

**HEALTH EDUCATION ENGLAND SHORT FORM TERMS AND CONDITIONS FOR THE
PROVISION OF SERVICES (CONTRACT VERSION)**

The Authority	Health Education England (HEE) of Blenheim House Duncombe Street Leeds LS1 4PL
The Supplier	Radiopaedia Events ABN: 80 603 740 030 16 Brook Street Hawthorn VIC 3122 Australia
Title of Contract	All-access Pass to Radiopaedia's complete online course library




The schedules listed below ("the **Schedules**") and this front sheet comprise the "**Contract**" which is made on the date it is signed by the Supplier. The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services (as that term is defined in Schedule 2) on the terms of this Contract.




Schedules

Schedule 1	Key Provisions, Definitions and Interpretation
Schedule 2	General Terms and Conditions (the " Conditions ")
Schedule 3	Authority Requirements/ Specification and Supplier Proposal/Tender Response Document
Schedule 4	Contract Price and Invoicing Requirements
Schedule 5	Personal Data and Data Protection Protocol

Signed by the authorised representative of THE AUTHORITY

Name:		THE AUTHORITY Signature:
Position:	 	

Signed by the authorised representative of THE SUPPLIER

Name:		THE SUPPLIER Signature:
Position:	 	

Schedule 1

Part A Key Provisions

1. Term

1.1 The Contract shall commence on 1st December 2022 (the "**Commencement Date**") and shall expire on 30th November 2023 ("the **Term**") unless the Authority has exercised its right to extend the Term under clause 2.2 of the Conditions set out in **Schedule 2**.

The Buyer may extend the Contract for a period of up to 12 (twelve) months by giving not less than 10 (ten) Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.

2. Contract Price

2.1 The amount payable to the Supplier under this Contract for 2022 – 23 is £ 11,600, [REDACTED] **Schedule 4** and shall be the full and exclusive remuneration of the Supplier in respect of the provision of the Services and will remain fixed for the Term. Unless otherwise agreed in writing by the Authority, the Contract Price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services (the "**Contract Price**").

3. Key Personnel

3.1 Any persons named below, or in Schedule 3 and/or as otherwise notified as such by the Authority to the Supplier in writing are **Key Personnel** for the purposes of the Contract:

3.1.1 for the Authority:

[REDACTED]

3.1.2 for the Supplier:

4. Names and addresses for notices

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

4.1.1 for the Authority:

[REDACTED]
4.1.2 for the Supplier:

5. Data Protection

5.1 The provisions of the Data Protection Protocol in Schedule 5 must be complied with.

Part B Definitions and Interpretation

Definitions

1.1 In these terms and conditions, in addition to any capitalised terms defined as they occur above in this Schedule 1 and in Schedule 2, the following words shall have the meanings ascribed to them here:

"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and (i) is marked as or stated to be confidential; or (iii) ought, by its nature, reasonably to be considered by the receiving party to be confidential;
"GDPR"	Means the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
"Intellectual Property Rights"	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade-marks and registered designs
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;
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
"Staff Vetting Procedures"	means the (i) the standard and enhanced Disclosure and Barring Service check; (ii) vetting procedures that accord with good industry practice in the Suppliers' industry; or; (iii) where requested by the Authority, the Authority's procedures for the vetting of personnel as provided to the Supplier from time to time;

Interpretation

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions
- 1.2.2 any reference to any enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 1.2.3 and the word 'including' shall be understood as meaning 'including without limitation'

1.3 In the event of any conflict between:

- 1.3.1 Schedule 1 and any other Schedule, Schedule 1 shall prevail;
- 1.3.2 the Specification and the Proposal (as those terms are defined in Schedule 2), the order of priority for construction purposes shall be (i) the Authority's requirements; (ii) any clarification to the Supplier's responses, proposals and/or method statements, and (ii) the Supplier's responses, proposals and/or method statements.

Schedule 2

The Conditions of Contract

1 Provision of Services

- 1.1 The services to be supplied by the Supplier to the Authority under the Contract are contained in **Schedule 3** which sets out the requirements of the Authority (the "**Specification**") and the Supplier's response (if any) to the Specification the "**Proposal**" the Specification and the Proposal together describing the "**Services**".
- 1.2 In consideration of the Authority's agreement to pay the Contract Price, the Supplier shall provide the Services to the Authority for the Term subject to and in accordance with the terms and conditions of the Contract.
- 1.3 In providing the Services, the Supplier shall:
 - 1.3.1 co-operate with the Authority in all matters relating to the Services and comply with all the Authority's instructions;
 - 1.3.2 perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade and in a professional and courteous manner;
 - 1.3.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - 1.3.4 be entirely and solely responsible for the acts or omissions of Staff as if they were its own acts;
 - 1.3.5 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 1.3.6 perform the Services promptly and in any event within any timescales set out in the Contract;
 - 1.3.7 comply with all applicable laws (from time to time) and any applicable policies of the Authority (including Health and Safety policies); and
 - 1.3.8 unless otherwise specified in **Schedule 3**, provide all equipment, tools and any other items as are required to provide the Services.

2 Duration of Contract

- 2.1 The Term expires on the Expiry Date, unless it is extended in accordance with clause 2.2 of **Schedule 2** or terminated earlier in accordance with its terms.
- 2.2 The Authority may extend the Term on one or more occasions by giving not less than 21 **Business Days** (being any day other than Saturday Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales) or, if the Contract is less than 6 months in duration, at least 10 Business Days' notice in writing to the Supplier prior to the Expiry Date.

3 Change Management

- 3.1 One party may, by written notice to the other, request a variation to the scope of the Services and/or the terms of this Contract. Unless and until that variation is mutually agreed and documented the Supplier will continue to perform the Services as if no change had been requested. Variations to the Contract will only be valid if signed/approved by both parties.

4 Contract Price, Payment and Recovery of Sums Due

- 4.1 Unless otherwise specified in **Schedule 4** the Supplier shall invoice the Authority on the completion of the Services. Invoices must be presented for payment as specified in **Schedule**

4. The Supplier will provide any additional information reasonably requested by the Authority in order to verify the accuracy of the invoice.

- 4.2 The Authority shall pay the Supplier within 30 days after receipt of a valid invoice. The Authority may, without prejudice to any other rights and remedies under the Contract, withhold or reduce payments in the event of unsatisfactory performance.
- 4.3 If there is a dispute between the parties as to the amount invoiced, the Authority shall pay any undisputed amount. The Supplier shall not suspend the provision of the Services unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 14.1.2. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in Clause 17.
- 4.4 If a payment of an undisputed amount is not made by the Authority by the due date, then if the Supplier issues an invoice for the same, the Authority shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.5 Subject to the Authority having given 3 Business Days' notice the Supplier will allow the Authority to inspect any records or data relating to the service covered by this Contract and will cooperate fully with such inspection.

5 Premises and equipment

- 5.1 If necessary, the Authority shall provide the Supplier with reasonable access at reasonable times to its premises solely for the purpose of providing the Services and provided always that the Supplier abides by any rules policies or procedures that apply to persons on the Authority's premises. All equipment, tools and vehicles brought onto the Authority's premises by the Supplier shall be at the Supplier's risk.
- 5.2 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Authority may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 5.3 Without prejudice to clause 1.3.7, any equipment provided by the Authority shall remain the property of the Authority, be used by the Supplier only for the purpose of carrying out the Contract and returned promptly to the Authority on expiry or termination of the Contract in good condition fair wear and tear excepted.

6 Staff and Key Personnel

- 6.1 If the Authority reasonably believes that any of the Staff are unsuitable to undertake the Services, it may, by giving written notice to the Supplier:
 - 6.1.1 refuse admission to the relevant person(s) to the Authority's premises;
 - 6.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 6.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 6.2 The Supplier shall:
 - 6.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and no person who fails the Staff Vetting Procedures and/or has a conviction that is relevant to the nature of the Services, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a "**Relevant Conviction**"), is employed or engaged in the provision of any part of the Services; and
 - 6.2.2 if requested, provide the Authority with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Authority's

premises in connection with the Contract.

- 6.3 Any Key Personnel shall not be released from providing the Services without the agreement of the Authority (not to be unreasonably withheld).
- 6.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Authority (not to be unreasonably withheld). Proposed replacements shall be of at least equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.5 The parties agree that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and the Cabinet Office Statement shall not apply.

7 Assignment and sub-contracting

- 7.1 The Supplier shall not without the written consent of the Authority assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Contract or any part of the Contract.
- 7.2 The Supplier shall ensure that any sub-contract that it enters into requires it to pay all sums due to the sub-contractor by the Supplier within 30 days from the receipt of a valid invoice.
- 7.3 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Contract without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Contract.

8 Intellectual Property Rights

- 8.1 The Parties acknowledge that there shall be no change as a result of the Contract in the ownership of any Intellectual Property Rights existing as at the Commencement Date ("**Pre-existing IP**").
- 8.2 Where the Supplier needs to use the Pre-existing IP of the Authority, the Authority hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials for the sole purpose of performing its obligations under the Contract.
- 8.3 All Intellectual Property Rights in any materials created or developed by the Supplier arising as a result of the provision of the Services and any Pre-existing IP of the Supplier shall vest in the Supplier but Supplier hereby grants to the Authority for any deliverables, material or any other output supplied to the Authority in any format as part of the Services (i) an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Authority's normal business operations and (ii) the right to sub-license the rights granted in (i) to any NHS Body for that NHS Body's normal business operations.
- 8.4 The Supplier shall indemnify, and keep indemnified, the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the Intellectual Property Rights licenced to the Authority under 8.3 above.

9 Governance and Records

- 9.1 The Supplier shall: (i) attend progress meetings with the Authority at the frequency and times specified by the Authority and shall ensure that its representatives are suitably qualified to attend such meetings; and (ii) submit progress reports to the Authority at the times and in the format specified by the Authority.
- 9.2 The Supplier shall keep and maintain, until 6 years after the end of the Contract, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the Services supplied under it and all payments made by the Authority. The Supplier shall on request afford the Authority or the Authority's representatives such access to those records as may be reasonably requested by the Authority in connection with the Contract.

10 Confidentiality, Transparency and Publicity

10.1 Subject to clause 10.2, each party shall:

10.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any third party (other in the case of the Supplier to any Staff) without the prior written permission of the disclosing party; and

10.1.2 not use or exploit the disclosing party's Confidential Information in any way except for the purposes anticipated under the Contract.

10.2 A party may disclose Confidential Information which it receives from the other party:

10.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

10.2.2 to its auditors or for the purposes of regulatory requirements;

10.2.3 on a confidential basis, to its professional advisers; and

10.2.4 where the receiving party is the Authority:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;

(b) on a confidential basis to any other NHS Body any successor body to an NHS Body or any organisation to which the Authority transfers or proposes to transfer all or any part of its business;

(c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its functions; or

(d) in accordance with clause 11 of **Schedule 2**.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 10.

10.3 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (the "**FOIA**"), the content of the Contract is not Confidential Information and the Supplier hereby gives its consent for the Authority to publish this Contract in its entirety (including any variations) to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted).

10.4 The Supplier shall not make any press announcement or publicise the Contract or any part of the Contract in any way, except with the prior written consent of the Authority.

11 Freedom of Information

11.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and shall:

11.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA; and

11.1.2 not respond directly to any **Requests for Information** (as defined in the FOIA) it receives (unless authorised to do so by the Authority) and transfer the same to the Authority all as soon as practicable and in any event within 2 Business Days of receipt.

11.2 Notwithstanding any other provision in the Contract, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA.

12 Protection of Personal Data

- 12.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the GDPR and both parties shall duly observe all their obligations under the GDPR which arise in connection with the Contract.
- 12.2 Notwithstanding the general obligation in clause 12.1 of **Schedule 2**, where the Supplier is processing Personal Data for the Authority as a Processor the Supplier shall comply with the Provisions of **Schedule 5**.

13 Liability

- 13.1 Nothing in this Contract shall exclude or restrict the liability of either party:
- 13.1.1 for death or personal injury resulting from its negligence;
 - 13.1.2 for fraud or fraudulent misrepresentation; or
 - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clause 13.1 above, other than the Supplier's liability under Clauses 8.4, 16.2 of this **Schedule 2** and clause 1.5 of Part A of **Schedule 5** the total liability of each party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of (a) one million GBP (£1,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming party:
- 13.3.1 extra costs incurred purchasing replacement or alternative services;
 - 13.3.2 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
 - 13.3.3 the costs of extra management time; and/or
 - 13.3.4 loss of income due to an inability to provide health care services,
in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.
- 13.4 Each party shall at all times take all reasonable steps to minimise and mitigate any loss for which that party is entitled to bring a claim against the other under this Contract.

14 Termination

- 14.1 Without prejudice to any other right or remedy it might have, a party may terminate this Contract if the other party:
- 14.1.1 is in material breach of any obligation under the Contract which is not capable of remedy; or
 - 14.1.2 is in breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of receiving notice specifying the breach and requiring it to be remedied.

- 14.2 Without prejudice to any other right or remedy it might have, the Authority may terminate this Contract if the Supplier:
- 14.2.1 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 14.2.2 breaches any of the provisions of clauses 6.2, 10, 11, 12, 16 and 17 of this **Schedule 2** or clauses 1.1 to 1.4 of **Schedule 5**; or
 - 14.2.3 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 14.2.3) in consequence of debt in any jurisdiction.
- 14.3 The Supplier shall notify the Authority as soon as it is able of any change of control as referred to in clause 14.2.1 or any potential such change of control.
- 14.4 Termination or expiry of the Contract shall not affect any right or obligation (i) that accrued prior to expiry or termination; or (ii) any other provision of the Contract that either expressly or by implication are intended to come into or continue in force after termination.
- 14.5 Upon termination or expiry of the Contract, the Supplier shall:
- 14.5.1 refund to the Authority any element of the Contract Price paid in respect of Services not delivered;
 - 14.5.2 give all reasonable assistance to the Authority and any incoming Supplier of the Services; and
 - 14.5.3 immediately return to the Authority all documents, information and data (excluding Personal Data) in an orderly and indexed and/or catalogued format whether stored electronically or otherwise relating in whole or in part to the Services.
- 14.6 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period both prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.

15 Compliance

- 15.1 The Supplier shall perform its obligations under the Contract in accordance with all applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force from time to time including the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998 and the Authority's equality and diversity policy as provided to the Supplier from time to time.

16 Prevention of Fraud and Corruption

- 16.1 The Supplier shall not commit any offence under the Bribery Act 2010 nor offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.
- 16.2 If the Supplier engages in conduct prohibited by clause 16.1 the Authority may:
- 16.2.1 terminate the Contract and recover from the Supplier the amount of any loss suffered

by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the onward provision of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract; or

16.2.2 recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.

16.3 Notwithstanding the provisions of clause 17 any dispute relating to this clause 16 shall be determined by the Authority acting reasonably and the decision shall be final and conclusive.

17 Dispute Resolution

17.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute through successive levels of management to appropriately senior representatives of each party.

17.2 If the dispute cannot be resolved by the parties within one month of being escalated as referred to in clause 17.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

17.3 If the parties fail to appoint a Mediator within one month or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

18 General

18.1 Each of the parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract, and that the Contract is executed by its duly authorised representative.

18.2 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties.

18.3 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond its reasonable control. The affected party shall, as soon as it is able, notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, the Authority may terminate the Contract by written notice to the Supplier.

18.4 The Contract contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

18.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

18.6 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary, employee employer relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Contract. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

18.7 The Contract is expressly for the provision of services and accordingly the unless clause 18.9

below applies the Authority shall have no responsibility for the payment of income tax, social security contributions and similar liability that an employer has in respect of its employees such as statutory sick pay, maternity/paternity leave, paid annual leave workplace pension.

- 18.8 The Supplier will, at the Authority's request, complete HMRC's on-line Employment Status Test (the "Test") and submit the same to the Authority at the commencement of the Services. However, it is acknowledged that, notwithstanding the outcome of the Test, it is for the Authority to use its own tax experts to determine if the intermediaries' legislation (known as IR35) applies.
- 18.9 In the event that the Authority determines that IR35 applies then the Authority will notify the Supplier of the necessary revisions to the Contract Price to reflect the fact that the Authority is liable to pay income tax, social security contributions and similar liability and all other obligations that an employer such as statutory sick pay, maternity/paternity leave, paid annual leave workplace pension owes to its employees.
- 18.10 Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.11 If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

19 Notices

- 19.1 Any notice to be given under the Contract shall be in writing and may be served by personal delivery, first class recorded or e-mail to as set out in **Schedule 1**, or such other address as that party may from time to time notify to the other party in accordance with this clause
- 19.2 Hard copy notices served as above shall be deemed served on the Business Day of delivery provided delivery is before 5.00 pm on a Business Day, otherwise delivery shall be deemed to occur on the next Business Day. In the case of notice sent by email, notice shall be deemed served on the Business Day the sender has received an electronic confirmation of receipt or the Business Day on which the sender has spoken to the recipient to inform the recipient inform the recipient that the email has been sent.

20 Governing Law and Jurisdiction

The validity, construction and performance of the Contract, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.

Schedule 3

Specification & Proposal



Schedule 4

Contract Price and Invoicing

Part 1 Contract Price

- 2022 - £11,900.00
- subject to annual review and available budget.

Part 2 In order to be valid for payment invoices raised by the Supplier must contain the following information as a minimum:

1. Name the Supplier;
2. Include the Purchase Order number;
3. The Supplier's bank details
4. The email address for financial correspondence;
5. Contain a brief description of Services provided.
6. Be either sent by post and addressed to:

Health Education England
T73 Payables F485
Phoenix House, Topcliffe Lane Wakefield
West Yorkshire, WF3 1WE; or by email to [REDACTED]

And;

7. be emailed/copied to: Deborah.horley@hee.nhs.uk

Schedule 5

Data Protection and Data Protection Protocol

Part A Data protection

- 1.1 Where the Supplier is Processing Personal Data in connection with this Contract, the parties shall comply with the Data Protection Protocol.
- 1.2 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 1.3 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:
 - 1.3.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;
 - 1.3.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
 - 1.3.3 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
 - 1.3.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
 - 1.3.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
 - 1.3.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
 - 1.3.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;
 - 1.3.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;

- 1.3.9 at all times comply with any information governance requirements and/or processes as may be set out in the Specification; and
- 1.3.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 1.4 Where any Personal Data is Processed by any sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such sub -contractor shall comply with the relevant obligations set out in clause 1 of this Schedule 5, as if such sub -contractor were the Supplier.
- 1.5 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this contract.

Part B Data Protection Protocol

Processing, Personal Data and Data Subjects

1 Description of the processing to be undertaken by the Supplier

- 1.1 **Scope** - The Supplier shall provide online access to the online course library
- 1.2 **Nature** – To access the Modules trainees will be required to input personal data, this data will then be sent onto the Authority to verify.
- 1.3 **Purpose** — The Supplier shall not be processing data as trainees will be contacted with details and conditions of using Radiopedia I.e. that they would need to sign up to a personal account, and that on condition they agree not to use the upload of cases function, they will receive an all access pass to courses.
- 1.4 **Duration** - The Supplier will collect the data for the Duration of the Contract. This will be retained for the Mandatory period only.

2 Types of Personal Data

The personal data will be the names and email addresses of course attendees as consented and verified by the trainees.

3 Types of Special Categories of Personal Data (or Sensitive Personal Data)

The Supplier will not come into contact with any Sensitive Personal Data as part of this Contract as the trainees will be advised not to use the case sharing functionality as a condition of receiving the All-access pass.

4 Categories of Data Subject

The Data Subjects will be trainees across the West Midlands