working days.
- 9.3 Liaising with the supplier, to manage and take appropriate action in dealing with trainee absence in line with the supplier's Attendance Management Policy.
- 9.4 Supporting trainees in returning to work following periods of absence by fully participating in return-to-work programmes including the accommodation of any identified reasonable adjustments necessary to meet the requirements of the Equality Act.
- 9.5 Managing long term sickness cases on a day-to-day basis.

10. Handling Concerns about the Conduct, Performance and Health of Trainees

Concerns about the conduct, performance and health of trainees must be handled in accordance with the relevant Authority and supplier policies and processes. The Trust should:

- 10.1 Advise the supplier / Postgraduate Dean (PGD) where any concerns about the conduct, performance or health of a trainee are raised.
- 10.2 Notify the supplier / PGD within 1 working day (or as soon as reasonably practicable thereafter) of any concerns relating to the conduct and behaviour of trainees which may raise concerns about fitness to practice.
- 10.3 Appoint an investigation officer as requested by the supplier, ensuring that any investigator is appropriately trained.
- 10.4 Participate in disciplinary hearings as requested by the supplier and in line with the supplier's policy and process ensuring that any Trust officer involved is appropriately trained.
- 10.5 When informed by the supplier, undertake exclusion meetings with the trainee.

11. Grievances, Bullying & Harassment, and other Disputes

The Trust should comply with its responsibilities, as per the supplier's Grievance Policy and Procedures document:

- 11.1 Appoint Case Investigators as required by the supplier, ensuring that any investigator is appropriately trained.
- 11.2 Participate in any grievance panels as requested by the supplier and in line with the applicable policy and procedure, ensuring that any Trust officer involved is appropriately trained.

12. Employment and Other Legal Claims

Where employment or other legal claims are submitted by trainees, the Trust will ensure that the Protocol for Handling Employment Tribunal and other Legal Claims is followed as set out in Annex B3 of the Specification.

13. Guardian of Safe Working ("Guardian")

The Trust must:

- 13.1 Adhere to the requirements set out at Schedule 6 of Terms and Conditions of Service for Doctors & Dentists in Training 2016.
- 13.2 Have a named Guardian of Safe Working where there are 10 or more doctors in training.
- 13.3 Sign up and adhere to the Memorandum of Understanding which sets out the responsibilities between the supplier and the Trust.
- 13.4 Ensure that appropriate systems are in place to enable trainees to “exception report” as per the requirements.
- 13.5 Where 13.2 applies provide quarterly and annual reports to the supplier’s Guardian to ensure that they are able to ensure issues are being handling appropriately.

14. Monitoring of Hours of Work

The Trust must:

- 14.1 Ensure that it has appropriate mechanisms in place to confirm that the hours of work of trainees meet the requirements of both the Working Time Regulations, the New Deal for Junior Doctors on 2002 TCS and the 2016 TCS.
- 14.2 Keep the supplier updated on banding appeals.

15. Travel Expenses

The Trust must approve trainee expenses in line with the applicable policy and/or contract of employment as appropriate.

16. Recharges

The Trust will accept and process payment for all recharges received from the supplier in respect of identified costs as set out in the Commercial Schedule. The Trust will:

- 16.1 Pay the supplier by the 15th of the month for the estimated recharge (i.e., bill on account). For the avoidance of doubt, this means that the Trust should schedule their payment run so that the payment is received in the supplier’s bank account on or before the due date. Late or non-payment will result in action by the supplier and/or the Authority as per the contract (Schedule 2 Paragraph 9.10 and Schedule 12 Paragraph 11.2 respectively).
- 16.2 Pay the supplier within the 30-day payment terms for the actual recharge amount invoiced on the adjusting invoice provided that timely and accurate information is provided by the supplier. Late or non-payment could result in action by the supplier and/or the Authority as per Schedule 2 Paragraph 9.10 and Schedule 12 Paragraph 11.2 respectively.
- 16.3 Issue any queries to the supplier within 15 days, notifying the supplier of missing or incorrect charges.
- 16.4 Ensure any dispute over invoicing charges with a Trust is managed locally in the first instance, engaging the relevant director of finance, if necessary, with the aim of reaching agreement without further action.
- 16.5 Where a disagreement with the supplier cannot be resolved locally, allow the Authority to work with both parties to agree a way forward, acting as arbiter to take appropriate intervention, action, or sanctions as appropriate.

17. Indemnity Insurance

The Trust is responsible for:

- 17.1 Maintaining third party, public liability and other appropriate clinical risk insurance cover in respect of trainees performing their clinical duties and training on the Trust's premises.
- 17.2 Claims of personal injury or clinical negligence arising from the acts or omissions of the trainees.
- 17.3 Indemnifying the supplier in full for and against all claims, costs, expenses, or liabilities whatsoever and howsoever arising, incurred, or suffered by the supplier, including without limitation all legal expenses and other professional fees incurred as a result of the placement provider's breach of their obligations. It is not expected that either the Authority or the supplier will be liable for any such claims, except in circumstances where the supplier is also the Trust.

18. Appointment of Locums

The Trust will be responsible for the recruitment and employment of locums to any training post vacancies as confirmed by the Supplier or HEE.

19. Additional Work / Extra Duties

HEE will not fund any additional work/extra duties over and above basic banding supplement/standard work schedule template. The liability for the costs of any extra duties worked by trainees on placement, including out of hours work, lies with the Trust. The Trust must inform the Supplier of any and all extra duties worked by a trainee in the Trust on a monthly basis to enable payment to be made as per payroll deadlines, subject to the trainee submitting the authorised claim form in line with the schedule. The Supplier will invoice the host organisation for reimbursement of these costs.

20. Communications & Liaison

The Trust must:

- 20.1 Identify a named individual, who is accountable for the management of the service at the Trust.
- 20.2 Provide the supplier and the Authority with regularly updated contact information for key individuals at the Trust.
- 20.3 Attend relevant representative networks/forums as required.
- 20.4 Contribute to the governance arrangements for management of the services as required.

Host Organisation Obligations

Section B: Non-Trust setting Obligations

This document sets out the minimum set of obligations to be undertaken by Host Organisations providing educational placements for Sport & Exercise Medicine Trainees, GP, Public Health, Palliative Care, Occupational Health Medicine and GU Medicine in non-Trust settings.

1. Day to Day Management

The Host Organisation must:

- 1.1 Assume responsibility for the day-to-day management of trainees whilst on rotational placement.
- 1.2 Provide a safe working environment to look after the health, safety, and well-being of trainees whilst on rotational placement to the same extent as that if they were the Host Organisation own employees.
- 1.3 Conduct appropriate risk assessments to ensure a safe working environment is provided in line with the Lead Employer policies in conjunction with any other relevant local policies.
- 1.4 Ensure generic work schedules are available for all posts.
- 1.5 Host Organisation to follow HEE NW policies related to Supported Return to Training (SuppoRTT) when trainees have had absence for over 3 months.

2. Induction, Statutory and Mandatory Training

The Host Organisation is responsible for:

- 2.1 Ensuring that all trainees on rotation placement complete the organisation's local induction and training requirements.
- 2.2 Ensuring alignment with regional and national Enabling Staff Movement Programmes, working with partners, including the Supplier and the Authority to ensure that any relevant trainee information is recorded, stored, and accessed in line with agreed streamlining processes in order that future Host Organisations can access updated records.

3. Occupational Health (OH) & Well Being (WB)

- 3.1 The Host Organisation will be responsible for flu jabs and emergency treatment following needlestick injuries.
- 3.2 If the relevant School considers that additional health screening, monitoring or immunisation programmes are required beyond that provided by the supplier, the school will meet such costs and provide such additional programmes and screening and report on the outcome thereof to the supplier.

4. Employee Services

The Host Organisation must use the relevant supplier policies and procedures to process day to day management of employee service issues:

4.1 Annual leave

- Receive and process annual leave requests from trainees, utilising the ESR/Allocate Employee Self-Service facility
- Issue approval to requests as per local Host Organisation guidelines.
- Deal with any queries arising out of annual leave procedures within 5 working days

4.2 Maternity, Paternity & Adoption Leave

- Where a trainee notifies the Host Organisation of an intention to take maternity, paternity or adoption leave, direct the trainee to the supplier to complete the necessary application documentation.
- Undertake a pregnant worker formal risk assessment within 10 working days of notification of pregnancy. The trainee and supplier must be notified of risk assessment outcomes within 5 working days.

4.3 Special Leave

- Receive and process the relevant forms from the trainees.
- Send acknowledgement to the trainees when leave has been approved.
- Record leave via Manager Self Service on Electronic Staff Record (ESR) on a monthly basis, by the 3rd day of each month.
- Deal with queries arising out of special leave procedures within 5 working days.

4.4 Less Than Full Time (LTFT)

- Have a defined process in place for managing Less Than Full Time (LTFT) sign off.

5. Resignations

The Host Organisation must:

5.1 Notify the supplier and the Authority within 3 days when any trainee seeks to resign or leaves their post without prior agreement.

5.2 Notify the supplier of any annual leave that is outstanding when a trainee resigns from their post within 2 weeks of the trainee resigning.

6. Policy Management

The Host Organisation must:

6.1 Fulfil its obligations in line with the supplier, the Authority and the Host Organisation policies listed within Part A of Schedule 5.

6.2 Ensure all Host Organisation policies are compliant with employment law and other relevant legislation.

7. Rotations

The Host Organisation must:

7.1 On receipt of rotational information from the supplier (which should be provided 12 weeks ahead of rotation date), provide pay banding / work schedule information to the supplier in order that all trainees are able to receive this information at least 8

weeks in advance of their rotation start date in line with the Code of Practice and the Authority's Allocations and Rotation Process.

- 7.2 Notify the supplier if a trainee fails to start in post within 24 hours of the expected commencement date.

NB: The Host Organisation is obliged to take any trainees who rotate to them. However, it has the right to refuse the opportunity to have a trainee where reasonable and legitimate grounds exist.

8. Revalidation

The Host Organisation should follow the Authority's exception reporting process and ensure that where there is a serious untoward incident (SUI) involving a trainee or where a trainee is involved in a capability / conduct issue, that the Authority and the supplier are notified.

9. Management of Attendance

The Host Organisation is responsible for:

- 9.1 Notifying the supplier of each and every absence from training (to include sickness, annual leave, or accident) for all trainees as follows:
 - Complete absence notification via the ESR Manager Self Service reporting module by the supplier's payroll deadline.
 - Send copies of the supplier's self-certified / doctor's certified certificates to the supplier within 5 working days of receipt.
- 9.2 Conducting return to work interviews for all trainees following any period of sickness absence. Complete return to work interview forms and provide confirmation via ESR within 5 working days.
- 9.3 Liaising with the supplier, to manage and take appropriate action in dealing with trainee absence in line with the supplier's Attendance Management Policy.
- 9.4 Supporting trainees in returning to work following periods of absence by fully participating in return-to-work programmes including the accommodation of any identified reasonable adjustments necessary to meet the requirements of the Equality Act.
- 9.5 Managing long term sickness cases on a day-to-day basis.

10. Handling Concerns about the Conduct, Performance and Health of Trainees

Concerns about the conduct, performance and health of trainees must be handled in accordance with the relevant Authority and supplier policies and processes. The Host Organisation should:

- 10.1 Advise the supplier / Postgraduate Dean (PGD) where any concerns about the conduct, performance or health of a trainee are raised.
- 10.2 Notify the supplier / PGD within 1 working day (or as soon as reasonably practicable thereafter) of any concerns relating to the conduct and behaviour of trainees which may raise concerns about fitness to practice.
- 10.3 Appoint an investigation officer as requested by the supplier, ensuring that any investigator is appropriately trained.

- 10.4 Participate in disciplinary hearings as requested by the supplier and in line with the supplier's policy and process ensuring that any Host Organisation officer involved is appropriately trained.
- 10.5 When informed by the supplier, undertake exclusion meetings with the trainee.

11. Grievances, Bullying & Harassment, and other Disputes

The Host Organisation should comply with its responsibilities, as per the supplier's Grievance Policy and Procedures document:

- 11.1 Appoint Case Investigators as required by the supplier, ensuring that any investigator is appropriately trained.
- 11.2 Participate in any grievance panels as requested by the supplier and in line with the applicable policy and procedure, ensuring that any Host Organisation officer involved is appropriately trained.

12. Employment and Other Legal Claims

Where employment or other legal claims are submitted by trainees, the Host Organisation will ensure that the Protocol for Handling Employment Tribunal and other Legal Claims is followed as set out in Annex 3 of the Specification.

13. Guardian of Safe Working ("Guardian")

The Host Organisation must:

- 13.1 Adhere to the requirements set out at Schedule 6 of Terms and Conditions of Service for Doctors & Dentists in Training 2016.
- 13.2 Sign up and adhere to the Memorandum of Understanding which sets out the responsibilities between the supplier and the Host Organisation.
- 13.3 Comply with the systems are in place to enable trainees to "exception report" as per the requirements.
- 13.4 Co-operate with the Supplier's Guardian of Safe Working/Head of School when a trainee raises an exception.

14. Monitoring of Hours of Work

The Host Organisation must:

- 14.1 Ensure that it has appropriate mechanisms in place to confirm that the hours of work of trainees meet the requirements of both the Working Time Regulations, the New Deal for Junior Doctors on 2002 TCS and the 2016 TCS.
- 14.2 Ensure that the generic work schedule is personalised if required in line with the 2016 TCS.

15. Travel Expenses

The Host Organisation must approve trainee expenses in line with the applicable policy and/or contract of employment as appropriate.

16. Insurance

The Host Organisation is responsible for:

- 16.1 Maintaining third party, public liability and other appropriate clinical risk insurance cover in respect of trainees performing their clinical duties and training on the Host Organisation's premises.
- 16.2 Indemnifying the supplier in full for and against all claims, costs, expenses, or liabilities whatsoever and howsoever arising, incurred, or suffered by the supplier, including without limitation all legal expenses and other professional fees incurred as a result of the placement provider's breach of their obligations. It is not expected that either the Authority or the supplier will be liable for any such claims, except in circumstances where the supplier is also the Host Organisation.

It is not expected that either the Authority or the Supplier will be liable for any such claims.

17. Additional Work / Extra Duties

HEE will not fund any additional work/extra duties over and above basic banding supplement/standard work schedule template. It is expected that any extra duties worked by trainees on placement, including out of hours work is compensated for by equivalent time off in lieu.

However, if the Host Organisation does wish to pay trainees for extra duties these need to be submitted to the Supplier for payment. The Supplier will then invoice the Host Organisation for reimbursement of these costs.

18. Communications & Liaison

The Host Organisation must:

- 18.1 Identify a named individual, who is accountable for the management of the service at the Host Organisation.
- 18.2 Provide the supplier and the Authority with regularly updated contact information for key individuals at the Host Organisation.
- 18.3 Attend relevant representative networks/forums as required.
- 18.4 Contribute to the governance arrangements for management of the services as required.

Schedule 12 Authority's Obligations

1. Workforce Planning

- 1.1 Submit minimum and maximum vacancy numbers to central Health Education England (HEE) for the annual investment plan and the relevant lead recruiter for specialty recruitment as required.
- 1.2 Lead the annual census for medical workforce training posts.
- 1.3 Ensure Trusts are informed of the number and type of training posts and funding source in their Trusts annually, meeting with the Trust where deemed appropriate and sharing this information with the supplier.

2. Recruitment & Selection

- 2.1 Identify vacancy numbers and specialty in which recruitment is agreed.
- 2.2 Manage the national/local recruitment and selection processes for medical and dental trainees, including the coordination of all recruitment activity, long listing, organising shortlisting, setting up interviews, providing presentation briefs to medical/dental school boards, and arranging panel members (including lay advisors) in line with national assessment timescales and criteria and Gold Guide standards.
- 2.3 Ensure that all recruitment processes meet legal requirements and are in accordance with the Code of Practice as well as any HEE guidance etc. for managing recruitment to specialty, general practice, and dental postgraduate training.
- 2.4 Ensure that all outcomes from interview processes are entered into Oriel and issue offers of training in line with national deadlines to ensure that the supplier is able to send out conditional offers of employment.
- 2.5 Ensure that all new trainees are allocated a first rotational placement and that this is uploaded into Trainee Information System (TIS) for data to be transferred to Electronic Staff Record (ESR) to meet pre-employment streamlining deadlines.
- 2.6 Issue training agreements to new trainees.
- 2.7 Manage all complaints received relating to local recruitment activity, in accordance with the Authority's policy.

3. Approvals

- 3.1 Where appropriate, approve applications for out of programme experience, training, research and career breaks as provided for by the Gold Guide, notifying the supplier within 5 working days of approval being granted.
- 3.2 Where appropriate, approve applications for less than full time training, notifying the supplier within 5 working days of approval being granted.
- 3.3 Where appropriate, manage all inter deanery transfers (IDTs) both in and out of the North West, using the nationally agreed process and intra-deanery transfers, notifying the supplier within 5 working days of approval being granted.
- 3.4 Notify the supplier of any other change to trainee status where this requires an amendment to contract being issued within 5 working days of amendment being agreed.

3.5 Notify the supplier of any changes to CCT dates for trainees within 5 working days of confirmation.

4. Resignations

4.1 Following receipt of trainee resignations from the supplier, confirm and notify the supplier of agreed termination dates within 5 working days.

5. Policies & Procedures

5.1 Ensure all national and local Authority office policies relating to doctors and dentists in training are kept updated and made available on the Authority's website at <https://www.nwpgmd.nhs.uk/policies-procedures>

6. Rotations

Ensure that appropriate provision of placement and rotation information is provided to the supplier in line with the Code of Practice and the Authority's Allocations and Rotation Process, maximising the use of technology where this is available:

6.1 Provide full rotation information by specialty to the supplier in line with the agreed Rotations and Allocations Policy, specifying gaps/unknown trainees due to pending recruitment, Out of Programme (OOP) trainees, maternity/sick leave, etc.

6.2 Where individual trainees' programmes are decided outside of this timescale, ensure the supplier is notified of changes which impact on rotation placements within 5 working days of confirmation being agreed.

6.3 Respond to queries relating to rotation placements from the supplier within 5 working of receipt.

6.4 Monitor compliance in the provision of placement and rotation information in line with the Code of Practice and the Authority's Allocations and Rotation Process. Addressing non-compliance as appropriate.

7. Management of Study Leave

7.1 Ensure the appropriate management of study leave processes for trainees as defined in the Authority's Study Leave Guidance available at: <https://nwpgmd.nhs.uk/study-leave>

7.2 Liaise with study leave administrators in the Trust, responding to queries within 3 working days.

7.3 Notify the Supplier of payments which need to be included in payroll.

8. Revalidation and Education & Training Reviews

8.1 The Postgraduate Dean (PGD) of the Authority (NW) is the Responsible Officer (RO) for all doctors in training in the Authority's region.

8.2 The Authority will facilitate and co-ordinate the trainees' revalidation data collection process and may be required to act about the fitness to practise of a trainee based on information reported as part of revalidation.

8.3 The Authority will notify the supplier if an ARCP outcome may impact on employment within 5 working days of the decision being taken e.g., where additional training time is required or were released from training.

9. Trainee Information System (TIS)

- 9.1 Ensure that relevant Supplier staff members have appropriate access to TIS
- 9.2 Provide first level service support on TIS to supplier staff as required, including password resets, login access and basic training. Any requirements not able to be dealt with by the local Authority Information team will be escalated to the national TIS team to respond to.
- 9.3 Ensure that relevant Trust members of staff have appropriate access to TIS once the system is configured to allow this level of access. The Authority will provide first level support as above to Trust members of staff.
- 9.4 Ensure that an accurate list of current training post numbers is regularly provided to the supplier to support efficient operation of the TIS/ESR Interface.
- 9.5 Maintain a process in which the supplier is notified of any changes to national post numbers and their structure, the inactivation of post numbers, and also, the addition of new post numbers to TIS in which the supplier is the employing Body.
- 9.6 Provide first level support in relation to TIS/ESR Interface queries from the supplier, ensuring fixes are applied in TIS in the event the issue resides with the authority. Any issues not able to be dealt with by the local authority information team will be escalated to the national TIS team to respond to.
- 9.7 To assist with any queries relating to TIS reporting provided via Tableau, whether with regards to access or the reporting outputs generated from TIS.

10. Advice & Notification

The PGD/nominated deputy/school team will provide the following:

- 10.1 Advice and information regarding a range of contractual changes to be processed by the supplier (e.g., OOP, Certificate of Completion of Training (CCT) dates and National Training Number (NTN) withdrawals) within 5 working days.
- 10.2 Notification of any issues to the supplier emerging from the ARCP or College exams/reviews or other factors which will impact on predicted CCT dates including Annual Review of Competency Progression (ARCP) outcomes when a trainee requires additional training time.
- 10.3 Provision of advice to the supplier on the impact that absence has on education and training.
- 10.4 Provision of advice to the Trust and the supplier on education and training issues relating to incidents of potential conduct, performance discipline or grievance, as appropriate, including where the restriction of duties or exclusion from work is being considered.
- 10.5 Provision of other advice to the supplier and/or Trust upon request.
- 10.6 Notification of agreement to modification of work schedules for patient safety reasons to the supplier.
- 10.7 Notification of newly approved placement providers to the providers and the supplier.
- 10.8 Provision of careers advice to trainees were recommendation from occupational health (OH) has been received.

11. Funding

- 11.1 To accept and process payment for all recharges received from the supplier in respect of identified costs as set out in the Commercial Schedule.
- 11.2 To assist in resolving any Trust late or non-payment issue that arises in connection with this contract in such a way as may be open to the Authority (which will include consideration of the terms of any individual Education Contract in place with the late or non-paying Trust and potential enforcement of those terms). Refer to Schedule 11 Paragraph 10 in respect of duties and obligations of Trusts.

12. Protocol for the Management of Employment and Other Legal Claims

- 12.1 Where employment or other legal claims are submitted by trainees, ensure that the Protocol for Handling Employment Tribunal and other Legal Claims is followed as set out in Annex B3.

13. Liaison, Communications and Stakeholder Engagement

- 13.1 Facilitate the delivery of no less than twice each calendar year Lead Employer Service Management Board (Board) meetings where the supplier will be required to provide assurance to the Board on the performance of the services.
- 13.2 Facilitate the delivery of no less than twice each calendar year Performance and Contract Management Committee meetings to review performance against agreed quality standards, review financial and governance issues, explore opportunities to make service improvements and interfaces between the parties, to seek formal customer feedback and discuss national and regional requirements and developments etc.
- 13.3 Chair a bi-monthly Operational Management Committee meeting between relevant Authority and supplier staff to discuss day-to day operational matters.
- 13.4 Identify named day to day contacts and management leads for each specialty school who can be contacted by the Trust as and when required.
- 13.5 Attend network meetings for Medical Directors (MDs), Human Resource Directors (HRDs), Medical Staffing Managers, Medical Education Managers, as required, to provide feedback to the Trust on any issue relating to the organisation of doctors in training.
- 13.6 Attend the Lead Employer service Joint Local Negotiating Committee (JLNC) to provide an Authority view on the group.
- 13.7 Ensure alignment and where required compliance with regional and national Enabling Staff Movement Programmes; working with partners, including the supplier and the Trust to ensure that any relevant trainee information is recorded, stored and accessed in line with agreed processes.

14. Grievances, Bullying & Harassment and other Disputes

The Authority should comply with its responsibilities, as per the supplier's Grievance Policy and Procedures document:

- 14.1 Appoint case investigators as required by the supplier, ensuring that any investigator is appropriately trained.
- 14.2 Participate in any grievance panels as requested by the supplier and in line with the applicable policy and procedure, ensuring that any Authority officer involved is appropriately trained.

Schedule 13 Implementation Plan

It is anticipated that the service provider will commence the implementation period on Monday 18th July 2022.

This handover period will ensure the legal obligations, including the requirements of TUPE, are met and that there is a sufficient period to ensure contractual dissemination of information is facilitated between the current contract holder and the awarded service provider resulting from this tender process.

This implementation phase will continue until the contract commences on the 1st October 2022.

The Authority will work in conjunction with the successful service provider to develop this plan further

