

Dated 2016

(1) **NHS LITIGATION AUTHORITY**

- and -

(2) **{●}**

Contract
For the Provision of Mediation Services

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THIS CONTRACT is made the day of 2016

BETWEEN:

- (1) **NHS LITIGATION AUTHORITY** of 2nd Floor, 151 Buckingham Palace Road, London SW1W 9SZ ("**NHSLA**"); and
- (2) **[INSERT]** incorporated and registered in England and Wales with company number **[INSERT NUMBER]** whose registered office is at **[INSERT ADDRESS]** ("**Supplier**")

BACKGROUND:

The NHSLA wishes the Supplier to provide the Services (as defined below) and the Supplier agrees to provide the Services in accordance with and subject to the terms and conditions of this Contract.

NOW IT IS HEREBY AGREED as follows:

1 Definitions and Interpretation

The definitions and rules of interpretation set out in Schedule 1 apply in this Contract.

2 Term

- 2.1 This Contract shall commence on the Commencement Date and shall expire on the Expiry Date, subject to earlier termination in accordance with its terms or at law (the "**Term**").
- 2.2 The NHSLA shall be entitled to extend the Term by the Extension Period on giving the Supplier written notice no less than one (1) month prior to the date on which this Contract would otherwise have expired under Clause 2.1.

3 Provision of Services

- 3.1 The NHSLA may request the provision of the Services at any time on or after the Service Commencement Date, in accordance with the Specification, and the Supplier shall provide the Services in accordance with the provisions of this Contract.
- 3.2 The Supplier acknowledges and agrees that:
 - 3.2.1 there is no obligation on the NHSLA to purchase any Services from the Supplier during the Term;
 - 3.2.2 no undertaking or any form of statement, promise, representation or obligation has been made by the NHSLA in respect of the total volumes or value of the Services to be provided by the Supplier pursuant to this Contract and the Supplier acknowledges and agrees that it has not entered into this Contract on the basis of any such undertaking, statement, promise or representation;

- 3.2.3 in entering into this Contract, no form of exclusivity has been granted by the NHSLA; and
- 3.2.4 the NHSLA is at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all services which are the same as or similar to the Services.
- 3.3 The Supplier agrees to provide the Services:
 - 3.3.1 with reasonable skill and care;
 - 3.3.2 in accordance with the Specification;
 - 3.3.3 in accordance with the Law and with Guidance;
 - 3.3.4 in accordance with Good Industry Practice;
 - 3.3.5 in accordance with the Policies.
- 3.4 The Supplier shall, as reasonably required by the NHSLA, cooperate with any other service providers to the NHSLA and/or any other third parties as may be relevant in the provision of the Services.
- 3.5 The Supplier shall notify the NHSLA forthwith in writing 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. Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the NHSLA 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.
- 3.6 The Supplier shall ensure at all times that:
 - 3.6.1 it is a registered mediation provider in compliance with the Civil Mediation Council Provider Registration Scheme and/or a registered mediator in compliance with the Civil Mediation Council Individual Registration Scheme (as appropriate);
 - 3.6.2 only Approved Mediators are engaged in the provision of the Services;
 - 3.6.3 all Approved Mediators are registered mediators in compliance with the Civil Mediation Council Individual Registration Scheme;
 - 3.6.4 it appoints an Approved Mediator in respect of each Mediation who possess the relevant skills and experience to mediate effectively for the parties to that Mediation;
 - 3.6.5 it complies, and all Approved Mediators comply, with the terms of any agreement made between the Supplier or the relevant Approved Mediator and the parties to any Mediation regarding the conduct of such Mediation;

- 3.6.6 it complies, and all Approved Mediators comply, with such code of conduct as is endorsed by the Civil Mediation Council from time to time (which, as at the date of this Agreement, is the European Model Code of Conduct for Mediators) and the Supplier's code of conduct (to the extent that the latter does not conflict with the former).

3.7 The Supplier shall be:

- 3.7.1 responsible for ensuring that all Approved Mediators are informed of, and abide by, the terms of this Contract; and
- 3.7.2 liable to the NHSLA for any breach of such terms by any of the Approved Mediators.

4 Deliverables

4.1 Wherever the Services require the Supplier to provide a Deliverable:

- 4.1.1 such Deliverable will be delivered in the form prescribed and in accordance with all other requirements set out in the Specification;
- 4.1.2 the NHSLA may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable has not (in whole or in part) been delivered in the form prescribed and in accordance with all other requirements set out in the Specification;
- 4.1.3 any Deliverables which are rejected shall be replaced by the Supplier (at no extra charge to the NHSLA) by Deliverables which are reasonably satisfactory to the NHSLA's Contract Manager.

5 Premises

- 5.1 The Services shall be provided at such premises, and at such locations within those premises, as may be agreed by the Parties in writing.

6 Staff

- 6.1 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.
- 6.2 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.
- 6.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services.

- 6.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 6.5 The Supplier shall:
- 6.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 6.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
 - 6.5.3 ensure all Staff have the appropriate qualifications to carry out their duties;
 - 6.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
 - 6.5.5 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.
- 6.6 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term obtain, as appropriate (including for the avoidance of doubt where required by Law and/or the Policies), 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 and shall take place before the Supplier engages the potential Staff or persons in the provision of the Services.
- 6.7 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the NHSLA's prior written consent if:
- 6.7.1 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 6.6; or
 - 6.7.2 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 6.6.
- 6.8 In addition to the requirements of Clauses 6.6 and 6.7, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
- 6.8.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
 - 6.8.2 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; and shall ensure that the NHSLA 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 NHSLA's written consent and with such safeguards being put in place as the NHSLA may reasonably request. Should the NHSLA withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith (at the Supplier's cost and expense).

- 6.9 The NHSLA 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 NHSLA will act reasonably in making such a request. Prior to making any such request the NHSLA shall raise with the Supplier the NHSLA's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The NHSLA shall be under no obligation to have such prior discussion should the NHSLA have concerns regarding patient or service user safety.

7 Business continuity

- 7.1 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 regarding continuity of the provision of the Services during and following a Business Continuity Event.
- 7.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months. The Supplier shall promptly provide to the NHSLA, at the NHSLA'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 7.2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the NHSLA 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.
- 7.3 The NHSLA 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 NHSLA to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the NHSLA in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the NHSLA into such Business Continuity Plan it will explain the reasons for not doing so to the NHSLA.
- 7.4 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 NHSLA on such implementation. During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

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 NHSLA's Contract Manager.
- 8.2 The Contract Managers at the commencement of this Contract are:
- 8.2.1 for the NHSLA: the Head of Claims Quality; and
 - 8.2.2 for the Supplier: **[insert name and role]**.
- 8.3 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. The first such meeting shall take place on a date to be agreed on or around the end of the first Quarter after the Commencement Date. Subsequent meetings shall take place at Quarterly intervals or as may otherwise be agreed in writing between the Parties.
- 8.4 Within 10 Business Days of the end of each Quarter, the Supplier shall provide a written service report to the NHSLA regarding the provision of the Services and the operation of this Contract during that Quarter. Unless otherwise agreed by the Parties in writing, such service report shall contain:
- 8.4.1 details of the performance of the Supplier;
 - 8.4.2 details of any complaints relating to the Services and the way in which the Supplier has responded to such complaints since the last service report;
 - 8.4.3 the information specified in the Specification;
 - 8.4.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.4.5 such other information as reasonably required by the NHSLA.
- 8.5 The Supplier shall provide such management information as the NHSLA 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 NHSLA in such form as may be specified by the NHSLA.

9 Price and payment

- 9.1 Subject to the Supplier providing the Services in accordance with this Contract, the NHSLA will pay the Supplier the Contract Price in accordance with this Clause 9 and the Pricing Schedule.
- 9.2 The Contract Price is the entire price payable by the NHSLA 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 and the cost of Staff.
- 9.3 The Supplier shall invoice the NHSLA within thirty (30) days of the conclusion of each Mediation, for the Contract Price payable in respect of that Mediation. Each invoice shall contain such information and be addressed to such individual as the NHSLA may inform the Supplier from time to time.
- 9.4 The NHSLA shall pay each undisputed invoice received in accordance with Clause 9.3 within thirty (30) days of receipt of such invoice.
- 9.5 The Contract Price is exclusive of VAT, which, if properly chargeable, the NHSLA 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.
- 9.6 The NHSLA reserves the right to deduct any monies due to the Supplier from the NHSLA from any monies due to the NHSLA from the Supplier under this Contract.
- 9.7 Subject to Clause 23, the Contract Price shall remain firm and not be subject to any increase whatsoever during the Term.
- 9.8 The Supplier acknowledges and agrees that:
- 9.8.1 the Contract Price may be paid to the Supplier by a third party, including any member of the NHSLA's schemes;
 - 9.8.2 payment of the Contract Price to the Supplier by a third party constitutes compliance by the NHSLA with its obligations under this Clause 9 and the Pricing Schedule; and
 - 9.8.3 receipt by the Supplier of any such payments from a third party is in full and final settlement of any actions, claims, rights, demands and set-offs that the Supplier may have against the NHSLA which arise out of or in connection with payment of the Contract Price.

10 Warranties

- 10.1 The Supplier warrants and undertakes that:

- 10.1.1 it has all rights, registrations, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
 - 10.1.2 receipt of the Services by or on behalf of the NHSLA and use of the Deliverables will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
 - 10.1.3 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 NHSLA's information and communications technology systems;
 - 10.1.4 all information supplied by it to the NHSLA during any procurement process leading to the execution of this Contract is true and accurate;
 - 10.1.5 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;
 - 10.1.6 its execution of this Contract does not and will not contravene or conflict with its constitutional documents, any Law or any agreement to which it is a party;
 - 10.1.7 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;
 - 10.1.8 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
 - 10.1.9 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 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 NHSLA 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 NHSLA as part of the Services.
- 11.2 The Supplier hereby grants to the NHSLA, for the life of the use by the NHSLA of any Deliverables, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such Deliverables in the course of the NHSLA's normal business operations.

12 Indemnity

12.1 The Supplier shall be liable to the NHSLA for, and shall indemnify and keep the NHSLA 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); and/or

12.1.3 any breach of Clause 10.1.2 and/or Clause 11; 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 negligent act or omission by the NHSLA.

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 Liability under Clauses 12.1.1, 12.1.3, 18.12 and 20.5 shall be unlimited.

13.3 Subject to Clauses 13.1 and 13.2, 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 profits, loss of income, 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 are properly evidenced by the claiming Party:

13.3.1 extra costs incurred purchasing replacement or alternative services; and/or

13.3.2 the costs of extra management time,

in each case to the extent to which such costs 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 Subject to Clauses 13.1, 13.2 and 13.3, the total liability of each Party to the other under or in connection with this Contract in any Contract Year whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to five million pounds (£5,000,000).
- 13.5 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.
- 13.6 This Clause 13 shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

- 14.1 The Supplier shall put in place and maintain insurance in respect of the Supplier's potential liabilities under this Contract and/or as required by Law (the "**Insurances**"). Without limitation, the Insurances shall include:
- 14.1.1 professional indemnity (including third parties intellectual property rights insurance) with a minimum limit of indemnity of one million pounds (£1,000,000) for each claim;
 - 14.1.2 public liability insurance with a minimum limit of indemnity of one million pounds (£1,000,000) for each claim; and
 - 14.1.3 employers' liability insurance with such minimum limit of indemnity as is required by Law from time to time.
- 14.2 The amount of any insurance cover shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of 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 insurance cover is insufficient to cover the settlement of any claim.
- 14.3 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.
- 14.4 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the NHSLA that the Insurances are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.5 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 Step In Events

- 15.1 If a Step In Event occurs, the NHSLA may by giving not less than twelve (12) hours written notice to the Supplier, require the Supplier to suspend its provision of the Services (in whole or in part) until the Supplier demonstrates to the reasonable satisfaction of the NHSLA that it is able to and will provide the suspended Services in accordance with this Contract
- 15.2 During the suspension of the Services (in whole or in part):
- 15.2.1 the Supplier shall not be entitled to receive payment of the Contract Price for such suspended Services;
 - 15.2.2 the Supplier shall indemnify and keep the NHSLA indemnified against, any loss, damages, costs and expenses (including without limitation legal costs and expenses) reasonably incurred by the NHSLA in respect of the suspension, including, without limitation, costs incurred in performing or arranging for the performance of the suspended Services.

16 Termination

- 16.1 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 failure to pay any sums due under this Contract), the non-breaching Party shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and 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 16.2.1(ii). 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:
- 16.1.1 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;
 - 16.1.2 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
 - 16.1.3 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 16.2.1(ii), a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

16.2 Either Party may terminate this Contract forthwith by notice in writing to the other Party if such other Party:

16.2.1 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; or

16.2.2 has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.

16.3 The NHSLA may terminate this Contract forthwith by notice in writing to the Supplier if:

16.3.1 the Supplier, 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;

16.3.2 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 NHSLA and the NHSLA shall be entitled to withhold such consent if, in the reasonable opinion of the NHSLA, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the NHSLA;

16.3.3 the Supplier purports to assign, subcontract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 29.1; or

16.3.4 pursuant to and in accordance with Clauses 25.8; 27.2; 27.4 and 30.2.

- 16.4 Within six (6) months of the Commencement Date the Parties shall develop and agree an exit plan which shall ensure continuity of the Services on expiry or earlier termination (full or partial) of this Contract and which shall comply with the requirements of Schedule 4 (the "**Exit Plan**"). The Supplier shall provide the NHSLA with the first draft of the Exit plan within four (4) months of the Commencement Date. The Parties shall review and, as appropriate, update the Exit Plan on each anniversary of the Commencement Date.

17 Consequences of expiry or earlier termination of this Contract

- 17.1 Immediately following expiry or earlier termination of this Contract:

17.1.1 the Supplier shall comply with its obligations under the Exit Plan; and

17.1.2 all data, including without limitation 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 NHSLA shall be delivered by the Supplier to the NHSLA 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.

- 17.2 The Supplier shall retain all data relating to the provision of the Services that are not transferred pursuant to Clause 17.1 for the period set out in Clause 26.1.

- 17.3 The Supplier shall cooperate fully with the NHSLA 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 NHSLA to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.

- 17.4 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, or which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

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

- 18.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the NHSLA and to the extent permitted by law, supply to the NHSLA and keep updated all information required by the NHSLA as to the terms and conditions of employment and employment history of any Supplier Personnel (including but not limited to all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.

- 18.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any subcontractor shall provide a final list to the Successor and/or the NHSLA, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or subcontractor expects will transfer to the Successor or the NHSLA and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 18.3 If the Supplier shall, in the reasonable opinion of the NHSLA, deliberately not comply with its obligations under Clauses 18.1 and 18.2, the NHSLA may withhold payment under Clause 9.
- 18.4 The Supplier shall be liable to the NHSLA for, and shall indemnify and keep the NHSLA indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 18.1 and 18.2.
- 18.5 Subject to Clause 18.6, 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 subcontractor shall not, without the prior written consent of the NHSLA, such consent not to be unreasonably withheld or delayed:
- 18.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
 - 18.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
 - 18.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
 - 18.5.4 deploy any person other than the Supplier Personnel to perform the Services;
 - 18.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
 - 18.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
 - 18.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 18.6 Clause 18.5 shall not prevent the Supplier or any subcontractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or subcontractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.

- 18.7 Having as appropriate gained permission from any subcontractor, the Supplier hereby permits the NHSLA to disclose information about the Supplier Personnel to any Interested Party provided that the NHSLA informs the Interested Party in writing of the confidential nature of the information.
- 18.8 The Parties agree that where a Successor or the NHSLA provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or subcontractor (in whole or in part) on the expiry or termination of this Contract (howsoever arising), TUPE and/or the Cabinet Office Statement and/or 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 and/or the Cabinet Office Statement and/or Fair Deal for Staff Pensions apply then Clauses 18.10 to 18.13 inclusive shall apply.
- 18.9 If on the expiry or termination of this Contract (howsoever arising) TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or subcontractor as appropriate. The Supplier will, and shall procure that any subcontractor shall, indemnify and keep indemnified the NHSLA in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 18.10 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any subcontractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 18.11 The Supplier will and shall procure that any subcontractor will on or before any Subsequent Transfer Date:
- 18.11.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
 - 18.11.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
 - 18.11.3 pay any Successor or the NHSLA, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
 - 18.11.4 pay any Successor or the NHSLA, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and

- 18.11.5 subject to any legal requirement, provide to the Successor or the NHSLA, 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 subcontractor warrant that such records are accurate and up to date.
- 18.12 The Supplier will and shall procure that any subcontractor will indemnify and keep indemnified the NHSLA and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 18.12.1 the Supplier's or subcontractor's failure to perform and discharge its obligations under Clause 18.11;
 - 18.12.2 any act or omission by the Supplier or subcontractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
 - 18.12.3 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 NHSLA, as appropriate;
 - 18.12.4 any emoluments payable to a person employed or engaged by the Supplier or subcontractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
 - 18.12.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or NHSLA, as appropriate, has failed to continue a benefit provided by the Supplier or subcontractor 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 NHSLA, as appropriate, to provide an identical benefit but where the Successor or NHSLA, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
 - 18.12.6 any act or omission of the Supplier or any subcontractor 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 NHSLA's failure to comply with regulation 13(4) of TUPE.
- 18.13 The Supplier will, or shall procure that any subcontractor will, on request by the NHSLA provide a written and legally binding indemnity in the same terms as set out in Clause 18.12 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 18.14 The Supplier will indemnify and keep indemnified the NHSLA and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the

Supplier or subcontractor 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.

19 Confidentiality

19.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of this Clause 19, each Party ("**Recipient**") undertakes to keep confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

19.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;

19.1.2 the provisions of this Clause 19 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 by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Disclosure Laws.

19.2 The NHSLA may disclose the Supplier's Confidential Information on a confidential basis, to any consultant, contractor or other person engaged by the NHSLA and, for the purposes of this Clause 19.2, "on a confidential basis" shall mean the NHSLA making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 19.2.

19.3 The Supplier may only disclose the NHSLA's Confidential Information, and any other information provided to the Supplier by the NHSLA 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 this Clause 19. The Supplier shall not, and shall ensure that the Staff do not, use any of the NHSLA's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.

- 19.4 For the avoidance of doubt, save as required by Law, the Supplier shall not, without the prior written consent of the NHSLA (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 NHSLA and/or make any other announcements about this Contract.
- 19.5 This Clause 19 shall remain in force:
- 19.5.1 without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and
 - 19.5.2 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.

20 Data protection

- 20.1 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.
- 20.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Supplier must, in particular, but without limitation:
- 20.2.1 only Process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instructions given by the NHSLA under this Contract;
 - 20.2.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements of this Clause 20, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by unauthorised or unlawful Processing or by its loss, damage or destruction;
 - 20.2.3 take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in Clause 20;
 - 20.2.4 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the NHSLA;
 - 20.2.5 complete and publish an annual information governance assessment using the NHS information governance toolkit;
 - 20.2.6 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
 - 20.2.7 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;

- 20.2.8 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;
 - 20.2.9 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
 - 20.2.10 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);
 - 20.2.11 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; and
 - 20.2.12 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.
- 20.3 The Supplier and the NHSLA shall ensure that Personal Data is safeguarded at all times in accordance with the Law and Guidance, 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 NHSLA under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 20.4 Where any Personal Data is Processed by any subcontractor of the Supplier in connection with this Contract, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in this Clause 20, as if such subcontractor were the Supplier.
- 20.5 The Supplier shall indemnify and keep the NHSLA 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.

21 Freedom of Information

[NOTE: This clause is drafted on the assumption that the Supplier is not subject to the FOIA. If the Supplier is subject to the FOIA, this clause will require amendment]

- 21.1 The Supplier shall assist and cooperate with the NHSLA as appropriate or necessary to enable it to comply with its disclosure obligations under the Disclosure Laws. The Supplier agrees:
- 21.1.1 that this Contract and any recorded information held by the Supplier on the NHSLA's behalf for the purposes of this Contract are subject to the obligations and commitments of the NHSLA under the Disclosure Laws;
 - 21.1.2 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 Disclosure Laws is a decision solely for the NHSLA;
 - 21.1.3 that where the Supplier receives a request for information under the Disclosure Laws and the Supplier itself is subject to the Disclosure Laws it will liaise with the NHSLA 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 NHSLA;
 - 21.1.4 that where the Supplier receives a request for information under the Disclosure Laws and the Supplier is not itself subject to the Disclosure Laws, it will not respond to that request (unless directed to do so by the NHSLA) and will promptly (and in any event within two (2) Business Days) transfer the request to the NHSLA;
 - 21.1.5 that the NHSLA, 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
 - 21.1.6 to assist the NHSLA 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 NHSLA within five (5) Business Days of that request and without charge.
- 21.2 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Disclosure Laws, the content of this Contract is not Confidential Information.
- 21.3 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 Disclosure Laws. In preparing a copy of this Contract for publication

under this Clause 21.3, the NHSLA 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 NHSLA's absolute discretion. The Supplier shall assist and cooperate with the NHSLA to enable the NHSLA to publish this Contract.

- 21.4 Where any information is held by any subcontractor of the Supplier in connection with this Contract, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in this Clause 21, as if such subcontractor were the Supplier.

22 Information Security

- 22.1 The Supplier shall:

22.1.1 notify the NHSLA 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 NHSLA's information governance Policies; and

22.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the NHSLA and shall provide full information as may be reasonably requested by the NHSLA in relation to such audits, investigations and assessments.

- 22.2 The Supplier will ensure that it puts in place and maintains an information security management plan appropriate to the Services and the obligations placed on the Supplier under this Contract. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance and Good Industry Practice.

23 Change management

- 23.1 The Supplier acknowledges to the NHSLA that the NHSLA'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, as may be requested by the NHSLA from time to time.

- 23.2 Subject to Clause 23.1, any change to the Services or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

24 Dispute resolution

- 24.1 During any dispute arises out of this Contract, including a dispute as to the validity of this Contract, it is agreed that:

24.1.1 the Supplier shall continue its performance of the provisions of the Contract (unless the NHSLA requests in writing that the Supplier does not do so); and

24.1.2 the Parties 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 this Clause 24 before commencing court proceedings.

- 24.2 If any dispute arises out of this Contract, including a dispute as to the validity of this Contract, which cannot be resolved by the Parties' respective Contract Managers within 10 Business Days, it shall be referred jointly by the Parties to the Director of Claims of the NHSLA and **[INSERT POST]** of the Supplier (or in the absence of any such person holding either office at the relevant time, to a person within the relevant party's organisation holding a reasonably equivalent post), who will attempt to resolve the matter.
- 24.3 If the procedure set out in Clause 24.2 above fails to resolve the dispute within 20 Business Days of the joint referral, the Parties will attempt to settle it by mediation with such mediation organisation as the Parties agree in writing (the "**Mediation Organisation**"), using the model procedure of such mediation organisation.
- 24.4 To initiate mediation a Party shall:
- 24.4.1 give notice in writing ("**Dispute Notice**") to the other Party requesting mediation of the dispute; and
 - 24.4.2 send a copy of the Dispute Notice to the Mediation Organisation asking them to nominate a mediator if the Parties are not able to agree such appointment by negotiation.
- 24.5 Neither Party may issue a Dispute Notice until the process set out in Clause 24.2 has been exhausted.
- 24.6 The mediation shall commence within twenty eight (28) days of the Dispute Notice being served. Neither Party will terminate such mediation 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. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The NHSLA 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.
- 24.7 Nothing in this Contract shall prevent:
- 24.7.1 the NHSLA 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
 - 24.7.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party 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 Mediation Organisation's model procedure.
- 24.8 This Clause 24 shall survive the expiry of or earlier termination of this Contract for any reason.

25 Force majeure

- 25.1 Subject to Clause 25.2 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.
- 25.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in this Clause 25 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 25.2.1 the Supplier has fulfilled its obligations pursuant to Clause 7;
 - 25.2.2 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
 - 25.2.3 the Supplier has complied with the procedural requirements set out in this Clause 25.
- 25.3 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.
- 25.4 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.
- 25.5 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.
- 25.6 Subject to service of the notice referred to in Clause 25.5, 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.
- 25.7 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.
- 25.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the NHSLA may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract on service of written notice on the Supplier.
- 25.9 Following such termination in accordance with Clause 25.8 and subject to Clause 25.10, neither Party shall have any liability to the other.

- 25.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 25.8 shall continue in full force and effect unless otherwise specified in this Contract.

26 Records retention and right of audit

- 26.1 Subject to any statutory requirement and Clause 26.2, 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.
- 26.2 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.
- 26.3 The NHSLA shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the NHSLA 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.
- 26.4 Should the Supplier subcontract any of its obligations under this Contract, the NHSLA shall have the right to audit and inspect such third party. The Supplier shall procure permission for the NHSLA 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 subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the NHSLA or its authorised representative if requested.
- 26.5 The Supplier shall grant to the NHSLA 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:
- 26.5.1 the examination and certification of the NHSLA's accounts; or
- 26.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the NHSLA has used its resources.
- 26.6 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 26 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under section 6(3)(d) and 6(5) of the National Audit Act 1983.
- 26.7 The Supplier shall provide reasonable cooperation to the NHSLA, 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.

- 26.8 The Supplier shall provide all reasonable information as may be reasonably requested by the NHSLA to evidence the Supplier's compliance with the requirements of this Contract.

27 Conflicts of interest and the prevention of fraud

- 27.1 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 NHSLA, 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 NHSLA under the provisions of this Contract (a "**Conflict of Interest**"). The Supplier will disclose to the NHSLA full particulars of any such conflict of interest which may arise. The Supplier agrees that undertaking work in relation to any claims or proceedings against the NHS in England shall amount to a Conflict of Interest.
- 27.2 The NHSLA 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 NHSLA, there is or may be a Conflict of Interest. The actions of the NHSLA pursuant to this Clause 27.2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the NHSLA.
- 27.3 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 NHSLA immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 27.4 If the Supplier or its Staff commits Fraud the NHSLA may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the NHSLA resulting from the termination.

28 Notice

- 28.1 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 Clause 28.2 or such other person as one Party may inform the other Party in writing from time to time.
- 28.2 Notices served under this Contract are to be delivered to:
- 28.2.1 for the NHSLA: the Head of Claims Quality, at the address set out above; and
 - 28.2.2 for the Supplier: **[INSERT POST AND ADDRESS]**.
- 28.3 A notice shall be treated as having been received:
- 28.3.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
 - 28.3.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting,

or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or

- 28.3.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

29 Assignment, novation and subcontracting

- 29.1 The Supplier shall not, assign, subcontract, 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 NHSLA. If the Supplier subcontracts any of its obligations under this Contract, every act or omission of the subcontractor 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 NHSLA as if such act or omission had been committed or omitted by the Supplier itself.
- 29.2 Any authority given by the NHSLA for the Supplier to subcontract any of its obligations under this Contract shall not impose any duty on the NHSLA to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Contract.
- 29.3 Where the Supplier enters into a subcontract 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 subcontract, unless otherwise agreed with the NHSLA in writing, which:
- 29.3.1 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 subcontracting;
- 29.3.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
- 29.3.3 contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the NHSLA (such approval not to be unreasonably withheld or delayed).
- 29.4 The NHSLA shall upon written request have the right to review any subcontract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any subcontract within five (5) Business Days of the date of a written request from the NHSLA. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.
- 29.5 The NHSLA may at any time transfer, assign, novate, subcontract 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, subcontracting or disposal.

30 Prohibited Acts

30.1 The Supplier warrants and represents that:

30.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

- (i) offered, given or agreed to give any officer or employee of the NHSLA 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 NHSLA or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the NHSLA; 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 NHSLA; and

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

30.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the NHSLA:

30.2.1 the NHSLA shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

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

30.2.3 notwithstanding Clause 24, any dispute relating to:

- (i) the interpretation of Clause 30; or
- (ii) the amount or value of any gift, consideration or commission,

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

31 General

- 31.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 31.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 31.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 31.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 31.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 31.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 31.7 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 31.7, right includes any power, privilege, remedy, or proprietary or security interest.
- 31.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 31.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the NHSLA 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.

- 31.10 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one contract.
- 31.11 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 31.12 Subject to Clause 24, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

IN WITNESS WHEREOF the Parties or their duly authorised representatives have signed this Contract

Signed for and on behalf of the NHSLA

Name:

Position:

Signature:

Date:

Signed for and on behalf of the Supplier

Name:

Position:

Signature:

Date:

Schedule 1

Definitions and Interpretations

1 Definitions

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

"Approved Mediators"	means those mediators listed in Schedule 5 or as otherwise agreed between the Parties in writing;
"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;
"Codes of Practice"	means the Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions and on the Management of Records;
"Commencement Date"	means the date of this Contract;
"Confidential Information"	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <ul style="list-style-type: none"> (a) Personal Data or Sensitive 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); (c) information arising out of or in connection with any Mediation, including the fact and terms of any settlement; and/or

	(c) Policies and such other documents which the Supplier may obtain or have access to through the NHSLA's intranet;
"Contract"	means this contract including its main body and all schedules attached to the main body;
"Contract Year"	means any 12 month period commencing on the Commencement Date or an anniversary thereof;
"Contract Manager"	means for the NHSLA and for the Supplier the individuals specified in Clause 8.1; or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1;
"Contract Price"	means the price exclusive of VAT that is payable to the Supplier by the NHSLA under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
"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);
"Data Controller"	shall have the same meaning as set out in the Data Protection Act 1998;
"Data Processor"	shall have the same meaning as set out in the Data Protection Act 1998;
"Data Protection Legislation"	means the Data Protection Act 1998 and any other Law relating to the protection of personal data and the privacy of individuals, including where applicable guidance and codes of practice issued by the Information Commissioner;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;
"Deliverable"	means any process, article, data, report, drawing, specification, design, invention, plan, program, document, material and/or other output produced by or to be produced by the Supplier and provided to the NHSLA in the course of the performance of the Services;
"Disclosure Laws"	means the FOIA, Codes of Practice and Environmental Regulations;
"Dispute Notice"	has the meaning given under Clause 24.4.1;
"Employment"	means all claims, demands, actions, proceedings, damages,

Liabilities"	compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
"Environmental Regulations"	the Environmental Information Regulations 2004;
"Exit Plan"	shall have the meaning given to the term in Clause 16.5;
"Expiry Date"	means 4 th December 2018;
"Extension Period"	means twelve (12) months;
"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"	means the Freedom of Information Act 2000;
"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 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

	<p>subcontractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or NHSLA's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p>
"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 as defined in regulation 3 of the Public Contracts Regulations 2006 (SI 2006/5) (as amended);</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 NHSLA 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>
"Intellectual Property Rights"	<p>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;</p>
"Interested Party"	<p>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 subcontractor and who had confirmed such interest in writing to the NHSLA;</p>
"Law"	<p>means:</p> <p>(a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;</p> <p>(b) any applicable European Union directive, regulation, decision or law;</p>

	<p>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</p> <p>(e) requirements set by any regulatory body; and</p> <p>(f) any applicable code of practice,</p> <p>in each case as applicable in England and Wales;</p>
“Measures”	means any measures proposed by the Supplier or any subcontractor within the meaning of regulation 13(2)(d) of TUPE;
"Mediation"	means the mediation of a dispute by the Supplier in the course of providing the Services;
“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;
“Party”	means the NHSLA or the Supplier as appropriate and Parties means both the NHSLA and the Supplier;
“Personal Data”	means personal data as defined in the Data Protection Act 1998;
“Policies”	means the policies, rules and procedures of the NHSLA as notified to the Supplier from time to time (including those relating to staff vetting, security and diversity);
“Pricing Schedule”	means Schedule 3;
“Process”	has the meaning given to it under the Data Protection Legislation and, for the purposes of this Contract, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly;
"Quarter"	means each period of three calendar months ending on 31 March, 30 June, 30 September and 31 December, provided that the first Quarter shall be the period which commences on the Commencement Date and ends on 31 March 2017;
“Remedial Proposal”	has the meaning given under Clause 16.2;
“Sensitive Personal Data”	means sensitive personal data as defined in the Data Protection Act 1998;

“Services”	means the services set out in this Contract (including, without limitation, the Specification;
“Services Commencement Date”	means 5 th December 2016;
"Specification"	means Schedule 2 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 Approved Mediators and any subcontractors and persons employed or engaged by such subcontractors;
“Step In Event”	<p>means the occurrence of any of the following:</p> <ul style="list-style-type: none"> (a) the NHSLA reasonably considers that a breach by the Supplier of any obligation under this Contract: <ul style="list-style-type: none"> (i) may create a threat to the health and safety of any individual(s); or (ii) may result in a material interruption in the provision of the Services (in whole or in part); or (b) the Supplier is unable to provide the Services (in whole or in part) in accordance with this Contract for any reason (except where such inability is due to the Supplier's performance of its obligations being rendered impossible by a Force Majeure Event, or where such inability is due to the acts or omissions of the NHSLA); or (c) the NHSLA is entitled to terminate this Contract pursuant to Clauses 16.3 or 16.4;
“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 NHSLA, 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 NHSLA, 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 Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or subcontractor who is either partially or fully engaged in the performance of the Services;
“Term”	has the meaning given under Clause 2.1, as such Term may be extended pursuant to Clauses 2.2 or 23.2;
“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 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 Date”	means the date the Supplier actually commences delivery of the Services;
“Transferring Employees”	means all those employees, if any, assigned by the NHSLA 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 enacted for the purpose of implementing 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 statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.
- 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 Pricing Schedule as a chargeable item and subject to Clause 31.6, 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 a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.11 Where there is an obligation on the NHSLA to procure any course of action from any third party, this shall mean that the NHSLA shall use its reasonable endeavours to procure such course of action from that third party.

Schedule 2

Specification

[NOTE: To be inserted as part of the final Contract – please see Volume 2 of the Invitation to Tender]

Schedule 3

Pricing Schedule

Fixed fees

1. Subject to paragraphs 2 and 3 below, the Supplier shall be paid a fixed fee in respect of each Mediation completed in accordance with this Contract, as set out in Table 1 below.

Table 1

[To be inserted as part of the final Contract - please see Volume 4 of the Invitation to Tender]

2. Subject to paragraph 3 below, where a Mediation continues for more than eight (8) hours, the Supplier shall be paid:

3.1 a fixed fee in accordance with paragraph 1 above; and

3.2 a further amount calculated in accordance with the hourly rates set out in Table 2 of paragraph 3 below, for the period during which the Mediation continues beyond eight (8) hours (subject always to any upper cap on the amount payable which has been agreed by the Parties),

in respect of each such Mediation completed in accordance with this Contract.

Hourly rates

3. Where the NHSLA requires it in writing for any Mediation:

3.1 the Supplier shall not be paid a fixed fee in accordance with paragraph 1 above; and

3.2 the Supplier shall instead be paid an amount calculated in accordance with the hourly rates set out in Table 2 below (subject always to any upper cap on the amount payable which has been agreed by the Parties),

in respect of each such Mediation completed in accordance with this Contract.

Table 2

[To be inserted as part of the final Contract - please see Volume 4 of the Invitation to Tender]

Expenses

4. The NHSLA shall reimburse all reasonable expenses necessarily incurred in the proper performance of the Services ("**Expenses**") up to a maximum aggregate amount of one hundred and fifty pounds (£150) excluding VAT per Mediation, subject to production by the Supplier of all relevant receipts and other appropriate evidence of payment.

Cancellations by the parties to a Mediation

5. Subject to paragraph 6 below, the above fixed fees and/or hourly rates and Expenses shall only be payable in respect of Mediations completed in accordance with this Contract.
6. If either party to a Mediation fails to attend such Mediation, or cancels their attendance less than 48 hours prior to the date of such Mediation, the following amounts shall be paid to the Supplier:
 - 6.1 where a party cancels its attendance less than 48 hours but more than 24 hours prior to the date of the Mediation, an amount equal to fifty percent (50%) of the fee which would otherwise have been payable pursuant to paragraph 1 above; or
 - 6.2 where a party cancels its attendance less than 24 hours prior to the date of the Mediation, or fails to attend, an amount equal to the fee which would otherwise have been payable pursuant to paragraph 1 above,and, in either case, the NHS LA shall reimburse the Supplier's Expenses in accordance with paragraph 4 above, to the extent that such Expenses arise from non-cancellable commitments.
7. Where a party cancels its attendance with more than 48 hours' notice prior to a Mediation no fee is payable.

8.

Exit Plan

1. This Schedule sets out the principles that shall form the basis of the Exit Plan and the Contractor's obligations in relation to the Exit Plan. For the avoidance of doubt, this Schedule applies to expiry and both full and partial termination of the Contract.
2. The Exit Plan shall:
 - 2.1 address each of the issues set out in this Schedule to facilitate the transition of the Services from the Supplier to the NHSLA or any Successor ensuring, to the fullest extent possible, that there is no disruption in the supply of the Services and that there is no deterioration in the quality of delivery of the Services during any such transition;
 - 2.2 detail how the performance of the Services will transfer to the NHSLA or any Successor including processes, documentation, data transfer, systems migration, security and the segregation of the NHSLA's technology components from any technology components run by the Supplier or any agent or subcontractor of the Supplier (where applicable);
 - 2.3 provide a timetable and identify critical issues for carrying out the Services transition;
 - 2.4 provide a handover plan for all information technology security matters and a security management control procedures manual, including for the avoidance of doubt:
 - 2.4.1 comprehensive details of any unresolved issues or disputes relating to the provision of the Services; and
 - 2.4.2 plans for the supply of any other items, or information, to be delivered to the NHSLA or any Successor.

Schedule 5

Approved Mediators

[NOTE: A list of the mediators approved to provide services under this Contract is to be included here as part of the final Contract.]