

**13<sup>th</sup> February 2023**

**IAPT PWP (NHS Talking Therapies) - Midlands**

**NHS EDUCATION AND TRAINING CONTRACT**

between

**NHS ENGLAND**

and

**BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS FOUNDATION TRUST**

**Type Of Services: Provision for delivery of NHS Talking Therapies for Anxiety and Depression Psychological Wellbeing Practitioner (PWP) Education Programme across NHS England's Midlands Region**

**Contract Summary Table**

<b>Description</b>	<b>Detail</b>
Cost for the first 3-year term	<b>£2,076,132 (Inclusive of VAT)</b>
Cost for the optional extended term of 2 years	<b>£[REDACTED] (Inclusive of VAT)</b>
Total costs for the full 5-year term	<b>£[REDACTED] (Inclusive of VAT)</b>
Extension options	<b>The contract can be extended for an additional 2 years on a 1 + 1 basis, subject to need and available budget.</b>
Annual costs for optional extensions	<b>£[REDACTED] (Inclusive of VAT)</b>

Expenses	<b>Not applicable all costs are included in the fixed price contract.</b>
Service Commencement Date	<b>01/04/2023</b>
Expiry Date (Initial Term)	<b>31/03/2026</b>

Clause	Contents	Page
1	DEFINITIONS .....	5
2	COMMENCEMENT AND DURATION .....	17
3	PROVIDER'S WARRANTIES .....	17
4	PROVIDER'S RESPONSIBILITIES .....	19
5	NHS ENGLAND'S RESPONSIBILITIES .....	25
6	PREMISES, LOCATIONS AND ACCESS .....	26
7	COOPERATION WITH THIRD PARTIES .....	26
8	USE OF NHS ENGLAND EQUIPMENT .....	26
9	CONTRACT MANAGEMENT .....	27
10	FUNDING .....	28
11	INTELLECTUAL PROPERTY .....	30
12	INSURANCE .....	32
13	LIABILITY .....	33
14	LIMITATION OF LIABILITY .....	34
15	TERMINATION .....	35
16	OBLIGATIONS ON TERMINATION AND SURVIVAL .....	38
17	COMPLAINTS .....	39
18	SUSTAINABLE DEVELOPMENT .....	39
19	ELECTRONIC SERVICES INFORMATION .....	40
20	PUBLICITY AND NHS BRANDING .....	40
21	ADVERTISEMENTS AND MARKETING .....	41
22	FORCE MAJEURE .....	41
23	COSTS AND EXPENSES .....	42
24	DISPUTE RESOLUTION PROCEDURE .....	42
25	QUALITY AND PERFORMANCE REQUIREMENTS .....	43
26	CONTRACT MANAGEMENT .....	43
27	CONTRACT PERFORMANCE NOTICE .....	43
28	CONTRACT MANAGEMENT MEETING .....	43
29	JOINT INVESTIGATION .....	44
30	REMEDIAL ACTION PLAN .....	44
31	IMPLEMENTATION AND BREACH OF REMEDIAL ACTION PLAN .....	45
32	EXCEPTION REPORT .....	45
33	WITHHOLDING OF FUNDING AT EXCEPTION REPORT FOR BREACH OF REMEDIAL ACTION PLAN .....	45
34	RETENTION OF SUMS WITHHELD FOR BREACH OF REMEDIAL ACTION PLAN .....	46
35	UNJUSTIFIED WITHHOLDING OR RETENTION OF FUNDING .....	46
36	RETENTION OF FUNDING WITHHELD ON EXPIRY OR TERMINATION OF THIS CONTRACT .....	46
37	REVIEW MEETINGS .....	46
38	RECORDS RETENTION AND RIGHT OF AUDIT .....	47
39	CONFLICTS OF INTEREST AND THE PREVENTION OF FRAUD .....	48
40	EQUALITY AND HUMAN RIGHTS .....	48
41	NOTICES .....	49
42	ASSIGNMENT, NOVATION AND SUB-CONTRACTING .....	50
43	PROHIBITED ACTS .....	52
44	CHANGE CONTROL .....	53

45    PROCEDURE ..... 53

46    GENERAL ..... 54

SCHEDULE 1 - SERVICES SPECIFICATION AND TENDER SUBMISSIONS..... 56

SCHEDULE 2 - FUNDING ..... 58

SCHEDULE 3 - QUALITY AND PERFORMANCE REQUIREMENTS ..... 59

SCHEDULE 4 - DATA PROTECTION PROTOCOL..... 60

SCHEDULE 5 - INFORMATION AND DATA PROVISIONS ..... 65

SCHEDULE 6 - CHANGE CONTROL NOTIFICATION FORM ..... 71

SCHEDULE 7 - EXCHANGE OF INFORMATION BETWEEN NHS ENGLAND AND THE PROVIDER  
..... 75

## NHS NHS ENGLAND - EDUCATION AND TRAINING CONTRACT

This contract is dated 1<sup>st</sup> April 2023

### Parties

- (1) **NHS ENGLAND**, whose head office is at **Wellington House, 133-155 Waterloo Rd, London SE1 8UG** (“**NHS England**”); and
- (2) **BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS FOUNDATION TRUST** whose head office is at Unit 1 B1, 50 Summer Hill Road, Birmingham, B13RB (**the “Provider”**),

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

### Signed by the authorised representative of NHS England

[REDACTED]

Full Name: [REDACTED]

Job Title/Role: [REDACTED]

Date Signed: 08/05/2025

### Signed by the authorised representative of THE PROVIDER

[REDACTED]

Full Name: [REDACTED]

Job Title/Role: [REDACTED]

Date Signed: 27 April 2023

# 1 DEFINITIONS

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

<b>“Actual Monthly Value”</b>	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);
<b>“Business Continuity Event”</b>	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;
<b>“Business Continuity Plan”</b>	means the Provider’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Change Control Process”</b>	means the change control process referred to in clause 44 and 45;
<b>“Codes of Practice”</b>	shall have the meaning given to the term in paragraph 1.2 of Schedule 5;
<b>“Commencement Date”</b>	means the date of this contract;
<b>“Confidential Information”</b>	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the contract including any procurement process which is: <ul style="list-style-type: none"> <li>(a) Personal Data including without limitation which relates to any Learner;</li> <li>(b) designated as confidential by either Party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</li> <li>(c) Policies and such other documents which the Provider may obtain or have access to through NHS England’s intranet;</li> </ul>
<b>“Contracting Authority”</b>	means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than NHS England;
<b>“Contract Management Meeting”</b>	means a meeting of NHS England and the Provider held in accordance with clause 28;

<b>“Contract Performance Notice”</b>	<p>(a) a notice given by NHS England to the Provider under clause 27, alleging failure by the Provider to comply with any obligation on its part under this contract; or</p> <p>(b) a notice given by the Provider to NHS England under clause 27 alleging failure by NHS England to comply with any obligation on its part under this contract,</p> <p>as appropriate;</p>
<b>“Controller”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Convictions”</b>	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
<b>“COVID-19”</b>	means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
<b>“Data Loss Event”</b>	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;
<b>“Data Protection Legislation”</b>	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;
<b>“Data Protection Protocol”</b>	means the protocol contained in Schedule 4;
<b>“Disclosure and Barring Service”</b>	means the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012;
<b>“Dispute(s)”</b>	means any dispute, difference or question of interpretation or construction arising out of or in connection with this contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the contract, or any matter where

	this contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>“Dispute Notice”</b>	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
<b>“Dispute Resolution Procedure”</b>	means the process for resolving Disputes as set out in clause 24;
<b>“DOTAS”</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
<b>“EDS2”</b>	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);
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as NHS England may specify from time to time;
<b>“Emergency Preparedness, Resilience and Response”</b>	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);
<b>“Employed Learner”</b>	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 NHS England may provide a financial contribution;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in paragraph 1.2 of Schedule 5;



<b>“eProcurement Guidance”</b>	means the NHS eProcurement strategy available via: <a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a> together with any further Guidance issued by the Department of Health and Social Care in connection with it;
<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
<b>“Exception Report”</b>	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;
<b>“Force Majeure Event”</b>	has the meaning given to it in clause 22;
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>“Exit Requirements”</b>	means NHS England’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;
<b>“Expiry Date”</b>	means the date delivery of the Services shall end as specified in Schedule 1 (Service Specification and Tender Submissions);
<b>“Extra-ordinary Review Meeting”</b>	means a meeting to be held in accordance with clause 37.3;
<b>“FOIA”</b>	shall have the meaning given to the term in paragraph 1.2 of Schedule 5;
<b>“Fraud”</b>	means any offence under any law in respect of fraud in relation to this contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
<b>“Funding”</b>	means the Funding that is payable to the Provider by NHS England 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 NHS England 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;

**“NHS England Materials”**

means all documents, information, items and materials in any form, whether owned by NHS England or a third party, which are provided by NHS England to the Provider in connection with the Services;

<b>"NHS England Representative"</b>	means either a Regional Director, National Director, regional manager and/or a national manager of NHS England;
<b>"NHS England Quality Framework"</b>	means the multi-professional education and training quality framework published by NHS England in April 2016 and as amended thereafter from time to time, measuring the quality of education and training across learning environments in England;
<b>"HM Government Cyber Essentials Scheme"</b>	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at:  <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ;
<b>"HRA"</b>	means the Human Rights Act 1998;
<b>"Immediate Action Plan"</b>	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;
<b>"Implementation Requirements"</b>	means NHS England'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;
<b>"Insolvency Event"</b>	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);
<b>“Learner”</b>	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;
<b>“Lead Employer”</b>	means a third party whom it is agreed will act as employer of Staff or Learners;
<b>“Local Counter Fraud Specialist”</b>	the accredited local counter fraud specialist nominated by NHS England;
<b>“Long Stop Date”</b>	means the date 3 months following the Services Commencement Date;
<b>“Losses”</b>	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;
<b>“National Director”</b>	means a person with delegated authority from NHS England to act for and on behalf of NHS England on a national basis;
<b>“NHS”</b>	means the National Health Service;
<b>“NHS Brand”</b>	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;
<b>“NHS Branding Guidelines”</b>	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);
<b>“NHSCFA”</b>	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;
<b>“Occasion of Tax Non-Compliance”</b>	means: <ul style="list-style-type: none"> <li>(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:               <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Provider under the General Anti-Abuse Rule or the Halifax</li> </ul> </li> </ul>

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;

<b>“Party”</b>	means NHS England or the Provider as appropriate and Parties means both NHS England and the Provider;
<b>“Personal Data”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Personal Data Breach”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Policies”</b>	means the policies, rules and procedures of NHS England as provided to the Provider from time to time;
<b>“Premises and Locations”</b>	has the meaning given under clause 6.1;
<b>“Process”</b>	shall have the same meaning as set out in the Data Protection Legislation. Processing and Processed shall be construed accordingly;
<b>“Processor”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Programme”</b>	any programme as identified in Schedule 1;
<b>“Protective Measures”</b>	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;
<b>“Provider”</b>	means the supplier named at the top of this contract on the first page;
<b>“Provider Outputs”</b>	means any output of the Services to be provided by the Provider to NHS England as specified in Schedule 1 and

	any other documents, products and materials provided by the Provider to NHS England in relation to the Services;
<b>“Previous Contract”</b>	means a contract between NHS England 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;
<b>“Provider Personnel”</b>	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;
<b>“Provider Representative”</b>	means such person with delegated authority to act on behalf of the Provider as notified by the Provider to NHS England from time to time in accordance with clause 9;
<b>“Purchase Order”</b>	means the purchase order required by NHS England’s commercial governance systems (if applicable);
<b>“Quality and Performance Requirements”</b>	means the requirements set out in Schedule 3;
<b>“Regional Director”</b>	means the person with delegated authority from NHS England to act for and on behalf of NHS England within any given Region;
<b>“Region”</b>	means any one or more of the seven (7) NHS England 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;
<b>“Relevant Tax Authority”</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Provider is established;
<b>“Remedial Action Plan”</b>	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;
<b>“Residual Contract Period”</b>	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;

<b>“Review Meeting”</b>	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;
<b>“Service User”</b>	means a patient or service user for whom a Provider has statutory responsibility;
<b>“Services”</b>	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 NHS England as issued to tenderers as part of the procurement process and the Provider’s response to these requirements;
<b>“Services Commencement Date”</b>	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;
<b>“Service Development and Improvement Plan or SDIP”</b>	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);
<b>“Services Information”</b>	means information concerning the Services as may be reasonably requested by NHS England and supplied by the Provider to NHS England in accordance with clause 19 of this contract;
<b>“Service Specification”</b>	means the information set out in Part 2 of Schedule 1;
<b>“Staff”</b>	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;
<b>“Sub-contract”</b>	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;
<b>“Sub-contractor”</b>	means any sub-contractor, whether of the Provider itself or at any further level of sub-contracting, under any Sub-contract;
<b>“Term”</b>	means the term set out in clause 2.1;
<b>“Termination Notice”</b>	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this contract on a specified date and setting out the grounds for termination;



**“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 NHS England 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 NHS England 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 NHS England and use of the Provider Outputs or of any other item or information supplied or made available to NHS England 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 NHS England 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 NHS England 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 NHS England 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 NHS England and shall provide to NHS England any reports or other information that NHS England 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 NHS England from time to time (acting reasonably);
- 3.1.14 all information included within the Provider's responses to any documents issued by NHS England 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 NHS England as set out in the Services shall be submitted to NHS England 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 NHS England to comply with such eProcurement Guidance, to the extent the same applies to NHS England;
- 3.1.22 as at the Commencement Date, it has notified NHS England 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 NHS England in writing of such fact within five (5) Business Days of its occurrence; and promptly provide to NHS England:
    - (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 NHS England may reasonably require;

3.1.23 it will inform NHS England 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 NHS England 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 NHS England 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 NHS England 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 NHS England 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 NHS England 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 NHS England 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 NHS England 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, NHS England 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 NHS England 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 NHS England 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 NHS England. To qualify for such relief, the Provider must notify NHS England promptly (and in any event within five (5) Business Days) in writing of the

occurrence of such act, omission, or default of NHS England 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 NHS England, 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 NHS England's staff, Learners, Service Users or visitors at risk unless otherwise agreed in writing with NHS England.
- 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 NHS England'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 NHS England 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 NHS England's written consent and with such safeguards being put in place as NHS England may reasonably request. Should NHS England 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 NHS England any information that NHS England reasonably requests to enable NHS England to satisfy itself that the obligations set out in this clause 4 have been met.
- 4.29 NHS England may at any time request that the Provider remove and replace any member of Staff from the provision of the Services, provided always that NHS England will act reasonably in making such a request. Prior to making any such request NHS England shall raise with the Provider NHS England's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. NHS England shall be under no obligation to have such prior discussion should NHS England have concerns regarding Learner or Service User safety.
- 4.30 The relationship of the Provider to NHS England 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 NHS England 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 NHS England 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 NHS England against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by NHS England 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 NHS England arising out of or in connection with the provision of the Services.
- 4.31 Unless otherwise confirmed by NHS England 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 NHS England (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 NHS England'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 NHS England; 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 NHS England and the size and scope of the Provider's business operations. The Provider shall promptly provide to NHS England, at NHS England'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 NHS England 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 NHS England 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 NHS England to be relevant and appropriate, the Provider will incorporate into the Business Continuity Plan all such suggestions made by NHS England in respect of such Business Continuity Plan. Should the Provider not incorporate any suggestion made by NHS England into such Business Continuity Plan it will explain the reasons for not doing so to NHS England.
- 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 NHS England 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 NHS ENGLAND'S RESPONSIBILITIES**

5.1 NHS England 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 NHS England Representative. Only the NHS England Representative shall have the authority to contractually bind NHS England 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 NHS England 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 NHS England 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 NHS England;
  - 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 NHS England, 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 NHS England.
- 5.3 NHS England 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 NHS England of any such cooperation necessary in circumstances where such cooperation will require NHS England 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, NHS England shall (where the Premises and Locations are those of NHS England) 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, NHS England 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 NHS England, cooperate with any other service providers to NHS England and/or any other third parties as may be relevant in the provision of the Services.

## **8 USE OF NHS ENGLAND 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 NHS England for use by the Provider:

8.1.1 shall be provided at NHS England'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 NHS England within any agreed timescales for such return or otherwise upon the request of NHS England; and

8.1.4 shall be used by the Provider at the Provider's risk and the Provider shall upon written request by NHS England reimburse NHS England 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 NHS England shall appoint and retain a NHS England 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 NHS England Representative or the Provider Representative be replaced, the Party replacing the NHS England Representative or the Provider Representative (as applicable) shall promptly inform the other Party in writing of the name and contact details for the new NHS England Representative or Provider Representative. Any NHS England 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 NHS England Representative.

9.4 Each Party shall ensure that its representatives (to include, without limitation, the NHS England 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 NHS England 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 NHS England.
- 9.7 Unless specified otherwise in the Services, NHS England 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 NHS England 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 NHS England 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 NHS England 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 NHS England in such form as may be specified by NHS England 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 NHS England 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 NHS England and/or the Third Party Body, or by NHS England to the Third Party Body, the Parties hereby consent to the Third Party Body and NHS England:

- 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 NHS England 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 NHS England to such Authority, be informed of the confidential nature of that information by NHS England and shall be requested by NHS England not to disclose it to anybody that is not an Authority (unless required to do so by Law).
- 9.15 NHS England 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 NHS England 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 NHS England, 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 NHS England 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 NHS England 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 NHS England.
- 10.6 Where NHS England agree in advance to pay VAT, NHS England 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 NHS England shall verify and pay each valid and undisputed invoice received within thirty (30) Business Days of receipt of such invoice at the latest. However, NHS England shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.
- 10.8 Where NHS England 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 NHS England 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 NHS England has then failed to pay such sum within a reasonable period following such determination.
- 10.11 The Provider shall pay to NHS England 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, NHS England may invoice the Provider for such sums or deductions at any time in the event that they have not automatically been credited to NHS England 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 NHS England reserves the right to adjust:
- 10.12.1 any monies due to the Provider from NHS England as against any monies due to NHS England from the Provider under this contract; and
- 10.12.2 any monies due to NHS England from the Provider as against any monies due to the Provider from NHS England under this contract.
- 10.13 Where NHS England is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Provider under this contract, NHS England 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 NHS England.
- 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 NHS England.

- 11.4 The Provider shall ensure that all Staff 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 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 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 The Provider:
- 11.10.1 shall indemnify NHS England 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 NHS England arising out of or in connection with any claim brought against NHS England 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
- 11.10.2 shall not be in breach of the warranty at clause 3.1.7, and NHS England shall have no claim under the indemnity at clause 11.10.2, to the extent the infringement arises from:
- (i) the use of NHS England Materials in the development of, or the inclusion of NHS England 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 NHS England'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 NHS England if it knows or suspects that compliance with such specification or instruction may result in infringement.

#### 11.11 NHS England:

- 11.11.1 warrants that the receipt and use of NHS England 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
- 11.11.2 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 NHS England Materials.

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

- 11.12.1 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**”);
- 11.12.2 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;
- 11.12.3 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
- 11.12.4 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 NHS England 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 [£5,000,000] 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 caused by or 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 duties relating to the Learners health, safety and welfare and shall comply with NHS England's reasonable requests in connection with the Provider's responsibilities in Schedule 1 supplier tender submissions.
- 12.5 The Provider shall agree with NHS England the specific duties and obligations of such persons as regards Learner supervision and patient care as appropriate, where the Learner is an Employed Learner or a secondee employed via a secondment agreement with the Provider, Subject to the service provisions in Schedule 1.
- 12.6 At the commencement of this contract and from time to time thereafter at the reasonable request of NHS England or the NHS England Representative, the Provider shall produce evidence of the insurances obtained and maintained in accordance with this clause 12 to NHS England.
- 12.7 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.
- 12.8 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 NHS England for breach of any of its obligations under this contract, the Provider shall be liable for and shall indemnify NHS England against any direct liability, loss, damage, costs, expenses, claims or proceedings whatsoever ("**Losses**") (subject always to an obligation upon NHS England to mitigate any Losses to every reasonably practicable extent) incurred by NHS England in respect of any claim against NHS England, 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 NHS England.

- 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 twenty one (21) years from termination or expiry of this contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

### 14 **LIMITATION OF LIABILITY**

- 14.1 Subject to clause 13, the limit of the Provider's liability to NHS England 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, NHS England'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 NHS England 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 NHS England 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 Provider shall further indemnify NHS England 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 NHS England 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, NHS England may terminate this contract or any part of the Services at any time on six (6) months' written notice, but may in its absolute discretion terminate on three (3) months' written notice. NHS England 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 NHS England and providing twelve (12) months' notice in writing. In partnership with the Provider and at the discretion of NHS England this notice period may be reduced

where it is reasonable to NHS England 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 NHS England 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 NHS England if NHS England 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 NHS England 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 NHS England 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, NHS England may request the replacement of such Sub-contractor and the Provider shall comply with such request as an alternative to NHS England 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 NHS England and NHS England shall be entitled to withhold such consent if, in the reasonable opinion of NHS England, the proposed change of control will have a material impact on the performance of this contract or the reputation of NHS England;
  - 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 NHS England of any Occasion of Tax Non-Compliance.
- 15.8 If NHS England, 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 NHS England 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 NHS England 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 NHS England 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 NHS England 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, NHS England to terminate this contract.
- 15.9 In order that NHS England may act reasonably in exercising its discretion in accordance with clause 15.8.1, the Provider shall provide NHS England 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 NHS England consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this contract. The Provider shall provide NHS England 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, NHS England 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 NHS England shall be delivered by the Provider to NHS England 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 NHS England shall be returned to NHS England 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 NHS England 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 NHS England.
- 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 NHS England 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 NHS England 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 NHS England for information evidencing the Provider's compliance with the provisions of this clause 18.

## 19 **ELECTRONIC SERVICES INFORMATION**

- 19.1 Where requested by NHS England, the Provider shall provide NHS England the Services Information in such manner and upon such media as agreed between the Provider and NHS England from time to time for the sole use by NHS England.
- 19.2 The Provider warrants that the Services Information is complete and accurate as at the date upon which it is delivered to NHS England and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of NHS England following publication of the same.
- 19.3 If the Services Information ceases to be complete and accurate, the Provider shall promptly notify NHS England in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 19.4 The Provider grants NHS England 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 NHS England's contracts from time to time. Subject to clause 19.5, no obligation to illustrate or advertise the Services Information is imposed on NHS England, as a consequence of the licence conferred by this clause 19.4.
- 19.5 NHS England may reproduce for its sole use the Services Information provided by the Provider in NHS England'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 NHS England'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 NHS England, NHS England will submit a copy of the relevant sections of NHS England'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 NHS England 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 NHS England, and to the extent not already agreed as part of the Service Specification, the Provider and NHS England 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 NHS England, apply NHS branding or NHS England's name or logo to the Services, and must obtain the NHS England'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 NHS England-funded Services. NHS England permits the Provider's use of the NHS England logo for the sole purpose of its compliance with this clause. Such use of the NHS England logo must comply with the NHS Branding Guidelines and this clause 20.
- 20.3 If NHS England 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 NHS England 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 NHS England staff (which includes any person employed or engaged by NHS England) ("**NHS England Staff**") in relation to the Provider's products and/or Services, or use any comments made by any member of NHS England 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 NHS England.

## 21 ADVERTISEMENTS AND MARKETING

- 21.1 Unless otherwise agreed by NHS England, 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 NHS England 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 NHS England 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 it's 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 NHS England 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 NHS England 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 NHS England Representative and the Provider Representative shall attempt in good faith to resolve the Dispute;

24.1.2 if the NHS England 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 NHS England and a senior director of the Provider who shall attempt in good faith to resolve it;

24.1.3 if the Director of NHS England 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 NHS England and the CEO of the Provider who shall attempt in good faith to resolve it; and

24.1.4 if the CEO of NHS England 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 NHS England 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, NHS England shall be entitled to exercise the agreed consequence immediately and without issuing a Contract Performance Notice, irrespective of any other rights NHS England 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 NHS England 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 NHS England has failed or is failing to comply with any obligation on its part under this contract it may issue a Contract Performance Notice to NHS England.

## 28 **CONTRACT MANAGEMENT MEETING**

- 28.1 Unless the Contract Performance Notice has been withdrawn, NHS England 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 NHS England and the Provider must ensure that NHS England Representative and the Provider Representative are in attendance (including representatives from the quality, finance, and performance and operations department of NHS England) 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 NHS England 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 NHS England 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 NHS England Representative and the Provider Representative; and

- 29.1.2 NHS England 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, NHS England 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 NHS England 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, NHS England 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 NHS England and the Provider for delivery of services the same or substantially the same as the Services.
- 30.4 The Provider and NHS England 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 NHS England and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. NHS England 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 NHS England (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) NHS England 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 NHS England must pay the Provider any Funding withheld under clause 33.1.1 within ten (10) Business Days following NHS England'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, NHS England

may notify the Provider that any Funding withheld under clause 33.1.1 is to be retained permanently by NHS England.

**35 UNJUSTIFIED WITHHOLDING OR RETENTION OF FUNDING**

- 35.1 If NHS England withholds sums under clause 33.1.1 or NHS England 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 NHS England that the relevant sums were withheld or retained unjustifiably, NHS England must pay those sums to the Provider within ten (10) Business Days following the date of NHS England's acceptance of that evidence, no interest shall be payable on these sums. If NHS England 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, NHS England may notify the Provider that any Funding withheld under clause 33.1.1 is to be retained permanently by NHS England.

- 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, NHS England may notify the Provider that any Funding withheld under clause 33.1.1 is to be retained permanently by NHS England.

**37 REVIEW MEETINGS**

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

37.1.1 NHS England 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 NHS England, in which case the Provider and NHS England 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 NHS England 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 NHS England.

- 37.2 NHS England 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 NHS England 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 NHS England.

37.5 NHS England 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 NHS England 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 NHS England shall have the right to audit the Provider's compliance with this contract. The Provider shall permit or procure permission for NHS England 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, NHS England shall have the right to audit and inspect such third party. The Provider shall procure permission for NHS England 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 NHS England or its authorised representative if requested.

38.4 The Provider shall grant to NHS England 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 NHS England'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 NHS England 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 NHS England, 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 NHS England 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 NHS England, 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 NHS England, 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 NHS England under the provisions of this contract. The Provider will disclose to NHS England full particulars of any such conflict of interest which may arise.

39.2 NHS England 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 NHS England, 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 NHS England under the provisions of this contract. The actions of NHS England 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 NHS England.

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 NHS England 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 NHS England may terminate this contract and recover from the Provider the amount of any direct loss suffered by NHS England 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 NHS England in light of NHS England'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 NHS England 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 NHS England 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 NHS England's equality and diversity policy available on the NHS England website; and
  - 40.3.3 any other requirements and instructions which NHS England reasonably imposes in connection with any equality obligations imposed on NHS England at any time under equality Law and/or Guidance; and
  - 40.3.4 take all necessary steps, and inform NHS England 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 NHS England requests so as to enable NHS England 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 NHS England 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 NHS England 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 NHS England 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 NHS England in relation to the recovery of sums due but unpaid;
  - 42.2.2 NHS England 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 NHS England 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 NHS England; and
  - 42.2.4 payment to the Assignee being full and complete satisfaction of NHS England's obligation to pay the relevant sums in accordance with this contract.
- 42.3 Any authority given by NHS England for the Provider to Sub-contract any of its obligations under this contract shall not impose any duty on NHS England 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 NHS England 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 NHS England (such approval not to be unreasonably withheld or delayed);
  - 42.4.4 contain a right for NHS England 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 NHS England 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 NHS England 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 NHS England finds there are non-compulsory grounds for exclusion, NHS England 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 NHS England 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 NHS England 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 NHS England. 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 NHS England 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 NHS England 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 NHS England 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 NHS England 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 NHS England or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with NHS England; 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 NHS England; 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 NHS England:

43.3 NHS England 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 NHS England; 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 NHS England, acting reasonably, and the decision shall be final and conclusive.

#### 44 **CHANGE CONTROL**

44.1 Where NHS England or the Provider sees a need to change this contract, NHS England 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, NHS England 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 NHS England 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 NHS England 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 NHS England; 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 NHS England, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to NHS England 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 NHS England in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. NHS England 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 NHS England and the Provider.
- 45.5 For each Change Control Note submitted by the Provider NHS England 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 NHS England 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 NHS England 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 NHS England 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 NHS England'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

<b><u>Management levels for escalation and dispute resolution Nominated Individuals</u></b>		
	<b>NHS England</b>	<b>Birmingham And Solihull Mental Health NHS Foundation Trust</b>
<b>Contract Manager</b>	[REDACTED] [REDACTED]	
<b>Escalation Level – Senior Manger</b>	[REDACTED] [REDACTED] [REDACTED]	
<b>Escalation Level – Director</b>	[REDACTED] [REDACTED] [REDACTED]	

**SERVICES COMMENCEMENT DATE: 1<sup>st</sup> April 2023**

**LONG STOP DATE: 1<sup>st</sup> September 2023**

**EXPIRY DATE: 31<sup>st</sup> March 2026**

**EXTENSION:** This contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15 (Termination), for a period of 3 years (“**Initial Term**”), when it shall terminate automatically without notice unless, no later than 3 months before the end of the Initial Term (or any Extended Term agreed under this paragraph), the parties agree in writing that the term of this contract shall be extended for further 1 year (the first extended term) and may be extended further 1 year (the second extended term), subject to need and available budget (“**Extended Term**”). Unless it is further extended under this paragraph or terminated earlier in accordance with clause 15 (Termination), this contract shall terminate automatically without notice at the end of an Extended Term.

### Part 1: Tender Submissions

Number	Description	Document
1	Appendix A Form of offer	[REDACTED]

2	Bidder response	[REDACTED]
3	Appendix E	[REDACTED]
4	Appendix G conflicts of interest	[REDACTED]
5	Appendix H	[REDACTED]
6	Appendix I	[REDACTED]

## Part 2: Service Specification:



Provision for  
delivery of IAPT Psyc

### 1.1 Aims

The Aims of the Psychological Wellbeing Practitioner (PWP) are the following:

- Demonstrate knowledge, understanding and critical awareness of concepts of mental health and mental illness, diagnostic category systems in mental health and a range of social, medical and psychological explanatory models.

- Demonstrate knowledge of, and competence in using 'common factors' to engage patients, gather information, build a therapeutic alliance with people with common mental health problems, manage the emotional content of sessions and grasp the client's perspective or "world view".
- Demonstrate knowledge of, and competence in 'patient-centred' information gathering to arrive at a succinct and collaborative definition of the person's main mental health difficulties and the impact this has on their daily living.
- Demonstrate knowledge of, and competence in recognising patterns of symptoms consistent with diagnostic categories of mental disorder from a patient-centred interview and can assess and recognise any risks to self and others posed by patients.
- Demonstrate knowledge of, and competence in accurate risk assessment to patient or others
- Demonstrate knowledge of, and competence in the use of standardised assessment tools including symptom and other psychometric instruments to aid problem recognition and definition and subsequent decision making.
- Demonstrate knowledge of, and competence in giving evidence-based information about treatment choices and in making shared decisions with patients.
- Demonstrate competence in understanding the patient's attitude to a range of mental health treatments including prescribed medication and evidence-based psychological treatments.
- Demonstrate competence in accurate recording of interviews and questionnaire assessments using paper and electronic record keeping systems.
- Critically evaluate a range of evidence-based interventions and strategies to assist patients manage their emotional distress and disturbance.
- Demonstrate knowledge of, and competence in developing and maintaining a therapeutic alliance with patients during their treatment programme, including dealing with issues and events that threaten the alliance.
- Demonstrate competence in planning a collaborative low-intensity psychological and/or pharmacological treatment programme for common mental health problems, including managing the ending of contact.
- Demonstrate in-depth understanding of, and competence in the use of, a range of low intensity, evidence-based psychological interventions for common mental health problems.
- Demonstrate knowledge of, and competence in low-intensity basic, intervention-specific, problem-specific and meta-CBT competencies such as behavioural activation, exposure, CBT based guided self-help, problem solving and individualisation of CBT approaches.
- Critically evaluate the role of case management and stepped care approaches to managing common mental health problems in primary care including ongoing risk management appropriate to service protocols.
- Demonstrate knowledge of, and competence in supporting people with medication, in particular, antidepressant medication, to help them optimise their use of pharmacological treatment and minimise any adverse effects.
- Demonstrate competency in delivering low-intensity interventions using a range of methods including face-to-face, telephone and electronic communication.
- Demonstrate knowledge of, commitment to and operationalisation of a non-discriminatory, recovery orientated values base to mental health care.
- Demonstrate respect for and the value of individual differences in age, sexuality, disability, gender, spirituality, race and culture.
- Demonstrate knowledge of, and competence in responding to people's needs sensitively about all aspects of diversity, including the use of translation services.
- Considers any physical and sensory difficulties service users may experience in accessing services and if required refer to appropriate services.

- Demonstrate knowledge of, and a commitment to equal opportunities for all and encourage people's active participation in every aspect of care and treatment.
- Demonstrate awareness & understanding of the power issues in professional / service user relationships.
- Demonstrate competence in managing a caseload of people with common mental health problems efficiently and safely.
- Demonstrate knowledge of, and competence in using supervision to assist the worker's delivery of low-intensity psychological and/or pharmacological treatment programmes for common mental health problems.
- Appreciate and critically evaluate a range of employment, occupational and wellbeing strategies to assist patients manage their emotional distress and disturbance.
- Demonstrate knowledge of, and competence in gathering patient-centred information on employment needs, wellbeing and social inclusion.
- Demonstrate an appreciation of the worker's own level of competence and an understanding of how to work within a team and with other agencies with additional specific roles which cannot be fulfilled by the worker alone.
- Demonstrate a clear understanding of what constitutes high-intensity psychological treatment and how this differs from low-intensity work.
- Demonstrate knowledge of, and competence in liaison and signposting to other agencies delivering employment, occupational and other advice and services.
- Critically appraise how the complex systems of community, statutory and voluntary sector provision of services work together.

## **1.2 General Overview**

The Psychological Wellbeing Practitioner programme prepares PWP trainees to assess and support patients with depression and/or anxiety disorders that can benefit from brief, standalone psychological interventions. The evidence-based low-intensity psychological interventions used by PWPs are informed by cognitive behavioural principles but also include physical activity and supporting medication adherence. PWPs work in NHS Talking Therapies for Anxiety and Depression services providing the low-intensity (Step 2) component of the stepped care model through a range of modes of delivery linked to service user choice.

## **1.3 Expected Outcomes**

The Improving Access to Psychological Therapies (IAPT) programme (now NHS Talking Therapies for Anxiety and Depression) began in 2008 and has transformed treatment of adult anxiety disorders and depression in England. Over 900,000 people now access Talking Therapies services each year, and the Five Year Forward View for Mental Health committed to expanding services further, alongside improving quality. It remains an integral part of The NHS Long Term Plan.

This education and training provision will prepare the workforce so that NHS Talking Therapies services are able to provide evidence-based treatments for people with anxiety and depression meeting the following requirements.

1. Evidenced based psychological therapies: with the therapy delivered by fully trained and accredited practitioners, matched to the mental health problem and its intensity and duration designed to optimize outcomes.

2. Regular and outcomes focused supervision, so practitioners are supported to continuously improve and deliver high quality care.

The priorities for service development are:

Expanding services so that at least 1.5m adults access care each year by 2020/21. This means that Talking Therapies services nationally will move from seeing around 15% of all people with anxiety and depression each year to 25%.

## **2.1 Services description**

The Education provider will deliver the programme in accordance with the service specification outlined within the contract under Part 2: Service Specification.

The programme will be mapped against the national curriculum for Psychological Wellbeing Practitioner (PWP) Programmes, 4th Edition (Updated and Revised July 2022) as published on NHS England website:

<https://www.hee.nhs.uk/sites/default/files/documents/PWP%20Curriculum%204th%20Edition%202022%20.pdf>

## **2.2 Expectations of Project Plan**

To ensure that the programme delivery commences from September 2023, all timelines will capture the major milestones to ensure learner intake and delivery of the NHS Talking Therapies for Anxiety and Depression Psychological Wellbeing Practitioner (PWP) Education Programme across NHS England's Midlands Region,

## **2.3 Expectations of Implementation Plan**

To capture all strategical goals, tasks require completing and the resources required to robustly implement the NHS Talking Therapies for Anxiety and Depression Psychological Wellbeing Practitioner (PWP) Education Programme across NHS England's Midlands Region.

## **Part 3: Project Plan**

Project plan included within bidder response.

## **Part 4: Implementation Plan**

Project plan included within bidder response.

## SCHEDULE 2 - FUNDING

Tuition costs at £[REDACTED], inclusive of any applicable VAT, per learner in respect of the delivery of a postgraduate/graduate certificate completing the programme over a maximum period of 12 months.

It is anticipated a maximum cohort of up to [REDACTED] students per NHS Financial year, the annual contract value is **£692,044** and the Total contract value is **£2,076,132**, for the 3 years. The contract can be extended for a further 2 years at a cost of £[REDACTED]. The total contractual cost for the full 5 years (including the 2-year optional extensions is £[REDACTED] (Inclusive of VAT).

### Price Summary Table

Description	Detail
Cost for the first 3-year term	<b>£2,076,132 (Inclusive of VAT)</b>
Cost for the optional extended term of 2 years	<b>£[REDACTED] (Inclusive of VAT)</b>
Total costs for the full 5-year term	<b>£[REDACTED] (Inclusive of VAT)</b>
Extension options	<b>The contract can be extended for an additional 2 years on a 1 + 1 basis, subject to need and available budget.</b>
Annual costs for optional extensions	<b>£[REDACTED] (Inclusive of VAT)</b>
Expenses	<b>Not applicable all costs are included in the fixed price contract.</b>

Commissioned numbers will be confirmed annually in line with service demand therefore the total commissioned numbers under this will be up to [REDACTED] places for three years.

There will be a requirement for the delivery of two cohorts for the PWP programme during the 2023/2024 academic year, with provision commencing in both Autumn 2023 (from September 2023) and Spring 2024, (commencing no later than 31st March 2024).

All funding levels highlighted in this document are based on the recruitment to all commissioned places for the duration of the programme and on the assumption that there is no attrition. All payments will be pro-rotta over the NHS Financial Year. In the event that a learner should have a leave of absence from the programme, tuition funding will be paused until they resume the programme. It is expected that the Education Provider and Employing Organisation partnership will proactively support the learners to return, where appropriate.

Funding will be paid according to the number of starters and the time spent in training, in line with the data submitted via the student data collection tool. Under-recruitment will not be paid, and upon interruption or withdrawal from a programme funding will be either paused or ended. Clawback for any over payment will be applied where required.



The HEI Contract finance schedule will be updated and issued to education providers, once updated trainee numbers have been submitted via the Student Data Collection Return.

The current financial model stipulates trainees will receive salary support funding which has been costed using Agenda for Change NHS 2022/23 pay scales. Salary funding will be at the, starting- point of Band 4, and will be paid for the full year of training. Salary support will be paid directly to those organisations who are hosting the training posts. Payment will be based on the number of active trainees submitted via the Student Data Collection Return.

**Invoicing:** All invoices must be sent to our e-invoicing system at:

[https://support.tradeshift.com/home?ent=nhs\\_sbs](https://support.tradeshift.com/home?ent=nhs_sbs)

via email to: **sbs.apinvoicing@nhs.net**

as a hard copy invoice to:

PAYABLES F485 T73 NHS ENGLAND

PO Box 312

LEEDS

LS11 1HP

(This address must be clearly shown on the invoice)

Please note if you do need a reference number to generate the invoice then please use:

[REDACTED] Non-compliant invoices will be sent back to you, which may lead to a delay in payment. Funding is conditional on compliance with Schedule 3 Key Performance Indicators and the obligations contained within the Contract, and this Schedule.

## **SCHEDULE 3- QUALITY AND PERFORMANCE REQUIREMENTS**

### **1. Quality Compliance**

- 1** The Supplier and their partners will allow NHS England staff access to their sites and facilities upon request and where appropriate.
- 2** The Supplier and their partners will allow all those involved in the programme to provide feedback on implementation, progress and completion, in line with organisational information governance policies and processes.
- 3** The Supplier and their partners will be familiar with and ensure that training is aligned to the national NHS England Quality Framework.
- 4** Quality and performance issues must be escalated to NHS England within 7 days as a proportionate response to risk. These will be managed via NHS England Quality Framework processes which may require a formal Contract Review Meeting.
- 5** NHS England places absolute importance on the continuous quality improvement of the programme provided. The Education Provider will have in place a system for the monitoring of staff performance.

### **Key Performance Indicators**

The Education Provider will ensure that Learners have access to the NHS England National Education and Training Survey (NETS) and encourage and facilitate completion of the survey.

The Education Provider will be required to submit Quantitative data, via the Student Data Collection Tool (SDCT) and the Talking Therapies specific return (formerly known as the IAPT Return) at the census points provided by NHS England's Business Intelligence team. NHS England reserves the right to collect quantitative data, where essential, outside of the SDCT, including, but not limited to - progress against recruitment prior to programme start, first destination data, and Equality and Diversity intelligence.

The Education Provider is required to collect student feedback for this programme via local formalised Boards of Study or other student forums that have terms of reference, indications for membership and formal minutes that are to be shared with NHS England.

The Education Provider is required to gather feedback on course content, teaching delivery and practice experiences which will be documented, summarised, and shared without edit with NHS England as part of the quality monitoring process and can be shared through the annual report provided to NHS England.

The Education Provider will submit data on a regular basis related to learners on the cohort, number of learners, retention information and completion, for the duration of the course through to successful accreditation. This will be via quarterly highlight reports.

In addition to aid NHS England to monitor the 9 Characteristics of the Equality Act 2010, a yearly submission will be required from the Provider for all registered learners. It is expected that reporting requirements will be shared with learners and their permissions logged.



### **Performance Management Requirements**

Six - Monthly contract meeting with Providers to discuss highlight report and KPIs

## 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:

<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>“Data Protection Officer” and “Data Subject”</b>	shall have the same meanings as set out in the Data Protection Legislation;
<b>“Data Subject Access Request”</b>	means a request made by, or on behalf of, a Data Subject to exercise rights granted pursuant to the Data Protection Legislation;
<b>“Protocol” or “Data Protection Protocol”</b>	means this Data Protection Protocol;
<b>“Sub-processor”</b>	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 acknowledge that for the purposes of the Data Protection Legislation, if Table A of this Protocol has been completed then NHS England is the Controller and the Provider is the Processor in relation to the Processing described at Table A. Where the Provider acts as a Processor they are only authorised to carry out the Processing listed in Table A.
- 1.2 The Provider shall notify NHS England immediately if it considers that any of NHS England's instructions infringe the Data Protection Legislation.
- 1.3 The Provider shall provide all reasonable assistance to NHS England in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of NHS England, include:
  - 1.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 1.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
  - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Provider shall, in relation to any Personal Data Processed in connection with its obligations as a Processor under this contract:
  - 1.4.1 process that Personal Data only in accordance with Table A of this Protocol, unless the Provider is required to do otherwise by Law. Where the Provider

is required by Law to Process the Personal Data it shall promptly notify NHS England before Processing the Personal Data or at the first available opportunity where prior notification is not possible unless notification to NHS England is prohibited by Law;

1.4.2 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

1.4.3 ensure that:

- (i) the Provider Personnel do not Process Personal Data except in accordance with this contract (and in particular Table A of this Protocol);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Provider's duties under this Protocol;
  - (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by NHS England or as otherwise permitted by this contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

1.1.1 not transfer Personal Data outside of the United Kingdom unless the prior written consent of NHS England has been obtained and the following conditions are fulfilled:

- (i) NHS England or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR) as determined by NHS England;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its

- best endeavours to assist NHS England in meeting its obligations); and
  - (iv) the Provider complies with any reasonable instructions notified to it in advance by NHS England with respect to the Processing of the Personal Data;
- 1.4.4 at the written direction of NHS England, delete or return Personal Data (and any copies of it) to NHS England on termination or expiry of the contract unless the Provider is required by Law to retain the Personal Data;
- 1.4.5 assist NHS England in ensuring compliance with the obligations set out in articles 32 to 36 of the UK GDPR taking into account the nature of the Processing and the information available to the Processor.
- 1.5 Subject to paragraph 1.6 of this Protocol, the Provider shall notify NHS England immediately if it:
  - 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 1.5.2 receives a request to rectify, block or erase any Personal Data;
  - 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this contract;
  - 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 The Provider's obligation to notify under paragraph 1.5 of this Protocol shall include the provision of further information to NHS England in phases, as details become available.
- 1.7 Taking into account the nature of the Processing, the Provider shall provide NHS England with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request described in clause 1.5 of this Protocol (and insofar as possible within the timescales reasonably required by NHS England) including by promptly providing:
  - 1.7.1 NHS England with full details and copies of the complaint, communication or request;
  - 1.7.2 such assistance as is reasonably requested by NHS England to enable NHS England to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 1.7.3 NHS England, at its request, with any Personal Data it holds in relation to a Data Subject;

- 1.7.4 assistance as requested by NHS England following any Data Loss Event;
- 1.7.5 assistance as requested by NHS England with respect to any request from the Information Commissioner's Office, or any consultation by NHS England with the Information Commissioner's Office.
- 1.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Protocol and make such records available to NHS England on request.
- 1.9 The Provider shall allow for audits of its Processing activity by NHS England or NHS England's designated auditor.
- 1.10 The Provider shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to Process any Personal Data related to this contract, the Provider must:
  - 1.11.1 notify NHS England in writing of the intended Sub-processor and Processing;
  - 1.11.2 obtain the express prior written consent of NHS England;
  - 1.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Protocol such that they apply to the Sub-processor; and
  - 1.11.4 provide NHS England with such information regarding the Sub-processor as NHS England may reasonably require.

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

- 1.12 NHS England may, at any time on not less than thirty (30) Business Days' notice, revise this Protocol by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable UK certification scheme (which shall apply when incorporated by attachment to this contract).
- 1.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. NHS England may on not less than thirty (30) Business Days' notice to the Provider amend this Protocol to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.14 The Provider shall comply with any further instructions with respect to Processing issued by NHS England by written notice. Any such further written instructions shall be deemed to be incorporated into Table A below from the date at which such notice has been provided to the Provider.
- 1.15 Subject to paragraphs 1.12 and 1.14 of this Protocol, any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.





**Processing, Personal Data and Data Subjects**

The Parties agree the Supplier will be the data controller and the Authority will be a data processor.

The Supplier agrees to provide the Authority with Summary Data in line with the Student Data Collection Tool (SDCT) and the Talking Therapies specific return (formerly known as the IAPT Return) when required.

## 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 NHS England 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 NHS England and/or the Contracting Authority receiving such information;

1.3.3 to any relevant party for the purpose of the examination and certification of NHS England'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 NHS England 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 NHS England 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 NHS England's Confidential Information, and any other information provided to the Provider by NHS England 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 NHS England's written discretion, destroyed securely or returned to NHS England when it is no longer required. The Provider shall not, and shall ensure that the Staff do not, use any of NHS England'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 NHS England (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 NHS England 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 NHS England 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 NHS England;
  - 2.5.2 assist NHS England 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 NHS England 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 NHS England, 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 NHS England 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 NHS England 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](http://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 NHS England 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 NHS England 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 NHS England 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, NHS England 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 NHS England's absolute discretion.
- 3.6 The Provider shall assist and cooperate with NHS England to enable NHS England 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 NHS England 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 NHS England's information governance Policies (which can be provided to the Provider by NHS England on request); and
  - 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by NHS England and shall provide full information as may be reasonably requested by NHS England 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:	Name:
Company:	Company:
Telephone:	Telephone:
Email:	Email:

Clauses and Schedules affected
--------------------------------

--

Associated Change Control Notices		
CCN No.	Name of Agreement	Date of Agreement

Reason for change

Description of Change

Changes to contract charges and revised payment schedules

<b>Price to implement change</b>

<b>Impact of change on other agreement provisions</b>

<b>Timetable for implementation</b>

<b>Acceptance</b>	
<b>Signed for and on behalf of:</b> <b>NHS England</b>	<b>Signed:</b>  <b>Print Name:</b>  <b>Title:</b>  <b>Date:</b>
<b>Signed for and on behalf of:</b> <b>[PROVIDER]</b>	<b>Signed:</b>

	<p><b>Print name:</b></p> <p><b>Title:</b></p> <p><b>Date:</b></p>
--	--

SCHEDULE 7- EXCHANGE OF INFORMATION BETWEEN NHS  
ENGLAND AND THE PROVIDER – NOT APPLICABLE

Template Data Sharing Agreement

This Data Sharing Agreement is made on  [Insert date]		
1	Between:  <i>[List all the parties]</i>	
2	Purpose, objectives of the information sharing:  <i>[Be clear and concise about the reasons for data sharing, giving as detailed a description as possible. You should set out what objective you are hoping to achieve by sharing personal data between organisations. Each purpose can be numbered separately]</i>	
3	Controller/s  <i>[List here all organisations which are controllers as part of this agreement and for which purposes]</i>	
4	Processor/s  <i>[List here all organisations acting as processors and sub-processors as part of the agreement (and to which purpose they relate to) and state which controller(s) they report to]</i>	
5	Data items to be processed (add more lines if required)	
	Detail Item	Justification

		(including confirmation of signed DPIA where applicable)
<b>6</b>	Article 6 Condition – Personal Data <i>[Specify which Article 6 condition (legal basis) is met]</i>	
	<b>Legal Basis (One of these must apply whenever you process personal data)</b>	<b>Tick which one you are using</b>
	<b>(a) Consent:</b> the individual has given clear consent for you to process their personal data for a specific purpose.	
	<b>(b) Contract:</b> the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.	
	<b>(c) Legal obligation:</b> the processing is necessary for you to comply with the law (not including contractual obligations).	
	<b>(d) Vital interests:</b> the processing is necessary to protect someone's life.	
	<b>(e) Public task:</b> the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.	

	<p><b>(f) Legitimate interests:</b> the processing is necessary for your legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)</p>	
7	<p><b>Article 9 condition – Special Categories of Personal Data</b></p> <p><i>[Specify here which Article 9 condition is met - a summary of the most likely conditions is provided below.]</i></p>	
	<p><b>Conditions for processing special category data</b></p>	<p><b>Tick which one you are using</b></p>
	<p><b>(a) Explicit consent:</b> (the data subject has given explicit consent)</p>	
	<p><b>(b) Vital interests:</b> (to protect the vital interests of the data subject, who cannot give consent (life or death situations))</p>	
	<p><b>(c) Legal claims or judicial acts:</b> (the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity)</p>	
	<p><b>(d) Reasons of substantial public interest (with a basis in law):</b> (which shall be proportionate to the purpose and, respect the essence of the right to data protection)</p>	
	<p><b>(e) Health or social care (with a basis in law):</b> (preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services)</p>	
	<p><b>(f) Public health (with a basis in law):</b> (protecting against serious internal or cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices)</p>	

	<b>(g) Archiving, research and statistics (with a basis in law):</b> (archiving purposes in the public interest, scientific or historical research purposes or statistical purposes)		
	<b>Other:</b>		
	<b>Please state (and indicate) below if you are processing data based on Schedule 1, Part 1, Data Protection Act 2018:</b>		
<b>8</b>	<b>Individual rights and preferences</b>		
	<i>[Explain how these will be managed by the parties to this agreement]</i>		
	<b>Individual right</b>	<b>Indicate how the right will be managed or why it is not applicable</b>	
	The right to be informed		
	The right of access		
	The right to rectification		
	The right to erasure		



The right to restrict processing	
The right to portability	
The right to object	
Rights in relation to automated decision-making profiling	

**Please state below how you will manage any complaints raised regarding the proposed data sharing:**

**Does the National Data Opt-out apply to proposed purpose/s for data sharing? Y/N**

**If yes, please state how these will be managed:**

**Compliance with duty of confidentiality / right to privacy**

*[Please state here how you will be satisfying the duty of confidentiality. NB this is in addition to how you have explained meeting data protection requirements to process personal data (above)]*

- Consent
- Statutory Gateway (e.g. approval under s251 of the NHS Act 2006)

*[Please provide an explanation if necessary. If relying on statutory gateway, specify which and confirm whether it sets aside the common law duty of confidentiality.]*

**Is there any interference with Human Rights Article 8?**

Yes/No/Not applicable

	<b>If yes, document why it is necessary to interfere with Human Rights and proportionate to do so:</b>
<b>10</b>	<b>Transparency</b>  <i>[Describe here how communication/s with the public will be undertaken i.e. update Privacy notice, patient information leaflets/posters, information on website/s etc]</i>
<b>11</b>	<b>How will the data sharing be carried out?</b>  <ul style="list-style-type: none"> <li>• <i>The mechanism by which the data will be shared and an explanation, why this is secure and which organisation is responsible for ensuring security</i></li> <li>• <i>How any outputs/analysis will be shared and an explanation of why this is secure, necessary and proportionate</i></li> <li>• <i>Frequency – including security precautions proportionate to the level of frequency</i></li> </ul> <i>Whether any information is being transferred outside the EU and, if so, relevant safeguards (this is to ensure compliance with Article 45 of the GDPR)</i>
<b>12</b>	<b>Accuracy of the data being shared</b>  <i>[Describe the processes/procedure for ensuring that data held and shared is accurate. Explain how any updates will be shared with all recipients of the data.]</i>
<b>13</b>	<b>Rectification of data that has been shared</b>  <i>[Specify here any procedures in place, or to be put in place, for rectifying inaccurate data that has been shared, or rectifying data that has been identified as inaccurate after sharing by the parties to this agreement. This is separate to the individual's right to rectification]</i>
<b>14</b>	<b>Retention and disposal requirements for the information to be shared - including details of the return of information to the source organisations (if applicable)</b>

<b>15</b>	<b>Breach management</b>  <i>[Outline the process for how any breach of data security/confidentiality will be managed by relevant parties]</i>
<b>16</b>	<b>Specify any particular obligation on <u>any</u> party to this agreement</b>  
<b>17</b>	<b>Contacts – Information Governance and Caldicott Guardian</b>  <i>[List here the IG contacts for each organisation]</i>
<b>18</b>	<b>Commencement of agreement</b> <i>[Specify the date the Agreement will come into force]</i>
<b>19</b>	<b>Review of agreement</b> <i>[Specify if, and when, and by whom (specify job role) the agreement will be reviewed]</i>
<b>20</b>	<b>Review period</b> <i>[Specify, if applicable, how long any review period will be]</i>
<b>21</b>	<b>Variation</b>  <i>[Specify here if the parties, or any party, can vary the terms of this agreement. If so, detail how this is done]</i>

<b>22</b>	<b>Ending the agreement</b>  <i>[Specify how a party ends their participation in the Agreement, and how data will be managed by the exiting party]</i>
<b>23</b>	<b>End date</b>  <i>[Specify the date the agreement ends]</i>
<b>24</b>	<b>Signatories</b>  <i>[Each organisation signs here, detailing the name and position of the signatory based on the sharing required. i.e. DPO/SIRO/CG/CEO/Head of service]</i>