

17th February 2023

NHS EDUCATION AND TRAINING CONTRACT

between

HEALTH EDUCATION ENGLAND

and

**ANNA FREUD CENTRE FOR CHILDREN AND FAMILIES (Company registration number
03819888)**

Title

Delivery of Autism Train the Trainer Training for All Age Mental Health

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NHS HEALTH EDUCATION ENGLAND - EDUCATION AND TRAINING CONTRACT

This contract is dated 17th February 2023

Parties

- (1) **HEALTH EDUCATION ENGLAND**, whose head office is at 1st Floor, Blenheim House, Duncombe Street, Leeds, LS1 4PL, (“**HEE**”); and
- (2) **ANNA FREUD NATIONAL CENTRE FOR CHILDREN AND FAMILIES** whose head office is at 4-8 Rodney Street, London, N1 9JH (**the “Provider”**),

each a **Party** and together, the **Parties**.

Signed by the authorised representative of HEE:

[Redacted signature line]
[Redacted signature line]
[Redacted signature line]

Signed by the authorised representative of THE PROVIDER:

[Redacted signature line]
[Redacted signature line]
[Redacted signature line]

1 DEFINITIONS

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

“Actual Monthly Value”	means for the relevant month, the aggregate of all Funding payments made to the Provider under this contract in respect of all Services delivered in that month (excluding VAT but before any deductions, withholdings or set-off);
“Business Continuity Event”	means any event or issue that could impact on the operations of the Provider and its ability to provide the Services including an influenza, epidemic, pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Provider’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;
“Change Control Process”	means the change control process referred to in clause 44 and 45;
“Codes of Practice”	shall have the meaning given to the term in paragraph 1.2 of Schedule 5;
“Commencement Date”	means the date of this contract;
“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the contract including any procurement process which is: (a) Personal Data including without limitation which relates to any Learner; (b) designated as confidential by either Party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (c) Policies and such other documents which the Provider may obtain or have access to through HEE’s intranet;

“Contracting Authority”	means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than HEE;
“Contract Management Meeting”	means a meeting of HEE and the Provider held in accordance with clause 28;
“Contract Performance Notice”	(a) a notice given by HEE to the Provider under clause 27, alleging failure by the Provider to comply with any obligation on its part under this contract; or (b) a notice given by the Provider to HEE under clause 27 alleging failure by HEE to comply with any obligation on its part under this contract, as appropriate;
“Controller”	shall have the same meaning as set out in the Data Protection Legislation;
“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);
“COVID-19”	means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this contract, and/or actual or potential loss, inaccessibility of and/or destruction of such Personal Data in breach of this contract, including any Personal Data Breach;
“Data Protection Legislation”	means (i) the Data Protection Act 2018; (ii) any European Union laws that relate to data protection or privacy that have been incorporated into UK law following the exit of the UK from the European Union as amended or supplemented from time to time by UK law including but not limited to the UK GDPR (iii) any European Union laws that are applicable in the UK pursuant to Article 71 of the withdrawal agreement between the European Union and the UK (2019/C 384 I/01); and (iv) all applicable Law about the processing of personal information and privacy; and the guidance and codes of practice issued by the Information Commissioner;
“Data Protection Protocol”	means the protocol contained in Schedule 4;
“Disclosure and Barring Service”	means the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012;

“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the contract, or any matter where this contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in clause 24;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“EDS2”	means the Equality Delivery System for the NHS – EDS2, being a tool designed to help NHS organisations, in discussion with local stakeholders, to review and improve their equality performance for people with characteristics protected by the Equality Act 2010, and to support them in meeting their duties under section 1 of the Equality Act 2010, available on the NHS England webpage (as may be updated or superseded from time to time);
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as HEE may specify from time to time;
“Emergency Preparedness, Resilience and Response”	means the emergency preparedness, resilience and response guidance relating to the need to plan for, and respond to, a wide range of incidents and emergencies that could affect health or patient care, issued by NHS England / NHS Improvement and available on the NHS England webpage (as may be updated or superseded from time to time);
“Employed Learner”	means those Learners who are recruited into NHS posts on Programmes leading to statutory or voluntary registration, who are for the duration of their training only

	employed by a Provider, or another contractually agreed Lead Employer, and for whom HEE may provide a financial contribution;
“Environmental Regulations”	shall have the meaning given to the term in paragraph 1.2 of Schedule 5;
“eProcurement Guidance”	means the NHS eProcurement strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health and Social Care in connection with it;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“Exception Report”	means a report issued in accordance with clause 32 notifying the relevant Party’s Governing Body of that Party’s breach of a Remedial Action Plan and failure to remedy that breach;
“Force Majeure Event”	has the meaning given to it in clause 22;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
“Exit Requirements”	means HEE’s exit requirements, as set out in the Service Specification and/or otherwise as part of this contract, which the Provider must comply with during the Term and/or in relation to any expiry or early termination of this contract;
“Expiry Date”	means the date delivery of the Services shall end as specified in Schedule 1 (Service Specification and Tender Submissions);
“Extra-ordinary Review Meeting”	means a meeting to be held in accordance with clause 37.3;
“FOIA”	shall have the meaning given to the term in paragraph 1.2 of Schedule 5;
“Fraud”	means any offence under any law in respect of fraud in relation to this contract or defrauding or attempting to

	defraud or conspiring to defraud the government, parliament or any Contracting Authority;
“Funding”	means the Funding that is payable to the Provider by HEE under the contract for the full and proper performance by the Provider of its obligations under the contract;
“General Anti-Abuse Rule”	means: (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this contract, including in accordance with any codes of practice published by relevant trade associations;
“Governing Body”	means in respect of any Party, the board of directors, governing body, executive team or other body having overall responsibility for the actions of that Party;
“Governing Documents”	means a Party’s standing orders, scheme of delegation, and standing financial instructions, as may be updated, replaced, or superseded from time to time;
“Guidance”	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 Provider by HEE and/or have been published and/or notified to the Provider by the Department of Health and Social Care, NHS England / Improvement, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the Cabinet Office, HM Treasury, the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;

“HEE Materials”	means all documents, information, items and materials in any form, whether owned by HEE or a third party, which are provided by HEE to the Provider in connection with the Services;
“HEE Representative”	means either a Regional Director, National Director, regional manager and/or a national manager of HEE;
“HEE Quality Framework”	means the multi-professional education and training quality framework published by HEE in April 2016 and as amended thereafter from time to time, measuring the quality of education and training across learning environments in England;
“HM Government Cyber Essentials Scheme”	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview;
“HRA”	means the Human Rights Act 1998;
“Immediate Action Plan”	means a plan setting out immediate actions to be undertaken by the Provider to protect the safety of Services to Learners, Service Users, the public and/or Staff;
“Implementation Requirements”	means HEE’s implementation and mobilisation requirements (if any), as may be set out in the Service Specification which the Provider must comply with as part of implementing the Services;
“Insolvency Event”	means the occurrence of any of the following events in respect of the Provider: (i) the Provider being, or being deemed for the purposes of any applicable Laws or Guidance to be, unable to pay its debts or insolvent; (ii) the Provider admitting its inability to pay its debts as they fall due; (iii) the value of the Provider’s assets being less than its liabilities taking into account contingent and prospective liabilities; (iv) the Provider suspending payments on any of its debts or announces an intention to do so; (v) by reason of actual or anticipated financial difficulties, the Provider commencing negotiations with creditors generally with a view to rescheduling any of its indebtedness; (vi) a moratorium is declared in respect of any of the Provider’s indebtedness; (vii) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Provider; (viii) a composition, assignment or arrangement with any creditor of any member of the Provider; (ix) the appointment of a liquidator, trustee in

bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Provider or any of its assets; (x) a resolution of the Provider or its directors is passed to petition or apply for the Provider's winding-up or administration; (xi) the Provider's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court or otherwise); or (xii) if the Provider suffers any event analogous to the events set out in (i) to (xi) of this definition in any jurisdiction in which it is incorporated or resident;

"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;
"JI Report"	means a report detailing the findings and outcomes of a Joint Investigation;
"Joint Investigation"	means an investigation into the matters referred to in a Contract Performance Notice in accordance with clause 29;
"KPI"	means the key performance indicators as set out in Schedule 3;
"Law"	means any applicable legal requirements including, without limitation: (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument) retained in UK law following the exit of the UK from the European Union; (c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (d) requirements set by any regulatory body as applicable in England and Wales;

	(e) any relevant code of practice as applicable in England and Wales; and
	(f) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
“Learner”	means those individuals enrolled on a Programme of education / training to be supplied pursuant to this contract by the Provider as part of the Services;
“Lead Employer”	means a third party whom it is agreed will act as employer of Staff or Learners;
“Local Counter Fraud Specialist”	the accredited local counter fraud specialist nominated by HEE;
“Long Stop Date”	means the date 3 months following the Services Commencement Date;
“Losses”	means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law as set out in clause 13.1 of this contract;
“National Director”	means a person with delegated authority from HEE to act for and on behalf of HEE on a national basis;
“NHS”	means the National Health Service;
“NHS Brand”	means the name and logo of the NHS and any other names, logos and graphical presentations as held by the Secretary of State required to be used in connection with the provision of the Services;
“NHS Branding Guidelines”	means NHS brand policy and guidelines, as revised, updated or re-issued from time to time by NHS England and/or the Department of Health and Social Care, and which are available on the NHS England webpage (as may be updated or superseded from time to time);
“NHSCFA”	means the NHS Counter Fraud Authority, the special health authority charged with identifying, investigating and preventing fraud and other economic crime within the NHS and the wider health group;
“Occasion of Tax Non-Compliance”	means: (a) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Provider under the

General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

- (ii) the failure of an avoidance scheme which the Provider was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

“Party”	means HEE or the Provider as appropriate and Parties means both HEE and the Provider;
“Personal Data”	shall have the same meaning as set out in the Data Protection Legislation;
“Personal Data Breach”	shall have the same meaning as set out in the Data Protection Legislation;
“Policies”	means the policies, rules and procedures of HEE as provided to the Provider from time to time;
“Premises and Locations”	has the meaning given under clause 6.1;
“Process”	shall have the same meaning as set out in the Data Protection Legislation. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the Data Protection Legislation;
“Programme”	any programme as identified in Schedule 1;
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
“Provider”	means the supplier named at the top of this contract on the first page;

“Provider Outputs”	means any output of the Services to be provided by the Provider to HEE as specified in Schedule 1 and any other documents, products and materials provided by the Provider to HEE in relation to the Services;
“Previous Contract”	means a contract between HEE and the Provider for the delivery of services which are the same or substantially the same as the Services, the term of which immediately precedes the Term;
“Provider Personnel”	means any employee, agent, consultant and/or contractor of the Provider or Sub-contractor who is either partially or fully engaged in the performance of the Services;
“Provider Representative”	means such person with delegated authority to act on behalf of the Provider as notified by the Provider to HEE from time to time in accordance with clause 9;
“Purchase Order”	means the purchase order required by HEE’s commercial governance systems (if applicable);
“Quality and Performance Requirements”	means the requirements set out in Schedule 3;
“Regional Director”	means the person with delegated authority from HEE to act for and on behalf of HEE within any given Region;
“Region”	means any one or more of the seven (7) HEE geographical regions which are set out as follows: (i) Midlands, (ii) East of England, (iii) London, (iv) North East and Yorkshire, (v) North West, (vi) South East, (vii) South West;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Provider is established;
“Remedial Action Plan”	means a plan to rectify a breach of or performance failure under this contract (or, where appropriate, a Previous Contract in accordance with the terms of such Previous Contract), specifying actions and improvements required, dates by which they must be achieved and consequences for failure to do so, as further described in clause 30;
“Residual Contract Period”	means the period after this contract expires or is terminated in accordance with its terms, during which the Provider is required (pursuant to the provisions of clauses 16.3 and 16.4 of this contract) to complete the Programme of education / training of Learners enrolled on such Programmes of education / training under this contract and all other relevant activity;

“Review Meeting”	means a meeting to be held in accordance with clause 37 at the intervals set out in clause 37 or as otherwise requested in accordance with clause 37;
“Service User”	means a patient or service user for whom a Provider has statutory responsibility;
“Services”	means the services set out in Part 2 of Schedule 1 of this contract and including, without limitation, Part 1 of Schedule 1 which sets out the requirements of HEE as issued to tenderers as part of the procurement process and the Provider’s response to these requirements;
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in Schedule 1 (Service Specification and Tender Submissions). If no date is specified in Schedule 1 (Service Specification and Tender Submissions) this date shall be the Commencement Date;
“Service Development and Improvement Plan or SDIP”	means an agreed plan setting out improvements to be made by the Provider to the Services (which may comprise or include any Remedial Action Plan agreed in relation to a Previous Contract);
“Services Information”	means information concerning the Services as may be reasonably requested by HEE and supplied by the Provider to HEE in accordance with clause 19 of this contract;
“Service Specification”	means the information set out in Part 2 of Schedule 1;
“Staff”	means all persons employed or engaged by the Provider to perform its obligations under this contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Sub-contract”	means any sub-contract entered into by the Provider or by any Sub-contractor of any level for the purpose of the performance of any obligation on the part of the Provider under this contract;
“Sub-contractor”	means any sub-contractor, whether of the Provider itself or at any further level of sub-contracting, under any Sub-contract;
“Term”	means the term set out in clause 2.1;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this contract on a specified date and setting out the grounds for termination;
“Third Party Body”	has the meaning given under clause 9.11 of this contract;

“UK GDPR”	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended or supplemented from time to time by UK law
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax;
“WRES”	means the NHS Workforce Race Equality Standard.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this contract and shall have effect as if set out in full in the body of this contract. Any reference to this contract includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This contract shall be binding on, and endure to the benefit of, the parties to this contract and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 1.9 A reference to any guidance or policy is a reference to it as amended, superseded, or replaced from time to time.
- 1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.12 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 1.13 A reference to **writing** or **written** includes either letter or email only.

- 1.14 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.15 A reference to **this contract** or to any other contract or document referred to in this contract is a reference of this contract or such other contract or document, in each case as varied from time to time.
- 1.16 References to clauses and Schedules are to the clauses and Schedules of this contract and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.17 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 COMMENCEMENT AND DURATION

- 2.1 This contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15, or until the Expiry Date when this contract shall terminate automatically without notice (the “**Term**”).
- 2.2 The Term may be extended in accordance with Schedule 1 provided the Services have commenced before the Long Stop Date. The Term shall include the Initial Term and, where applicable, any Extended Term agreed between the Parties in accordance with Schedule 1.
- 2.3 The Provider shall provide or procure the provision of the Services to HEE from the Services Commencement Date as specified in Schedule 1.
- 2.4 For the avoidance of doubt, there is no automatic roll-over of this contract on expiry or termination of the Term.
- 2.5 Where this contract is used to facilitate an initial pilot project, the contract shall not be extended in accordance with clause 2.2 and Schedule 1.
- 2.6 The Parties acknowledge that the Staff of the Provider (and the Provider) are not acting as agents of HEE when carrying out the Services.

3 PROVIDER’S WARRANTIES

- 3.1 The Provider warrants, represents and undertakes that:
 - 3.1.1 it has full power and authority to enter into this contract and to deliver the Services, and that all necessary approvals and consents have been obtained and are in full force and effect;
 - 3.1.2 the execution of this contract does not and shall not contravene or conflict with its Governing Documents or any legal obligations (including under contract) to which it is subject;
 - 3.1.3 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this contract and the documents referred to in this contract;
 - 3.1.4 any information provided by the Provider is in all material respects accurate and not misleading, and since its provision there has not been any material

change to that information or to the Provider's position or developments that would have adversely affected the decision of a reasonable public sector funder to fund the Services substantially on the terms of this contract;

- 3.1.5 to the best of its knowledge, nothing shall have, or is likely to have, a material adverse effect on its ability to deliver the Services (assuming receipt of the Funding); and it has, and shall maintain, adequate insurances in respect of the Services;
- 3.1.6 unless otherwise set out in the Services and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 3.1.7 receipt of the Services by or on behalf of HEE and use of the Provider Outputs or of any other item or information supplied or made available to HEE as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 3.1.8 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 3.1.9 it shall not make any significant changes to its system of quality controls and processes in relation to the Services without notifying HEE in writing at least twenty one (21) Business Days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 3.1.10 without prejudice to any specific notification requirements set out in this contract, it will promptly notify HEE of any health and safety hazard which has arisen, or the Provider is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 3.1.11 unless otherwise confirmed by HEE in writing (to include, without limitation, as part of the Service Specification), it will ensure that any products purchased by the Provider partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014) (as supplemented by procurement policy note 01/15: implementing Energy Efficiency Directive article 6: further information), to the extent such requirements apply to the relevant products being purchased;
- 3.1.12 it shall at all times conduct its business in a manner that is consistent with any anti-slavery policy of HEE and shall provide to HEE any reports or other information that HEE may request as evidence of the Provider's compliance with this;
- 3.1.13 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this contract, the provision of the Services, any complaints and any Disputes at the frequency, in the

timeframes and in the format as requested by HEE from time to time (acting reasonably);

- 3.1.14 all information included within the Provider's responses to any documents issued by HEE as part of the procurement relating to the award of this contract (to include, without limitation, as referred to in the Schedules) and all accompanying materials is accurate;
- 3.1.15 all necessary actions to authorise the execution of and performance of its obligations under this contract have been taken before such execution;
- 3.1.16 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 Provider;
- 3.1.17 there are no material agreements existing to which the Provider is a party which prevents the Provider from entering into or complying with this contract;
- 3.1.18 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this contract;
- 3.1.19 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;
- 3.1.20 all information, data and other records and documents required by HEE as set out in the Services shall be submitted to HEE in the format and in accordance with any timescales set out in the Schedules;
- 3.1.21 it shall comply with the eProcurement Guidance as it may apply to the Provider and shall carry out all reasonable acts required of the Provider to enable HEE to comply with such eProcurement Guidance, to the extent the same applies to HEE;
- 3.1.22 as at the Commencement Date, it has notified HEE in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Provider shall:
 - (i) notify HEE in writing of such fact within five (5) Business Days of its occurrence; and promptly provide to HEE:
 - (A) details of the steps which the Provider is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (B) such other information in relation to the Occasion of Tax Non-Compliance as HEE may reasonably require;
- 3.1.23 it will inform HEE in writing immediately within one (1) Business Day upon becoming aware that any of the warranties set out have been breached or there is a risk that any warranties may be breached.

- 3.2 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.

4 PROVIDER'S RESPONSIBILITIES

- 4.1 The Provider shall manage and supply the Services in accordance with this contract in all material respects.
- 4.2 The Provider shall meet the Milestones specified in Schedule 1.
- 4.3 The Provider shall appoint a manager for the Services, such person as identified in Schedule 1. That person shall have authority to contractually bind the Provider on all matters relating to the Services. The Provider shall use all reasonable endeavours to ensure that the same person acts as the Provider's manager throughout the term of this contract, but may replace that person from time to time where reasonably necessary in the interests of the Provider's business.
- 4.4 The Provider shall ensure they attend and prepare as necessary for any Review Meetings convened under clause 37 of this contract, and shall acknowledge a request from HEE to hold a Review Meeting or an Extra-ordinary Review Meeting within three (3) Business Days.
- 4.5 The Provider shall provide the Services:
- 4.5.1 in accordance with the terms of this contract;
 - 4.5.2 with all due skill care and diligence using appropriately experienced, qualified and trained personnel;
 - 4.5.3 in accordance with Good Industry Practice and more particularly the HEE Quality Framework;
 - 4.5.4 in accordance with regulatory requirements of any Regulator in respect of the Services;
 - 4.5.5 in compliance with applicable Laws and Guidance (including the holding and maintaining of all necessary licences, authorisations consents, accreditations, and permissions in order to ensure compliance in all respects with its obligations under this contract);
 - 4.5.6 using all reasonable endeavours to ensure that it does not do, and to procure that none of its employees, directors, officers or agents does, anything that may damage the name, reputation or goodwill of HEE or the NHS in any material respect; and
 - 4.5.7 in a manner which does not infringe the Intellectual Property Rights of any third party.
- 4.6 The Provider shall ensure invoices are sent to HEE in a timely fashion, in accordance with Schedule 2.
- 4.7 The Provider shall comply with the Implementation Requirements in accordance with any timescales as may be set out in Schedule 1.

- 4.8 The Provider shall comply fully with its obligations set out in this contract, including without limitation any KPIs in Schedule 3 and all obligations contained in this contract in relation to the quality, performance, characteristics, supply and delivery of the Services.
- 4.9 If the Services, or any part of them, are regulated by any Regulator, the Provider shall ensure that at the Commencement Date in clause 2 it has in place all relevant registrations and shall maintain such registrations during the Term.
- 4.10 The Provider shall notify HEE in writing within two (2) Business Days of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 4.11 The Provider shall notify HEE in writing within two (2) Business Days of the Provider becoming aware of any such failure:
- 4.11.1 of any pending inspection of the Services, or any part of them, by a Regulator immediately upon the Provider becoming aware of such inspection; and
 - 4.11.2 of the Services, or any part of them, to meet the quality standards required by a Regulator.
- This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
- 4.12 Following any inspection of the Services, or any part of them, by a Regulator, the Provider shall provide HEE with a copy of any report, or other communication published or provided by the relevant Regulator, within two (2) Business Days, in relation to the provision of the Services.
- 4.13 Upon receipt of notice, or any report or communication pursuant to this clause 4, HEE shall be entitled to request further information from the Provider and/or a meeting with the Provider, and the Provider shall cooperate fully with any such request.
- 4.14 The Provider shall ensure that its Provider Representative informs HEE Representative in writing within forty eight (48) hours upon:
- 4.14.1 becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or
 - 4.14.2 the Provider Representative having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred.
- 4.15 The Provider shall ensure that the Provider *Representative* informs HEE Representative in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 4.16 The Provider shall be relieved from its obligations under this contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of HEE. To qualify for such relief, the Provider must notify HEE promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of HEE together with the potential impact on the Provider's obligations.

- 4.17 Subject to the requirements of this contract and any Law, the Provider shall be entirely responsible for the employment and conditions of service of Staff. The Provider shall ensure that such conditions of employment are consistent with its obligations under this contract.
- 4.18 The Provider will at all times during the contract employ a sufficient number of appropriately trained, qualified, experienced and skilled Staff to ensure that it complies with its obligations under this contract. This will include, but not be limited to, the Provider providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 4.19 The Provider shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Schedule 1 or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Provider shall be subject to the prior written approval of HEE, such approval not to be unreasonably withheld or delayed.
- 4.20 The Provider shall ensure that all Staff are aware of, and at all times comply with, the contract.
- 4.21 The Provider shall:
- 4.21.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 4.21.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
 - 4.21.3 ensure all Staff have the qualifications to carry out their duties;
 - 4.21.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Provider's expense) in respect of the Staff; and
 - 4.21.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health and Social Care or any relevant Regulator or any industry body in relation to such Staff.
- 4.22 The Provider shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of HEE's staff, Learners, Service Users or visitors at risk unless otherwise agreed in writing with HEE.
- 4.23 The Provider shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
- 4.23.1 are questioned concerning their Convictions; and

- 4.23.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Provider engages the potential staff or persons in the provision of the Services.
- 4.24 The Provider shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Provider's cost and expense.
- 4.25 The Provider shall ensure that no person is employed or otherwise engaged in the provision of the Services without HEE's prior written consent if:
 - 4.25.1 the person has disclosed any Convictions upon being questioned about their Convictions;
 - 4.25.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body); or
 - 4.25.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Provider.
- 4.26 The Provider shall ensure where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Provider:
 - 4.26.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
 - 4.26.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
 - 4.26.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to Learners or any other person.
- 4.27 The Provider shall ensure that HEE 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 Provider 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 Learners, Service Users, or any other person. The Provider shall only be entitled to continue to engage or employ such member of Staff with HEE's written consent and with such safeguards being put in place as HEE may reasonably request. Should HEE withhold consent the Provider shall remove such member of Staff from the provision of the Services forthwith.
- 4.28 The Provider shall immediately provide to HEE any information that HEE reasonably requests to enable HEE to satisfy itself that the obligations set out in this clause 4 have been met.

- 4.29 HEE may at any time request that the Provider remove and replace any member of Staff from the provision of the Services, provided always that HEE will act reasonably in making such a request. Prior to making any such request HEE shall raise with the Provider HEE's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. HEE shall be under no obligation to have such prior discussion should HEE have concerns regarding Learner or Service User safety.
- 4.30 The relationship of the Provider to HEE will be that of independent contractor and nothing in this contract shall render the Provider (or any of its Staff) an employee, worker, agent, partner or member of HEE and the Provider shall not hold itself out as such. This contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Provider shall be fully responsible for and shall indemnify HEE for and in respect of:
- 4.30.1 any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services. The Provider shall further indemnify HEE against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by HEE in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
- 4.30.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Provider (or a member of its Staff) against HEE arising out of or in connection with the provision of the Services.
- 4.31 Unless otherwise confirmed by HEE in writing, the Provider shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by HEE (to include as may be set out as part of any procurement documents leading to the award of this contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Provider Representatives that visit NHS premises.
- 4.32 Once compliance with any notified implementation timelines has been achieved by the Provider, the Provider shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.
- 4.33 The Provider shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside HEE's business continuity plan where relevant to the provision of the Services. The Provider shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements as may be set out in the Service Specification.
- 4.34 Throughout the Term, the Provider will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Provider confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 4.34.1 the criticality of this contract to HEE; and
- 4.34.2 the size and scope of the Provider's business operations,

regarding continuity of the provision of the Services during and following a Business Continuity Event.

- 4.35 The Provider shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this contract to HEE and the size and scope of the Provider's business operations. The Provider shall promptly provide to HEE, at HEE's written request and within ten (10) Business Days, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Provider tests its Business Continuity Plan in accordance with the requirements of this contract and reasonable and proportionate information regarding the outcome of such tests.
- 4.36 The Provider shall provide to HEE a copy of any updated or revised Business Continuity Plan within ten (10) Business Days of any material update or revision to the Business Continuity Plan.
- 4.37 HEE may suggest reasonable and proportionate amendments to the Provider regarding the Business Continuity Plan at any time. Where the Provider, acting reasonably, deems such suggestions made by HEE to be relevant and appropriate, the Provider will incorporate into the Business Continuity Plan all such suggestions made by HEE in respect of such Business Continuity Plan. Should the Provider not incorporate any suggestion made by HEE into such Business Continuity Plan it will explain the reasons for not doing so to HEE.
- 4.38 Should a Business Continuity Event occur at any time, the Provider shall implement and comply with its Business Continuity Plan and provide regular written reports to HEE on such implementation.
- 4.39 During and following a Business Continuity Event, the Provider shall use reasonable endeavours to continue to provide the Services in accordance with this contract.

5 HEE'S RESPONSIBILITIES

5.1 HEE shall:

- 5.1.1 co-operate and adopt a partnership approach with the Provider in all matters relating to the Services;
- 5.1.2 appoint a manager for the Services, to work with the HEE Representative. Only the HEE Representative shall have the authority to contractually bind HEE on matters relating to the Services;
- 5.1.3 arrange Contract Management Meetings in accordance with clause 28;
- 5.1.4 arrange Review Meetings in accordance with clause 37;
- 5.1.5 provide to the Provider in a timely manner all documents, information, items and materials in any form (whether owned by HEE or third party) required under Schedule 1 or otherwise reasonably required by the Provider in connection with the Services and ensure that they are accurate and complete in all material respects;

- 5.1.6 ensure any formal communication under this contract is responded to within three (3) Business Days and which includes agreement for a detailed response within a reasonable timeframe;
 - 5.1.7 provide the Funding in accordance with Schedule 2 on receipt of a valid invoice;
 - 5.1.8 ensure that the Provider has access to the HEE Quality Framework;
 - 5.1.9 engage with other relevant national bodies, government, Regulators, and arm's length bodies to review the performance and suitability of the Provider to undertake education and training for HEE;
 - 5.1.10 support the Provider throughout their engagement of the Services, and ensure collaborative and partnership practice is enabled for the healthcare system, with the Provider; and
 - 5.1.11 enable, so far as reasonably possible, the sharing of best practice for all providers for the purpose of innovation and transformation of the NHS workforce, either current or future.
- 5.2 If the Provider's performance of its obligations under this contract is prevented or delayed by any act or omission of HEE, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Provider shall be allowed a proportionate extension of time to perform its obligations equal to the delay caused by HEE.
- 5.3 HEE shall provide the Provider with any reasonable and proportionate cooperation necessary to enable the Provider to comply with its obligations under this contract. The Provider shall at all times provide reasonable advance written notification to HEE of any such cooperation necessary in circumstances where such cooperation will require HEE to plan for and/or allocate specific resources in order to provide such cooperation.
- 6 PREMISES, LOCATIONS AND ACCESS**
- 6.1 The Services shall be provided at such premises and at such locations within those premises as agreed by the Parties in writing ("**Premises and Locations**").
- 6.2 Subject to the Provider and its Staff complying with all relevant policies applicable to such Premises and Locations, HEE shall (where the Premises and Locations are those of HEE) grant reasonable access to the Provider and its Staff to such Premises and Locations to enable the Provider to provide the Services.
- 6.3 Any access granted to the Provider and its Staff under this clause 6 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Provider warrants that it shall carry out all such reasonable further acts to give effect to this.
- 6.4 Where it is provided for by a specific mechanism set out in Schedule 1, HEE may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism.
- 6.5 Any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with the Change Control Process. If

agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

7 COOPERATION WITH THIRD PARTIES

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

8 USE OF HEE EQUIPMENT

- 8.1 Unless otherwise set out in Schedule 1 or otherwise agreed by the Parties in writing, any equipment or other items provided by HEE for use by the Provider:

- 8.1.1 shall be provided at HEE's sole discretion;
- 8.1.2 shall be inspected by the Provider in order that the Provider can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Provider until it has satisfied itself of this;
- 8.1.3 must be returned to HEE within any agreed timescales for such return or otherwise upon the request of HEE; and
- 8.1.4 shall be used by the Provider at the Provider's risk and the Provider shall upon written request by HEE reimburse HEE for any loss or damage relating to such equipment or other items caused by the Provider (fair wear and tear exempted).

9 CONTRACT MANAGEMENT

- 9.1 The Provider shall appoint and retain a Provider Representative and HEE shall appoint and retain a HEE Representative who shall be the primary point of contact for the other Party in relation to matters arising from this contract.
- 9.2 Should either the HEE Representative or the Provider Representative be replaced, the Party replacing the HEE Representative or the Provider Representative (as applicable) shall promptly inform the other Party in writing of the name and contact details for the new HEE Representative or Provider Representative. Any HEE Representative or the Provider Representative appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the contract.
- 9.3 The Provider confirms and agrees that it will be expected to work closely and cooperate fully with the HEE Representative.
- 9.4 Each Party shall ensure that its representatives (to include, without limitation, the HEE Representative and the Provider Representative) shall, attend Review Meetings in accordance with clause 37.
- 9.5 Each Party shall ensure that those attending such meetings have authority to make decisions regarding the day to day operation of the contract.
- 9.6 Ten (10) Business Days prior to each Review Meeting the Provider shall provide a written contract management report to HEE regarding the provision of the Services

and the operation of this contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:

- 9.6.1 details of the performance of the Provider when assessed in accordance with the KPIs in Schedule 3;
 - 9.6.2 details of any complaints, their nature and the way in which the Provider has responded to such complaints since the last review meeting written report;
 - 9.6.3 the information specified in the Services;
 - 9.6.4 a status report in relation to the implementation of any current Remedial Action Plan by either Party; and
 - 9.6.5 such other information as reasonably required by HEE.
- 9.7 Unless specified otherwise in the Services, HEE shall take minutes of each Review Meeting and shall circulate draft minutes to the Provider within five (5) Business Days following such Review Meeting.
- 9.8 The Provider shall inform HEE in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes.
- 9.9 If the Provider does not respond to HEE within such five (5) Business Days the minutes will be deemed to be approved.
- 9.10 Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 9.11 The Provider shall provide such management information as HEE may request from time to time within five (5) Business Days of the date of the request. The Provider shall supply the management information to HEE in such form as may be specified by HEE and, where requested to do so, the Provider shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**").
- 9.12 The Provider confirms and agrees that HEE may itself provide the Third Party Body with management information relating to the Services purchased, any Funding provided under this contract, and any other information relevant to the operation of this contract.
- 9.13 Upon receipt of management information supplied by the Provider to HEE and/or the Third Party Body, or by HEE to the Third Party Body, the Parties hereby consent to the Third Party Body and HEE:
- 9.13.1 storing and analysing the management information and producing statistics; and
 - 9.13.2 sharing the management information or any statistics produced using the management information with any other Authority.

- 9.14 If the Third Party Body and/or HEE shares the management information or any other information provided under clause 9.13, any Authority receiving the management information shall, where such management information is subject to obligations of confidence under this contract and such management information is provided direct by HEE to such Authority, be informed of the confidential nature of that information by HEE and shall be requested by HEE not to disclose it to anybody that is not an Authority (unless required to do so by Law).
- 9.15 HEE may make changes to the type of management information which the Provider is required to supply and shall give the Provider at least one (1) month's written notice of any changes.

10 FUNDING

- 10.1 The Funding shall be calculated as set out in Schedule 2.
- 10.2 Unless otherwise stated in Schedule 2 the Funding:
- 10.2.1 shall be payable from the Services Commencement Date;
 - 10.2.2 shall remain fixed during the Term; and
 - 10.2.3 is the entire Funding payable by HEE to the Provider in respect of the Services and includes, without limitation, any licence fees, supplies and all consumables used by the Provider, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.
- 10.3 Unless stated otherwise in Schedule 2:
- 10.3.1 the Funding profile for this contract is monthly in arrears, the Provider shall invoice HEE, within fourteen (14) Business Days of the end of each calendar month, the Funding in respect of the Services provided in compliance with this contract in the preceding calendar month; or
 - 10.3.2 where clause 10.3.1 does not apply, the Provider shall invoice HEE for Services at any time following completion of the provision of the Services in compliance with this contract.
- 10.4 Each invoice shall contain such information of the Services delivered, including the Purchase Order number and be addressed to such individual as HEE may inform the Provider from time to time.
- 10.5 The Funding is exempt and exclusive of VAT. Which under normal circumstances is not chargeable to HEE.
- 10.6 Where HEE agree in advance to pay VAT, HEE shall pay at the prevailing rate subject to receipt from the Provider of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 10.7 HEE shall verify and pay each valid and undisputed invoice received within thirty (30) Business Days of receipt of such invoice at the latest. However, HEE shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.

- 10.8 Where HEE raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) Business Days of the query being raised. No interest is permitted to be added to a future invoice.
- 10.9 If the Parties are unable to agree a resolution within thirty (30) Business Days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. No interest is permitted to be added to a future invoice.
- 10.10 HEE shall not be in breach of any of any of its Funding obligations under this contract in relation to any queried or disputed invoice sums unless the process referred to in this clause 10 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Provider and HEE has then failed to pay such sum within a reasonable period following such determination.
- 10.11 The Provider shall pay to HEE any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Funding) that may become due in accordance with the provisions of the Services. For the avoidance of doubt, HEE may invoice the Provider for such sums or deductions at any time in the event that they have not automatically been credited to HEE in accordance with the provisions of the Service Specification. Such invoices shall be paid by the Provider within thirty (30) Business Days of the date of such invoice.
- 10.12 HEE reserves the right to adjust:
- 10.12.1 any monies due to the Provider from HEE as against any monies due to HEE from the Provider under this contract; and
- 10.12.2 any monies due to HEE from the Provider as against any monies due to the Provider from HEE under this contract.
- 10.13 Where HEE is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Provider under this contract, HEE may invoice the Provider for such sums. Such invoices shall be paid by the Provider within thirty (30) Business Days of the date of such invoice.

11 INTELLECTUAL PROPERTY

- 11.1 Except as set out expressly in this contract no Party shall acquire the Intellectual Property Rights of any other Party.
- 11.2 The Provider confirms and agrees that all Intellectual Property Rights in and to the Provider Outputs, Services, materials and any other output developed by the Provider as part of the Services shall be owned by HEE.
- 11.3 The Provider hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such Provider Outputs, Services, materials and other outputs to HEE.
- 11.4 The Provider shall ensure that all Staff and subcontractors assign any Intellectual Property Rights they may have in and to such Provider Outputs, Services, materials and other outputs to the Provider to give effect to clause 11.3 and that such Staff absolutely and irrevocably waive their moral rights in relation to such Provider Outputs, Services, materials and other outputs.

- 11.5 This clause 11 shall continue notwithstanding the expiry or earlier termination of this contract.
- 11.6 The Provider and AT-Autism is hereby granted a non-exclusive, non-transferable, royalty-free, non-sublicensable right and licence to use all Intellectual Property Rights assigned pursuant to clause 11.3 for academic, training delivery and research purposes, including research involving projects funded by third parties provided that no third party shall gain any rights in or to such Intellectual Property Rights.
- 11.7 For the avoidance of doubt, the Provider is not granted any permission to use any Intellectual Property Rights licenced to it in accordance with clause 11.6 for commercial gain.
- 11.8 All Intellectual Property Rights used or owned by a Party prior to the Commencement Date ("**Background IP**") are and shall remain the exclusive property of the Party owning them (or, where applicable, the third party from whom its right to use the Background IP has derived).
- 11.9 Each Party grants to the other a, royalty-free, non-exclusive licence to use its Background IP for the sole purpose of developing and delivering the Services but for no other purpose. Neither Party shall be entitled to grant any sub-licence over or in respect of the other Party's Background IP.
- 11.10 Both Parties agree that no material changes will be made to the materials for the duration of the pilot. Following completion of the pilot, changes can be made to the materials on the recommendation of evaluation partners, NHS bodies or the Provider.
- 11.11 Any training delivery will be delivered by fully trained trainers who have completed all training modules for the duration of the pilot.
- 11.12 The Provider:
- 11.12.1 shall indemnify HEE in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by HEE arising out of or in connection with any claim brought against HEE for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Provider Outputs; and
 - 11.12.2 shall not be in breach of the warranty at clause 3.1.7, and HEE shall have no claim under the indemnity at clause 11.12.1 to the extent the infringement arises from:
 - (i) the use of HEE Materials in the development of, or the inclusion of HEE Materials in any Provider Output;
 - (ii) any modification of the Provider Outputs or Services, other than by or on behalf of the Provider; and
 - (iii) compliance with HEE's specifications or instructions, where infringement could not have been avoided while complying with

such specifications or instructions and provided that the Provider shall notify HEE if it knows or suspects that compliance with such specification or instruction may result in infringement.

11.13 HEE:

11.13.1 warrants that the receipt and use of HEE Materials in the performance of this contract by the Provider, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

11.13.2 shall indemnify the Provider in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Provider arising out of or in connection with any claim brought against the Provider, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of this contract of HEE Materials.

11.14 If either Party (the “**Indemnifying Party**”) is required to indemnify the other Party (the “**Indemnified Party**”) under this clause 11, the Indemnified Party shall:

11.14.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 3.1.7 or clause 11.11.2 (as applicable) (“**IPRs Claim**”);

11.14.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

11.14.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Provider of the Indemnified Party's costs so incurred; and

11.14.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

12 **INSURANCE**

12.1 Without prejudice to its obligations to HEE under this contract, including its indemnity and liability obligations, the Provider shall for the Term at its own cost take out and maintain, or procure the taking out and maintenance of the insurances as set out in this clause and any other insurances as may be required by applicable Law and/or Guidance (together the “**Insurances**”).

- 12.2 During the Term and for a period of six (6) years after the Provider ceases to have any obligations under this contract, the Provider shall maintain in force the following insurance policies with reputable insurance companies:
- 12.2.1 public liability insurance with a limit of at least £2,000,000 a claim;
 - 12.2.2 professional indemnity insurance (which, for the avoidance of doubt, shall include cover for any clinical malpractice) with a limit of at least £5,000,000 for claims arising from a single event or series of related events in a single calendar year;
 - 12.2.3 employer's liability insurance with a limit of at least £2,000,000 for claims arising from a single event or series of related events in a single calendar year; and
 - 12.2.4 adequate insurance cover for any loss, injury and damage to any Learners (whilst on the Premises or not) in the course of providing the Services with a limit of at least £10,000,000 for claims arising from a single event or series of related events in a single calendar year.
- 12.3 The Provider confirms that the insurance taken out in accordance with this clause 12 adequately covers any losses caused by injury or death to persons (including Learners) arising from the Services including as a result of any notifiable infectious diseases as listed under the Health Protection (Notification) Regulations 2010, including, but not limited to, COVID-19.
- 12.4 During the Term, the Provider shall fulfil all duties relating to the Learners' health, safety and welfare as if it was their employer and shall comply with HEE's reasonable requests in connection with the Provider's duties in relation to the Learners, Shall only be subject to service provisions.
- 12.5 At the commencement of this contract and from time to time thereafter at the reasonable request of HEE or the HEE Representative, the Provider shall produce evidence of the insurances obtained and maintained in accordance with this clause 12 to HEE.
- 12.6 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Provider of any liabilities under this contract. It shall be the responsibility of the Provider to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this contract. Accordingly, the Provider shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 12.7 The Provider 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.

13 **LIABILITY**

- 13.1 Without prejudice to its liability to HEE for breach of any of its obligations under this contract, the Provider shall be liable for and shall indemnify HEE against any direct

liability, loss, damage, costs, expenses, claims or proceedings whatsoever (“**Losses**”) (subject always to an obligation upon HEE to mitigate any Losses to every reasonably practicable extent) incurred by HEE in respect of any claim against HEE, arising under any statute or otherwise in respect of:

- 13.1.1 any loss of or damage to property (whether real or personal);
 - 13.1.2 any injury to any person (including but not limited to Learners), including injury resulting in death; or
 - 13.1.3 any infectious disease present on the Premises (including but not limited to COVID-19); or
 - 13.1.4 any Losses of the Provider that result from or arise out of the Provider's negligence or breach of contract in connection with the performance of this contract except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Provider, their Staff or agents; or
 - 13.1.5 any material or non-material damage to any person as a result of infringement of the Data Protection Legislation, arising directly out of any act or omission or breach of this contract by the Provider (which expression shall in the remainder of this clause include its servants, agents, contractors or any other person who at the request of the Provider is or should be performing or discharging or purporting to perform or discharge one or more of the obligations of the Provider under this contract) save to the extent caused (or contributed to) by any act or omission or breach of contract by HEE.
- 13.2 Upon the expiry or earlier termination of this contract, the Provider 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 two (2) 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.
- 14 LIMITATION OF LIABILITY**
- 14.1 Subject to clause 13, the limit of the Provider's liability to HEE for any claim arising under this contract shall be limited to a maximum of 120% of the total Funding provided under this contract in pounds sterling in aggregate for all occurrences or series of occurrences in any year of the Term.
- 14.2 Subject to clause 13, HEE's total liability to the Provider for any and all claims arising under this contract shall be limited to the total Funding.
- 14.3 Nothing in this contract shall exclude or limit the liability of either Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or any other liability which cannot be excluded or limited by reason of law.
- 14.4 Neither Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 14.5 HEE has no responsibility for any other costs incurred by the Provider in connection with the Services and/or the Programme(s) to which the Funding relates, and the Provider must indemnify and keep HEE indemnified against any losses, damages,

costs, expenses, liabilities, claims, actions, proceedings or other liabilities that result from or arise out of the Provider's acts or omissions in relation to the Services and/or the Programme(s) or its duties to third parties.

14.6 The Parties shall indemnify against any costs, claims or other liabilities:

14.6.1 which arise in relation to or in connection with any acts or omissions by any Learners during their attendance on an enrolled Programme of education pursuant to this contract; and

14.6.2 which HEE incurs as a direct result of the Provider's act or omission in assessing any Staff suitability to work alongside or to supervise Learners in the course of undertaking any Programme of education pursuant to this contract.

14.7 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:

14.7.1 extra costs incurred purchasing replacement or alternative services;

14.7.2 the costs of extra management time; and/or

14.7.3 costs incurred as a result of a Data Loss Event, including the costs of informing Data Subjects of the Data Loss Event

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.

14.8 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.

15 **TERMINATION**

15.1 Without affecting any other right or remedy available to it, HEE may terminate this contract or any part of the Services at any time on three (3) months' written notice, but may in its absolute discretion terminate on one (1) months' written notice. HEE will consider the impact on the Provider and the healthcare system in making the decision for termination on three (3) months, and share this decision publicly.

15.2 Without affecting any other right or remedy available to it, the Provider may terminate this contract or any part of the Services at any time with the written agreement of HEE and providing twelve (12) months' notice in writing. In partnership with the Provider and at the discretion of HEE this notice period may be reduced where it is reasonable to HEE to do so, provided that twelve (12) months' notice has been provided.

15.3 Without affecting any other right or remedy available to it, either Party may terminate this contract with immediate effect by giving written notice to the other Party if:

15.3.1 the other Party commits a material breach of any term of this contract and (if such breach is remediable) fails to remedy that breach within a period of twenty (20) Business Days after being notified in writing to do so;

- 15.3.2 the other Party repeatedly breaches any of the terms of this contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this contract;
 - 15.3.3 where the Provider is an NHS Trust or NHS Foundation Trust, the Provider is or becomes subject to an order made under section 65B or 65D of the NHS Act 2006;
 - 15.3.4 the Provider is in receipt of a quality report from any Regulator which has material adverse implications for the provision of any of the Services, where a Remedial Action Plan has not been agreed and enforced;
 - 15.3.5 the Provider is subject to an Insolvency Event or otherwise its financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this contract is in jeopardy; and/or
 - 15.3.6 the Secretary of State for Health and Social Care no longer authorises and/or funds HEE to commission, and manage the provision of Funding in a manner as envisaged by this contract.
- 15.4 For the purposes of clause 15.3.1 **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:
- 15.4.1 a substantial portion of this contract; or
 - 15.4.2 any number of the obligations set out in the contract,
- over the term of this contract in deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 15.5 Without affecting any other right or remedy available to it, the Provider may terminate this contract with immediate effect by giving written notice to HEE if HEE fails to pay any amount due under this contract on the due date for payment and remains in default not less than forty (40) Business Days after being notified in writing to make such payment. No interest is payable on these amounts.
- 15.6 The termination of this contract for whatever reason shall be without prejudice to any rights or liabilities which have accrued prior to the date of termination.
- 15.7 HEE may terminate this contract forthwith by issuing a Termination Notice to the Provider if:
- 15.7.1 the Provider does not commence delivery of the Services by any Long Stop Date;
 - 15.7.2 the contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 15.7.3 HEE has become aware that the Provider should have been excluded under regulation 57(1) – (4) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this contract;
 - 15.7.4 the contract should not have been awarded to the Provider in view of a serious infringement of obligations under European law declared by the

Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or

- 15.7.5 there has been a failure by the Provider and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Provider's Sub-contractors, HEE may request the replacement of such Sub-contractor and the Provider shall comply with such request as an alternative to HEE terminating this contract under this clause 15.7.5;
 - 15.7.6 the Provider, or any third party guaranteeing the obligations of the Provider under this contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
 - 15.7.7 the Provider 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 HEE and HEE shall be entitled to withhold such consent if, in the reasonable opinion of HEE, the proposed change of control will have a material impact on the performance of this contract or the reputation of HEE;
 - 15.7.8 the Provider purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this contract;
 - 15.7.9 the warranty given by the Provider is materially untrue; or
 - 15.7.10 the Provider breaches its obligation to notify HEE of any Occasion of Tax Non-Compliance.
- 15.8 If HEE, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Provider and/or any third party guaranteeing the obligations of the Provider under this contract and/or any material Sub-contractor of the Provider when compared to any information provided to and/or assessed by HEE as part of any procurement process or other due diligence leading to the award of this contract to the Provider or the entering into a Sub-contract by the Provider, the following process shall apply:
- 15.8.1 HEE may (but shall not be obliged to) give notice to the Provider requesting adequate financial or other security and/or assurances for due performance of its material obligations under this contract on such reasonable and proportionate terms as HEE may require within a reasonable time period as specified in such notice;

- 15.8.2 a failure or refusal by the Provider to provide any financial or other security and/or assurances requested in accordance with clause 15.8.1 in accordance with any reasonable timescales specified in any such notice issued by HEE shall be deemed a breach of this contract by the Provider and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
- 15.8.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, HEE to terminate this contract.
- 15.9 In order that HEE may act reasonably in exercising its discretion in accordance with clause 15.8.1, the Provider shall provide HEE with such reasonable and proportionate up-to-date financial or other information relating to the Provider or any relevant third party entity upon request.
- 15.10 Within six (6) months of the Commencement Date the Provider shall develop and agree an exit plan with HEE consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this contract. The Provider shall provide HEE with the first draft of an 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 of this contract.
- 15.11 If the Parties cannot agree an exit plan in accordance with the timescales set out in clause 15.10 (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.
- 16 **OBLIGATIONS ON TERMINATION AND SURVIVAL**
 - 16.1 Upon expiry or earlier termination of this contract, HEE agrees to pay the Provider for the Services which have been completed by the Provider in accordance with this contract prior to expiry or earlier termination of this contract.
 - 16.2 Immediately following expiry or earlier termination of this contract and/or in accordance with any timescales as set out in the agreed exit plan:
 - 16.2.1 the Provider shall comply with its obligations under any agreed exit plan;
 - 16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services and all other items provided on loan or otherwise to the Provider by HEE shall be delivered by the Provider to HEE provided that the Provider shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Provider is required by Law and/or Guidance to keep copies; or (c) the Provider was in possession of such data, documents and records prior to the Commencement Date; and
 - 16.2.3 any Personal Data Processed by the Provider on behalf of HEE shall be returned to HEE or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
 - 16.3 In the event that upon termination of this contract, there remain any Learners who are still on a Programme of education / training pursuant to this contract, subject to the provisions of clause 16.4, the terms of this contract shall remain in full force and effect

in relation to such Learners until their Programmes of education / training have completed, or, if this is not feasible, the Provider will, with the agreement of HEE in writing, organise alternative provision of a comparable standard and quality.

- 16.4 During the Residual Contract Period the Provider shall complete the delivery of all Programmes of education / training for Learners who have not, upon the expiry or termination of this contract, completed the same unless agreed to the contrary with HEE.
- 16.5 The Provider shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to clause 16.2.3 for a maximum of 6 years from termination or expiry of this contract.
- 16.6 The Provider shall cooperate fully with HEE 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 HEE to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.7 The expiry or earlier termination of this contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.8 The expiry or earlier termination of this contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

17 COMPLAINTS

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

18 SUSTAINABLE DEVELOPMENT

- 18.1 The Provider shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Provider shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Service Specification. Without prejudice to the generality of the foregoing, the Provider shall:
 - 18.1.1 comply with all Policies and/or procedures and requirements set out in the Service Specification in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Services and the Provider's supply chain;

- 18.1.2 maintain relevant policy statements documenting the Provider's significant labour, social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Provider's business operations; and
 - 18.1.3 maintain plans and procedures that support the commitments made as part of the Provider's significant labour, social and environmental policies, as referred to at clause 18.1.1.
- 18.2 The Provider shall meet reasonable requests by HEE for information evidencing the Provider's compliance with the provisions of this clause 18.

19 ELECTRONIC SERVICES INFORMATION

- 19.1 Where requested by HEE, the Provider shall provide HEE the Services Information in such manner and upon such media as agreed between the Provider and HEE from time to time for the sole use by HEE.
- 19.2 The Provider warrants that the Services Information is complete and accurate as at the date upon which it is delivered to HEE and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of HEE following publication of the same.
- 19.3 If the Services Information ceases to be complete and accurate, the Provider shall promptly notify HEE in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 19.4 The Provider grants HEE a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to HEE's contracts from time to time. Subject to clause 19.5, no obligation to illustrate or advertise the Services Information is imposed on HEE, as a consequence of the licence conferred by this clause 19.4.
- 19.5 HEE may reproduce for its sole use the Services Information provided by the Provider in HEE's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on HEE's external website and/or made available on other digital media from time to time.
- 19.6 Before any publication of the Services Information (electronic or otherwise) is made by HEE, HEE will submit a copy of the relevant sections of HEE's services catalogue to the Provider for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Provider shall have no right to compel HEE to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this clause 19.6 or otherwise under the terms of this contract.
- 19.7 If requested in writing by HEE, and to the extent not already agreed as part of the Service Specification, the Provider and HEE shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

20 PUBLICITY AND NHS BRANDING

- 20.1 Subject to clause 20.2, the Provider must not, without the prior written consent of HEE, apply NHS branding or HEE's name or logo to the Services, and must obtain the HEE's

prior written approval (not to be unreasonably withheld) for any publicity in connection with the Provider's receipt of the Funding.

- 20.2 For all activity relating to the Services (including, but not limited to any activity in connection with the Provider's receipt of the Funding), the Provider shall make clear on all publications, notices, and communications, that the Services are HEE-funded Services. HEE permits the Provider's use of the HEE logo for the sole purpose of its compliance with this clause. Such use of the HEE logo must comply with the NHS Branding Guidelines and this clause 20.
- 20.3 If HEE does permit the Provider to use NHS branding, its name or logo in connection with the Services, that permission is limited to the purposes and duration communicated to the Provider by HEE and the Provider must comply with the NHS Branding Guidelines.
- 20.4 Goodwill in the Services, to the extent branded as NHS services, shall belong separately to both the Secretary of State and the Provider. The Provider may enforce its rights in its own branding even if it includes the NHS Brand. The Provider must provide whatever assistance the Secretary of State may reasonably require to allow the Secretary of State to maintain and enforce his rights in respect of the NHS Brand.
- 20.5 The Provider shall not request any endorsement in any form whatsoever from HEE staff (which includes any person employed or engaged by HEE) ("**HEE Staff**") in relation to the Provider's products and/or Services, or use any comments made by any member of HEE Staff in relation to the Provider's products and/or Services, in any publicity, marketing or on any website, including the Provider's website or social media, without the prior express written permission of HEE.

21 **ADVERTISEMENTS AND MARKETING**

- 21.1 Unless otherwise agreed by HEE, no disclosure, announcement, advertisement or publication or any form of marketing or public relations exercise in connection with this contract or the existence of this contract and the Parties to it or them shall be made by or on behalf of a Party to this contract without the approval of HEE in writing. For the avoidance of doubt, the provisions of this clause 21 shall in no way preclude the Provider from advertising, publishing or announcing in any way the details of the healthcare or education services it delivers.

22 **FORCE MAJEURE**

- 22.1 **Force Majeure Event** means any circumstance not within a Party's reasonable control including (having regard to Emergency Preparedness, Resilience and Response guidance) without limitation:

- 22.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 22.1.2 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 22.1.3 nuclear, chemical or biological contamination or sonic boom;
- 22.1.4 any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to provide a necessary licence or consent;

- 22.1.5 collapse of buildings, fire, explosion or accident;
 - 22.1.6 any labour or trade dispute, strikes, industrial action or lockouts; and/or
 - 22.1.7 non-performance by Providers and interruption or failure of utility service.
- 22.2 For the avoidance of doubt, a Force Majeure Event does not include an epidemic, pandemic, or other incidents which have been planned under NHS Emergency Preparedness, Resilience and Response requirements. Providers are required to work in partnership to identify these events and to collaborate with HEE to comply with any national guidance issued in these circumstances.
- 22.3 Provided it has complied with clause 22.5, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this contract by a Force Majeure Event (“**Affected Party**”), the Affected Party shall not be in breach of this contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 22.4 The corresponding obligations of the other Party shall be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 22.5 The Affected Party shall:
- 22.5.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify HEE in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this contract; and
 - 22.5.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 22.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the Party not affected by the Force Majeure Event may terminate this contract by giving 4 weeks' written notice to the Affected Party.
- 22.7 All Regulator, NHS and HEE notices should be adhered to by the Provider in the event of a Force Majeure Event.

23 COSTS AND EXPENSES

- 23.1 Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this contract.

24 DISPUTE RESOLUTION PROCEDURE

- 24.1 If a dispute arises out of or in connection with this contract or the performance, validity or enforceability of it (“**Dispute**”) then except as expressly provided in this contract, the Parties shall follow the procedure set out in this clause:
- 24.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with relevant supporting documents. On service of the Dispute Notice, the HEE

Representative and the Provider Representative shall attempt in good faith to resolve the Dispute;

- 24.1.2 if the HEE Representative and Provider Representative are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to a Director of HEE and a senior director of the Provider who shall attempt in good faith to resolve it;
 - 24.1.3 if the Director of HEE and the senior director of the Provider are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the Dispute shall be referred to the CEO of HEE and the CEO of the Provider who shall attempt in good faith to resolve it; and
 - 24.1.4 if the CEO of HEE and the CEO of the Provider are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the Parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (“**ADR notice**”) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation shall start not later than thirty (30) days after the date of the ADR notice.
- 24.2 No Party may commence any court proceedings under clause 46.11 (in relation to the whole or part of the Dispute until thirty (30) Business Days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 24.3 If the Dispute is not resolved within thirty (30) Business Days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of thirty (30) Business Days, or the mediation terminates before the expiration of the said period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 46.11.

25 **QUALITY AND PERFORMANCE REQUIREMENTS**

- 25.1 The Provider shall provide the Services, and meet the Quality and Performance Requirements in accordance with Schedule 3 and the HEE Quality Framework.

26 **CONTRACT MANAGEMENT**

- 26.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality and Performance Requirement and the Provider fails to meet the Quality and Performance Requirement, HEE shall be entitled to exercise the agreed consequence immediately and without issuing a Contract Performance Notice, irrespective of any other rights HEE may have under this clause 26.
- 26.2 The provisions of this clause 26 do not affect any other rights and obligations the Parties may have under this contract.

27 **CONTRACT PERFORMANCE NOTICE**

- 27.1 If HEE believes that the Provider has failed or is failing to comply with any obligation on its part under this contract it may issue a Contract Performance Notice to the Provider.

- 27.2 If the Provider believes that HEE has failed or is failing to comply with any obligation on its part under this contract it may issue a Contract Performance Notice to HEE.

28 **CONTRACT MANAGEMENT MEETING**

- 28.1 Unless the Contract Performance Notice has been withdrawn, HEE and the Provider must meet to discuss the Contract Performance Notice and any related issues within ten (10) Business Days following the date of the Contract Performance Notice.

- 28.2 At the Contract Management Meeting HEE and the Provider must ensure that HEE Representative and the Provider Representative are in attendance (including representatives from the quality, finance, and performance and operations department of HEE) and agree either:

28.2.1 that the Contract Performance Notice is withdrawn; or

28.2.2 to implement an appropriate Immediate Action Plan and/or Remedial Action Plan.

- 28.3 If HEE and the Provider cannot agree on either course of action, they must undertake a Joint Investigation.

29 **JOINT INVESTIGATION**

- 29.1 If a Joint Investigation is to be undertaken:

29.1.1 HEE and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than two (2) months) and the appropriate representatives from each relevant Party to participate in the Joint Investigation as well as HEE Representative and the Provider Representative; and

29.1.2 HEE and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

- 29.2 On completion of a Joint Investigation, HEE and the Provider must produce and agree a JI Report. The JI Report must include a recommendation to be considered at the next Review Meeting that either:

29.2.1 the Contract Performance Notice be withdrawn; or

29.2.2 a Remedial Action Plan be agreed and implemented.

- 29.3 Either HEE or the Provider may require a Review Meeting to be held at short notice within five (5) Business Days to consider a JI Report.

30 **REMEDIAL ACTION PLAN**

- 30.1 If a Remedial Action Plan is to be implemented, HEE and the Provider must agree the contents of the Remedial Action Plan within:

30.1.1 five (5) Business Days following the Contract Management Meeting; or

30.1.2 five (5) Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause 29.2.2,

as appropriate.

30.2 The Remedial Action Plan must set out:

- 30.2.1 actions required and which Party is responsible for completion of each action to remedy the failure in question and the date by which each action must be completed;
- 30.2.2 the improvements in outcomes and/or other key indicators required, the date by which each improvement must be achieved and for how long it must be maintained; and
- 30.2.3 any agreed reasonable and proportionate financial sanctions or other consequences for any Party for failing to complete any agreed action and/or to achieve and maintain any agreed improvement (any financial sanctions applying to the Provider not to exceed in aggregate 20% of the Actual Monthly Value in any month in respect of any Remedial Action Plan).

30.3 If a Remedial Action Plan is agreed during the final year of the Term, that Remedial Action Plan may specify a date by which an action is to be completed or an improvement is to be achieved or a period for which an improvement is to be maintained falling or extending after the Expiry Date, with a view to that Remedial Action Plan being incorporated in an SDIP under a subsequent contract between HEE and the Provider for delivery of services the same or substantially the same as the Services.

30.4 The Provider and HEE must implement the actions and achieve and maintain the improvements applicable to it within the timescales set out in, and otherwise in accordance with, the Remedial Action Plan.

30.5 HEE and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. HEE and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.

30.6 Each Party shall bear its own costs in relation to any Joint Investigation.

31 IMPLEMENTATION AND BREACH OF REMEDIAL ACTION PLAN

31.1 If, following implementation of a Remedial Action Plan, the agreed actions have been completed and the agreed improvements achieved and maintained, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed.

32 EXCEPTION REPORT

32.1 If a Party fails to complete an action required of it, or to deliver or maintain the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan and does not remedy that failure within five (5) Business Days following receipt of notice requiring it to do so, the Provider or HEE (as the case may be) may issue an Exception Report:

- 32.1.1 to the relevant Party's chief executive and/or Governing Body; and/or
- 32.1.2 (if it reasonably believes it is appropriate to do so) to any appropriate Regulator,

in order that each of them may take whatever steps they think appropriate.

33 WITHHOLDING OF FUNDING AT EXCEPTION REPORT FOR BREACH OF REMEDIAL ACTION PLAN

33.1 If the Provider fails to complete an action required of it, or to deliver the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan:

33.1.1 (if the Remedial Action Plan does not itself provide for a withholding or other financial sanction in relation to that failure) HEE may, when issuing an Exception Report, withhold in respect of each action not completed or improvement not met, a reasonable and proportionate sum of up to 5% of the Actual Monthly Value, from the date of issuing the Exception Report and for each month the Provider's breach continues and/or the required improvement has not been achieved and maintained, subject to a maximum monthly withholding in relation to each Remedial Action Plan of 50% of the Actual Monthly Value; and

33.1.2 HEE must pay the Provider any Funding withheld under clause 33.1.1 within ten (10) Business Days following HEE's confirmation that the breach of the Remedial Action Plan has been rectified and/or the required improvement has been achieved and maintained. No interest shall be payable on those sums.

34 RETENTION OF SUMS WITHHELD FOR BREACH OF REMEDIAL ACTION PLAN

34.1 If, twenty (20) Business Days after an Exception Report has been issued under clause 32.1, the Provider remains in breach of a Remedial Action Plan, HEE may notify the Provider that any Funding withheld under clause 33.1.1 is to be retained permanently by HEE.

35 UNJUSTIFIED WITHHOLDING OR RETENTION OF FUNDING

35.1 If HEE withholds sums under clause 33.1.1 or HEE retain sums under clause 34.1, and within twenty (20) Business Days of the date of that withholding or retention the Provider produces evidence satisfactory to HEE that the relevant sums were withheld or retained unjustifiably, HEE must pay those sums to the Provider within ten (10) Business Days following the date of HEE's acceptance of that evidence, no interest shall be payable on these sums. If HEE does not accept the Provider's evidence the Provider may refer the matter to the Dispute Resolution Procedure at clause 24.

36 RETENTION OF FUNDING WITHHELD ON EXPIRY OR TERMINATION OF THIS CONTRACT

36.1 If the Provider does not agree a Remedial Action Plan:

36.1.1 within six (6) months following the expiry of the relevant time period set out in clause 30.1; or

36.1.2 before the Expiry Date or earlier termination of this contract,

whichever is the earlier, HEE may notify the Provider that any Funding withheld under clause 33.1.1 is to be retained permanently by HEE.

- 36.2 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this contract, HEE may notify the Provider that any Funding withheld under clause 33.1.1 is to be retained permanently by HEE.

37 **REVIEW MEETINGS**

- 37.1 Review Meetings are to take place as specified in Schedule 1 between HEE and the Provider, unless the following conditions are met:

37.1.1 HEE is assured of the delivery of Services, and that it meets the conditions of this contract, and all regulatory conditions, and that regular communication has taken place between Provider and HEE, in which case the Provider and HEE may agree to formally note that conditions are met and a formal Review Meeting shall not take place, in these circumstances a letter of confirmation shall be provided from HEE to the Provider; and

37.1.2 the Provider submits a bi-annual return on their progress with the conditions of this contract, the contents of which are satisfactory to HEE.

- 37.2 HEE may, in its absolute discretion, continue with a Review Meeting even when the conditions in clause 37.1 are considered to be met, as part of good governance and accountability practice.

- 37.3 Extra-ordinary Review Meetings may be called by HEE or the Provider, giving ten (10) Business Days' written notice. In these circumstances the calling Party shall issue an agenda to the other Party within five (5) Business Days of the meeting.

- 37.4 A Review Meeting shall be convened with representatives from the quality, finance, and performance and operations department of HEE.

- 37.5 HEE may determine at its absolute discretion to hold a Review Meeting via the submission of a paper review, rather than an in person formal attendance. The Provider may request that an in person formal attendance Review Meeting proceeds setting out its justification to HEE in writing.

38 **RECORDS RETENTION AND RIGHT OF AUDIT**

- 38.1 Subject to any statutory requirement, the Provider 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.

- 38.2 HEE shall have the right to audit the Provider's compliance with this contract. The Provider shall permit or procure permission for HEE 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 Provider's compliance with its obligations under this contract.

- 38.3 Should the Provider Sub-contract any of its obligations under this contract, HEE shall have the right to audit and inspect such third party. The Provider shall procure permission for HEE 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 Provider's obligations under this contract that

are Sub-contracted to such third party. The Provider shall cooperate with such audit and inspection and accompany HEE or its authorised representative if requested.

- 38.4 The Provider shall grant to HEE or its authorised representative, such access to those records as they may reasonably require in order to check the Provider's compliance with this contract for the purposes of:

38.4.1 the examination and certification of HEE's accounts; or

38.4.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which HEE has used its resources.

- 38.5 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 Provider and may require the Provider to provide such oral and/or written explanations as they consider necessary. This does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Provider under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

- 38.6 The Provider shall provide reasonable cooperation to HEE, 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.

- 38.7 The Provider shall provide all reasonable information as may be reasonably requested by HEE to evidence the Provider's compliance with the requirements of this contract.

- 38.8 On the request of the Department of Health and Social Care, NHS England, NHS Improvement, NHSCFA, any regulatory body or HEE, the Provider must allow NHSCFA or any Local Counter Fraud Specialist, as soon as it is reasonably practicable and in any event not later than 5 Business Days following the date of the request, access to:

38.8.1 all property, premises, information (including records and data) owned or controlled by the Provider; and

38.8.2 all Staff who may have information,

- 38.9 which is relevant to the detection and investigation of cases of bribery, Fraud or corruption, directly or indirectly in connection with this contract.

39 **CONFLICTS OF INTEREST AND THE PREVENTION OF FRAUD**

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

- 39.2 HEE 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 HEE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to HEE under the provisions of this contract. The actions of HEE pursuant to this clause 39 shall not prejudice or

affect any right of action or remedy which shall have accrued or shall subsequently accrue to HEE.

39.3 The Provider shall take all reasonable steps to prevent Fraud by Staff and the Provider (including its owners, members and directors). The Provider shall notify HEE immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

39.4 If the Provider or its Staff commits Fraud HEE may terminate this contract and recover from the Provider the amount of any direct loss suffered by HEE resulting from the termination.

40 **EQUALITY AND HUMAN RIGHTS**

40.1 The Provider shall:

40.1.1 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

40.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with HEE in light of HEE's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Provider shall take such reasonable and proportionate steps as HEE considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

40.1.3 the Provider shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Provider by this clause 40.

40.2 The Provider shall meet reasonable requests by HEE for information evidencing the Provider's compliance with the provisions of this clause 40.

40.3 The Provider shall perform its obligations under this contract in accordance with:

40.3.1 the Equality Act 2010 and any other equality applicable Law and/or Guidance (whether in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation);

40.3.2 the Provider's equality and diversity policy which must be consistent with HEE's equality and diversity policy available on the HEE website; and

40.3.3 any other requirements and instructions which HEE reasonably imposes in connection with any equality obligations imposed on HEE at any time under equality Law and/or Guidance; and

40.3.4 take all necessary steps, and inform HEE of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

- 40.4 The Provider shall (and shall use its reasonable endeavours to procure that its Staff shall) at all times comply with the provisions of the HRA in the performance of the contract.
- 40.5 The Provider shall undertake, or refrain from undertaking, such acts as HEE requests so as to enable HEE to comply with its obligations under the HRA.
- 40.6 Where the Provider is an NHS Trust or an NHS Foundation Trust, the Provider shall implement EDS2 and WRES.
- 40.7 The Provider and HEE will work in partnership to address any equality, diversity and inclusivity matters relating to education and training.

41 **NOTICES**

- 41.1 Any notice or other communication given to a Party under or in connection with this contract shall be in writing and shall be:
 - 41.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 41.1.2 sent by email to the address specified at the beginning of this contract.
- 41.2 Any notice or communication shall be deemed to have been received:
 - 41.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 41.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or
 - 41.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 41.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

42 **ASSIGNMENT, NOVATION AND SUB-CONTRACTING**

- 42.1 The Provider shall not, except where clause 42.2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this contract without the prior consent in writing of HEE such consent not to be unreasonably withheld or delayed. If the Provider Sub-contracts any of its obligations under this contract, every act or omission of the Sub-contractor shall for the purposes of this contract be deemed to be the act or omission of the Provider and the Provider shall be liable to HEE as if such act or omission had been committed or omitted by the Provider itself.
- 42.2 Notwithstanding clause 42.1, the Provider may assign to a third party (“**Assignee**”) the right to receive Funding due and owing to the Provider under this contract for which an invoice has been issued. Any assignment under this clause 42.2 shall be subject to:
 - 42.2.1 all related rights of HEE in relation to the recovery of sums due but unpaid;

- 42.2.2 HEE receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which HEE shall make payment;
 - 42.2.3 the provisions of clause 10 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of HEE; and
 - 42.2.4 payment to the Assignee being full and complete satisfaction of HEE's obligation to pay the relevant sums in accordance with this contract.
- 42.3 Any authority given by HEE for the Provider to Sub-contract any of its obligations under this contract shall not impose any duty on HEE to enquire as to the competency of any authorised Sub-contractor. The Provider shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this contract.
- 42.4 Where the Provider enters into a Sub-contract in respect of any of its obligations under this contract relating to the provision of the Services, the Provider shall include provisions in each such Sub-contract, unless otherwise agreed with HEE in writing, which:
- 42.4.1 contain at least equivalent obligations as set out in this contract in relation to the performance of the Services to the extent relevant to such Sub-contracting;
 - 42.4.2 contain at least equivalent obligations as set out in this contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
 - 42.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of HEE (such approval not to be unreasonably withheld or delayed);
 - 42.4.4 contain a right for HEE to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this contract;
 - 42.4.5 requires the Provider or other party receiving services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 42.4.6 provides that if the Provider or other party fails to consider and verify an invoice in accordance with clause 42.4.5 the invoice shall be regarded as valid and undisputed for the purpose of clause 42.4.5 after a reasonable time has passed;
 - 42.4.7 requires the Provider or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
 - 42.4.8 permitting the Provider to terminate, or to procure the termination of, the relevant Sub-contract where the Provider is required to replace such Sub-contractor in accordance with clause 42.5; and

- 42.4.9 requires the Sub-contractor to include a clause to the same effect as this clause 42.4 in any Sub-contract which it awards.
- 42.5 Where HEE considers that the grounds for exclusion under regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
 - 42.5.1 if HEE finds there are compulsory grounds for exclusion, the Provider shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
 - 42.5.2 if HEE finds there are non-compulsory grounds for exclusion, HEE may require the Provider to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Provider shall comply with such a requirement.
- 42.6 The Provider shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where HEE pays the Provider's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Provider shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 42.7 HEE shall upon written request have the right to review any Sub-contract entered into by the Provider in respect of the provision of the Services and the Provider shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from HEE. For the avoidance of doubt, the Provider shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 42.8 HEE may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this contract or any part of this contract and the Provider warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If HEE novates this contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of HEE shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this contract or any part of this contract without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed by the Provider.
- 43 **PROHIBITED ACTS**
 - 43.1 The Provider warrants and represents that:
 - 43.1.1 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 HEE 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 HEE or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with HEE; 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 HEE; and

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

43.2 If the Provider 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 Provider in relation to this or any other agreement with HEE:

43.3 HEE shall be entitled:

- (i) to terminate this contract and recover from the Provider the amount of any loss resulting from the termination;
- (ii) to recover from the Provider the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Provider 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;

43.4 any termination under clause 43.2.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to HEE; and

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

- (i) the interpretation of clause 43, or
- (ii) the amount or value of any gift, consideration or commission,

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

44 **CHANGE CONTROL**

44.1 Where HEE or the Provider sees a need to change this contract, HEE may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Process set out in this clause 44 and clause 45.

44.2 Until such time as a Change is made in accordance with the Change Control Process, HEE and the Provider shall, unless otherwise agreed in writing, continue to perform this contract in compliance with its terms prior to such Change.

44.3 Any discussions which may take place between HEE and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.

44.4 Any work undertaken by the Provider and the Provider's Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this clause 44 and clause 45 shall be undertaken entirely at the expense and liability of the Provider.

45 **PROCEDURE**

- 45.1 Discussion between HEE and the Provider concerning a Change shall result in any one of the following:
- 45.1.1 no further action being taken; or
 - 45.1.2 a request to change this contract by HEE; or
 - 45.1.3 a recommendation to change this contract by the Provider.
- 45.2 Where a written request for an amendment is received from HEE, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to HEE within three (3) weeks of the date of the request.
- 45.3 A recommendation to amend this contract by the Provider shall be submitted directly to HEE in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. HEE shall give its response to the Change Control Note within three (3) weeks.
- 45.4 Each Change Control Note shall contain:
- 45.4.1 the title of the Change;
 - 45.4.2 the originator and date of the request or recommendation for the Change;
 - 45.4.3 the reason for the Change;
 - 45.4.4 full details of the Change, including any specifications;
 - 45.4.5 the price, if any, of the Change;
 - 45.4.6 a timetable for implementation, together with any proposals for acceptance of the Change;
 - 45.4.7 a schedule of Funding if appropriate;
 - 45.4.8 details of the likely impact, if any, of the Change on other aspects of this contract including:
 - (iii) the timetable for the provision of the Change;
 - (iv) the personnel to be provided;
 - (v) the Funding;
 - (vi) the training to be provided;
 - (vii) working arrangements; and
 - (viii) other contractual issues;
 - (ix) the date of expiry of validity of the Change Control Note; and
 - (x) provision for signature by HEE and the Provider.

45.5 For each Change Control Note submitted by the Provider HEE shall, within the period of the validity of the Change Control Note:

45.5.1 allocate a sequential number to the Change Control Note; and

45.5.2 evaluate the Change Control Note and, as appropriate:

(xi) request further information; or

(xii) arrange for two copies of the Change Control Note to be signed by or on behalf of HEE and return one of the copies to the Provider; or

(xiii) notify the Provider of the rejection of the Change Control Note.

45.6 A Change Control Note signed by HEE and by the Provider shall constitute an amendment to the contract.

45.7 Any Changes to this contract, including to the Services, shall be recorded and agreed in writing in the Change Control Notification form detailed in Schedule 6.

46 GENERAL

46.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

46.2 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

46.3 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.

46.4 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.

46.5 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.

46.6 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.

46.7 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.

- 46.8 The rights and remedies provided in this contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this contract or by any other contract or document. In this clause 46.8 right includes any power, privilege, remedy, or proprietary or security interest.
- 46.9 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 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.
- 46.10 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 Provider and HEE relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this contract. Nothing in this contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in HEE's procurement documentation leading to the award of this contract shall form part of this contract.
- 46.11 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.
- 46.12 Subject to clause 24, the Parties irrevocably agree that the courts of England and Wales shall have the exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this contract or its subject matter.
- 46.13 All written and oral communications and all written material referred to under this contract shall be in English.

SCHEDULE 1 - SERVICES SPECIFICATION AND TENDER SUBMISSIONS

PROVIDER CONTRACT MANAGER:

Name	Email	Region
		N/A

HEE CONTRACT MANAGER:

Name	Email	Region
		National

ESCALATION LEVEL – SENIOR MANAGER (PROVIDER):

Name	Email	Region
		N/A

ESCALATION LEVEL – SENIOR MANAGER (HEE):

Name	Email	Region
		National

ESCALATION LEVEL - DIRECTOR (PROVIDER):

Name	Email	Region

	N/A
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ESCALATION LEVEL - DIRECTOR (HEE):

Name	Email	Region
		National

SERVICES COMMENCEMENT DATE: The Services shall commence on contract signature.

EXTENSION: This contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15 (Termination), until 31st March 2025 (“Initial Term”), subject to annual performance and funding confirmations, when it shall terminate automatically without notice unless.

Part 1: Tender Submissions:

As appendices to Schedule 1, Part 1

Detail	
Appendix A Bidder Response Document	
Appendix B Budget break down	
Appendix C One Stage Compliance Question	
Appendix D Clarification Log	

Part 2: Service Specification:

The Services shall be delivered in line with the following Specification and project plan.

1. Background

Health Education England (HEE) is part of the NHS and it exists for one reason only: to support the delivery of excellent healthcare and health improvement to the patients and public of England. This is by ensuring that the workforce of today and tomorrow has the right numbers, skills, values and behaviours, at the right time and in the right place.

Autism is highlighted in the NHS Long-Term Plan (LTP), as a priority of the future workforce and training of the workforce is required to deliver safe and effective services.

The care experienced by many autistic people in mental health inpatient and community mental health provision has been well documented by CQC in multiple reports and inspections – and there has been a recurring theme when the care hasn't been provided to the required standard, that this is contributed to by staff without the relevant skills of expertise of working with autistic people.

To address these quality issues, funding is being made available to enable specialist training.

The NHS Long Term Plan states that the whole of the NHS should have an awareness of the needs of autistic people, working together to improve the way it cares, supports, listens to, works with and improves the health and wellbeing of autistic people and their families.

It is important that the workforce inclusive of healthcare professionals are experienced in the Importance of autistic people's mental health and the tailored support they will need as a result.

Autistic people at times cannot access the right mental health support when it is needed the most or support that meets their needs.

This can lead to autistic people reaching crisis point and at times can lead them to be sectioned in a long stay setting.

A fundamental challenge to the quality of care will be having a workforce specifically trained to work with autistic people who require community mental health services. Turnover and the high use of temporary and flexible workforce add to the difficulties organisations have maintaining the staff team on a unit equipped to understand and work with autistic people. Consequently, care is often inappropriate or not reasonably adjusted to offer a good quality service.

As such creating a workforce with the right training for staff in the wider workforce including community settings, is a priority area identified in the National Autism Strategy.

Work to date has included conducting two pilot programmes in Child and Adolescent Mental Health Service (CAMHS) Inpatient Settings and Adult Mental Health Inpatient Settings. The pilots consisted of a train-the-trainer programme aimed at training both subject matter experts and people with lived experience to sustainably co-produce and co-deliver training locally.

Based on recommendations from independent evaluations, There are training programmes devised as a result of the pilots. These will be updated and available to use as part of a wider roll out programme over the next three years; to Mar 2025 (subject to performance and annual funding confirmation).

2. Aim

The aim of the project is to equip mental health service providers with the means to sustainably give their workforce the training they need to provide mental health care for autistic people.

The aim of this specification is to outline a central service required to :-

- Build on the pilot, co-produce and co-deliver roll out of training to trainers from Adult Mental Health Inpatient Settings and people with relevant lived experience. This will be delivered using the materials created as part of the pilot which will be available on eLearning for Healthcare (estimated availability from August 2022). This training

programme will start in October 2022 and finish in March 2025 – subject to funding and performance.

- Build on the pilot, co-produce and co-deliver roll out of training to trainers from Child and Adolescent Mental Health Inpatient settings and people with relevant lived experience. This will be delivered using the materials created as part of the pilot which will be available on eLearning for Healthcare (estimated availability from August 2022). This training programme will start in October 2022 and finish in March 2025 – subject to funding and performance.
- Co-produce and co-deliver a pilot train-the-trainer programme during October 2022 > 31st May 2023 to trainers from Children and Young People, Adult and All Age Mental Health Community Settings and people with relevant lived experience.
- Post evaluation and subject to performance and funding, roll out co-delivery of train-the-trainer training in Children and Young People, Adult and All Age Mental Health Community Settings during 2023/24 and 2024/25.
- Co-produce and co-deliver a pilot expansion of the autism train-the-trainer programme during October 2022 > 31st May 2023 to trainers from Secure Welfare, Youth Justice and Residential schools and people with relevant lived experience.
- Post evaluation and subject to performance and funding, roll out co-delivery of train-the-trainer training in Secure Welfare, Youth Justice and Residential schools during 2023/ 24 and 2024/25.
- Overarching responsibility to drive roll out across all settings stated above [all age mental health inpatient and community settings plus secure welfare, youth justice and residential schools], for example but not limited to; liaise with service providers, monitor training delivery, promote and communicate with on behalf of Health Education England and NHEngland with providers about the roll out of their training, provide reports regarding the number trained and activity, quality issues and governance.

3. Requirements

Health Education England is seeking a single training provider [can be a consortium] with experience and evidence of relevant success in co-developing learning resources and co-delivering sustainable autism related training. This training will have been designed for health and social care staff and for those with lived experience.

Training is expected to be delivered across Child and Adolescent Mental Health Inpatient settings, Adult Mental Health Inpatient Settings, Children and Young People, Adult and All Age Mental Health Community Settings and Secure Welfare, Youth Justice and Residential schools covering the 7 NHS Regions:

- South East England
- South West England
- London
- Midlands
- East of England
- North West England
- North East England

Bidders are expected to bid for the full delivery of the programme:

- Roll-out of training in Child and Adolescent Mental Health Inpatient settings (Oct 2022: Mar 2025)
- Roll-out of training in Adult Mental Health Inpatient Settings (Oct 2022: Mar 2025)
- Pilot training in Children and Young People, Adult and All Age Mental Health Community Settings (Oct 2022: May 2023)
- Roll-out training in Children and Young People, Adult and All Age Mental Health Community Settings (Jun 2023: Mar 2025)
- Pilot Train-the-Trainer training in Secure Welfare, Youth Justice and Residential Schools (Oct 2022: May 2023)
- Roll-out training in Secure Welfare, Youth Justice and Residential Schools (Jun 2023: Mar 2025)

Materials produced as part of the pilot Autism Train-the-Trainer programme for Adult Mental Health Inpatient Settings and Child and Adolescent Mental Health Inpatient settings will be finalised in July 2022 and available through the most suitable HEE learning platform [e.g. [elearning for healthcare](#)] in August 2022 [to be confirmed]. Suppliers can use this material to help inform the development of the training content for Mental Health Community Settings and Secure Welfare, Youth Justice and Residential Schools. However, a clear and distinct training package including material specifically suited for each setting [and each speciality and service focus within the setting] is expected [Secure Welfare, Youth Justice and Residential Schools can be classed as one setting].

Roll out of the programme whether in an inpatient setting, community setting or wider expansion must include refresher training and establishment of community of practice for both trainers from the settings and people with lived experience.

Materials produced as part of this programme should also be made available on a the most suitable HEE learning platform.

Training provider must actively help recruit suitable trainers on to the course and actively monitor and support those individuals to deliver training and to report back to Health Education England on numbers of people trained by trainers. This will include but not limited to the following:

- Engage with all relevant providers
- Establish working relationships
- Support organisations to determine who the right people to train will be and to determine the number of trainers an organisation may need
- Educate and ensure service providers are committed to and co-delivery of training
- Assist the organisations to plan and monitor their training roll out to all relevant services
- Plan the numbers of people with lived experience they train
- Report to Health Education England the numbers of trainers trained, numbers of people each trainer trains, the extent to which each organisation has engaged, has a plan and is delivering training.
- Respond to any other reasonable requests for relevant data.

- Assure the quality of training delivered by the trainers who receive the Train the Trainer training.
- the number staff trainers trained and people with lived experience trained should be the right amount to facilitate co-production

The training provided to trainers should be clearly co-delivered and demonstrate the values of co-production in proportion, duration, selection and skills of the delivery team. [Co-production and co delivery should not be confused with contribution or participation].

The pilot training has been based on the specific content from the [Core Capabilities Framework for Supporting Autistic People](#) and any further development of the material by the training supplier must adhere to the following:

- As there is wide variety of roles within Mental Health inpatient and community settings the training will be required to cover Tiers 1-3 capabilities of the [Core Capabilities Framework for Supporting Autistic People](#) in order to deliver services at Tier 3 capability where required.
- After their training each member of the team, will receive the skills, knowledge and values required for their role.
- The team will be able to function together with a shared understanding to deliver health care with a high degree of autonomy in complex situations for autistic people.
- The setting will be able to deliver care as a team as described in tier 3 capabilities of the [Core Capabilities Framework for Supporting Autistic People](#).

In Mental Health services there will be a greater need for tier 3 than tier 1 capabilities.

Tier 1 Training

Intended for those with little or no prior knowledge of autism to develop an awareness of the key features and effects of autism. This will include all staff groups.

Tier 2 Training

For those who work directly with autistic adults, require more in-depth knowledge and skills to enable them to more effectively carry out their work, review and reflect on their practice.

Tier 3 Training

For all staff whose role demands more advanced and in-depth autism knowledge and skills.

Please refer to and cover all applicable knowledge and skills from the Core Capabilities Framework for Supporting Autistic People.

The autism training must be: -

- aligned to and mapped against the [Core Capabilities Framework for Supporting Autistic People](#)
- evidenced based and make clear where there is:- uncertainty, areas of emerging practice or difference in practice and theory.
- adapted and applicable to different mental health settings
- adaptable to be flexibly applied to the different specialities

- adaptable in response to emerging evidence, feedback, investigations and evaluations

include a focus on:

- Understanding of the risks of institutionalisation for autistic people
- How to reduce restrictive practice
- The use of a whole systems approach
- Difficulties faced by autistic people during transitions and how to mitigate

Cover Tier 3 competencies of capability 13:

Mental Health from the Core Capabilities Framework:

- Recognition of the signs, symptoms, prevalence and potential impact on the lives of autistic people with mental health conditions including (but not limited to psychosis, neuroses and stress related conditions or illnesses , personality disorders, other neuro-developmental conditions such as ADHD, mood disorders including suicidality, substance misuse, dementia and confusional states and eating disorders
- Evaluation of the importance of autonomy through occupations, meaningful activity and social engagement as potential ‘protective factors’ in maintaining positive mental health.
- Why autistic people are at increased risk of mental health conditions ?
- The potential role of traumatic events in the lives of autistic people, including by families and peers such as childhood neglect and bullying.
- Provision of trauma informed care so that autistic people are not traumatised by services.
- Why mental health conditions may be overlooked in autistic people e.g. due to complex or atypical presentations and/or diagnostic overshadowing.
- The understanding that autistic people commonly need adapted mental health therapies and that certain therapies (such as group CBT) are likely to be both ineffective if not adapted and very challenging to access due to sensory, language and/or social challenges.
- Explore and appraise the needs of autistic people who also have a mental health condition, supporting and actively planning for community-based services and to minimise the use of compulsion under the Mental Health Act.
- The need for supporting an autistic person with a mental health condition to access and use specialist and personalised assessment, and care, treatment and support, recognising that reasonable adjustments may be required to standard mental health assessments, approaches and treatments.

Value based Training

The following values and behaviours support all the capabilities in this framework and focus on the minimum that autistic people, their family and carers can expect of the people who provide support. These values and behaviours are taken from coproduction workshops with autistic people carried out during the development of this framework. As such, these are additional to any existing legal, regulatory and ethical requirements or codes relevant to professional bodies and employers.

The person or practitioner will:

- Demonstrate positivity, recognising the strengths and abilities of autistic people.
- Gain an understanding of each autistic person's perspective and personal preferences.
- Be patient and really listen to what is being communicated by an autistic person.
- Recognise the presentation, behaviour and identity of autistic people – and respond with respect and compassion, without judging them or labelling their behaviour in unhelpful ways.
- Value and acknowledge the experience and expertise of autistic people, their families and support networks, enabling choice and autonomy and protecting people's human rights.
- Act with integrity, honesty and openness, seeking to develop mutual trust in all interactions with autistic people, their families, carers and communities.
- Be committed to integrated current and future care and support through working in partnership with autistic people, teams, communities and organisations.
- Value collaborative involvement and co-production with autistic people to improve person-centred design and quality of services.
- Recognise, respect and value autistic people's differences and challenge negative stereotyping.
- Take responsibility for one's own learning and continuing professional development and contributing to the learning of others.

The training will employ problem solving approaches to achieve cultural change, enabling trainers to have the flexibility to tailor the training to specific provider needs.

The training must emphasise multi-disciplinary learning, team working, and person-centred planning and approaches. The unique contribution of individual professions, and roles that contribute to the high-quality provision of care, and the shared learning that this brings, should be maximised.

Training is an expectation for all non-clinical, clinical and educational staff including volunteers and any additional visiting staff who work directly with autistic people in the settings.

Once embedded in the service, the training should be designed so that it can continue to be delivered as part of a rolling programme at induction. When the training is updated and reviewed, the updates are to be delivered to staff within the service in a timely manner.

Online resources should be available through the training hub or on Health Education England eLearning platform – wherever this is technically possible.

The training providers must ensure their delivery is programmed in a manner that is accessible and sustainable for service providers.

The overall delivery must be quality assured with a quality review process built into the delivery proposal prior to commencement of the train the trainer training.

To ensure the quality of the training and delivery, the supplier should outline how:-

- The suitability of trainers coming onto the programme will be assured
- The supplier will ensure they are suitable to deliver the training provided
- They will check to see the training provided in each is sufficient.
- Bidders should make clear their assessment strategy and assurance mechanisms.

An evaluation of the programme will be conducted via a single national evaluation partner. This is being taken forward as a separate Invitation To Tender. Training provider is expected to work closely with the chosen Evaluation partner for the duration of the programme.

Capability and Competence Documents to be used to inform training

[Core Capabilities Framework for Supporting People with a Learning Disability](#)

[Core Capabilities Framework for Supporting Autistic People](#)

[Workforce Competency Framework – Providing community forensic services for people with learning disabilities and/or Autistic Spectrum Conditions](#)

[Learning Disabilities Transition Pathway Competency Framework](#)

[Person-Centred Approaches: Empowering people in their lives and communities to enable an upgrade in prevention, wellbeing, health, care and support.](#)

[Physical Health Competency Framework for Mental Health and Learning Disability Settings](#)

The following pages detail the specifications [in addition to the requirements stated above] for each of the training settings:

4. Roll-Out of Train-the-Trainer programme in Child and Adolescent Mental Health Service Inpatient Settings

Building on the pilot and **3. Requirements**, the training provider is expected to establish a bespoke train the trainer offer that specifically meets the training needed in Child and Adolescent Mental Health Service Inpatient settings and will be delivered in those settings by staff and people with lived experience working in or experienced in those settings:

- delivery of training to trainers from Child and Adolescent Mental Health Service Inpatient settings and people with lived experience [boosting the numbers of trainers previously trained in the pilot phase]
- refresher training for those who have already received the training
- Community of practice established for both sets of trainers from Child and Adolescent Mental Health Service Inpatient and people with lived experience
- On-going active engagement, support, monitoring and coordination of trainers from the settings and people with lived experience, to help them deliver training within settings. This will also involve strong engagement with service providers to ensure the training can be efficiently coordinated. Progress is to be reported back to Health Education England on a quarterly basis and will also be independently evaluated.
- the number of staff trainers trained and people with lived experience trained should be proportional and flexible to facilitate co-production

Bidders should make clear how many people with lived experience people they would train through the duration of the programme.

All training must be co-produced and co-delivered with people who have lived experience relevant to the setting i.e. experience of Child and Adolescent Mental Health Services Inpatient settings.

Personalised training for people with lived experience and family/ carers must be planned and provided for within the proposal.

The train the trainer package must include:-

- All materials and resources required by the trainers
- Familiarisation of with the materials and content of the course
- Presentation and delivery skills
- Material and content to enable trainers to help prepare and support people with lived experience to co-deliver training. This is a key requirement of the programme.
- How to conduct a training needs analysis
- How to prepare and sustainably roll out training within their organisation

The training that trainers will be delivering in their settings must enable the unit to work as a team and adopt a whole systems approach.

Scope

In Scope:

All NHS Provided/ Commissioned Child and Adolescent Mental Health Inpatient settings

Out of Scope:

Children and Young People Mental Health Community Settings

Adult Mental Health Inpatient or Community Settings

5. Roll-Out of Train-the-Trainer Programme in Adult Mental Inpatient Settings

Building on the pilot and **3. Requirements**, the training provider is expected to establish a bespoke train the trainer programme relating to Adult Mental Health Inpatient Settings from October 2022 to March 2025 that will

- delivery of training to trainers from Adult Mental Health Inpatient Settings and people with lived experience [boosting the numbers of trainers previously trained in the pilot phase]
- refresher training for those who have already received the training
- Community of practice established for both sets of trainers from Adult Mental Health Inpatient Settings and people with lived experience
- On-going active engagement, support, monitoring and coordination of trainers from the settings and people with lived experience, to help them deliver training within settings. This will also involve strong engagement with service providers to ensure the training can be efficiently coordinated. Progress is to be reported back to Health Education England on a quarterly basis and will also be independently evaluated.
- the number of staff trainers trained and people with lived experience trained should be proportional and flexible to facilitate co-production

Bidders should make clear how many people with lived experience people they would train through the duration of the programme.

All training must be co-produced and co-delivered with people with lived experience relevant to the setting i.e. experience of Adult Mental Health Inpatient settings.

Personalised training for people with lived experience and family/ carers must be planned and provided for within the proposal.

The train the trainer programme must include:-

- All materials and resources required by the trainers
- Familiarisation of with the materials and content of the course
- Presentation and delivery skills
- Material and content to enable trainers to help prepare and support people with lived experience to co-deliver training. This is a key requirement of the programme.
- How to conduct a training needs analysis
- How to prepare and sustainably roll out training within their organisation

The training that trainers are trained to deliver must enable the unit to work as a team and adopt a whole systems approach.

Scope

In Scope:

All NHS Provided/ Commissioned Adult Mental Health Inpatient Settings

Out of Scope:

Child and Adolescent Mental Health Settings

Adult Mental Health Community Service Settings

6. Pilot programme in All Age Mental Health Community Settings

In order to establish capability, the training provider will pilot train the trainer training for trainers from Children and Young People and Adult Mental Health Community Settings and people with lived experience across the 7 NHS regions. Training is expected to be delivered on-line.

The Requirements sections has detailed information on the course content relating to the [Core Capabilities Framework for Supporting Autistic People](#). Bidders are expected to reference this when establishing the pilot.

The train the trainer model: -

- Fits with what employers have told us they prefer.
- Provides the organisation a means of training their temporary and flexible workforce.
- Builds on a whole system approach.
- Can integrate with similar training needed in other parts of the organisation.

The pilot will:

- Allow for local implementation
- Support local relationships between self advocacy groups and providers
- Establish suitability
- Build capability and capacity of trainers from the settings and people with lived experience to co-deliver training in Children and Young People and Adult Mental Health Community Settings

The proportion of people trained and the time taken should be flexible to meet service demand and proportionate for the training to be effectively and substantively co-delivered. Bidders should make clear how many trainers [from the settings and people with lived experience] they would train for the pilot.

All training must be co-produced and co-delivered with people with lived experience.

Personalised training for people with lived experience and family/ carers must be planned and provided for within the proposal.

The train the trainer programme must:-

- Be based on the [Core Capabilities Framework for Supporting Autistic People](#)– see Requirements section for further details
- Include all materials and resources required by the trainers
- Familiarisation of the materials and content of the course
- Presentation and delivery skills
- Material and content to enable trainers to help prepare and support people with lived experience to co-deliver training. This is a key requirement of the programme.
- How to conduct a training needs analysis
- How to prepare and sustainably roll out training within their organisation

The training that trainers are trained to deliver must enable the unit to work as a team and adopt a whole systems approach.

Pilot duration is Oct 2022 to May 2023

Scope

In Scope: -

All NHS Provided/ Commissioned Children and Young People Mental Health Community Settings

All NHS Provided/ Commissioned Adult Mental Health Community Settings

Out of Scope: -

Child and Adolescent Mental Health Inpatient settings

Adult Mental Health Inpatient settings

7. Roll-Out of Train-the-Trainer Programme in All Age Mental Health Community Settings

Building on the pilot and **3. Requirements**, the training provider is expected to establish a train the trainer programme from Apr 2023 to March 2025 that will

- delivery of training to trainers from Mental Health Community Settings and people with lived experience [boosting the numbers of trainers previously trained in the pilot phase]
- refresher training for those who have already received the training
- Community of practice established for both sets of trainers from Mental Health Community Settings and people with lived experience

- On-going active engagement, support, monitoring and coordination of trainers from the settings and people with lived experience, to help them deliver training within settings. This will also involve strong engagement with service providers to ensure the training can be efficiently coordinated. Progress is to be reported back to Health Education England on a quarterly basis and will also be independently evaluated.
- the number of staff trainers trained and people with lived experience trained should be proportional and flexible to facilitate co-production

Bidders should make clear how many people with lived experience people they would train through the duration of the programme.

All training must be co-produced and co-delivered with people with lived experience relevant to the setting i.e. experience of Mental Health Community settings.

Personalised training for people with lived experience and family/ carers must be planned and provided for within the proposal.

The train the trainer programme must include:-

- All materials and resources required by the trainers
- Familiarisation of with the materials and content of the course
- Presentation and delivery skills
- Material and content to enable trainers to help prepare and support people with lived experience to co-deliver training. This is a key requirement of the programme.
- How to conduct a training needs analysis
- How to prepare and sustainably roll out training within their organisation

The training that trainers are trained to deliver must enable the unit to work as a team and adopt a whole systems approach.

Scope

In Scope: -

All NHS Provided/ Commissioned Children and Young People Mental Health Community Settings

All NHS Provided/ Commissioned Adult Mental Health Community Settings

Out of Scope: -

Child and Adolescent Mental Health Inpatient settings

Adult Mental Health Inpatient settings

8. Pilot expansion of the programme into Secure Welfare, Youth Justice and Residential Schools

In order to establish capability, the training provider will pilot bespoke train the trainer training for subject matter experts and people with lived experience across a number of Secure Welfare, Youth Justice and Residential schools. Training is expected to be delivered on-line.

The Requirements sections has detailed information on the course content relating to the [Core Capabilities Framework for Supporting Autistic People](#). Bidders are expected to reference this when establishing the pilot.

The train the trainer model: -

- Fits with what employers have told us they prefer.
- Provides the organisation a means of training their temporary and flexible workforce.
- Builds on a whole system approach.
- Can integrate with similar training needed in other parts of the organisation.

The pilot will:

- Allow for local implementation
- Support local relationships between self advocacy groups and providers
- Establish feasibility
- Build capability and capacity of subject matter experts and people with lived experience to co-deliver training in Secure Welfare, Youth Justice and Residential schools

The proportion of people trained and the time taken should be flexible to meet service demand and proportionate for the training to be effectively and substantively co-delivered. Bidders should make clear how many trainers from the settings and people with lived experience they would train for the pilot.

All training must be co-produced and co-delivered with people with lived experience.

Personalised training for people with lived experience and family/ carers must be planned and provided for within the proposal.

The train the trainer programme must:-

- Be based on the [Core Capabilities Framework for Supporting Autistic People](#)– see Requirements section for further details
- Include all materials and resources required by the trainers
- Familiarisation of the materials and content of the course
- Presentation and delivery skills
- Material and content to enable trainers to help prepare and support people with lived experience to co-deliver training. This is a key requirement of the programme.
- How to conduct a training needs analysis
- How to prepare and sustainably roll out training within their organisation

Pilot duration is Oct 2022 to May 2023

Scope

In Scope: -

Secure Welfare

Youth Justice

Residential Schools

Out of Scope: -

Other similar Children and Young People or Adult settings

9. Roll-Out of training in Secure Welfare, Youth Justice and Residential Schools

Building on the pilot and Requirements, the training provider is expected to establish a bespoke train the trainer programme from Apr 2023 to March 2025 that will include:

- delivery of training to trainers from Secure Welfare, Youth Justice and Residential schools and people with lived experience [boosting the numbers of trainers previously trained in the pilot phase]
- refresher training for those who have already received the training
- Community of practice established for both sets of trainers from Secure Welfare, Youth Justice and Residential schools and people with lived experience
- On-going active engagement, support, monitoring and coordination of trainers from the settings and people with lived experience, to help them deliver training within settings. This will also involve strong engagement with service providers to ensure the training can be efficiently coordinated. Progress is to be reported back to Health Education England on a quarterly basis and will also be independently evaluated.
- the number of trainers trained and people with lived experience trained should be proportional and flexible to facilitate co-production

Bidders should make clear how many people with lived experience people they would train through the duration of the programme.

All training must be co-produced and co-delivered with people with lived experience relevant to the setting i.e. experience of Secure Welfare, Youth Justice, Residential School settings.

Personalised training for people with lived experience and family/ carers must be planned and provided for within the proposal.

The train the trainer programme must include:-

All materials and resources required by the trainers

Familiarisation of with the materials and content of the course

Presentation and delivery skills

Material and content to enable trainers to help prepare and support people with lived experience to co-deliver training. This is a key requirement of the programme.

How to conduct a training needs analysis

How to prepare and sustainably roll out training within their organisation

The training that trainers are trained to deliver must enable the unit to work as a team and adopt a whole systems approach.

Scope

In Scope: -

Secure Welfare

Youth Justice

Residential Schools

Out of Scope: -

Other similar Children and Young People or Adult settings

10. Project Management

The successful provider will be responsible for project managing the delivery of the training, including: -

- liaising with providers relating to nominations and training attendance.
- working closely with trainers – both subject matter experts and people with lived experience to help them deliver training within settings. This is to be reported back to HEE on a quarterly basis.
- Make provision for and manage payments to people with lived experience to attend bespoke training
- monthly update reports, progress reports, and final report covering outcomes, risks and lessons learnt.
- arranging and minuting associated meetings.

Bidders will be required to work closely with key stakeholders, HEE, NHSE/I, People with lived experience, Skills for Care and a Task and Finish Group that will oversee the programme of work.

11. Expectations of Bids

Detailed responses should describe how providers will:

Clearly identify learning outcomes and curriculum by mapping the specification and other documentation including mapping to the Core Capabilities Framework for Supporting Autistic People and other relevant frameworks to develop a sustainable autism training programme for staff working in inpatient and community mental health settings.

Detail how the training and resources will be developed and delivered co-productively with service users and/or people with lived experience.

Employ a blended learning approach to offer the opportunity for people with lived experience to inspire and teach and drive through the significant service improvement and cultural change required.

Show how training materials will be engaging and make good use of innovative media/materials.

Ensure the production of resources should include online resources, videos, and a digital assessment of learning with certification.

They will provide resources that can be used as stand-alone materials as training in areas such as residential homes and supported living to help reduce inappropriate community admissions placement breakdowns.

Bids should clearly detail the model for the training programme. This should include:

- the content of the training programme,
- manuals, resources etc for the trainers.
- the strategy for the effective recruitment of the right staff to undertake the training programme and deliver training going forward.
- support to organisations to plan their training and understand who should be recruited to be trainers, and how to select and support people with lived experience.
- Specify the trainer evaluation strategy

Details of delivery that must be: -

- COVID-safe, and what resilience strategies need to be described that will be employed should unexpected disruption occur.
- Co-developed and co-delivered with people with lived experience
- offered to multi-professional clinical experts
- delivered by competent experienced trainers' working with autistic people within their area of specialism
- offered on a multimodal format including virtual platforms and ongoing reflective and supervision models
- personalised training for the people with lived experience and prepare individuals to participate in the training and the delivery of training
- inclusive of fair and equitable remuneration for people with lived experience
- included assessment / certification of learning that show how the provider will recognise trainers' skills, knowledge and competence and assess training in practice
- include learner support
- peer to peer supported learning to build local strength and resilience
- opportunity for collaborative cross system projects building sustainable communities of practice.
- provide a reflective learning resource for trainers who have undertaken training

Bids will also

Ensure the bid meets accepted accessibility criteria for plain English to ensure all evaluators have equality of access and can fully engage in the evaluation process.

Ensure all programmes meet accepted accessibility criteria to ensure all learners have equality of access and can fully engage in the learning experience.

Evidence that there is or plans to ensure sufficient expertise in Autism, education and training development, and health service provision in the project team

All resources (learning materials and outcomes), will remain the intellectual property of NHSE/I and HEE.

12. Assessment Criteria

All eligible bids will be evaluated against the following criteria.

The Panel reserves the right to amend scores based on any clarification responses provided during the process.

1. Agreement in principle with co-production partners. Yes/ No Evidence of agreement that autistic people will be part of the co-production and co-delivery of the training	Pass/ Fail
2. Ability to deliver across the whole programme. Yes/ No Delivery in CAMHs and Adult Mental Health Inpatient Settings, CYP, Adult and All Age Community Mental Health Settings, Secure Welfare, Youth Justice and Residential Schools	Pass/ Fail
3. Ability to develop and deliver pilot training to trainers in CYP, Adult and All Age Mental Health Community Settings by 31st May 2023. Yes/ No Project plan for pilot does not exceed 31 st May 2023.	Pass/ Fail
4. Ability to develop and deliver pilot training to trainers in Secure Welfare, Youth Justice and Residential School Settings by 31st May 2023. Yes/ No Project plan for pilot does not exceed 31 st May 2023.	Pass/ Fail
5. Understand and Approach to this programme: Please outline your understanding of the brief and the proposed training methodology/ curriculum you would utilise and the reasons for this. (Maximum narrative word Limit: 2000)	15%
6. Delivery and Timeline: <i>Please provide a breakdown of timescales and key delivery points to meet the timeline identified in the Specification.</i> <i>Please identify any risks you envisage and how you intend to mitigate these, include project management, resourcing and governance arrangements.</i> <i>Please be clear and distinct in your delivery and timeline for the different settings involved in the programme.</i> <i>Please be clear and distinct on how many trainers including people with lived experience you will be training as part of your programme.</i> <i>Delivery Plan to be attached.</i> (Maximum narrative word Limit: 2000)	20%
7. Experience and Knowledge:	20%

<i>Please evidence the relevant skills and experience for individuals in your organisation and partners that will be involved in delivering this work. Please also provide evidence on projects undertaken, of a similar nature, to a high standard. Please ensure that all settings are covered as part of the response:</i> <i>a. Child, Adolescent and Adult Mental Health Inpatient Settings</i> <i>b. Child, Adult and All Age Mental Health Community Settings</i> <i>c. Secure Welfare, Youth Justice and Residential Schools</i> (Maximum narrative word Limit: 2000)	
8. Describe your proposals for involving people with lived experience in the development, delivery and quality assurance of the training. Co-production partners must be autistic people with the relevant experience. (Maximum narrative word Limit: 1000) Please outline your philosophy and plans for the involvement of people with lived experience in every aspect of the training development and delivery. The following areas should be addressed: a. How the involvement of those with lived experience is co-ordinated. b. How lived experience contributors are selected to be inclusive across backgrounds, cultures and ethnicities. c. How people with lived experience are remunerated. d. The role they will take in the development and delivery of the training	15%
9. Value for Money: Please provide a detailed breakdown, with each cost shown exclusive of VAT. The breakdown should demonstrate value for money and be based on the criteria outlined in the specification e. Please provide a total cost for the training f. Please provide a cost per trainee.	30%

Evaluation

The successful bidder must agree to participate and co-operate fully in an evaluation of the programme, including but not limited to methodology, outcomes, good practice, lessons learnt and sharing and collecting of data. The provider must agree to support and co-operate fully in the evaluation process and implement any interim adaptations required.

Programme Budget

The total available over the three year period is c£9million [subject to annual funding confirmation and performance reviews]. This is expected to be approximately £3million per financial year. Extensive set up costs are envisaged within the first 6 months of mobilisation.

Timeline

Activity	Timeframe
ITT live	June 22 – August 22
Clarification, evaluation	June – August 22
Award of contract. Ratification and 10 day stand still	September 22
Contract Go Live	October 22

Glossary

Term	Definition
Specification	Stating what is required from the training programme
People with Lived Experience	Autistic people or their family/ carers with first-hand experience of mental health settings, have personally lived through the experience
Trainers from Settings	Staff members from health, social care, education settings that are being trained to deliver training



SCHEDULE 2- FUNDING

Funding Scheme

KPIs	Description	Amount to be receipted [EXC VAT]
Total		£7,722,542

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

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

PAYABLES F485, T73 HEALTH EDUCATION ENGLAND

PO Box 312

LEEDS

LS11 1HP

OR;

8. be emailed to: sbs.apinvoicing@nhs.net

SCHEDULE 3- QUALITY AND PERFORMANCE REQUIREMENTS

- 1 The Supplier agrees to coproduction with the autism community.
- 2 The Supplier agrees that they will work on both a regional and national level with the relevant HEE teams.
- 3 The Supplier agrees to work with any other providers who have been awarded as requested by HEE.
- 4 The Supplier agrees to deliver the Services in line with the following KPIs.
- 5 Both HEE and the Provider acknowledge the risk associated with the recruitment of trainees and agree that they will meet on a monthly basis to review progress against the contract. Both parties agree that the following remedial actions may be taken to mitigate this risk, subject to mutual agreement:
 - 5.1.1 If reasonable endeavors have been taken by all parties to deliver the training, both parties may agree to redefine any service credits or place reasonable caps on the proportion of the budget impacted by any relevant KPIs.
 - 5.1.2 Accrue an agreed proportion of the budget and receipt this payment against training carried over into next financial year. The training delivery timescales and allocated budget carried over, would need to be agreed by all parties.
 - 5.1.3 Agree any unused training that can be carried over as a training credit, this would be subject to cost viability, service delivery terms and mutual agreement between all parties.



SCHEDULE 4 - DATA PROTECTION PROTOCOL

The definitions and interpretative provisions at clause 1 of this contract shall also apply to this Protocol. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
“Data Protection Officer” and “Data Subject”	shall have the same meanings as set out in the Data Protection Legislation;
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject to exercise rights granted pursuant to the Data Protection Legislation;
“Protocol” or “Data Protection Protocol”	means this Data Protection Protocol;
“Sub-processor”	means any third party appointed to Process Personal Data on behalf of the Provider where the Provider is acting as a Processor in relation to this contract.

1 DATA PROTECTION

- 1.1 The parties agree that Anna Freud Centre will be the Data Controller and that HEE will have no data processor obligations. HEE will be provided with anonymised attendance reports, as agreed in this Contract. It will be the Supplier's sole responsibility to ensure that data is maintained in a way that is compliant with the Data Protection Act 2018 and The Network and Information Systems Regulations 2018.

SCHEDULE 5 - INFORMATION AND DATA PROVISIONS

1 CONFIDENTIALITY

1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of this paragraph 1, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

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

1.1.2 the provisions of this paragraph 1 shall not apply to any Confidential Information:

- (i) which is in or enters the public domain other than by breach of this contract or other act or omissions of the Recipient;
- (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (iii) which is authorised for disclosure by the prior written consent of the Discloser;
- (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
- (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

1.2 Nothing in this paragraph 1 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").

1.3 HEE may disclose the Provider's Confidential Information:

1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by HEE and/or the Contracting Authority receiving such information;

1.3.3 to any relevant party for the purpose of the examination and certification of HEE's accounts;

- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HEE has used its resources;
- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this contract,

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

- 1.4 The Provider may only disclose HEE's Confidential Information, and any other information provided to the Provider by HEE in relation this contract, to the Provider's Staff or professional advisors who are directly involved in the performance of or advising on the Provider's obligations under this contract. The Provider shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in this paragraph 1 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at HEE's written discretion, destroyed securely or returned to HEE when it is no longer required. The Provider shall not, and shall ensure that the Staff do not, use any of HEE's Confidential Information received otherwise than for the purposes of performing the Provider's obligations in this contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 5, the Provider shall not, without the prior written consent of HEE (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 Provider to HEE and/or make any other announcements about this contract.
- 1.6 Paragraph 1 of this Schedule 5 shall remain in force:
 - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
 - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this contract unless otherwise agreed in writing by the Parties.

2 DATA PROTECTION

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, each Party shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 2.2 Where either Party is Processing Personal Data under or in connection with this contract as a Processor, the Parties shall comply with the Data Protection Protocol. Where the Parties are both Processing Personal Data under or in connection with this contract as Controllers, the Parties shall set out their rights and responsibilities in

- respect of such Personal Data in a document based on the model data sharing agreement at Schedule 7.
- 2.3 The provisions of this paragraph 2 are additional to those set out in the Data Protection Protocol.
- 2.4 Without prejudice to the generality of paragraph 2.1, when acting as a Controller HEE shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Provider for the duration and purposes of this contract.
- 2.5 Without prejudice to the generality of paragraph 2.1, when acting as a Controller in connection with this contract the Provider shall:
- 2.5.1 not transfer any Personal Data outside of the UK without the prior written consent of HEE;
 - 2.5.2 assist HEE in responding to any request from a Data Subject to exercise their rights under the Data Protection Legislation and responding to consultations and inquiries from the Information Commissioner's office or any other regulator;
 - 2.5.3 notify HEE without undue delay on becoming aware of a Data Loss Event; and
 - 2.5.4 ensure that all personnel who have access to or process Personal Data in connection with this contract are obliged to keep the personal data confidential
- 2.6 When acting as a Controller, the Provider must obtain the prior written consent of HEE, such consent not to be unreasonably withheld or delayed, prior to appointing any third party as a processor of Personal Data under this contract.
- 2.7 The Provider and HEE 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 HEE under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.8 Where, as a requirement of this contract, either Party is Processing Personal Data relating to Learners as part of the Services, that Party shall:
- 2.8.1 complete and publish an annual information governance assessment using the Data Security & Protection Toolkit (www.dsptoolkit.nhs.uk);
 - 2.8.2 meet the standards in the relevant NHS Data Security & Protection Toolkit;
 - 2.8.3 nominate an information governance lead able to communicate with that Party's board of directors or equivalent governance body, who will be responsible for information governance and from whom that Party's board of directors or equivalent governance body will receive regular reports on

- information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
- 2.8.4 in addition to the requirements of the Data Protection Protocol, report all incidents of data loss and breach of confidence in accordance with applicable Department of Health and Social Care and/or the NHS England and/or Health and Social Care Information Centre guidelines (which can be provided to the Provider by the HEE on request);
- 2.8.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies rigorously;
- 2.8.6 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this contract;
- 2.8.7 at all times comply with any information governance requirements and/or processes as may be set out in the Service Specification; and
- 2.8.8 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Provider by HEE from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 2.9 Subject to clause 14, the Provider shall indemnify and keep HEE indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Provider's unlawful or unauthorised Processing (whether in breach of this contract or the Data Protection Legislation) or the destruction inaccessibility and/or damage to Personal Data for which the Provider is responsible in connection with this contract.
- 2.10 The requirements of this paragraph 2 are in addition to, and do not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

3 FREEDOM OF INFORMATION AND TRANSPARENCY

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 Each Party shall assist and cooperate with the other to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Parties agree:
- 3.2.1 that this contract and any recorded information held by one Party on the other's behalf for the purposes of this contract are subject to the obligations and commitments under the FOIA, Codes of Practice and Environmental Regulations;
- 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Party receiving such a request;

- 3.2.3 that where a Party receives a request for information under the FOIA, Codes of Practice and Environmental Regulations in relation to this contract and/or its subject matter, and that Party itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the other Party 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 other Party;
- 3.2.4 that where the Provider receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Provider is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
- 3.2.5 that either Party, 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 other Party and this contract; and
- 3.2.6 to assist the other Party 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 other Party within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this contract is not Confidential Information.
- 3.4 Notwithstanding any other term of this contract, the Parties consent to the publication of this contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this contract for publication under paragraph 3.4 of this Schedule 5, HEE may consult with the Provider to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at HEE's absolute discretion.
- 3.6 The Provider shall assist and cooperate with HEE to enable HEE to publish this contract.
- 3.7 Where any information is held by any Sub-contractor of the Provider in connection with this contract, the Provider shall procure that such Sub-contractor shall comply with the relevant obligations set out in paragraph 66 of this Schedule 5, as if such Sub-contractor were the Provider.
- 4 INFORMATION SECURITY**
- 4.1 Without limitation to any other information governance requirements set out in this Schedule 5, the Provider shall:

- 4.1.1 notify HEE 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 HEE's information governance Policies (which can be provided to the Provider by HEE on request); and
 - 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by HEE and shall provide full information as may be reasonably requested by HEE in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with the Service Specification, the Provider will ensure that it puts in place and maintains an information security management plan appropriate to this contract, the type of Services being provided and the obligations placed on the Provider. The Provider shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Service Specification.
- 4.3 Where required in accordance with the Service Specification, the Provider shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Service Specification.

SCHEDULE 6 - CHANGE CONTROL NOTIFICATION FORM

CCN Number:

Title of Change	
Service Line	
Operations Lead	
CM originator	

Change Control Notice (CCN to the following agreement:		
Agreement name		Date of Agreement
Date Change Requested	Date CCN Raised	Expiry date of CCN

Contact Information for the proposed change	
Originator	Other Party
Name: Company: Telephone: Email:	Name: Company: Telephone: Email:

Clauses and Schedules affected

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Associated Change Control Notices		
<i>CCN No.</i>	<i>Name of Agreement</i>	<i>Date of Agreement</i>

Reason for change

Description of Change

Changes to contract charges and revised payment schedules

Price to implement change

Impact of change on other agreement provisions

Timetable for implementation

Acceptance	
Signed for and on behalf of: Health Education England	Signed: Print Name: Title: Date:
Signed for and on behalf of: [PROVIDER]	Signed:

	Print name: Title: Date:
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