22nd October 2024

NHS EDUCATION AND TRAINING CONTRACT

between

NHS England

And

Tower Hamlets GP Care Group CIC

for the Provision of

North East London Training Hub

Contents

NHS ENGLAND - EDUCATION AND TRAINING CONTRACT

This contract is dated 22nd October 2024

Parties

(1) **NHS England,** whose head office is at 133-155 Waterloo Road, London, SE1 8UG, (**"NHSE"**); and

(2) **Tower Hamlets GP Care Group CIC** whose head office is at Island Health, 145 East Ferry Road, E14 3BQ (**the "Provider"**),

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

Signed by the authorised representative of NHS ENGLAND

[redacted]

Date Signed: 29 October 2024

Signed by the authorised representative of THE PROVIDER

[redacted]

Date Signed: 22/10/2024

1 **DEFINITIONS**

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

"Actual Monthly Value"	means for the relevant month, the aggregate of all Funding payments made to the Provider under this contract in respect of all Services delivered in that month (excluding VAT but before any deductions, withholdings or set-off);
"Business Continuity Event"	means any event or issue that could impact on the operations of the Provider and its ability to provide the Services including an influenza, epidemic, pandemic and any Force Majeure Event;
"Business Continuity Plan"	means the Provider's business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
"Business Day"	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
"Change Control Process"	means the change control process referred to in clause 45 and 46;
"Codes of Practice"	shall have the meaning given to the term in paragraph 1.2 of Schedule 5;
"Commencement Date"	means the date of this contract;
"Confidential Information"	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the contract including any procurement process which is: (a) Personal Data including without limitation which relates to any Learner; (b) designated as confidential by either Party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (c) Policies and such other documents which the Provider may obtain or have access to through NHSE's intranet;
"**Contracting Authority**"	means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than NHSE;

"**Contract Management Meeting**"	means a meeting of NHSE and the Provider held in accordance with clause 29;
"**Contract Performance Notice**"	(a) a notice given by NHSE to the Provider under clause 28, alleging failure by the Provider to comply with any obligation on its part under this contract; or (b) a notice given by the Provider to NHSE under clause 28 alleging failure by NHSE to comply with any obligation on its part under this contract, as appropriate;
"**Controller**"	shall have the same meaning as set out in the Data Protection Legislation;
"**Convictions**"	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
"Cost Increase"	shall have the meaning given to the term in Clause 1.3.2 of Part D of Schedule 6;
"**Cost Saving**"	shall have the meaning given to the term in Clause 1.3.4 of Part D of Schedule 6;
"**COVID-19**"	means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this contract, and/or actual or potential loss, inaccessibility of and/or destruction of such Personal Data in breach of this contract, including any Personal Data Breach;
"**Data Protection Legislation**"	means (i) the Data Protection Act 2018; (ii) any European Union laws that relate to data protection or privacy that have been incorporated into UK law following the exit of the UK from the European Union as amended or supplemented from time to time by UK law including but not limited to the UK GDPR (iii) any European Union laws that are applicable in the UK pursuant to Article 71 of the withdrawal agreement between the European Union and the UK (2019/C 384 I/01); and (iv) all applicable Law about the processing of personal information and privacy; and the guidance and codes of practice issued by the Information Commissioner;
"**Data Protection Protocol**"	means the protocol contained in Schedule 4;

"Direction Letter"	means an NHS Pensions Direction letter issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHS Pension Scheme in respect of the Eligible Employees;
"**Disclosure and Barring Service**"	means the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012;
"**Dispute(s)**"	means any dispute, difference or question of interpretation or construction arising out of or in connection with this contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the contract, or any matter where this contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"**Dispute Notice**"	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
"**Dispute Resolution Procedure**"	means the process for resolving Disputes as set out in clause 25;
"**DOTAS**"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
"**EDS2**"	means the Equality Delivery System for the NHS – EDS2, being a tool designed to help NHS organisations, in discussion with local stakeholders, to review and improve their equality performance for people with characteristics protected by the Equality Act 2010, and to support them in meeting their duties under section 1 of the Equality Act 2010, available on the NHS England webpage (as may be updated or superseded from time to time);
"**Electronic Trading System(s)**"	means such electronic data interchange system and/or world wide web application and/or other application with

	such message standards and protocols as NHSE may specify from time to time;
"Eligible Employees"	means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the Authority (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services. For the avoidance of doubt a member of Staff who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHS Pension Scheme "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection under Part D of Schedule 8;
"**Emergency Preparedness, Resilience and Response**"	means the emergency preparedness, resilience and response guidance relating to the need to plan for, and respond to, a wide range of incidents and emergencies that could affect health or patient care, issued by NHS England / NHS Improvement and available on the NHS England webpage (as may be updated or superseded from time to time);
"**Employed Learner**"	means those Learners who are recruited into NHS posts on Programmes leading to statutory or voluntary registration, who are for the duration of their training only employed by a Provider, or another contractually agreed Lead Employer, and for whom NHSE may provide a financial contribution;
"Employee Transfer Date"	means the Transferred Staff's first day of employment with the Supplier (or its Sub-contractor);
"Employment Liabilities"	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
"**Environmental Regulations**"	shall have the meaning given to the term in paragraph 1.2 of Schedule 5;
"**eProcurement Guidance**"	means the NHS eProcurement strategy available via:

	http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health and Social Care in connection with it;
"**Equality Legislation**"	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
"**Exception Report**"	means a report issued in accordance with clause 33 notifying the relevant Party's Governing Body of that Party's breach of a Remedial Action Plan and failure to remedy that breach;
"Fair Deal for Staff Pensions"	means guidance issued by HM Treasury entitled "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 (as amended, supplemented or replaced);
"**Force Majeure Event**"	has the meaning given to it in clause 23;
"**Electronic Trading System(s)**"	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
"**Exit Requirements**"	means NHSE's exit requirements, as set out in the Service Specification and/or otherwise as part of this contract, which the Provider must comply with during the Term and/or in relation to any expiry or early termination of this contract;
"**Expiry Date**"	means the date delivery of the Services shall end as specified in Schedule 1 (Service Specification and Tender Submissions);
"Extra-ordinary Review Meeting"	means a meeting to be held in accordance with clause 38.3;
"**FOIA**"	shall have the meaning given to the term in paragraph 1.2 of Schedule 5;
"**Fraud**"	means any offence under any law in respect of fraud in relation to this contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;

"**Funding**"	means the Funding that is payable to the Provider by NHSE 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 NHSE 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;
"**NHSE Materials**"	means all documents, information, items and materials in any form, whether owned by NHSE or a third party, which

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

	in respect of the Provider or any of its assets; (x) a resolution of the Provider or its directors is passed to petition or apply for the Provider's winding-up or administration; (xi) the Provider's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court of 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 30;
"**KPI**"	means the key performance indicators as set out in Schedule 3;
"**Law**"	means any applicable legal requirements including, without limitation: (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument) retained in UK law following the exit of the UK from the European Union; (c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (d) requirements set by any regulatory body as applicable in England and Wales; (e) any relevant code of practice as applicable in England and Wales; and

	(f) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
"Learner"	means those individuals enrolled on a Programme of education / training to be supplied pursuant to this contract by the Provider as part of the Services;
"**Lead Employer**"	means a third party whom it is agreed will act as employer of Staff or Learners;
"**Local Counter Fraud Specialist**"	the accredited local counter fraud specialist nominated by NHSE;
"**Long Stop Date**"	means the date 3 months following the Services Commencement Date;
"Losses"	means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law as set out in clause 13.1 of this contract;
"National Director"	means a person with delegated authority from NHSE to act for and on behalf of NHSE on a national basis;
"NHS"	means the National Health Service;
"**NHS Brand**"	means the name and logo of the NHS and any other names, logos and graphical presentations as held by the Secretary of State required to be used in connection with the provision of the Services;
"**NHS Branding Guidelines**"	means NHS brand policy and guidelines, as revised, updated or re-issued from time to time by NHS England and/or the Department of Health and Social Care, and which are available on the NHS England webpage (as may be updated or superseded from time to time);
"NHS Pensions"	means NHS Pensions (being a division of the NHS Business Services Authority) acting on behalf of the Secretary of State as the administrators of the NHS Pension Scheme or such other body as may from time to time be responsible for relevant administrative functions of the NHS Pension Scheme, including the Pensions Division of the NHS Business Services Authority;
"**NHS Pension Scheme**"	means the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
"NHS Pension Scheme Arrears"	means any failure on the part of the Supplier or any Sub-contractor to pay employer's contributions or deduct and

	pay across employee's contributions to the NHS Pension Scheme or meet any other financial obligations under the NHS Pension Scheme or any Direction Letter in respect of the Eligible Employees;
"NHS Pension Scheme Regulations"	means, as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) and any subsequent regulations made in respect of the NHS Pension Scheme, each as amended from time to time;
"**NHSCFA**"	means the NHS Counter Fraud Authority, the special health authority charged with identifying, investigating and preventing fraud and other economic crime within the NHS and the wider health group;
"Occasion of Tax Non-Compliance"	means: (a) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Provider under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Provider was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
"**Party**"	means NHSE or the Provider as appropriate and Parties means both NHSE and the Provider;
"Payment Date"	means twenty (20) Business Days after the last of the conditions in Clause 1.7 of Part D of Schedule 6 has been satisfied;
"Pension Benefits"	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity

	or survivor's benefits provided under an occupational pension scheme;
"Personal Data"	shall have the same meaning as set out in the Data Protection Legislation;
"**Personal Data Breach**"	shall have the same meaning as set out in the Data Protection Legislation;
"**Policies**"	means the policies, rules and procedures of NHSE as provided to the Provider from time to time;
"Premature Retirement Rights"	rights to which any Transferred Staff (had they remained in the employment of an NHS Body or other employer which participates automatically in the NHS Pension Scheme) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
"**Premises and Locations**"	has the meaning given under clause 6.1;
"**Process**"	shall have the same meaning as set out in the Data Protection Legislation. Processing and Processed shall be construed accordingly;
"**Processor**"	shall have the same meaning as set out in the Data Protection Legislation;
"**Programme**"	any programme as identified in Schedule 1;
"**Protective Measures**"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
"**Provider**"	means the supplier named at the top of this contract on the first page;
"**Provider Outputs**"	means any output of the Services to be provided by the Provider to NHSE as specified in Schedule 1 and any other documents, products and materials provided by the Provider to NHSE in relation to the Services;
"**Previous Contract**"	means a contract between NHSE and the Provider for the delivery of services which are the same or substantially

	the same as the Services, the term of which immediately precedes the Term;
"**Provider Personnel**"	means any employee, agent, consultant and/or contractor of the Provider or Sub-contractor who is either partially or fully engaged in the performance of the Services;
"Provider Representative"	means such person with delegated authority to act on behalf of the Provider as notified by the Provider to NHSE from time to time in accordance with clause 8.1.4;
"Purchase Order"	means the purchase order required by NHSE's commercial governance systems (if applicable);
"**Quality and Performance Requirements**"	means the requirements set out in Schedule 3;
"**Regional Director**"	means the person with delegated authority from NHSE to act for and on behalf of NHSE within any given Region;
"**Region**"	means any one or more of the seven (7) NHSE geographical regions which are set out as follows: (i) Midlands, (ii) East of England, (iii) London, (iv) North East and Yorkshire, (v) North West, (vi) South East, (vii) South West;
"**Relevant Tax Authority**"	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Provider is established;
"**Remedial Action Plan**"	means a plan to rectify a breach of or performance failure under this contract (or, where appropriate, a Previous Contract in accordance with the terms of such Previous Contract), specifying actions and improvements required, dates by which they must be achieved and consequences for failure to do so, as further described in clause 31;
"**Residual Contract Period**"	means the period after this contract expires or is terminated in accordance with its terms, during which the Provider is required (pursuant to the provisions of clauses 16.3 and 16.4 of this contract) to complete the Programme of education / training of Learners enrolled on such Programmes of education / training under this contract and all other relevant activity;
"**Review Meeting**"	means a meeting to be held in accordance with clause 38 at the intervals set out in clause 38 or as otherwise requested in accordance with clause 38;
"**Service User**"	means a patient or service user for whom a Provider has statutory responsibility;

"**Services**"	means the services set out in Part 2 of Schedule 1 of this contract and including, without limitation, Part 1 of Schedule 1 which sets out the requirements of NHSE as issued to tenderers as part of the procurement process and the Provider's response to these requirements;
"**Services Commencement Date**"	means the date delivery of the Services shall commence as specified in Schedule 1 (Service Specification and Tender Submissions). If no date is specified in Schedule 1 (Service Specification and Tender Submissions) this date shall be the Commencement Date;
"**Service Development and Improvement Plan or SDIP**"	means an agreed plan setting out improvements to be made by the Provider to the Services (which may comprise or include any Remedial Action Plan agreed in relation to a Previous Contract);
"**Services Information**"	means information concerning the Services as may be reasonably requested by NHSE and supplied by the Provider to NHSE in accordance with clause 20 of this contract;
"**Service Specification**"	means the information set out in Part 2 of Schedule 1;
"**Staff**"	means all persons employed or engaged by the Provider to perform its obligations under this contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
"**Sub-contract**"	means any sub-contract entered into by the Provider or by any Sub-contractor of any level for the purpose of the performance of any obligation on the part of the Provider under this contract;
"**Sub-contractor**"	means any sub-contractor, whether of the Provider itself or at any further level of sub-contracting, under any Sub-contract;
"Subsequent Transfer Date"	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
"Subsequent Transferring Employees"	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
"**Term**"	means the term set out in clause 2.1;

"**Termination Notice**"	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this contract on a specified date and setting out the grounds for termination;
"**Third Party Body**"	has the meaning given under clause 9.11 of this contract;
"Third Party Employees"	means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
"Transfer Amount"	an amount paid in accordance with Clause 1.7 of Part D of Schedule 6 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause 1.6 of Part D of Schedule 6 in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or a Third Party's Broadly Comparable scheme and elected to transfer them to the Supplier's Broadly Comparable scheme or the NHS Pension Scheme under the Transfer Option;
"Transfer Date"	means the Actual Services Commencement Date;
"Transfer Option"	an option given to each Eligible Employee with either: (a) accrued rights in the NHS Pension Scheme; or (b) accrued rights in a Broadly Comparable scheme, as at the Employee Transfer Date, to transfer those rights to the Supplier's (or its Sub-contractor's) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes);
"Transfer Option Deadline"	the first Business Day to fall at least three (3) months after the notice detailing the Transfer Option has been sent to each Eligible Employee;
"Transferred Staff"	means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a Sub-contractor by operation of TUPE, the Cabinet Office Statement or for any other reasons, as a result of the award of this Contract;
"**Transferring Employees**"	means all those employees, if any, assigned by the Authority to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;

"**TUPE**"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
"**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 NHSE 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 NHSE 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 NHSE and use of the Provider Outputs or of any other item or information supplied or made available to NHSE 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 NHSE 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 NHSE 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 NHSE 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 NHSE and shall provide to NHSE any reports or other information that NHSE 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 NHSE from time to time (acting reasonably);

3.1.14 all information included within the Provider's responses to any documents issued by NHSE 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 NHSE as set out in the Services shall be submitted to NHSE 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 NHSE to comply with such eProcurement Guidance, to the extent the same applies to NHSE;

3.1.22 as at the Commencement Date, it has notified NHSE 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 NHSE in writing of such fact within five (5) Business Days of its occurrence; and promptly provide to NHSE:

(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 NHSE may reasonably require;

3.1.23 it will inform NHSE 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 38 of this contract, and shall acknowledge a request from NHSE 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 NHSE 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 NHSE in a timely fashion, in accordance with this 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 NHSE 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 NHSE 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 NHSE 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, NHSE 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 NHSE 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 NHSE 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 NHSE. To qualify for such relief, the Provider must notify NHSE promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of NHSE 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 NHSE, 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 NHSE's staff, Learners, Service Users or visitors at risk unless otherwise agreed in writing with NHSE.

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 NHSE'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 NHSE 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 NHSE's written consent and with such safeguards being put in place as NHSE may reasonably request. Should NHSE 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 NHSE any information that NHSE reasonably requests to enable NHSE to satisfy itself that the obligations set out in this clause 4 have been met.

4.29 NHSE may at any time request that the Provider remove and replace any member of Staff from the provision of the Services, provided always that NHSE will act reasonably in making such a request. Prior to making any such request NHSE shall raise with the Provider NHSE's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. NHSE shall be under no obligation to have such prior discussion should NHSE have concerns regarding Learner or Service User safety.

4.30 The relationship of the Provider to NHSE 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 NHSE 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 NHSE 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 NHSE against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by NHSE 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 NHSE arising out of or in connection with the provision of the Services.

4.31 Unless otherwise confirmed by NHSE 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 NHSE (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 Polices.

4.33 The Provider shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside NHSE'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 NHSE; 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 NHSE and the size and scope of the Provider's business operations. The Provider shall promptly provide to NHSE, at NHSE'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 NHSE 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 NHSE 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 NHSE to be relevant and appropriate, the Provider will incorporate into the Business Continuity Plan all such suggestions made by NHSE in respect of such Business Continuity Plan. Should the Provider not incorporate any suggestion made by NHSE into such Business Continuity Plan it will explain the reasons for not doing so to NHSE.

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 NHSE 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 NHSE'S RESPONSIBILITIES

5.1 NHSE 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 NHSE Representative. Only the NHSE Representative shall have the authority to contractually bind NHSE on matters relating to the Services;

5.1.3 arrange Contract Management Meetings in accordance with clause 29;

5.1.4 arrange Review Meetings in accordance with clause 38;

5.1.5 provide to the Provider in a timely manner all documents, information, items and materials in any form (whether owned by NHSE 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 NHSE;

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 NHSE, 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 NHSE.

5.3 NHSE 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 NHSE of any such cooperation necessary in circumstances where such cooperation will require NHSE 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, NHSE shall (where the Premises and Locations are those of NHSE) 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, NHSE 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 NHSE, cooperate with any other service providers to NHSE and/or any other third parties as may be relevant in the provision of the Services.

8 USE OF NHSE 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 NHSE for use by the Provider:

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

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

9.4 Each Party shall ensure that its representatives (to include, without limitation, the NHSE Representative and the Provider Representative) shall, attend Review Meetings in accordance with clause 38.

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 NHSE 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 NHSE.

9.7 Unless specified otherwise in the Services, NHSE 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 NHSE 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 NHSE 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 NHSE 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 NHSE in such form as may be specified by NHSE 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 NHSE 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 NHSE and/or the Third Party Body, or by NHSE to the Third Party Body, the Parties hereby consent to the Third Party Body and NHSE:

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 NHSE 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 NHSE to such Authority, be informed of the confidential nature of that information by NHSE and shall be requested by NHSE not to disclose it to anybody that is not an Authority (unless required to do so by Law).

9.15 NHSE 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 NHSE 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 NHSE, 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 NHSE 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 NHSE 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 NHSE.

10.6 Where NHSE agree in advance to pay VAT, NHSE 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 NHSE shall verify and pay each valid and undisputed invoice received within thirty (30) Business Days of receipt of such invoice at the latest. However, NHSE shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.

10.8 Where NHSE 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 NHSE 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 NHSE has then failed to pay such sum within a reasonable period following such determination.

10.11 The Provider shall pay to NHSE 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, NHSE may invoice the Provider for such sums or deductions at any time in the event that they have not automatically been credited to NHSE 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 NHSE reserves the right to adjust:

10.12.1 any monies due to the Provider from NHSE as against any monies due to NHSE from the Provider under this contract; and

10.12.2 any monies due to NHSE from the Provider as against any monies due to the Provider from NHSE under this contract.

10.13 Where NHSE is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Provider under this contract, NHSE 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 NHSE.

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 NHSE.

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 NHSE 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 NHSE arising out of or in connection with any claim brought against NHSE 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 NHSE shall have no claim under the indemnity at clause 11.10.1, to the extent the infringement arises from:

(i) the use of NHSE Materials in the development of, or the inclusion of NHSE 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 NHSE'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 NHSE if it knows or suspects that compliance with such specification or instruction may result in infringement.

11.11 NHSE:

11.11.1 warrants that the receipt and use of NHSE 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 NHSE 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 11.10.1 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 NHSE 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 all duties relating to the Learners' health, safety and welfare as if it was their employer and shall comply with NHSE's reasonable requests in connection with the Provider's duties in relation to the Learners.

12.5 The Provider shall agree with NHSE the specific duties and obligations of such persons as regards Learner supervision and patient care as appropriate. For the purposes of this clause 12 and in performing the Services, the Provider agrees to be deemed to be the employer of the Learner whilst undertaking a Programme(s) and not for the purposes of employment law, save where the Learner is an Employed Learner or a secondee employed via a secondment agreement with the Provider.

12.6 At the commencement of this contract and from time to time thereafter at the reasonable request of NHSE or the NHSE Representative, the Provider shall produce evidence of the insurances obtained and maintained in accordance with this clause 12 to NHSE.

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 NHSE for breach of any of its obligations under this contract, the Provider shall be liable for and shall indemnify NHSE against any direct

liability, loss, damage, costs, expenses, claims or proceedings whatsoever ("**Losses**") (subject always to an obligation upon NHSE to mitigate any Losses to every reasonably practicable extent) incurred by NHSE in respect of any claim against NHSE, 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 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 NHSE.

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 NHSE 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, NHSE'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 NHSE 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 NHSE 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 NHSE 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 NHSE 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, NHSE 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. NHSE 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 NHSE and providing twelve (12) months' notice in writing. In partnership with the Provider and at the discretion of NHSE this notice period may be reduced where it is reasonable to NHSE 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 NHSE 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 NHSE if NHSE 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 NHSE 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 NHSE 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, NHSE may request the replacement of such Sub-contractor and the Provider shall comply with such request as an alternative to NHSE 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 NHSE and NHSE shall be entitled to withhold such consent if, in the reasonable opinion of NHSE, the proposed change of control will have a material impact on the performance of this contract or the reputation of NHSE;

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 NHSE of any Occasion of Tax Non-Compliance.

15.8 If NHSE, 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 NHSE 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 NHSE 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 NHSE 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 NHSE 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, NHSE to terminate this contract.

15.9 In order that NHSE may act reasonably in exercising its discretion in accordance with clause 15.8.1, the Provider shall provide NHSE 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 NHSE consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this contract. The Provider shall provide NHSE 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, NHSE 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 NHSE shall be delivered by the Provider to NHSE 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 NHSE shall be returned to NHSE 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 NHSE 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 NHSE.

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 NHSE 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 NHSE 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 STAFF INFORMATION AND THE APPLICATION OF TUPE AT THE END OF THE CONTRACT

17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by Law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.

17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-contractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.

17.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 17.1 and 17.2, the Authority may withhold payment

17.4 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from

any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2.

17.5 Subject to Clauses 17.6 and 17.7, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-contractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:

17.6 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;

17.7 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;

17.8 replace any of the Supplier Personnel or increase the total number of employees providing the Services;

17.9 deploy any person other than the Supplier Personnel to perform the Services;

17.10 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;

17.11 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or

17.12 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.

17.13 Clause 17.5 shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.

17.14 Where the obligations on the Supplier under Clause 17 are subject to the Data Protection Legislation, the Supplier will, and shall procure that any Sub-contractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.

17.15 Having as appropriate gained permission from any Sub-contractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.

17.16 The Parties agree that where a Successor or the Authority provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply

then Clause 17.11 to Clause 17.14 and (where relevant) the provisions of Clause 1.15 of Part D of Schedule 6 shall apply.

17.17 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-contractor as appropriate. The Supplier will, and shall procure that any Sub-contractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.

17.18 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.

17.19 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:

17.20 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;

17.21 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;

17.22 pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;

17.23 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and

17.24 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any Sub-contractor warrant that such records are accurate and up to date.

17.25 The Supplier will and shall procure that any Sub-contractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:

17.26 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.12;

17.27 any act or omission by the Supplier or Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;

17.28 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;

17.29 any emoluments payable to a person employed or engaged by the Supplier or Sub-contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;

17.30 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and

17.31 any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Authority's failure to comply with regulation 13(4) of TUPE.

17.32 The Supplier will, or shall procure that any Sub-contractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.

17.33 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.

17.34 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:

17.35 the Authority will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;

17.36 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by the Authority or Successor;

17.37 if such offer of employment is accepted, the Authority will, or shall procure that the Successor will, immediately release the person from their employment; and

17.38 if after the period in Clause 17.16.2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with

its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

18 COMPLAINTS

18.1 To the extent relevant to the Services, the 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.

18.2 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.

19 SUSTAINABLE DEVELOPMENT

19.1 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:

19.1.1 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;

19.1.2 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

19.1.3 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 19.1.1.

19.2 The Provider shall meet reasonable requests by NHSE for information evidencing the Provider's compliance with the provisions of this clause 19.

20 ELECTRONIC SERVICES INFORMATION

20.1 Where requested by NHSE, the Provider shall provide NHSE the Services Information in such manner and upon such media as agreed between the Provider and NHSE from time to time for the sole use by NHSE.

20.2 The Provider warrants that the Services Information is complete and accurate as at the date upon which it is delivered to NHSE and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of NHSE following publication of the same.

20.3 If the Services Information ceases to be complete and accurate, the Provider shall promptly notify NHSE in writing of any modification or addition to or any inaccuracy or omission in the Services Information.

20.4 The Provider grants NHSE 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 NHSE's contracts from time to time. Subject to clause 20.5, no obligation to illustrate or advertise the Services Information is imposed on NHSE, as a consequence of the licence conferred by this clause 20.4.

20.5 NHSE may reproduce for its sole use the Services Information provided by the Provider in NHSE'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 NHSE's external website and/or made available on other digital media from time to time.

20.6 Before any publication of the Services Information (electronic or otherwise) is made by NHSE, NHSE will submit a copy of the relevant sections of NHSE'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 NHSE to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this clause 20.6 or otherwise under the terms of this contract.

20.7 If requested in writing by NHSE, and to the extent not already agreed as part of the Service Specification, the Provider and NHSE shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

21 PUBLICITY AND NHS BRANDING

21.1 Subject to clause 20.2, the Provider must not, without the prior written consent of NHSE, apply NHS branding or NHSE's name or logo to the Services, and must obtain the NHSE's prior written approval (not to be unreasonably withheld) for any publicity in connection with the Provider's receipt of the Funding.

21.2 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 NHSE-funded Services. NHSE permits the Provider's use of the NHSE logo for the sole purpose of its compliance with this clause. Such use of the NHSE logo must comply with the NHS Branding Guidelines and this clause 20.

21.3 If NHSE 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 NHSE and the Provider must comply with the NHS Branding Guidelines.

21.4 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.

21.5 The Provider shall not request any endorsement in any form whatsoever from NHSE staff (which includes any person employed or engaged by NHSE) ("**NHSE Staff**") in relation to the Provider's products and/or Services, or use any comments made by any member of NHSE 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 NHSE.

22 ADVERTISEMENTS AND MARKETING

22.1 Unless otherwise agreed by NHSE, 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 NHSE in writing. For the avoidance of doubt, the provisions of this clause 22 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.

23 FORCE MAJEURE

23.1 **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:

23.1.1 acts of God, flood, drought, earthquake or other natural disaster;

23.1.2 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;

23.1.3 nuclear, chemical or biological contamination or sonic boom;

23.1.4 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;

23.1.5 collapse of buildings, fire, explosion or accident;

23.1.6 any labour or trade dispute, strikes, industrial action or lockouts; and/or

23.1.7 non-performance by Providers and interruption or failure of utility service.

23.2 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 NHSE to comply with any national guidance issued in these circumstances.

23.3 Provided it has complied with clause 23.5, 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.

23.4 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.

23.5 The Affected Party shall:

23.5.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify NHSE 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

23.5.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

23.6 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.

23.7 All Regulator, NHS and NHSE notices should be adhered to by the Provider in the event of a Force Majeure Event.

24 COSTS AND EXPENSES

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

25 DISPUTE RESOLUTION PROCEDURE

25.1 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:

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

25.1.2 if the NHSE 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 NHSE and a senior director of the Provider who shall attempt in good faith to resolve it;

25.1.3 if the Director of NHSE 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 NHSE and the CEO of the Provider who shall attempt in good faith to resolve it; and

25.1.4 if the CEO of NHSE 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.

25.2 No Party may commence any court proceedings under clause 47.11 (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.

25.3 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 47.11.

26 QUALITY AND PERFORMANCE REQUIREMENTS

26.1 The Provider shall provide the Services, and meet the Quality and Performance Requirements in accordance with Schedule 3 and the NHS England Quality Framework.

27 CONTRACT MANAGEMENT

27.1 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, NHSE shall be entitled to exercise the agreed consequence immediately and without issuing a Contract Performance Notice, irrespective of any other rights NHSE may have under this clause 27.

27.2 The provisions of this clause 27 do not affect any other rights and obligations the Parties may have under this contract.

28 CONTRACT PERFORMANCE NOTICE

28.1 If NHSE 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.

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

29 CONTRACT MANAGEMENT MEETING

29.1 Unless the Contract Performance Notice has been withdrawn, NHSE 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.

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

29.2.1 that the Contract Performance Notice is withdrawn; or

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

29.3 If NHSE and the Provider cannot agree on either course of action, they must undertake a Joint Investigation.

30 JOINT INVESTIGATION

30.1 If a Joint Investigation is to be undertaken:

30.1.1 NHSE 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 NHSE Representative and the Provider Representative; and

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

30.2 On completion of a Joint Investigation, NHSE 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:

30.2.1 the Contract Performance Notice be withdrawn; or

30.2.2 a Remedial Action Plan be agreed and implemented.

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

31 REMEDIAL ACTION PLAN

31.1 If a Remedial Action Plan is to be implemented, NHSE and the Provider must agree the contents of the Remedial Action Plan within:

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

31.1.2 five (5) Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause 30.2.2,

as appropriate.

31.2 The Remedial Action Plan must set out:

31.2.1 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;

31.2.2 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

31.2.3 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).

31.3 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 NHSE and the Provider for delivery of services the same or substantially the same as the Services.

31.4 The Provider and NHSE 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.

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

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

32 IMPLEMENTATION AND BREACH OF REMEDIAL ACTION PLAN

32.1 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.

33 EXCEPTION REPORT

33.1 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 NHSE (as the case may be) may issue an Exception Report:

33.1.1 to the relevant Party's chief executive and/or Governing Body; and/or

33.1.2 (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.

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

34.1 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:

34.1.1 (if the Remedial Action Plan does not itself provide for a withholding or other financial sanction in relation to that failure) NHSE 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

34.1.2 NHSE must pay the Provider any Funding withheld under clause 34.1.1 within ten (10) Business Days following NHSE'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.

35 RETENTION OF SUMS WITHHELD FOR BREACH OF REMEDIAL ACTION PLAN

35.1 If, twenty (20) Business Days after an Exception Report has been issued under clause 33.1, the Provider remains in breach of a Remedial Action Plan, NHSE may notify the Provider that any Funding withheld under clause 34.1.1 is to be retained permanently by NHSE.

36 UNJUSTIFIED WITHHOLDING OR RETENTION OF FUNDING

36.1 If NHSE withholds sums under clause 34.1.1 or NHSE retain sums under clause 35.1, and within twenty (20) Business Days of the date of that withholding or retention the Provider produces evidence satisfactory to NHSE that the relevant sums were withheld or retained unjustifiably, NHSE must pay those sums to the Provider within ten (10) Business Days following the date of NHSE's acceptance of that evidence, no interest shall be payable on these sums. If NHSE does not accept the Provider's evidence the Provider may refer the matter to the Dispute Resolution Procedure at clause 25.

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

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

37.1.1 within six (6) months following the expiry of the relevant time period set out in clause 31.1; or

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

whichever is the earlier, NHSE may notify the Provider that any Funding withheld under clause 34.1.1 is to be retained permanently by NHSE.

37.2 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this contract, NHSE may notify the Provider that any Funding withheld under clause 34.1.1 is to be retained permanently by NHSE.

38 REVIEW MEETINGS

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

38.1.1 NHSE 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 NHSE, in which case the Provider and NHSE 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 NHSE to the Provider; and

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

38.2 NHSE may, in its absolute discretion, continue with a Review Meeting even when the conditions in clause 38.1 are considered to be met, as part of good governance and accountability practice.

38.3 Extra-ordinary Review Meetings may be called by NHSE 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.

38.4 A Review Meeting shall be convened with representatives from the quality, finance, and performance and operations department of NHSE.

38.5 NHSE 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 NHSE in writing.

39 RECORDS RETENTION AND RIGHT OF AUDIT

39.1 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.

39.2 NHSE shall have the right to audit the Provider's compliance with this contract. The Provider shall permit or procure permission for NHSE 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.

39.3 Should the Provider Sub-contract any of its obligations under this contract, NHSE shall have the right to audit and inspect such third party. The Provider shall procure permission for NHSE 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 NHSE or its authorised representative if requested.

39.4 The Provider shall grant to NHSE 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:

39.4.1 the examination and certification of NHSE's accounts; or

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

39.5 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.

39.6 The Provider shall provide reasonable cooperation to NHSE, 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.

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

39.8 On the request of the Department of Health and Social Care, NHS England, NHS Improvement, NHSCFA or any regulatory body, 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:

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

39.8.2 all Staff who may have information,

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

40 CONFLICTS OF INTEREST AND THE PREVENTION OF FRAUD

40.1 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 NHSE, 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 NHSE under the provisions of this contract. The Provider will disclose to NHSE full particulars of any such conflict of interest which may arise.

40.2 NHSE 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 NHSE, 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 NHSE under the provisions of this contract. The actions of NHSE pursuant to this clause 40 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to NHSE.

40.3 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 NHSE immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

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

41 EQUALITY AND HUMAN RIGHTS

41.1 The Provider shall:

41.1.1 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;

41.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with NHSE in light of NHSE'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 NHSE 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

41.1.3 the Provider shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Provider by this clause 41.

41.2 The Provider shall meet reasonable requests by NHSE for information evidencing the Provider's compliance with the provisions of this clause 41.

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

41.3.1 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);

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

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

41.3.4 take all necessary steps, and inform NHSE 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).

41.4 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.

41.5 The Provider shall undertake, or refrain from undertaking, such acts as NHSE requests so as to enable NHSE to comply with its obligations under the HRA.

41.6 Where the Provider is an NHS Trust or an NHS Foundation Trust, the Provider shall implement EDS2 and WRES.

41.7 The Provider and NHSE will work in partnership to address any equality, diversity and inclusivity matters relating to education and training.

42 NOTICES

42.1 Any notice or other communication given to a Party under or in connection with this contract shall be in writing and shall be:

42.1.1 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

42.1.2 sent by email to the address specified at the beginning of this contract.

42.2 Any notice or communication shall be deemed to have been received:

42.2.1 if delivered by hand, at the time the notice is left at the proper address;

42.2.2 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

42.2.3 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.

42.3 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.

43 ASSIGNMENT, NOVATION AND SUB-CONTRACTING

43.1 The Provider shall not, except where clause 43.2 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 NHSE 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 NHSE as if such act or omission had been committed or omitted by the Provider itself.

43.2 Notwithstanding clause 43.1,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 43.2 shall be subject to:

43.2.1 all related rights of NHSE in relation to the recovery of sums due but unpaid;

43.2.2 NHSE 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 NHSE shall make payment;

43.2.3 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 NHSE; and

43.2.4 payment to the Assignee being full and complete satisfaction of NHSE's obligation to pay the relevant sums in accordance with this contract.

43.3 Any authority given by NHSE for the Provider to Sub-contract any of its obligations under this contract shall not impose any duty on NHSE 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.

43.4 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 NHSE in writing, which:

43.4.1 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;

43.4.2 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;

43.4.3 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 NHSE (such approval not to be unreasonably withheld or delayed);

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

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

43.4.6 provides that if the Provider or other party fails to consider and verify an invoice in accordance with clause 43.4.5 the invoice shall be regarded as valid and undisputed for the purpose of clause 43.4.5 after a reasonable time has passed;

43.4.7 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;

43.4.8 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 43.5;and

43.4.9 requires the Sub-contractor to include a clause to the same effect as this clause 43.4 in any Sub-contract which it awards.

43.5 Where NHSE considers that the grounds for exclusion under regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:

43.5.1 if NHSE finds there are compulsory grounds for exclusion, the Provider shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or

43.5.2 if NHSE finds there are non-compulsory grounds for exclusion, NHSE 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.

43.6 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 NHSE 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.

43.7 NHSE 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 NHSE. 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.

43.8 NHSE 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 NHSE 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 NHSE 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.

44 PROHIBITED ACTS

44.1 The Provider warrants and represents that:

44.1.1 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 NHSE 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 NHSE or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with NHSE; 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 NHSE; and

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

44.2 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 NHSE:

44.3 NHSE 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;

44.4 any termination under clause 44.3 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to NHSE; and

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

(i) the interpretation of clause 44, or

(ii) the amount or value of any gift, consideration or commission,

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

45 CHANGE CONTROL

45.1 Where NHSE or the Provider sees a need to change this contract, NHSE 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 45 and clause 46.

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

45.3 Any discussions which may take place between NHSE 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.

45.4 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 45 and clause 46 shall be undertaken entirely at the expense and liability of the Provider.

46 PROCEDURE

46.1 Discussion between NHSE and the Provider concerning a Change shall result in any one of the following:

46.1.1 no further action being taken; or

46.1.2 a request to change this contract by NHSE; or

46.1.3 a recommendation to change this contract by the Provider.

46.2 Where a written request for an amendment is received from NHSE, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to NHSE within three (3) weeks of the date of the request.

46.3 A recommendation to amend this contract by the Provider shall be submitted directly to NHSE in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. NHSE shall give its response to the Change Control Note within three (3) weeks.

46.4 Each Change Control Note shall contain:

46.4.1 the title of the Change;

46.4.2 the originator and date of the request or recommendation for the Change;

46.4.3 the reason for the Change;

46.4.4 full details of the Change, including any specifications;

46.4.5 the price, if any, of the Change;

46.4.6 a timetable for implementation, together with any proposals for acceptance of the Change;

46.4.7 a schedule of Funding if appropriate;

46.4.8 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 NHSE and the Provider.

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

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

46.5.2 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 NHSE and return one of the copies to the Provider; or

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

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

46.7 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 7.

47 GENERAL

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

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

47.3 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.

47.4 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.

47.5 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.

47.6 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.

47.7 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.

47.8 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 47.8 right includes any power, privilege, remedy, or proprietary or security interest.

47.9 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.

47.10 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 NHSE 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 NHSE's procurement documentation leading to the award of this contract shall form part of this contract.

47.11 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.

47.12 Subject to clause 25, 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.

47.13 All written and oral communications and all written material referred to under this contract shall be in English.

SCHEDULE 1 - SERVICES SPECIFICATION AND TENDER SUBMISSIONS

PROVIDER CONTRACT MANAGER: [redacted]

NHSE CONTRACT MANAGER: [redacted]

ESCALATION LEVEL – SENIOR MANAGER (PROVIDER): [redacted]

ESCALATION LEVEL – SENIOR MANAGER (NHSE): [redacted]

ESCALATION LEVEL - DIRECTOR (PROVIDER): [redacted]

ESCALATION LEVEL - DIRECTOR (NHSE): [redacted]

SERVICES COMMENCEMENT DATE: 1st November 2024

EXTENSION: This contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15 (Termination), until 31st March 2027 ("**Initial Term**"), when it shall terminate automatically without notice.

Part 1: Tender Submissions:

Questionnaire 2 – AQ3 Response	Questionnaire%202%20-%20AQ3%20Re:
Questionnaire 2 – AQ4 Response – Stakeholder Engagement Plan	Questionnaire%202%20-%20AQ4%20Re:
Questionnaire 2 – AQ4 Response	Questionnaire%202%20-%20AQ4%20Re:
Questionnaire 2 – AQ5 Response	Questionnaire%202%20-%20AQ5%20Re:

Questionnaire 2 – AQ6 Response – Summary Profiles	Questionnaire%202%20-%20AQ6%20Re:
Questionnaire 2 – AQ6 Response	Questionnaire%202%20-%20AQ6%20Re:
Questionnaire 2 – SV1 Response	Questionnaire%202%20-%20SV1%20Res
Questionnaire 2 – SV2 Response	Questionnaire%202%20-%20SV2%20Res

Part 2: Service Specification:

Primary Care ICS level Training Hubs Vision, Aims, and Objectives

Vision

To provide high quality primary and community care education and training

This Vision should help ICS level Training Hubs in their mission to be an exemplar in delivering, co-ordinating and leading education and training across their ICS.

Overview

Primary Care ICS level Training Hubs are integral to supporting the delivery of excellent healthcare and health improvement to patients and the public. They help to support the primary care workforce of today and tomorrow by training with the necessary skills, values, and behaviours for the NHS.

In supporting, leading, and assisting the delivery of the NHS Long Term Plan and the We are the NHS: People Plan 2020/21, there needs to be a continued strengthening of the education and training infrastructure to support new role and multi-professional team development, systematically and at scale in primary care.

Integrated care systems (ICSs) are partnerships of health and care organisations, that come together to plan and deliver joined-up services, and to improve the health of people who live and work in their area. They assumed a

statutory footing as Integrated Care Boards from April 2022. Building strong integrated care systems everywhere: guidance on the ICS people function (August 2021) describes how NHS leaders and organisations are expected to work together and, with their partners in the ICS, to deliver 10 outcome-based people functions from April 2022.

The ICS Training Hubs network is vital to transform primary care, through developing the current and new workforce required to deliver world class patient care across an ICS.

ICS Level Training Hubs working across the System

Primary Care ICS level Training Hubs support NHS England (NHSE) to deliver the Government Manifesto commitment. This is to deliver 6,000 additional doctors and 26,000 additional multidisciplinary staff – to contribute to the third manifesto commitment of delivering 50 million more appointments in primary care.

ICS Level Training Hubs are the conduit, within primary care, to support and facilitate the education of the workforce and as such, are able to drive the new models of care.

Further to the scope and requirements as outlined within this Specification, successful providers may be invited to participate in commercial processes run by organisations other than that of the Contracting Authority.

For clarification, these additional processes are standalone and shall not form any part of this procurement exercise and subsequent Contracts, as such NHSE is unable to give any indication of scope or value for these further potential opportunities which may arise.

What is an ICS Level Training Hub? What do they do?

The remit of an ICS level Training Hub is to bring together education and training resources from NHS organisations and community providers, as well as local authorities. ICS level Training Hubs are your ‘go to’ place for any information about primary care workforce, education, and development. Throughout this specification the term “Training Hub” will be used however for clarity these Training Hubs will work across an ICS footprint. They work to address local needs. Every practice and Primary Care Network (PCN) has access to Training Hub resources. There are currently 42 ICS level Training Hubs, with a number of Locality Hubs who help support links between practices and PCNs.

Training Hubs:

- have a key role in understanding, influencing, supporting, and leading educational interventions around population health needs and health inequalities in their area to address these

- provide advice on workforce planning and training needs analysis, to help find which roles best meet the needs of the population. For example, actively supporting workforce planning by understanding population health needs and the training needs required to support new care

pathways

- help new staff, appointed through the Additional Roles Reimbursement Scheme (ARRS) scheme, embed into roles, for example supporting the roll out of the First Contact Practitioner (FCP) programme

- facilitate and/or deliver opportunities for Continuing Professional Development (CPD) programmes, based on scoping CPD requirements across PCNs

- provide career support at all stages for all primary care workforce

- train and, where appropriate, recruit more educators

- develop and help to keep staff through retention programmes, for example mentoring, and preceptorships

- support practices and PCNs, who are looking to become learning environments, to increase the number of placements for a variety of trainees and students

Aims

The following aims, in conjunction with the vision and objectives, should set the tone of a Training Hub and assist in guiding the strategic and operational delivery. These aims are mapped to specific outcomes, outlined in Building strong integrated care systems everywhere: guidance on the ICS people function (August 2021).

Supporting workforce planning

Training Hubs support conversations for primary care workforce planning, assisting in the co-ordination and realisation of the health and social care workforce across an ICS. Using knowledge and evidence to inform decision-making on workforce transformation to drive service improvement, with support from Knowledge and Library Services.

Support the following ICS People Function Outcomes:

- Growing the workforce for the future and enabling adequate workforce supply

- Leading workforce transformation and new ways of working

- Leading co-ordinated workforce planning, using analysis and intelligence

Supporting the development of educational programmes

Following workforce planning, Training Hubs are to support the educational requirements identified in workforce plans. Key considerations are to understand

what educational interventions, including career support, are required for current and future workforce to meet service re-design, based on population health needs.

Support the following ICS People Function Outcomes:

- Educating, training, and developing people, and managing talent
- Valuing and supporting leadership at all levels, and lifelong learning
- Transforming people services and supporting the people profession

Support Equality, Diversity, and Inclusion

Training Hubs have a role in improvements to Equality, Diversity and Inclusion in their workforce, and their local populations. They have a key role in understanding, influencing, supporting, and leading educational interventions around population health needs and health inequalities in their area to address these.

Support the following ICS People Function Outcomes:

- Supporting inclusion and belonging for all, and creating a great experience for staff
- Driving and supporting broader social and economic development

Expanding and managing innovative and high-quality learning environments

To meet the future workforce needs identified in workforce plans, Training Hubs have a leading role to manage and grow learning placements in partnership with educational providers to increase capacity for learners. Where possible, this should be done at scale across a PCN, within a given ICS and for multi-professional learners. Training Hubs should have oversight of all placements in primary care, and where appropriate, manage the education and training tariff distribution. Working with Library and Knowledge Services they should offer NHS staff and learners proactive support to underpin the education, training, development, and practice of the multi-professional workforce.

Support the following ICS People Function Outcomes:

- Educating, training, and developing people, and managing talent
- Valuing and supporting leadership at all levels, and lifelong learning
- Transforming people services and supporting the people profession

Increasing capacity and capability of educators

Alongside increasing learning environment capacity, Training Hubs should lead on increasing the number of approved educators to improve the uptake of programmes that meet their workforce plans.

Support the following ICS People Function Outcomes:

- Educating, training, and developing people, and managing talent
- Valuing and supporting leadership at all levels, and lifelong learning
- Transforming people services and supporting the people profession

Embedding new roles as part of the Additional Roles Reimbursement Scheme supporting retention

Training Hubs have a role in supporting primary care to embed new roles highlighted in the Additional Roles Reimbursement Scheme (ARRS) and supporting new ways of working in Primary Care.

Support the following ICS People Function Outcomes:

- Growing the workforce for the future and enabling adequate workforce supply
- Leading workforce transformation and new ways of working
- Supporting system design and development

Objectives

In operationalising the aims, the following objectives are to be delivered by ICS Training Hubs. These form part of the Key Performance Indicators (KPIs) and the overall performance assurance.

Primary Care Workforce Planning

1. Support PCNs and their provider partners to undertake effective workforce planning to inform ICS, regional and national workforce plans.
2. As part of working with ICS/ICBs to support delivery of their people functions.

Education and Training

3. Deliver a consistent training opportunity across primary care and professions to support the achievement of population health and learner needs
4. Provide and/or support education and training supporting retention programmes

Placements

5. Actively work with practices and PCNs to develop placement opportunities, and with educational providers to find placements which meet the needs of learners and programmes

6. Work with educational providers and NHSE WT&E quality team(s) to ensure all placements meet the appropriate professional standards required and are aligned to the HEE quality framework, enabling learners to develop the capabilities required.

Sustainability

7. Ensure funding secured through NHSE WT&E is appropriately used for primary care education and training infrastructure and is overseen by effective governance.

8. Establish appropriate and flexible primary care education infrastructure, which includes leadership, educator, and programme management roles.

Communication and Stakeholder Management

9. Have a clear and proactive communication strategy that articulates the NHSE WT&E vision for Primary Care Training Hubs working across an ICS footprint outlined in this specification.

Development of Systems

10. Ensure that the appropriate resources are in place and supported, to provide a level of education and training, in a consistent manner, for primary care.

Governance

A clear governance structure is in place for Training Hubs. The following sections describe the governance at various levels.

National Governance: Wider Workforce Training Hub Programme Assurance Group (WW PAG)

The national Wider Workforce Training Hubs Programme Assurance Group (WW PAG) is part of the NHSE WT&E governance structure. Its terms of reference are designed to oversee decision-making processes and are applied in accordance with the requirements of NHSE to manage public money and adhere to the Code of Good Practice as this relates to public bodies.

Given the importance and emphasis of collaboration, NHSE WT&E's national Primary and Community Care team works closely with teams and directorates across NHSE. Examples include co-designing guidance and sharing KPI data to support the system.

The aims and purposes of the Wider Workforce Training Hubs Programme Assurance Group are to:

- provide assurance to the Primary Care Strategic Board with regards to the delivery of the Wider Workforce & Training Hub Programme

- ensure that the Training Hub programme supports the delivery of the

appropriate educational programmes required for the ICS people function

- provide strategic direction to guide the business of the Training Hub programme including, where appropriate, NHSE planning, goal setting (ideally articulating medium to longer term aspirations to promote both consistency and stability), objective setting and delivery of programmes.

- review regional reports and KPIs regarding the performance of ICS Training Hubs

- review potential risks to delivery, where variations in performance exist and investigate, identify, and ensure effective mechanisms to address such variations are actioned. Learning from such occurrences to be disseminated to mitigate against future instances within NHSE.

Regional Governance: NHSE Regional offices for Primary Care

Training Hubs are accountable to NHSE WT&E through their regional Primary Care Schools, Postgraduate Dean through to the Regional Director, which provides a level of assurance and monitoring of an ICS level Training Hub.

Partnership Governance: Training Hub Oversight Boards

It is expected, based on local arrangements, ICS Training Hubs will have an Oversight Board. This is to ensure effective engagement of partners and robust oversight of Training Hub strategy, operational plans and financial activity. These will:

- oversee activity of ICS Training Hubs, as set out in the specification and any regionally led work programmes

- ensure collaborative approaches to recruitment of key posts within the ICS Training Hub

- assure and agree with all stakeholders: the strategic direction of the Training Hub and its associated annual delivery plan highlighted in section Performance Assurance section

- review and monitor progress of delivery plans

- review and escalate, as appropriate, any organisational and/or delivery associated risk and issues for either the Training Hub and/or its host organisation. These will in turn be escalated by the appropriate Training Hub stakeholder and/or NHSE as the overall accountable organisation

Membership of a Training Hub Oversight Board will include NHS WT&E, NHSE, the ICB and members of the ICS primary care workforce group. The nature and shape of these boards will be subject to local agreement and discussions, which could be combined with established ICS primary care workforce groups. These

arrangements will be agreed by the NHSE WT&E Regional Primary Care Dean and senior stakeholders.

Contract Management

Primary Care Training Hub contracts will be managed directly by NHSE WT&E regional governance structures, including assurance of Key Performance Indicators following review of these via Oversight Boards. Contract management will be supported by the Oversight Boards where information will be triangulated with partners.

The Commission Requirements

The commission requirement covers a broad set of requirements and WT&E regions set KPIs to reflect the specific education and training workforce priorities within their ICSs.

The following are requirements of a Training Hub which relate to the objectives set:

ICS Training Hubs Objectives	Requirements include
Primary Care Workforce Planning 1. Support PCNs and their provider partners to undertake effective workforce planning to inform ICS, regional and national workforce plans. 2. As part of working with ICS/ICBs to support delivery of their people functions.	• To provide advice with workforce planning and training needs analysis, actively engaging with PCNs within ICSs, using evidence-based approach, to help find which roles best meet the needs of patients and practice population • To support PCNs and their provider partners to undertake effective workforce planning to inform ICS, regional and national workforce plans • Help to embed new staff into roles through the Additional Roles Reimbursement Scheme (ARRS) • Develop and help to retain staff.
Education and Training 3. Deliver a consistent training opportunity across primary care and professions to support the achievement of population health and learner needs. 4. Provide and/or support	• Ensure all nurses, nursing associates and AHPs are able to benefit from their CPD funding by conducting investment plans, and delivering the education, if appropriate, or sourcing the right CPD provision. Please

education and training	note, this specific element of funding is subject to annual review and is therefore not guaranteed. • Promote, train, and recruit more educators • Actively work with educational providers to find placements in primary care • Grow and support the delivery of profession-based initiatives such as Advancing Practice, General Practice Nursing, and Physician Associates. The requirements of these initiatives vary from providing training, through to distributing supervision costs where appropriate. Please note, this specific element of funding is subject to annual review and is therefore not guaranteed. • Grow clinical and non-clinical Apprenticeships by facilitating levy transfer, supporting practices with advice, and supporting implementation of delivering the apprenticeship standards • Offer NHS staff and learners proactive knowledge and library services to underpin the education, training, development, and practice of the multi- professional workforce • Actively encouraging all trainees and staff to access health and well-being support • Support transition of learners from pre- registration through to primary care, working closely with PCNs to promote employment opportunities
Placements 5. Actively work with practices and PCNs to develop placement opportunities, and with educational providers to find placements which meet the needs of learners and programmes. 6. Work with educational providers and NHSE WT&E	• Increase learning environment placements at scale, across a PCN within a given ICS footprint, to enable practices to take on a variety of trainees and students meeting professional standards • To actively work with educational providers to find placements in primary care

quality team(s) to ensure all placements meet the appropriate professional standards required and are aligned to the HEE quality framework, enabling learners to develop the capabilities required.	• To ensure all placements meet the HEE quality framework standards required for all learners to develop the capabilities required • Train and, where appropriate, recruit more educators
Sustainability 7. Ensure funding secured through NHSE WT&E is appropriately used for primary care education and training infrastructure and is overseen by effective governance. 8. Establish appropriate and flexible primary care education infrastructure, which includes leadership, educator, and programme management roles.	ICS Training Hubs are required to deliver the vision, aims, and objectives. It is expected that ICS Training Hubs will profile and divide funding between core staffing and projects and/or direct training delivery aligned to the objectives and local need ICS Training Hubs may offer the following roles in any manner which complies with locally determined processes which could include: • **Programme Manager/Executive Officer/Chief Training Hub Officer** - to act as the senior responsible person overseeing the delivery of the ICS Training Hub. Ensuring compliance with all aspects of the specification and guidance, with specific duties for the Equality, Diversity, and Inclusivity aim. Co-ordinating with all primary care providers in the ICS, and the wider health and social care organisations to ensure Primary Care is represented in wider workforce planning. • **Lead for Education and Training** - to lead on learning environments, educators, current education, and training. Planning future education and training across all professions working in Primary Care in the ICS. • **Lead Clinician (Doctor, Nurse, or AHP)** - to be the clinical lead for all activity of the ICS Training Hub,

	overseeing patient safety clinical developments, new roles, and transformation of existing roles.
Communication and Stakeholder Management 9. Have a clear and proactive communication strategy that articulates the NHSE WT&E vision for Primary Care ICS Training Hubs outlined in this specification.	Each Training Hub to have a Stakeholder Engagement Strategy and Plan covering three years, to be developed with and agreed by the Oversight Board
Development of Systems 10. Ensure that the appropriate resources are in place and supported, to provide a level of education and training, in a consistent manner, for primary care.	This specification covers activities required by NHSE WT&E. As a key partner in the ongoing development of the primary care workforce, ICS Training Hubs may be invited to participate in commercial processes run by organisations other than that of the Contracting Authority. For clarification, these additional processes are standalone and shall not form any part of this procurement exercise and subsequent Contracts, as such NHSE WT&E is unable to give any indication of scope or value for these further potential opportunities which may arise.

Infrastructure

Training Hubs are required to deliver the vision, aims, and objectives. It is expected that Training Hubs will profile and divide funding between core staffing and projects and/or direct training delivery aligned to the objectives and local need.

Training Hubs can offer the following roles in any manner which complies with locally determined processes:

- **Programme Manager/Executive Officer/Chief Training Hub Officer** - to act as the senior responsible person overseeing the delivery of the Training Hub. Ensuring compliance with all aspects of the specification and guidance, with specific duties for the Equality, Diversity, and Inclusivity aim. Co-ordinating with all primary care providers in the ICS, and the wider health and social care organisations to ensure Primary Care is represented in wider workforce planning.

- **Lead for Education and Training** - to lead on learning environments, educators, current education, and training. Planning future education and

training across all professions working in Primary Care in the ICS.

- **Lead Clinician (Doctor, Nurse, or AHP and other professions)** - to be the clinical lead for all activity of the Training Hub, overseeing patient safety, clinical developments, new roles, and transformation of existing roles.

Training Hubs may be hosted by existing Community Interest Companies (CICs), including those holding Primary Medical Services (PMS) or Alternative Provider Medical Services (APMS) contracts or established community providers. It is not the intention that Training Hubs develop themselves into a CIC, for the purpose of delivering the Training Hub requirements outlined in this specification. Whilst such hosting arrangements may vary, to reflect local partnerships, geographies, and contexts, these may include ICBs, community providers or primary care organisations.

Awarded providers are required to support management infrastructure by including HR, Finance, recruitment of staff, accommodation where appropriate and IT hardware and desktop support.

Financial Governance

Training Hubs are expected to provide effective management of NHSE WT&E and (where relevant in the context of separately commissioned programmes) NHSE funds to deliver a variety of educational transformational activities, in accordance with the vision, aims, and objectives outlined in this specification.

In delegating those responsibilities, NHSE WT&E needs to ensure such financial operations are both lawful and adhere to the respective organisations' policies and procedures. Financial management will follow formal contractual processes and is expected to be achieved within the terms of the funding provided.

The awarded provider is to have a transparent and governed process for transferring funding to appropriate organisations (within an ICS geography) to deliver the requirements above. Evidence and accounting, for funding being utilised for the purposes intended, as set out above.

Performance Assurance

The Training Hub is accountable to NHSE WT&E through the Primary Care School for all workstreams relating to NHSE WT&E and those developed in conjunction between NHSE WT&E and relevant teams and directorates across NHSE. In assessing whether a Training Hub is delivering against the vision, aims, and objectives Key Performance Indicators (KPIs) have been developed.

This is done through reporting back the Training Hub activity against the aims, objectives and KPIs. In addition to national KPIs, regional KPIs will be determined based on current baseline figures and growth projections across an ICS footprint for primary care.

The following assurance process will be in place to assure delivery of service against KPIs:

- Training Hub to complete a set of KPIs (twice per year). In addition to

national KPIs, regions based KPIs will be determined based on current baseline figures and growth projections across an ICS footprint for primary care

- As part of system working Training Hubs and NHSE system partners discuss the data – this could be done as part of your group highlighted in the Partnership Governance section of this specification which may include primary care regional workforce groups or People Boards.

- Ad hoc monitoring for programmes of work such as, Continuing Professional Development and Advancing Practice, will also be required.

Training Hubs should have the following in place, with regular reviews and approvals from appropriate governance:

- Training Hub Strategy (3 years)

- Training Hub Stakeholder Engagement Strategy and Plan (3 years)

- Training Hub Delivery Plan (1-3 years)

- Training Hub Financial Plan (yearly)

The Training Hub should report concerns / issues, that constitute a risk to the delivery of agreed workstreams, delivery against KPIs or business continuity, in a timely manner to NHSE WT&E through the Primary Care School.

Key Performance Indicators

KPIs are indicative to support the delivery of this specification for the duration of the contract. It is recognised that some baselines may not currently exist, but providers are expected to work with NHSE WT&E to further develop these KPIs, based on current baseline figures and growth projections across an ICS footprint, ensuring compliance with the KPIs.

Please note that the KPIs below are as set within the National ICS Level Training Hub procurement 2021/22. Wording and targets set below may be subject to review.

Meeting the Aims and Objectives

Supporting workforce planning

- % of primary care organisations offered support on workforce planning advice and identification of needs of patients and populations

Target: [redacted]% year 1, [redacted]% year 2, [redacted]% year 3

Baseline: total number of primary care organisations in geographic area

For clarity Primary Care organisation for this purpose is practices, and PCNs.

Supporting the development of educational programmes

- % Nurses and AHP staff offered CPD funding Target: [redacted]%

Baseline: total number of Nurses and AHP staff in post from 1 April 2022

- % of Nurses and AHP staff take-up of CPD funding Target: [redacted]% +

Baseline: to be regionally determined based on previous year's figures

- % of primary care workforce offered training provided by the ICS Training Hub Target: [redacted]% year 1, [redacted]% year 2, [redacted]% year 3

Baseline: total number of workforce in post using NWRS data place on 1 April 2022

- Breakdown of professions undertaking training provided Target: all professions involved equally in training provided

Baseline: List of all professions in primary care as of 1 April 2022

- % of non-clinical apprenticeships offered across primary care

Target: year 1, [redacted]% + to be determined by regions, based on current baseline figures and growth projections across an ICS footprint for primary care, year 2 and year 3, to be determined.

Baseline: number of learners on apprenticeship route on 1 April 2022

- % clinical apprenticeships offered across primary care

Target: [redacted]% + to be determined by regions, based on current baseline figures and growth projections across an ICS footprint for primary care

Baseline: number of learners on apprenticeship route on 1 April 2022

- % breakdown of utilisation of evidence-based practice using Library and Knowledge Services

Target: [redacted]% + to be determined by regions, based on current Library Knowledge Services activity and growth projections across an ICS footprint for primary care Baseline: total number of primary care organisations utilising evidence-based practice

Support Equality, Diversity, and Inclusion

- Provide EDI analysis across 100% of current workforce in training, working with educational providers

Target: data on demographics data and primary care workforce Baseline: demographics of geographic area

- Breakdown of Training Hub education and training activity, based on ICS plans on reducing health inequalities

Target: Year 1, three initiatives scoped and implementation started, year 2, to be determined by regions based on current initiatives scoped in year 1

Baseline: total number of workforce

- Engage with NHSE WT&E regional Differential Attainment Lead to utilise

support package and guidance available on reducing differential attainment

Target: year 1, establish link and utilise materials created, year 2, to be determined by regions

- Number of EDI events to engage the system on Training Hub contribution to the Equality Diversity and Inclusion

Target: 2 per year

Baseline: not required for this

Expanding and managing innovative and high-quality learning environment

- Number of quality concerns, complaints, issues raised from educators, students, and demonstrate their process for dealing with complaints

Target: 0 to ensure appropriate behaviours and training is in place to mitigate these. It is accepted that this is not always possible, so a threshold is allowable for compliance when accompanied with a root cause analysis and an action plan.

Number of issues raised

Number of issued resolved with Training Hub intervention

- % of placements increase

Target: [redacted]% +, to be determined by regions based on current placement approval data and growth projections across an ICS footprint for primary care

Baseline: number of placements offered through 2021

NB – there will also be a consideration of practices that may be in special measures

- All professions being offered placements, by breakdown of profession Target: all professions have placements provided

Baseline: 2020 figures reported to NHSE WT&E and on educator KPI

- Compliance with regulatory standards and HEE Quality Framework Target: 100%

Baseline: reported back from Education Providers, Regulatory Bodies, and/or NHS Education Contract Self-Assessment Return.

Increasing capacity and capability of educators

- % increase approval of Educators and Supervisors

Target: based on the increase of placements, to be determined by regions based on current placement approval data and growth projections across an ICS footprint for primary care

Baseline: total number of Educators in post from 1 April 2022

- Number of Educators re-educated or undertaken additional training

Target: [redacted]% per year

Baseline: number of Educators in post at the start of the financial year (i.e. each April)

Embedding new roles as part of the Additional Roles Reimbursement Scheme (26K), supporting retention

- % of uptake in ARRS roles supported by ICS Training Hub

Target: to be regionally determined based on PCN recruitment intentions and actual recruitment figures

Baseline: From ARRS roles in place from 1 April 2022.

- % of active engagement with PCNs around understanding new roles and how they can support new ways of working in primary care to support population health needs Target: year 1, [redacted]% active engagement PCN, year 2, [redacted]% year 3, [redacted]%

Please note this KPI is based on system maturity and not all of the system will take up the services that the Training Hub has to offer.

- % of new graduates who were placed in a role in primary care

Target: for regions to work with Training Hubs on establishing “end of destination” data

Additional Regional Requirements

The ICS level training hub will hold a contractual relationship with NHSE for the overall system. In addition to the core specification outlined in this document, the following sets out additional specification requirements for the ICS Level Training Hub in North East London

- organise training hub activity equitably across the entire ICS footprint
- ensure governance enables strong working relationships and delivery at borough level
- enable and foster intelligence gathering, connections and relationships at borough (and in some instances, PCN or equivalent) level.

Included within the contract value is funding provision to administrate the following schemes on behalf of the London region:

- GP Return to Practice Scheme: https://www.england.nhs.uk/gp/the-best-place-to-work/returning-to-practice/
- GP Retention Scheme https://www.england.nhs.uk/gp/the-best-place-to-work/retaining-the-current-medical-workforce/retained-doctors/
- GP International Induction Programme https://medical.hee.nhs.uk/medical-training-recruitment/medical-

specialty-training/general-practice-gp/how-to-apply-for-gp-specialty-training/international-induction-programme/international-induction-overview

NHSE will provide full details of current administrative processes as well as direction and connection with the London Head of GP School and relevant Associate Directors who will provide clinical oversight for the three programmes listed.

General Data Protection Regulations (GDPR) and Privacy Impact Assessments (PIA)

The successful provider(s) will be required to complete all necessary Data Protection Impact Assessment (DPIA) documentation to ensure adherence with GDPR and NHSE policies, in respect of data processing and security.

Contract Period

The contract term will run from 1st November 2024 until 31st March 2027.

Infrastructure Allocations

The current anticipated infrastructure allocations are based on ICS boundaries. However, we are aware that there may be boundary changes across the contract term, which would affect the funding that has been allocated per ICS Training Hub. These will be managed on a case-by-case basis and will be done in a fair and equitable way to ensure that the funding allocation is proportionate.

SCHEDULE 2 - FUNDING

Financial Governance

Training Hubs are expected to provide effective management of NHSE funds to deliver a variety of educational transformational activities, in accordance with the vision, aims, and objectives outlined in this specification.

In delegating those responsibilities, NHSE need to ensure such financial operations are both lawful and adhere to the respective organisations' policies and procedures. Financial management will follow formal contractual processes and is expected to be achieved within the terms of the funding provided.

The awarded provider is to have a transparent and governed process for transferring funding to appropriate organisations (within an ICS geography) to deliver the requirements above. Evidence and accounting, for funding being utilised for the purposes intended, as set out above.

Infrastructure Funding

The total amount chargeable by the Provider for the infrastructure funding to provide the services as outlined within schedule 1 shall be as follows (breakdown included within the Financial Submission appendix below also):

[redacted]

All figures are inclusive of VAT, where VAT shall be chargeable by the Provider.

Provider Financial Tender Submission

Questionnaire 3 – Commercial Questionnaire	Questionnaire%203%20-%20Commercia

SCHEDULE 3 - QUALITY AND PERFORMANCE REQUIREMENTS

The Training Hub is accountable to NHSE WT&E through the Primary Care School for all workstreams relating to NHSE WT&E and those developed in conjunction between NHSE WT&E and relevant teams and directorates across NHSE. In assessing whether a Training Hub is delivering against the vision, aims, and objectives Key Performance Indicators (KPIs) have been developed.

This is done through reporting back the Training Hub activity against the aims, objectives and KPIs. In addition to national KPIs, regional KPIs will be determined based on current baseline figures and growth projections across an ICS footprint for primary care.

The following assurance process will be in place to assure delivery of service against KPIs:

- Training Hub to complete a set of KPIs (twice per year). In addition to national KPIs, regions based KPIs will be determined based on current baseline figures and growth projections across an ICS footprint for primary care
- As part of system working Training Hubs and NHSE system partners discuss the data – this could be done as part of your group highlighted in the Partnership Governance section of this specification which may include primary care regional workforce groups or People Boards.
- Ad hoc monitoring for programmes of work such as, Continuing Professional Development and Advancing Practice, will also be required.

Training Hubs should have the following in place, with regular reviews and approvals from appropriate governance:

- Training Hub Strategy (3 years)
- Training Hub Stakeholder Engagement Strategy and Plan (3 years)
- Training Hub Delivery Plan (1-3 years)
- Training Hub Financial Plan (yearly)

The Training Hub should report concerns / issues, that constitute a risk to the delivery of agreed workstreams, delivery against KPIs or business continuity, in a timely manner to NHSE WT&E through the Primary Care School.

Key Performance Indicators

KPIs are indicative to support the delivery of this specification for the duration of the contract. It is recognised that some baselines may not currently exist, but providers are expected to work with NHSE WT&E to further develop these KPIs, based on current baseline figures and growth projections across an ICS footprint, ensuring compliance with the KPIs.

Please note that the KPIs below are as set within the National ICS Level Training Hub procurement 2021/22. Wording and targets set below may be subject to review.

Meeting the Aims and Objectives

Supporting workforce planning

- % of primary care organisations offered support on workforce planning advice and identification of needs of patients and populations

Target: [redacted]% year 1, [redacted]% year 2, [redacted]% year 3

Baseline: total number of primary care organisations in geographic area

For clarity Primary Care organisation for this purpose is practices, and PCNs.

Supporting the development of educational programmes

- % Nurses and AHP staff offered CPD funding Target: [redacted]%

Baseline: total number of Nurses and AHP staff in post from 1 April 2022

- % of Nurses and AHP staff take-up of CPD funding Target: [redacted]% +

Baseline: to be regionally determined based on previous year's figures

- % of primary care workforce offered training provided by the ICS Training Hub Target: [redacted]% year 1, [redacted]% year 2, [redacted]% year 3

Baseline: total number of workforce in post using NWRS data place on 1 April 2022

- Breakdown of professions undertaking training provided Target: all professions involved equally in training provided

Baseline: List of all professions in primary care as of 1 April 2022

- % of non-clinical apprenticeships offered across primary care

Target: year 1, [redacted]% + to be determined by regions, based on current baseline figures and growth projections across an ICS footprint for primary care, year 2 and year 3, to be determined.

Baseline: number of learners on apprenticeship route on 1 April 2022

- % clinical apprenticeships offered across primary care

Target: [redacted]% + to be determined by regions, based on current baseline figures and growth projections across an ICS footprint for primary care

Baseline: number of learners on apprenticeship route on 1 April 2022

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Target: [redacted]% + to be determined by regions, based on current Library Knowledge Services activity and growth projections across an ICS footprint for primary care Baseline: total number of primary care organisations utilising evidence-based practice

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Target: data on demographics data and primary care workforce Baseline: demographics of geographic area

- Breakdown of Training Hub education and training activity, based on ICS plans

on reducing health inequalities

Target: Year 1, three initiatives scoped and implementation started, year 2, to be determined by regions based on current initiatives scoped in year 1

Baseline: total number of workforce

- Engage with NHSE WT&E regional Differential Attainment Lead to utilise support package and guidance available on reducing differential attainment

Target: year 1, establish link and utilise materials created, year 2, to be determined by regions

- Number of EDI events to engage the system on Training Hub contribution to the Equality Diversity and Inclusion

Target: [redacted] per year

Baseline: not required for this

Expanding and managing innovative and high-quality learning environment

- Number of quality concerns, complaints, issues raised from educators, students, and demonstrate their process for dealing with complaints

Target: 0 to ensure appropriate behaviours and training is in place to mitigate these. It is accepted that this is not always possible, so a threshold is allowable for compliance when accompanied with a root cause analysis and an action plan.

Number of issues raised

Number of issued resolved with Training Hub intervention

- % of placements increase

Target: [redacted]% +, to be determined by regions based on current placement approval data and growth projections across an ICS footprint for primary care

Baseline: number of placements offered through 2021

NB – there will also be a consideration of practices that may be in special measures

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Baseline: 2020 figures reported to NHSE WT&E and on educator KPI

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Increasing capacity and capability of educators

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Target: based on the increase of placements, to be determined by regions based on current placement approval data and growth projections across an ICS footprint for primary care

Baseline: total number of Educators in post from 1 April 2022

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- % of uptake in ARRS roles supported by ICS Training Hub

Target: to be regionally determined based on PCN recruitment intentions and actual recruitment figures

Baseline: From ARRS roles in place from 1 April 2022.

- % of active engagement with PCNs around understanding new roles and how they can support new ways of working in primary care to support population health needs Target: year 1, [redacted]% active engagement PCN, year 2, [redacted]% year 3, [redacted]%

Please note this KPI is based on system maturity and not all of the system will take up the services that the Training Hub has to offer.

- % of new graduates who were placed in a role in primary care

Target: for regions to work with Training Hubs on establishing “end of destination” data

SCHEDULE 4 - DATA PROTECTION PROTOCOL

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

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

1 **DATA PROTECTION**

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, if Table A of this Protocol has been completed then NHSE 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 NHSE immediately if it considers that any of NHSE's instructions infringe the Data Protection Legislation.

1.3 The Provider shall provide all reasonable assistance to NHSE in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of NHSE, 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 NHSE before Processing the Personal Data or at the first available opportunity where prior notification is not possible unless notification to NHSE 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 NHSE 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 NHSE has been obtained and the following conditions are fulfilled:

(i) NHSE 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 NHSE;

(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 NHSE in meeting its obligations); and

(iv) the Provider complies with any reasonable instructions notified to it in advance by NHSE with respect to the Processing of the Personal Data;

1.4.4 at the written direction of NHSE, delete or return Personal Data (and any copies of it) to NHSE on termination or expiry of the contract unless the Provider is required by Law to retain the Personal Data;

1.4.5 assist NHSE 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 NHSE 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 NHSE in phases, as details become available.

1.7 Taking into account the nature of the Processing, the Provider shall provide NHSE 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 NHSE) including by promptly providing:

1.7.1 NHSE with full details and copies of the complaint, communication or request;

1.7.2 such assistance as is reasonably requested by NHSE to enable NHSE to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

1.7.3 NHSE, at its request, with any Personal Data it holds in relation to a Data Subject;

1.7.4 assistance as requested by NHSE following any Data Loss Event;

1.7.5 assistance as requested by NHSE with respect to any request from the Information Commissioner's Office, or any consultation by NHSE 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 NHSE on request.

1.9 The Provider shall allow for audits of its Processing activity by NHSE or NHSE'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 NHSE in writing of the intended Sub-processor and Processing;

1.11.2 obtain the express prior written consent of NHSE;

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 NHSE with such information regarding the Sub-processor as NHSE may reasonably require.

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

1.12 NHSE 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. NHSE 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 NHSE 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.

Table A - Processing, Personal Data and Data Subjects

1. The contact details of the Authority's Data Protection Officer are: [redacted]

2. The contact details of the Supplier's Data Protection Officer are: [redacted]

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that the Authority is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation in respect of: Personal data of trainees.
Subject matter of the Processing	The Supplier may be required to process personal data as part of the requirement to deliver the Services as outlined within Schedule 1, this will be in order for individuals identified to be enrolled for the International Induction Programme, Return to Practice programme or GP Retainer Scheme.
Duration of the Processing	Duration of the Term of the Contract
Nature and purposes of the Processing	Supplier will be given access to the data by the Authority to enable enrolment on the International Induction Programme, Return to Practice Programme and GP Retainer Scheme. Data will have been received by the Authority from those individuals who have expressed interest in the provision, and they will be made aware of the Data Sharing process.
Type of Personal Data being Processed	The data is likely to include name, role, organisation, education & qualifications, home address, email address, phone number and others details as contained on a curriculum vitae.
Sensitive Data being Processed	Sensitive data collected for generic monitoring only – all reports will be anonymised.
Categories of Data Subject	The Data Subjects shall be either: Internationally qualified practitioners seeking to work in general practice in London GP's returning to practice in London

	GP's being supported to remain in employment in London
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	As per Article 5e of the General Data Protection Regulations, the personal data shared with the Supplier shall not be kept for longer than is necessary.

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 NHSE 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 NHSE and/or the Contracting Authority receiving such information;

1.3.3 to any relevant party for the purpose of the examination and certification of NHSE'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 NHSE 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 NHSE 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 NHSE's Confidential Information, and any other information provided to the Provider by NHSE 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 NHSE's written discretion, destroyed securely or returned to NHSE when it is no longer required. The Provider shall not, and shall ensure that the Staff do not, use any of NHSE'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 NHSE (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 NHSE 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 8.

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 NHSE 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 NHSE;

2.5.2 assist NHSE 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 NHSE 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 NHSE, 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 NHSE 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 NHSE under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).

2.8 Where, as a requirement of this contract, either Party is Processing Personal Data relating to Learners as part of the Services, that Party shall:

2.8.1 complete and publish an annual information governance assessment using the Data Security & Protection Toolkit (www.dsptoolkit.nhs.uk);

2.8.2 meet the standards in the relevant NHS Data Security & Protection Toolkit;

2.8.3 nominate an information governance lead able to communicate with that Party's board of directors or equivalent governance body, who will be responsible for information governance and from whom that Party's board of directors or equivalent governance body will receive regular reports on

information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;

2.8.4 in addition to the requirements of the Data Protection Protocol, report all incidents of data loss and breach of confidence in accordance with applicable Department of Health and Social Care and/or the NHS England and/or Health and Social Care Information Centre guidelines (which can be provided to the Provider by the NHSE 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 NHSE 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 NHSE 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, NHSE 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 NHSE's absolute discretion.

3.6 The Provider shall assist and cooperate with NHSE to enable NHSE 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 96 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 NHSE 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 NHSE's information governance Policies (which can be provided to the Provider by NHSE on request); and

4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by NHSE and shall provide full information as may be reasonably requested by NHSE 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 – STAFF TRANSFER

The optional parts of this Schedule 6 below shall only apply to this Contract where such parts have been checked.

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

1.1 The Parties agree that at the commencement of the provision of Services by the Supplier TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.

1.2 If any person who is an employee of the Authority or a Third Party claims, or it is determined, that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:

1.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;

1.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;

1.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment;

1.2.4 if after that period specified in Clause 1.2.2 of Part A of this Schedule 6 has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the provisions of Part D of this Schedule 6.

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

1.1 The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Transferring Employees will transfer on the Transfer Date to the Supplier or any Sub-contractor pursuant to TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions.

1.2 The Supplier agrees, or shall ensure by written agreement that any Sub-contractor shall agree, to accept the Transferring Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (including the right to continued access to the NHS Pension Scheme or access to a Broadly Comparable pension scheme which shall be dealt with in accordance with Part D of this Schedule 6) and with full continuity of employment.

1.3 The Supplier's agreement in Clause 1.2 of Part B of this Schedule 6 (and any subsequent agreement by any Sub-contractor), is subject to the right of any employee identified as a Transferring Employee to object to being transferred to the Supplier or any Sub-contractor.

1.4 The Supplier will, or shall ensure by written agreement that any Sub-contractor will:

1.4.1 not later than twenty eight (28) days after issue of a written notice in writing to it from the Authority, provide the Authority with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;

1.4.2 provide such assistance and information to the Authority as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Supplier or any Sub-contractor (including attendance at any meetings with Transferring Employees, trade unions and employee representatives);

1.4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and

1.4.4 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Transferring Employees about any Measures in accordance with regulation 13(6) of TUPE.

1.5 The Authority will on or before the Transfer Date:

1.5.1 pay all wages, salaries and other benefits of the Transferring Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Transferring Employees in respect of the period before the Transfer Date;

1.5.2 procure that any loans or advances made to the Transferring Employees before the Transfer Date are repaid to it;

1.5.3 account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Transferring Employees in the period before the Transfer Date; and

1.5.4 pay the Supplier the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date.

1.6 The Authority will:

1.6.1 provide such assistance and information to the Supplier as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Supplier or any Sub-contractor, including the provision of all employee liability information identified in regulation 11 of TUPE in relation to the Transferring Employees; and

1.6.2 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE.

1.7 The Authority shall indemnify and keep indemnified the Supplier in relation to any Employment Liabilities arising out of or in connection with any claim which arises as a result of any act or omission of the Authority in relation to the Transferring Employees prior to the Transfer Date save for where such act or omission results from complying with the instructions of the Supplier or Sub-contractor, including the Supplier or Sub-contractor failing to comply with its obligations under regulation 13 of TUPE, but only to the extent that such claim is brought by:

1.7.1 any of the Transferring Employees (whether on their own behalf or in their capacity as employee representatives); or

1.7.2 any trade union, staff association or staff body recognised by the Authority in respect of any of the Transferring Employees or any employee representatives acting on behalf of any of the Transferring Employees.

1.8 The Supplier shall be responsible for or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and other Staff.

1.9 The Supplier shall indemnify and will keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with:

1.9.1 any act or omission of the Supplier or Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Transferring Employee or Staff (including but not limited to any liability which arises because a Transferring Employee's employment with the Supplier or Sub-contractor is deemed to include their previous continuous employment with the Authority);

1.9.2 any act or omission of the Supplier or Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Authority's failure to comply with regulation 13 of TUPE;

1.9.3 any allegation or claim by a Transferring Employee or any other employee of the Authority that in consequence of the transfer of Services to the Supplier or Sub-contractor there has or will be a substantial change in such Transferring Employee's working conditions to their detriment within regulation 4(9) of TUPE; and

1.9.4 any allegation or claim that the termination of employment of any of the Transferring Employees or any other employee of the Authority whether on or before the Transfer Date which arises as a result of any act or omission by the Supplier or Sub-contractor save for where such act or omission results from complying with the instructions of the Authority.

1.10 If any person who is an employee of the Authority who is not a Transferring Employee claims or it is determined that their contract of employment has been transferred from

the Authority to the Supplier or any Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned:

1.10.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;

1.10.2 the Authority may offer employment to such person within twenty eight (28) days of the notification by the Supplier;

1.10.3 if such offer of employment is accepted, the Supplier or Sub-contractor shall immediately release the person from their employment; and

1.10.4 if after the period specified in Clause 1.10.2 of Part B of this Schedule 6 has elapsed, no offer of employment has been made by the Authority or such offer has been made by the Authority but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person from the Transfer Date.

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

1.1 The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Third Party Employees will transfer on the Transfer Date to the Supplier or a Sub-contractor pursuant to TUPE, the Cabinet Office Statement and (where relevant) Fair Deal for Staff Pensions.

1.2 The Supplier agrees, or shall ensure by written agreement that any Sub-contractor shall agree, to accept the Third Party Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (and including (where relevant) the right to secure access or continued access to the NHS Pension Scheme or access or continued access to a Broadly Comparable pension scheme in accordance with Fair Deal for Staff Pensions (which shall be dealt with in accordance with Part D of this Schedule 6) and with full continuity of employment.

1.3 The Supplier's agreement in Clause 1.2 of Part C of this Schedule 6 (and any subsequent agreement by any Sub-contractor), is subject to the right of any Third Party Employee to object to being transferred to the Supplier or any Sub-contractor.

1.4 The Supplier will, or shall ensure by written agreement that any Sub-contractor will:

1.4.1 not later than twenty eight (28) days after issue of a written notice in writing to it from the Authority, provide the Third Party with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority and any Third Party indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;

1.4.2 provide such assistance and information to the Third Party as it may reasonably request to facilitate a smooth and efficient handover of the Third Party Employees to the Supplier or any Sub-contractor (including attendance

at any meetings with Third Party Employees, trade unions and employee representatives);

1.4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and

1.4.4 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Third Party Employees about any Measures in accordance with regulation 13(6) of TUPE.

1.5 The Supplier shall be responsible for, or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements and outgoings in respect of the Third Party Employees and other Staff.

1.6 The Supplier shall indemnify and will keep indemnified the Authority and any Third Party in relation to any Employment Liabilities arising out of or in connection with:

1.6.1 any act or omission of the Supplier or a Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Third Party Employee or Staff (including but not limited to any liability which arises because a Third Party Employee's employment with the Supplier or a Sub-contractor is deemed to include their previous continuous employment with the Third Party);

1.6.2 any act or omission of the Supplier or a Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Third Party's failure to comply with regulation 13 of TUPE;

1.6.3 any claim or allegation by a Third Party Employee or any other employee of the Authority or Third Party that in consequence of the transfer of Services to the Supplier or a Sub-contractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and

1.6.4 any claim or allegation that the termination of employment of any of the Third Party Employees or any other employee of the Third Party whether on or before the Transfer Date or not which arise as a result of any act or omission by the Supplier or a Sub-contractor save for where such act or omission results from complying with the instructions of the Authority.

1.7 The Authority shall use reasonable endeavours to transfer to the Supplier or any Sub-contractor the benefit of any indemnity it has from the Third Party.

Part D ☐ Provisions regarding pensions (only applicable to the Contract if this box is checked or Clause 1.2.4 of Part A of this Schedule 6 applies)

Broadly comparable pension benefits ☐ (Clause 1.4 of this Part D of Schedule 6 only applies to the Contract if this box is checked or Clause 1.2.4 of Part A of this Schedule 6 applies. For the avoidance of doubt, where this box is not checked, but the Part D box

above is checked all of the provisions of this Part D of Schedule 6 shall apply to this Contract except Clause 1.4 of this Part D of Schedule 6)

1 Pension protection for Eligible Employees

1.1 General

1.1.1 The Supplier shall procure that, if relevant, each of its Sub-contractors shall comply with the provisions in this Schedule 6 as if references to the Supplier were to the Sub-contractor.

1.2 Membership of the NHS Pension Scheme

1.2.1 In accordance with Fair Deal for Staff Pensions, the Supplier to which the employment of any Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHS Pension Scheme, shall on or before the Employee Transfer Date, each secure a Direction Letter to enable the Eligible Employees to retain either continuous active membership of or eligibility for, the NHS Pension Scheme, or as appropriate rejoin or secure eligibility for the NHS Pension Scheme for so long as they remain employed in connection with the delivery of the Services under this Contract.

1.2.2 The Supplier must supply to the Authority a complete copy of the Direction Letter as soon as reasonably practicable after the Employee Transfer Date.

1.2.3 The Supplier shall comply with the terms of the Direction Letter (including any terms which change as a result of changes in Law) for so long as it remains bound by the terms of the Direction Letter.

1.2.4 Where any Staff (including any Transferred Staff) omitted from the Direction Letter supplied in accordance with Part D of this Schedule 6 is subsequently found to be an Eligible Employee, the Supplier (or its Sub-contractor if relevant) will ensure that that person is treated as an Eligible Employee from the Employee Transfer Date so that their Pension Benefits and Premature Retirement Rights are not adversely affected.

1.2.5 The Supplier shall ensure that all data relating to the Eligible Employees and the NHS Pension Scheme is up to date and is provided to the Authority as requested from time to time.

1.3 Contributions payable

1.3.1 The Supplier shall pay to the NHS Pension Scheme all such amounts as are due under the Direction Letter and shall deduct and pay to the NHS Pension Scheme such employee contributions as are required by the NHS Pension Scheme.

1.3.2 Where during the Term the standard employer contribution rate which the Supplier is required to pay into the NHS Pension Scheme pursuant to the terms of its Direction Letter is increased to a rate which is over and above the rate which was applicable to the Supplier as at the date of this Contract and such rate increase results in an increased cost to the Supplier overall in

relation to the provision of the Services ("Cost Increase"), the Supplier shall (subject to Clause 1.3.3 of Part D of this Schedule 6 and the provision of supporting information) be entitled to recharge a sum equal to the Cost Increase to the Authority. The Supplier shall only be entitled to recharge any Cost Increase to the Authority pursuant to this Clause 1.3.2 of Part D of this Schedule 6 in circumstances where the Cost Increase arises solely as a direct result of a general increase in the employer contribution rate applicable to all employers participating in the NHS Pension Scheme and not in circumstances where the employer contribution rate applicable to the Supplier is increased for any other reason, including as a result of any acts or omissions of the Supplier which give rise to any costs or additional charges (including interest) being charged to the Supplier which are over and above the minimum employer contributions payable by an employer in the NHS Pension Scheme (including as a result of a failure by the Supplier to comply with the terms of its Direction Letter or to meet its obligations to the NHS Pension Scheme).

1.3.3 The Supplier must supply all such information as the Authority may reasonably request from time to time in order to support any claim made by the Supplier pursuant to Clause 1.3.2 of Part D of this Schedule 6 in relation to a Cost Increase.

1.3.4 Where during the Term the standard employer contribution rate which the Supplier is required to pay in relation to the NHS Pension Scheme pursuant to the terms of its Direction Letter is decreased as part of a general reduction in the standard employer contribution rate applicable to all employers participating in the NHS Pension Scheme to a rate which is lower than that which was applicable as at the date of this Contract and such decrease results in a cost saving for the Supplier (a "Cost Saving"), the Authority shall be entitled to reduce the amounts payable to the Supplier under this Contract by an amount equal to the Cost Saving. The Authority shall be entitled to deduct any Cost Saving from sums otherwise payable by the Authority to the Supplier under this Contract.

1.4 Broadly Comparable Pension Benefits

1.4.1 If the Authority in its sole discretion agrees that the Supplier or Sub-contractor need not provide the Eligible Employees with access to the NHS Pension Scheme, the Supplier must ensure that, with effect from the Employee Transfer Date until the day before the Subsequent Transfer Date, the Eligible Employees are offered access to a scheme under which the Pension Benefits are Broadly Comparable to those provided under the NHS Pension Scheme.

1.4.2 The Supplier must supply to the Authority details of its Broadly Comparable scheme and provide a full copy of the valid certificate of Broad Comparability covering all Eligible Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Employee Transfer Date.

1.5 Transfer Option where Broadly Comparable Pension Benefits are provided

1.5.1 As soon as reasonably practicable and in any event no later than twenty (20) Business Days after the Employee Transfer Date, the Supplier must provide the Eligible Employees with the Transfer Option, where a Third Party offered, or the Supplier offers, a Broadly Comparable scheme.

1.6 Calculation of Transfer Amount

1.6.1 The Authority shall use reasonable endeavours to procure that twenty (20) Business Days after the Transfer Option Deadline, the Transfer Amount is calculated by the Third Party's Actuary or the Authority's Actuary (as appropriate) on the following basis and notified to the Supplier along with any appropriate underlying methodology.

1.6.2 If the Third Party offers a Broadly Comparable scheme to Eligible Employees:

(i) the part of the Transfer Amount which relates to benefits accrued in that Broadly Comparable scheme other than those in Clause 1.6.2(ii) of Part D of this Schedule 6 below must be aligned to the funding requirements of that scheme; and

(ii) the part of the Transfer Amount which relates to benefits accrued in the NHS Pension Scheme (having been previously bulk transferred into the Third Party's Broadly Comparable scheme), must be aligned to whichever of:

(A) the funding requirements of the Third Party's Broadly Comparable scheme; or

(B) the principles under which the Third Party's Broadly Comparable scheme received a bulk transfer payment from the NHS Pension Scheme (together with any shortfall payment),

gives the higher figure, provided that where the principles require the assumptions to be determined as at a particular date, that date shall be the Employee Transfer Date.

1.6.3 In the case of Transferring Employees or any Third Party Employees who have access to the NHS Pension Scheme (and who are classed as Eligible Employees), the Transfer Amount shall be calculated by the NHS Pension Scheme's Actuary on the basis applicable for bulk transfer terms from the NHS Pension Scheme set by the Department of Health from time to time.

1.6.4 Each Party shall promptly provide to the Actuary calculating or verifying the Transfer Amount any documentation and information which that Actuary may reasonably require.

1.7 Payment of Transfer Amount

Subject to:

1.7.1 the period for acceptance of the Transfer Option having expired; and

1.7.2 the Supplier having provided the trustees or managers of the Third Party's pension scheme (or NHS Pensions, as appropriate) with completed and signed forms of consent in a form acceptable to the Third Party's pension scheme (or NHS Pensions) from each Eligible Employee in respect of the Transfer Option; and

1.7.3 the calculation of the Transfer Amount in accordance with Clause 1.6 of Part D of this Schedule 6; and

1.7.4 the trustees or managers of the Supplier's (or any Sub-contractor's) Broadly Comparable scheme (or NHS Pensions, as appropriate) having confirmed in writing to the trustees or managers of the Third Party's pension scheme (or NHS Pensions, as appropriate) that they are ready, willing and able to receive the Transfer Amount and the bank details of where the Transfer Amount should be sent, and not having revoked that confirmation,

the Authority will use reasonable endeavours to procure that the Third Party's pension scheme (or the NHS Pension Scheme, as appropriate) shall, on or before the Payment Date, transfer to the Supplier's Broadly Comparable scheme (or NHS Pension Scheme) the Transfer Amount in cash, together with any cash or other assets which are referable to additional voluntary contributions (if any) paid by the Eligible Employees which do not give rise to salary-related benefits.

1.8 Credit for Transfer Amount

1.8.1 Subject to prior receipt of the Transfer Amount, by the trustees or managers of the Supplier's Broadly Comparable scheme (or NHS Pensions, as appropriate), the Supplier must procure that year-for-year day-for-day service credits are granted in the Supplier's (Broadly Comparable scheme (or NHS Pension Scheme), or an actuarial equivalent agreed by the Authority's Actuary (and NHS Pension Scheme Actuary) in accordance with Fair Deal for Staff Pensions as a suitable reflection of the differences in benefit structure between the NHS Pension Scheme and the Supplier's pension scheme.

1.8.2 To the extent that the Transfer Amount is or shall be insufficient to provide benefits in the receiving scheme on the basis set out in Clause 1.8.1 above, the Supplier shall be liable to make a top-up payment into the receiving scheme such that benefits shall be provided by the receiving scheme on the basis set out in Clause 1.8.1. above.

1.9 Premature Retirement Rights

1.9.1 From the Employee Transfer Date until the day before the Subsequent Transfer Date, the Supplier must provide Premature Retirement Rights in respect of the Eligible Employees that are identical to the benefits they would have received had they remained employees of an NHS Body or other employer which participates automatically in the NHS Pension Scheme.

1.10 Breach and Cancellation of any Direction Letter(s) and Right of Set-Off

1.10.1 The Supplier agrees that it shall notify the Authority if it breaches the terms of the Direction Letter. The Supplier also agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier breaches the terms of this Direction Letter.

1.10.2 If the Authority is entitled to terminate this Contract, the Authority may in its sole discretion instead of exercising its right permit the Supplier to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority.

1.10.3 If the Authority is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Authority shall be entitled to deduct all or part of those arrears from any amount due to be paid by the Authority to the Supplier having given the Supplier five (5) Business Days' notice of its intention to do so, and to pay any sum deducted to NHS Pensions in full or partial settlement of the NHS Pension Scheme Arrears. This set-off right is in addition to and not instead of the Authority's right to terminate the Contract.

1.11 Compensation

1.11.1 If the Supplier is unable to provide the Eligible Employees with either:

(i) membership of the NHS Pension Scheme (having used its best endeavours to secure a Direction Letter); or

(ii) a Broadly Comparable scheme,

the Authority may in its sole discretion permit the Supplier to compensate the Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier having consulted with a view to reaching agreement any recognised trade union or, in the absence of such body, the Eligible Employees. The Supplier must meet the costs of the Authority in determining whether the level of compensation offered is reasonable in the circumstances.

1.11.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract.

1.12 Supplier Indemnities Regarding Pension Benefits and Premature Retirement Rights

1.12.1 The Supplier must indemnify and keep indemnified the Authority and any Successor against all Losses arising out of any claim by any Eligible Employee that the provision of (or failure to provide) Pension Benefits and Premature Retirement Rights from the Employee Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

1.12.2 The Supplier must indemnify and keep indemnified the Authority, NHS Pensions and any Successor against all Losses arising out of the Supplier (or its Sub-contractor) allowing anyone who is not an Eligible Employee to join or claim membership of the NHS Pension Scheme at any time during the Term.

1.12.3 The Supplier must indemnify the Authority, NHS Pensions and any Successor against all Losses arising out of its breach of this Part D of this Schedule 6 or the terms of the Direction Letter.

1.13 Sub-contractors

1.13.1 If the Supplier enters or has at the Commencement Date entered into a Sub-contract for delivery of all or part of the Services it shall impose obligations on its Sub-contractor in the same terms as those imposed on the Supplier in

relation to Pension Benefits and Premature Retirement Benefits by this Part D of this Schedule 6, including requiring that:

(i) if the Supplier has secured a Direction Letter, the Sub-contractor also secures a Direction Letter in respect of the Eligible Employees for their future service with the Sub-contractor as a condition of being awarded the Sub-contract; or

(ii) if the Supplier has offered the Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHS Pension Scheme, the Sub-contractor either secures a Direction Letter in respect of the Eligible Employees or provides Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHS Pension Scheme and in either case the option for Eligible Employees to transfer their accrued rights in the Supplier's pension scheme into the Sub-contractor's Broadly Comparable scheme (or where a Direction Letter is secured by the Sub-contractor, the NHS Pension Scheme) on the basis set out in Clause 1.8 of Part D of this Schedule 6, except that the Supplier or the Sub-contractor as agreed between them, must make up any shortfall in the transfer amount received from the Supplier's pension scheme.

1.14 Direct Enforceability by the Eligible Employees

1.14.1 Notwithstanding Clause 47.9, the provisions of this Part D of this Schedule 6 may be directly enforced by an Eligible Employee against the Supplier and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to him or her by the Supplier under this Part D of this Schedule 6 in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

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

1.15 Pensions on Transfer of Employment on Exit

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

(i) not adversely affect pension rights accrued by the Eligible Employees in the period ending on the Subsequent Transfer Date;

(ii) within thirty (30) Business Days of being requested to do so by the Authority or Successor, (or if the Successor is offering Eligible Employees access to the NHS Pension Scheme, by NHS

Pensions), provide a transfer amount calculated in accordance with Clause 1.6 of this Part D of this Schedule 6; and

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

SCHEDULE 7 - CHANGE CONTROL NOTIFICATION FORM

CCN Number:

Title of Change	
Service Line	
Operations Lead	
CM originator	

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

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

Clauses and Schedules affected

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

Price to implement change

Impact of change on other agreement provisions

Timetable for implementation

Acceptance	
Signed on behalf of: **NHS England**	**Signed:** **Print Name:** **Title:** **Date:**
Signed on behalf of: [PROVIDER]	**Signed:**

	Print name: **Title:** **Date:**

SCHEDULE 8- EXCHANGE OF INFORMATION BETWEEN NHSE AND THE PROVIDER

Template Data Sharing Agreement

<table>
<tr><td colspan="3">This Data Sharing Agreement is made on

[Insert date]</td></tr>
<tr><td>1</td><td colspan="2">Between:

[List all the parties]</td></tr>
<tr><td>2</td><td colspan="2">Purpose, objectives of the information sharing:

[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]</td></tr>
<tr><td>3</td><td colspan="2">Controller/s

[List here all organisations which are controllers as part of this agreement and for which purposes]</td></tr>
<tr><td>4</td><td colspan="2">Processor/s

[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]</td></tr>
<tr><td rowspan="2">5</td><td colspan="2">Data items to be processed (add more lines if required)</td></tr>
<tr><td>Detail Item</td><td>Justification

(including confirmation of signed DPIA where applicable)</td></tr>
</table>

6	Article 6 Condition – Personal Data [*Specify which Article 6 condition (legal basis) is met]*	
	Legal Basis (One of these must apply whenever you process personal data)	**Tick which one you are using**
	(a) Consent: the individual has given clear consent for you to process their personal data for a specific purpose.	
	(b) Contract: 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.	
	(c) Legal obligation: the processing is necessary for you to comply with the law (not including contractual obligations).	
	(d) Vital interests: the processing is necessary to protect someone's life.	
	(e) Public task: 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.	
	(f) Legitimate interests: 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.)	

7	**Article 9 condition – Special Categories of Personal Data** [*Specify here which Article 9 condition is met - a summary of the most likely conditions is provided below.*]	
	Conditions for processing special category data	**Tick which one you are using**
	(a) Explicit consent: (the data subject has given explicit consent)	
	(b) Vital interests: (to protect the vital interests of the data subject, who cannot give consent (life or death situations)	
	(c) Legal claims or judicial acts: (the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity)	
	(d) Reasons of substantial public interest (with a basis in law): (which shall be proportionate to the purpose and, respect the essence of the right to data protection)	
	(e) Health or social care (with a basis in law): (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)	
	(f) Public health (with a basis in law): (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)	
	(g) Archiving, research and statistics (with a basis in law): (archiving purposes in the public interest, scientific or historical research purposes or statistical purposes)	

	Other:	
	Please state (and indicate) below if you are processing data based on Schedule 1, Part 1, Data Protection Act 2018:	
8	**Individual rights and preferences** [*Explain how these will be managed by the parties to this agreement*]	

Individual right	**Indicate how the right will be managed or why it is not applicable**
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:**	
9	**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 **If yes, document why it is necessary to interfere with Human Rights and proportionate to do so:**	

10	**Transparency** [*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*]
11	**How will the data sharing be carried out?** ● *The mechanism by which the data will be shared and an explanation, why this is secure and which organisation is responsible for ensuring security* ● *How any outputs/analysis will be shared and an explanation of why this is secure, necessary and proportionate* ● *Frequency – including security precautions proportionate to the level of frequency* *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)*
12	**Accuracy of the data being shared** [*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.*]
13	**Rectification of data that has been shared** *[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]*
14	**Retention and disposal requirements for the information to be shared - including details of the return of information to the source organisations (if applicable)**
15	**Breach management**

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

	[*Specify the date the agreement ends*]
24	**Signatories** [*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*]