

## NHS TERMS AND CONDITIONS FOR THE PROVISION FOR PORTFOLIO MANAGEMENT TOOL

<b>The Authority</b>	<b><i>Health Education England 1<sup>st</sup> Floor, Blenheim House Duncombe Street. Leeds, LS1 4PL</i></b>
<b>The Supplier</b>	<b>Bestoutcome Ltd Europa House, 11 Marsham Way, Gerrards Cross, Buckinghamshire SL9 8BQ Registered Number: 03922318</b>
<b>Date</b>	<b>10<sup>th</sup> December 2018</b>
<b>Type of Services</b>	<b>Portfolio Management Tool</b>

Notwithstanding the dates of signature of this Contract below, this Contract comes into effect on the Commencement Date and commencement of the Services will begin on the Service Commencement Date set out above and the Services Commencement Date on the terms and conditions of this Contract, subject always to the terms set out in the schedules listed below ("**Schedules**"). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Contract save where a different meaning has been specifically ascribed elsewhere in this Contract.

The Supplier acknowledges that this is a subcontract of services which the Authority is required to supply to its Commissioner under its head contract with the Commissioner, The Supplier acknowledges that it is aware of the General Conditions and Service conditions of the NHS Standard Contract 2018/19 (and as updated nationally from time to time) (the "**Terms**") which the Authority has signed with its commissioner for inter alia the Services. The Supplier shall not by its acts or omissions in providing the Services under this Contract, put the Authority in breach of the Terms.

### **Schedules**

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Terms and Conditions
<b>Schedule 3</b>	Information and Data Provisions
<b>Schedule 4</b>	Definitions and Interpretations
<b>Schedule 5</b>	Specification and Tender Response Document
<b>Schedule 6</b>	Commercial Schedule
<b>Schedule 7</b>	Change Control Process
<b>Schedule 8</b>	Expert Determination

**Signed by the authorised representative of THE AUTHORITY**

Name:	[REDACTED] .....	Signature:	[REDACTED]
Position:	Regional Director .....		

**Signed by the authorised representative of THE SUPPLIER**

Name:	[REDACTED] .....	Signature	[REDACTED] .....
Position:	Director .....		

## Schedule 1

### Key Provisions

#### Standard Key Provisions

#### **1 Application of the Key Provisions**

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 7 to 23 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

#### **2 Term**

- 2.1 This Contract shall commence on the Commencement Date and the Term of this Contract shall expire **30<sup>st</sup> November 2023** from the Actual Services Commencement Date. The Term may be extended in accordance with Clause 15.2 of Schedule 2 provided that the duration of this Contract shall be no longer than **2** years in total.

#### **3 Contract Managers**

- 3.1 The Contract Managers at the commencement of this Contract are:

3.1.1 for the Authority:

**[REDACTED], HEE, Portfolio Assurance Manager**

3.1.2 for the Supplier:

**[REDACTED], Bestoutcome**

#### **4 Names and addresses for notices**

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

4.1.1 for the Authority

**[REDACTED], HEE, Portfolio Manager Performance and Development**

4.1.2 for the Supplier:

**[REDACTED], Bestoutcome,**

#### **5 Management levels for escalation and dispute resolution**

- 5.1 The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

Level	Authority representative	Supplier representative
1		
2		

## 6 Order of precedence

6.1 Subject always to Clause 1.10 of Schedule 4, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

6.1.1 the provisions on the front page of this NHS Contract for the Provision of Services;

6.1.2 Schedule 1: Key Provisions;

6.1.3 Schedule 5: Specification and Tender Response Document;

6.1.4 Schedule 2: General Terms and Conditions;

6.1.5 Schedule 6: Commercial Schedule;

6.1.6 Schedule 3: Information Governance Provisions;

6.1.7 Schedule 7: Change Control Process;

6.1.8 Schedule 4: Definitions and Interpretations;

6.1.9 the order in which all subsequent schedules, if any, appear; and

6.1.10 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

6.2 For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 5. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

### **Optional Key Provisions**

**7 Implementation phase** ☐ **Not Used**

**8 Services Commencement Date** ☒

8.1 The Services Commencement Date shall be 10<sup>th</sup> December 2018 and the Long Stop Date referred to in Clause 15.5.1 of Schedule 2 shall be **30<sup>th</sup> November 2023**.

**9 Induction training** ☐ **Not Used**

**10 Quality assurance standards** ☐ **Not Used**

**11 Different levels and/or types of insurance** ☒

11.1 The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

<b>Type of insurance required</b>	<b>Minimum cover</b>
Employer's Liability	£5 million
Public Liability	£5 million
Professional Indemnity	£5 million

**12 Further Authority obligations** ☐ **Not Used**

12.1 The Authority's Obligations are set out in Schedule 5.

**13 Assignment of Intellectual Property Rights in deliverables, materials and outputs** ☒

13.1 All Background is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom its right to use the Background has derived)

13.2 Each Party grants the other a revocable, royalty-free, non-exclusive license to use its Background during the Term for the sole purpose of developing and delivering the Programme, but for no other purpose. Neither Party shall be entitled to grant any sub-license over or in respect of the other Party's Background.

**14 Inclusion of a Change Control Process** ☒

- 14.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in Schedule 7.
- 15 Authority step-in rights ☐ Not Used**
- 15.1 If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights set out in Schedule 5.
- 16 Grant of lease or license ☐ Not Used**
- 17 Guarantee ☐ Not Used**
- 18 Supplier as Data Processor ☒**
- 18.1 The Parties acknowledge that the Authority is the Controller and the Supplier is the Processor in respect of Personal Data Processed under this Contract and that paragraph 2.2 of Schedule 3 and the provisions of the Data Protection Protocol must be complied with by the Parties as a term of this Contract.
- 19 Purchase Orders ☒**
- 19.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Services to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Purchase Order.
- 20 Annual payment profile ☒**
- 20.1 The payment profile for this Contract shall be annual in advance.
- 21 Termination for convenience ☒**
- 21.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on **six (6) months'** written notice. Subject to section 22.1.
- 21.2 Should the Authority terminate this Contract in accordance with Clause 21.1 of this Schedule 1, then the Authority shall pay to the Supplier the termination sum calculated in accordance with Schedule 7.
- 22 Right to terminate following a specified number of material breaches ☒**
- 22.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the third Breach Notice.

**23 Expert Determination ☒**

23.1 Any Dispute between the Authority and the Supplier shall be dealt in accordance with the expert determination process as specified at Schedule 8.

For the avoidance of doubt, where this Clause 23 of this Schedule 1 is checked, all Disputes shall be dealt in accordance with Clause 23.1 of this Schedule 1 above and the entirety of Clause 22 of Schedule 2 shall be deemed not to apply and deleted in its entirety from this Contract.

## **Schedule 2**

### **General Terms and Conditions**

#### **Contents**

1. Provision of Services
2. Premises, locations and access
3. Cooperation with third parties
4. Use of Authority equipment
5. Staff and Lifescience Industry Accredited Credentialing Register
6. Business continuity
7. The Authority's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Intellectual property
12. Indemnity
13. Limitation of liability
14. Insurance
15. Term and termination
16. Consequences of expiry or early termination of this Contract
17. Staff information and the application of TUPE at the end of the Contract
18. Complaints
19. Sustainable development
20. Electronic services information
21. Change management
22. Dispute resolution
23. Force majeure
24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice
28. Assignment, novation and Sub-contracting
29. Prohibited Acts
30. General

## 1 **Provision of Services**

- 1.1 The Authority appoints the Supplier and the Supplier agrees to provide the Services:
- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
  - 1.1.2 in accordance with all other provisions of this Contract;
  - 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions and/or the Specification and Tender Response Document;
  - 1.1.4 in accordance with the Law and with Guidance;
  - 1.1.5 in accordance with Good Industry Practice;
  - 1.1.6 in accordance with the Policies; and
  - 1.1.7 in a professional and courteous manner.
- 1.2 The Supplier shall commence delivery of the Services on the Services Commencement Date.
- 1.3 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.
- 1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.

## 2 **Premises, locations and access**

- 2.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 2.2 Subject to Clause 2.3 of this Schedule 2, any access granted to the Supplier and its Staff under Clause **Error! Reference source not found.** of this Schedule 2 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 Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.2 of this Schedule 2.
- 2.3 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause **Error! Reference source not found.** and Clause 2.2 of this Schedule 2, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.

- 2.4 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 2.3 of this Schedule 2. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

### **3 Cooperation with third parties**

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

### **4 Staff and Lifescience Industry Accredited Credentialing Register**

- 4.1 Subject to the requirements of this Contract and any Law, the Supplier and the Authority shall be entirely responsible for the employment and conditions of service of Staff. The Supplier and the Authority shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 4.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 4.3 The Supplier 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 Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 4.4 The Supplier shall:
- 4.4.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
  - 4.4.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
  - 4.4.3 ensure all Staff have the qualifications to carry out their duties;
  - 4.4.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
  - 4.4.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of

Health or any relevant regulatory body or any industry body in relation to such Staff.

- 4.5 The Supplier 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 the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 4.6 The Supplier 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:
  - 4.6.1 are questioned concerning their Convictions; and
  - 4.6.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 4.7 The Supplier 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 Supplier's cost and expense.
- 4.8 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
  - 4.8.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 4.6.1 of this Schedule 2;
  - 4.8.2 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) in accordance with Clause 4.6.2 of this Schedule 2; or
  - 4.8.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 4.6.2 of this Schedule 2.
- 4.9 In addition to the requirements of Clause 4.6 to Clause 4.8 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
  - 4.9.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
  - 4.9.2 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

- 4.9.3 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 patients, service users or any other person.
- 4.10 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 4.11 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 4.6 to Clause 4.10 of this Schedule 2 have been met.
- 4.12 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
- 4.13 Unless otherwise confirmed by the Authority in writing, the Supplier 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 the Authority (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 Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

## **5 Business continuity**

- 5.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the provision of the Services. The Supplier 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 Specification and Tender Response Document.
- 5.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees

such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

5.2.1 the criticality of this Contract to the Authority; and

5.2.2 the size and scope of the Supplier's business operations,

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

- 5.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twenty four (24) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 5.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (30) Business Days of any material update or revision to the Business Continuity Plan.
- 5.4 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.
- 5.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
- 5.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

## **6 The Authority's obligations**

- 6.1 Subject to the Supplier providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2.
- 6.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
- 6.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.
- 6.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances

where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

## **7 Contract management**

7.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.

7.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising

8 The parties shall in accordance with the provisions relating to Contract Management in the General Terms and Conditions (Schedule 2, Clause 8), hold regular (and at least quarterly) review meetings to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. [ The Authority shall take minutes of each review meeting held with the Supplier and circulate draft minutes to the Supplier within 5 Business Days following such review meeting. In the event that the Authority fails to do this, the Supplier shall circulate minutes of the review meeting.]

8.1 generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.

8.2 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority 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:

8.2.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;

8.2.2 details of any complaints from or on behalf of students or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;

- 8.2.3 the information specified in the Specification and Tender Response Document;
  - 8.2.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
  - 8.2.5 such other information as reasonably required by the Authority.
- 8.3 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. 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.
- 8.4 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier 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**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
- 8.5 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.5.1 storing and analysing the management information and producing statistics; and
  - 8.5.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.6 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.5 of this Schedule 2, any Contracting 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 the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 8.7 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

## **9      Price and payment**

- 9.1      The Contract Price shall be calculated as set out in the Commercial Schedule.
- 9.2      Unless otherwise stated in the Commercial Schedule the Contract Price:
- 9.2.1      shall be payable from the Actual Services Commencement Date;
  - 9.2.2      shall remain fixed during the Term; and
  - 9.2.3      is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.
- 9.3      Unless stated otherwise in the Commercial Schedule:
- 9.3.1      where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or
  - 9.3.2      where Clause 9.3.1 of this Schedule 2 does not apply, the Supplier shall invoice the Authority for Services at any time following completion of the provision of the Services in compliance with this Contract.
- Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.
- 9.4      The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 9.5      The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.5 after a reasonable time has passed.
- 9.6      Where the Authority 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) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.6 of this Schedule 2 has been followed and it has been determined that the queried or

disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.

9.7 The Authority reserves the right to set-off:

9.7.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and

9.7.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.

9.8 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.

9.9 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

## **10 Warranties**

10.1 The Supplier warrants and undertakes that:

10.1.1 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;

10.1.2 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;

10.1.3 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;

10.1.4 it shall not make any significant changes to its system of quality controls and processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);

10.1.5 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;

10.1.6 receipt of the Services by or on behalf of the Authority and use of the deliverables or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;

- 10.1.7 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the provision of the Services;
- 10.1.8 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.9 unless otherwise set out in the Specification and Tender Response Document 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;
- 10.1.10 without limitation to the generality of Clause 10.1.7 of this Schedule 2, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any reasonable notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;
- 10.1.11 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier 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;
- 10.1.12 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.13 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier 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), to the extent such requirements apply to the relevant products being purchased;
- 10.1.14 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.15 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;

- 10.1.16 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.16 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;
  - 10.1.17 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 the Authority from time to time (acting reasonably);
  - 10.1.18 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document and Commercial Schedule) and all accompanying materials is accurate;
  - 10.1.19 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
  - 10.1.20 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;
  - 10.1.21 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
  - 10.1.22 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
  - 10.1.23 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
  - 10.1.24 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
  - 10.1.25 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 Without prejudice to the generality of Clause 10.2 of this Schedule 2, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant

payments to the Authority. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Authority.

10.4 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.

10.5 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority 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 Supplier shall:

10.5.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and

10.5.2 promptly provide to the Authority:

(i) details of the steps which the Supplier 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

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

10.6 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.

10.7 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

## **11 Intellectual property**

11.1 The Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.

11.2 Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Authority's normal business operations. For the avoidance of doubt, unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Authority shall have no rights to commercially exploit (e.g.

by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

## **12 Indemnity**

12.1 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 in respect of:

12.1.1 any injury or allegation of injury to any person, including injury resulting in death;

12.1.2 any loss of or damage to property (whether real or personal);

12.1.3 any breach of Clause 10.1.6 and/or Clause 11 of this Schedule 2; and/or

12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

12.2 Liability under Clauses 12.1.1, 12.1.3 and **Error! Reference source not found.** of this Schedule 2 and Clause 2.6 of Schedule 3 shall be Capped at £5 million. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.

12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or

12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).

## **13 Limitation of liability**

13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:

13.1.1 for death or personal injury resulting from its negligence;

- 13.1.2 for fraud or fraudulent misrepresentation; or
- 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.
- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
- 13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:
  - 13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
  - 13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);
  - 13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
  - 13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 13.6 Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

## **14     Insurance**

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier 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 Supplier 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.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within ten (10) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

## 15 Term and termination

- 15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.
- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.6 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
  - 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
  - 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,
- shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.
- 15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:
- (i) not capable of remedy; or
  - (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 15.5 The Authority may terminate this Contract forthwith by issuing a Termination Notice to the Supplier if:

- 15.5.1 the Supplier does not commence delivery of the Services by any Long Stop Date;
  - 15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier 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;
  - 15.5.3 the NHS Business Services Authority has notified the Authority that the Supplier or any Sub-contractor of the Supplier has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter) as assumed pursuant to the provisions of Part D of Schedule 7;
  - 15.5.4 pursuant to and in accordance with the Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or
  - 15.5.5 the warranty given by the Supplier pursuant to Clause 10.5 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.5 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.5 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier 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 the Authority may require within a reasonable time period as specified in such notice;
  - 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this

Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and

- 15.6.3 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, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

- 15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:

15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;

15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;

15.7.3 the Contract should not have been awarded to the Supplier 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

15.7.4 there has been a failure by the Supplier 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 Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4.

- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.3 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

- 15.9 Within three (3) months of the Contract end Dates the Supplier shall develop and agree an exit plan with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within one (1) month of the contract end Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the contract end Date of this Contract. If the Parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.9 of this Schedule 2 (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 Consequences of expiry or early termination of this Contract**

- 16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Services which have been completed by the Supplier 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 Supplier 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, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and
  - 16.2.3 any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 for the period set out in Clause 24.1 of this Schedule 2.
- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
- 16.6 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.
- 16.7 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- Not Applicable**

- 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 of this Schedule 2, the Authority may withhold payment under Clause 9 of this Schedule 2.
- 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 of this Schedule 2.
- 17.5     Subject to Clauses 17.6 and 17.7 of this Schedule 2, 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:
- 17.5.1     make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
- 17.5.2     increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
- 17.5.3     replace any of the Supplier Personnel or increase the total number of employees providing the Services;
- 17.5.4     deploy any person other than the Supplier Personnel to perform the Services;
- 17.5.5     terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
- 17.5.6     increase the proportion of working time spent on the Services by any of the Supplier Personnel; or

- 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 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.
- 17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 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.
- 17.8 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.
- 17.9 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 17.13 of this Schedule 2 and (where relevant) the provisions of Clause of Part D of Schedule 7 shall apply.
- 17.10 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.
- 17.11 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.
- 17.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:
- 17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;

- 17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
- 17.12.3 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;
- 17.12.4 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
- 17.12.5 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.
- 17.12.6 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.12 of this Schedule 2;
- 17.12.7 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;
- 17.12.8 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;
- 17.12.9 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;
- 17.12.10 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
- 17.12.11 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.

- 17.13 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 in Clause **Error! Reference source not found.** of this Schedule 2 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 17.14 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.
- 17.15 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:
- 17.15.1 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;
  - 17.15.2 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;
  - 17.15.3 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
  - 17.15.4 if after the period in Clause 17.15.2 of this Schedule 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 Not Used**

- 18.1 To the extent relevant to the Services, the Supplier 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 from or on behalf of patients or other service users 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 Supplier 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 Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:

- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Services and the Supplier's supply chain;
  - 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and
  - 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.
- 19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.

## **20 Electronic services information**

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 20.2 The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.
- 20.3 If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 20.4 The Supplier grants the Authority 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 the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.
- 20.5 The Authority may reproduce for its sole use the Services Information provided by the Supplier in the Authority'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 the Authority'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 the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Contract.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

## **21 Change management**

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

## **22 Dispute resolution**

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next levels until all level have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.

- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties, shall acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Contract shall prevent:
- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

## **23 Force majeure**

- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 5 of this Schedule 2;
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and

- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.

## **24 Records retention and right of audit**

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.

- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or
  - 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Authority, 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.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Contract.

## **25 Conflicts of interest and the prevention of fraud**

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.
- 25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable

opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

## **26 Equality and human rights**

26.1 The Supplier shall:

- 26.1.1 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;
  - 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority 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
  - 26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.
- 26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.
- ## **27 Notice**
- 27.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
  - 27.2 A notice shall be treated as having been received:

- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
- 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

## **28 Assignment, novation and Sub-contracting**

- 28.1 The Supplier, may except where Clause 28.2 of this Schedule 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 the Authority such consent not to be unreasonably withheld or delayed. If the Supplier 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 Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 2, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 shall be subject to:
  - 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.7 of this Schedule 2;
  - 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
  - 28.2.3 the Authority 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 the Authority shall make payment;
  - 28.2.4 the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
  - 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier 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.

28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:

28.4.1 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;

28.4.2 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;

28.4.3 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 the Authority (such approval not to be unreasonably withheld or delayed);

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

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

28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;

28.4.7 requires the Supplier 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;

28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;

28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and

28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.

28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:

- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
- 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier 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 the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Authority 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 Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority 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 the Authority 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 Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

## **29 Prohibited Acts**

29.1 The Supplier warrants and represents that:

- 29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
  - (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

- 29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:
- 29.2.1 the Authority shall be entitled:
- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
  - (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
  - (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
- 29.2.2 any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
- 29.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:
- (i) the interpretation of Clause 29 of this Schedule 2; or
  - (ii) the amount or value of any gift, consideration or commission,
- shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

### **30 General**

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this

Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 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 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority 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 the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.10 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.
- 30.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

### Schedule 3

#### 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 Clause 1 of this Schedule 3, 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 Clause 1 of this Schedule 3 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 Clause 1 of this Schedule 3 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 The Authority may disclose the Supplier'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 the Authority and/or the Contracting Authority receiving such information;
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority'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 the Authority 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 the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier'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 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 3 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, the Supplier 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 the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 2.3      The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4      Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to portfolio management tool and/or service users as part of the Services, the Supplier shall:
  - 2.4.1      complete and publish an annual information governance assessment using the NHS information governance toolkit;
  - 2.4.2      achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
  - 2.4.3      nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
  - 2.4.4      report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
  - 2.4.5      put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
  - 2.4.6      put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);

- 2.4.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;
  - 2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;
  - 2.4.9 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and
  - 2.4.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 2.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.
- 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 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority 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 Authority;
  - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority 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 Authority;
- 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier 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 the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
- 3.2.6 to assist the Authority 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 Authority 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 Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 4 Information Security**
- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
- 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of

confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and

- 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier 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 Supplier. The Supplier 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 Key Provisions and/or the Specification and Tender Response Document.
- 4.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber ISO27001 Scheme at the level set out in the Specification and Tender Response Document.

## **Schedule 4**

### **Definitions and Interpretations**

#### **1 Definitions**

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

<b>“Actual Services Commencement Date”</b>	means the date the Supplier actually commences delivery of the Services;
<b>“Actuary”</b>	means a Fellow of the Institute and Faculty of Actuaries;
<b>“Authority”</b>	means the authority named on the form of Contract on the first page;
<b>“Authority’s Actuary”</b>	means the Government Actuaries Department;
<b>“Authority’s Obligations”</b>	means the Authority’s further obligations, if any, referred to in the Key Provisions;
<b>“Breach Notice”</b>	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
<b>“Broadly Comparable”</b>	means certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of Fair Deal for Staff Pensions;
<b>“Business Continuity Event”</b>	means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event;
<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Cabinet Office Statement”</b>	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
<b>“Change Control Process”</b>	means the change control process, if any, referred to in the Key Provisions;

<b>“Codes of Practice”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Commencement Date”</b>	means the date of this Contract;
<b>“Commercial Schedule”</b>	means the document set out at Schedule 6;
<b>“Confidential Information”</b>	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <ul style="list-style-type: none"> <li>(a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;</li> <li>(b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</li> <li>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority's intranet;</li> </ul>
<b>“Contract”</b>	means the form of contract at the front of this document and all schedules attached to the form of contract;
<b>“Contracting Authority”</b>	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
<b>“Contract Manager”</b>	means for the Authority and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 7.1 of Schedule 2;
<b>“Contract Price”</b>	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
<b>“Controller”</b>	shall have the same meaning as set out in the GDPR;
<b>“Convictions”</b>	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
<b>“Cost Increase”</b>	shall have the meaning given to the term in Clause of Part D of Schedule 7;

<b>“Cost Saving”</b>	shall have the meaning given to the term in Clause of Part D of Schedule 7;
<b>“Data Protection Legislation”</b>	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Protection Protocol”</b>	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;
<b>“Direction Letter”</b>	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;
<b>“Dispute(s)”</b>	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>“Dispute Notice”</b>	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
<b>“Dispute Resolution Procedure”</b>	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 or, where Clause 23 of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in Schedule 8. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of Schedule 2;
<b>“DOTAS”</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social

	Security Administration Act 1992;
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>“Eligible Employees”</b>	<p>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.</p> <p>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 Not Used ;</p>
<b>“Employee Transfer Date”</b>	means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor) Not Used;
<b>“Employment Liabilities”</b>	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;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“eProcurement Guidance”</b>	<p>means the NHS eProcurement Strategy available via:</p> <p><a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a></p> <p>together with any further Guidance issued by the Department of Health in connection with it;</p>
<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act

	1998;
<b>“Exit Requirements”</b>	means the Authority’s exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
<b>“Fair Deal for Staff Pensions”</b>	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);
<b>“FOIA”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Force Majeure Event”</b>	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> <li>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract;</li> <li>(b) acts of terrorism;</li> <li>(c) flood, storm or other natural disasters;</li> <li>(d) fire;</li> <li>(e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</li> <li>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</li> <li>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</li> <li>(h) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</li> <li>(i) a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the</li> </ul>

	<p>Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
<b>“Fraud”</b>	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>“General Anti-Abuse Rule”</b>	<p>means</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
<b>“Good Industry Practice”</b>	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;
<b>“Guidance”</b>	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HM Government Cyber Essentials Scheme"</b>	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ;
<b>“Implementation Plan”</b>	means the implementation plan, if any, referred to in the Key Provisions;
<b>“Implementation Requirements”</b>	means the Authority’s implementation and mobilisation requirements (if any), as may be set out in the Specification and

	Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
<b>“Intellectual Property Rights”</b>	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;
<b>“Interested Party”</b>	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
<b>“Key Provisions”</b>	means the key provisions set out in Schedule 1;
<b>“KPI”</b>	means the key performance indicators as set out in Schedule 5;
<b>“Law”</b>	<p>means any applicable legal requirements including, without limitation,:</p> <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</li> <li>(b) any applicable 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);</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</li> <li>(e) requirements set by any regulatory body as applicable in England and Wales;</li> <li>(f) any relevant code of practice as applicable in England and Wales; and</li> <li>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</li> </ul>
<b>“Long Stop Date”</b>	means the date, if any, specified in the Key Provisions;
<b>“Losses”</b>	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;

<b>“Measures”</b>	means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE;
<b>“NHS”</b>	means the National Health Service;
<b>“NHS Body”</b>	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
<b>“NHS Pensions”</b>	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;
<b>“NHS Pension Scheme”</b>	Not Used 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;
<b>“NHS Pension Scheme Arrears”</b>	Not Used 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;
<b>"NHS Pension Scheme Regulations"</b>	Not Used 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;
<b>“Occasion of Tax Non-Compliance”</b>	means: (a) any tax return of the Supplier 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 Supplier 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 Supplier 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 Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1

	April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
<b>“Party”</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>“Payment Date”</b>	means twenty (20) Business Days after the last of the conditions in Clause of Part D of Schedule 7 has been satisfied;
<b>“Pension Benefits”</b>	Not Used 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;
<b>“Personal Data”</b>	shall have the same meaning as set out in the GDPR;
<b>“Policies”</b>	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
<b>“Premature Retirement Rights”</b>	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;
<b>“Premises and Locations”</b>	has the meaning given under Clause 2.1 of Schedule 2;
<b>“Process”</b>	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
<b>“Processor”</b>	shall have the same meaning as set out in the GDPR;
<b>“Purchase Order”</b>	means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions;
<b>“Relevant Tax Authority”</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Remedial Proposal”</b>	has the meaning given under Clause 15.3 of Schedule 2;
<b>“Services”</b>	means the services set out in this Contract (including, without limitation, Schedule 5 which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
<b>“Services</b>	means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key

<b>Commencement Date</b>	Provisions this date shall be the Commencement Date;
<b>“Services Information”</b>	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's services catalogue from time to time;
<b>“Specification and Tender Response Document”</b>	means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract;
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
<b>“Step In Rights”</b>	means the step in rights, if any, referred to in the Key Provisions;
<b>“Sub-contract”</b>	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
<b>Sub-contractor</b>	means a party to a Sub-contract other than the Supplier;
<b>“Subsequent Transfer Date”</b>	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;
<b>“Subsequent Transferring Employees”</b>	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;
<b>“Successor”</b>	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
<b>“Supplier”</b>	means the supplier named on the form of Contract on the first page;
<b>“Supplier Code of Conduct”</b>	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
<b>“Supplier Personnel”</b>	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully

	engaged in the performance of the Services;
<b>“Term”</b>	means the term as set out in the Key Provisions;
<b>“Termination Notice”</b>	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>“Third Party”</b>	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
<b>“Third Party Body”</b>	has the meaning given under Clause 8.4 of Schedule 2;
<b>“Third Party Employees”</b>	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;
<b>“Transfer Amount”</b>	an amount paid in accordance with Clause of Part D of Schedule 7 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause of Part D of Schedule 7 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;
<b>“Transfer Date”</b>	means the Actual Services Commencement Date;
<b>“Transfer Option”</b>	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);
<b>“Transfer Option Deadline”</b>	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;
<b>“Transferred Staff”</b>	Not Used 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;
<b>“Transferring</b>	means all those employees, if any, assigned by the Authority to

<b>Employees”</b>	the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
<b>"TUPE"</b>	Not Used 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
<b>“VAT”</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.

- 1.13 Any guidance notes in grey text do not form part of this Contract.
- 1.14 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.15 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

## Schedule 5

### Specification and Tender Response Document

No.	Requirement/Question	Priority Level	Bestoutcome's Response
	<b><i>Browsers and Integration</i></b>		
1	Multiple Browser support (I.E, Chrome, Firefox)	<b>M</b>	We support the following browsers: <ul style="list-style-type: none"> <li>• Chrome Version 61</li> <li>• Firefox Version 56</li> <li>• Internet Explorer Version 11</li> <li>• Safari Version iOS 5</li> <li>• Safari Version MacOS 11</li> </ul>
2	Integration with other impending office solutions example SharePoint, O365, Tableau, Power BI	<b>S</b>	PM3 integrates with SharePoint, office 365 and a range of BI tools including PowerBI, Business Objects, Cognos. Tableau would need a dedicated API written but this is relatively straightforward.
3	Can be viewed and accessed via I pads and other mobile devices	<b>S</b>	PM3 can be used on all mobile devices although small mobile phones are not ideal devices. PM3 can be used on iPads and Android tablets.
	<b><i>Portfolio, Projects, Programmes</i></b>		
4	Able to create multiple Portfolios?	<b>M</b>	In PM3 you can create organisational portfolios and personal portfolios. There is no limit to the number of portfolios that can be created. You can attach projects and programmes to multiple portfolios and you can also attach a portfolio to other multiple portfolios. This gives great flexibility in reporting.
5	Portfolios be broken down in different ways e.g. by SRO, Departments/teams by Sub-Portfolio?	<b>M</b>	Yes. It is common for clients to use PM3 portfolios by brand, year, type of project or department. You can also attach a portfolio to multiple portfolios. This gives great flexibility in reporting as you can report on groups of projects in seconds. You can add multiple projects and programmes into a portfolio in one operation
6	Programmes and projects should appear in multiple portfolios?	<b>M</b>	Yes. Projects, programmes, business change programmes and portfolios can appear in multiple portfolios.
7	Users should have different access levels for different Portfolios? (Portfolio Security)	<b>M</b>	Yes. Security is advanced in PM3. Users can have different access rights to portfolios, e.g. portfolios

No.	Requirement/Question	Priority Level	Best outcome's Response
			and their contents can be protected and invisible to some users.
8	Be able to clearly align programmes and projects with Mandate and business plan delivery priorities	<b>M</b>	Yes. In PM3 we have a screen that allows you to set your organisational criteria and business plan delivery priorities. You can then prioritise projects against these priorities. You can also customise one of the drop boxes in the 'details screen' and have a list of priorities that a project or programme manager can select. Another option is to have a portfolio for each priority. Projects and programmes can then be added to each portfolio that supports a priority.
9	Milestones should be viewed in Highlight Reports?	<b>M</b>	PM3 allows you to have key milestones and non-key milestones in your milestone plan. Both sets of milestones can be viewed on a number of highlight reports.
10	A project can be changed to a programme and vice-versa?	<b>M</b>	This is not possible using out of the box functionality, but it can be achieved by us writing a script. The reason why this is not out of the box functionality is that there are many linkages in the system between projects and programmes and business change programmes. For example, if a project was part of a programme which was then part of a business change programme, then converting the project into a programme would not be possible architecturally as the programme (project) would link to another programme which is not allowed in PM3's architecture
11	Projects can be moved from one programme to another?	<b>M</b>	In the project details screen the project can be detached from one programme and then attached to another. This operation takes seconds to perform.
12	Projects or programmes be removed from the portfolio but still managed within the system?	<b>M</b>	Projects and Programmes can easily be removed or added to other portfolios but still be managed in the PM3 system.
13	Project can be moved through the various Hierarchical levels. Example for HEE from Local to National and back to Local?	<b>M</b>	Yes. One of the strengths of PM3 is the ability to move projects through either a programme hierarchy or a portfolio hierarchy. We understand that HEE use this PM3 functionality widely at present.
14	Project/programme/portfolio level Benefits management inc clear	<b>C</b>	Yes. Benefits can be defined at the project level. Programme and BCP

No.	Requirement/Question	Priority Level	Bestoutcome's Response
	automated reporting on these		benefits can then automatically sum all the underlying project benefits into programme benefits. Benefits can also be grouped by portfolios.
	<b>Project Planning</b>		
16	MS Project plans can be imported/exported?	<b>M</b>	MS Project Plans can be imported into PM3 and exported from PM3. There are dedicated icons on each planning screen to enable you to easily import and export between PM3 and MS Project. Export and Import are performed using a standard XML interface.
17	Online projects can be exported into MS project/Excel and vice versa?	<b>S</b>	Yes. Project online can be imported and exported via PM3
18	The system informs of project updates e.g. via email notification or messaging system?	<b>W</b>	PM3 has many configurable alerts when items in PM3 are updated. These alerts include: mitigation action for a risk, new milestone owner, late milestone, new action.
19	Supports effective projects prioritisation?	<b>M</b>	PM3 allows you to prioritise projects within any portfolio. Projects are prioritised using 2 sets of factors: fit to organisational objectives and generic risks of doing the project. Projects can also be prioritised using costs or benefits. All axis of the project prioritisation matrix can be configured by the user.
20	Ability to attach key project documentation to the project record e.g business cases, risks, approvals	<b>S</b>	PM3 allows you to attach project documentation in 2 ways: 1) PM3 allows you to attach any file into the PM3 project. This action is performed using the attach file (paperclip icon). You can also attach the file using a link to SharePoint. PM3 currently integrates with HEE's SharePoint instance.
21	Supports multiple project tasks, subtasks and summaries be developed within the system as a standard project plan	<b>M</b>	Yes. PM3 supports tasks which are then grouped into Workstreams which is our version of Summary tasks.
21.1	Ability to archive closed/completed projects	<b>S</b>	Yes. The philosophy of PM3 is to keep completed projects in the PM3 system so that they can be used for lessons learnt, etc. Projects can be archived into an archived portfolio.

	<b>Capability development Support</b>		<b>Bestoutcome Response</b>
22	Should provide a guide for the PM	<b>S</b>	Yes. PM3 does come with a

	lifecycle to assist inexperienced Project Managers?		lifecycle that is a set of HTML slides. These can be used as part of PM3 or as separate web page(s). If required, we can embed HEE's project management life-cycle into PM3 provided it is in the correct format.
23	Ability to prioritise projects or programmes based on a set of criteria and ranking.	<b>S</b>	Yes. PM3 prioritises projects using a range of criteria. You can assess each project against your organisation's strategic objectives and against a set of generic risk factors. Both risk factors and strategic objectives can be configured by the user. Projects within a portfolio can then be compared using a 3x3 matrix.
24	Provides live system support for functionality queries for users (preferably UK based helpdesk)	<b>S</b>	Yes. We provide an email support system and a phone help line service. We pride ourselves on our quick turnaround of issues. We normally respond in 15 minutes and resolve issues within a day. HEE are aware of our rapid response to support queries.
24.1	Online help videos and or Support via chat and or telephone.	<b>S</b>	We have a set of on-line videos that help with on-boarding of new PM3 users. We will be adding to these videos during the year. We support you by phone and email. We are also looking at introducing web chat later in 2018.
25	Provide training and or help guides for all elements of the products functionality available within the system and accessible by all users?	<b>S</b>	Yes. PM3 has a comprehensive help guide which is searchable. We also have a range of other help guides including: Resource planning; quick start guide, viewers guide; milestone planning and resource management.
26	Initial training for system configuration and set up training for the system administrators	<b>C</b>	<p>We provide a training system and a test (sandpit) system for you to use. The training system allows you to run your own training courses using our material, our training database and our exercises.</p> <p>We have a course for PM3 creators. With Administrator training we prefer to carry out this training on a one to one basis or in small groups rather than classroom training.</p>
	<b>Configurability</b>		
27	Configurability - labels, risk/issue matrixes, project gateways, hierarchies, currencies, date format, field names?	<b>M</b>	Yes. PM3 is a highly configurable system and the following is not an exhaustive list. Some of the fields that can be customised are: gateways sets, gateway criteria,

			risk type, risk category, risk matrix, currency. Capex type, Opex type, period, month, portfolio goal, management escalation, PID fields on Project description tab, benefits, global benefits, strategic objectives, generic risks, action categories. Workflow status, tab names, date formats, global benefits, stakeholder benefits.
28	Once configured should be easily reconfigured without additional cost	<b>W</b>	Yes. In PM3, the client Administrator can reconfigure and configure items easily without any intervention or help from Bestoutcome; there is no additional cost to reconfigure any item.
29	Options to personalise homepage/landing page to HEE branding	<b>W</b>	Yes. We can add an HEE logo to the home page.
30	Changeable project lifecycle including changing the process flow? E.g. add documents or steps within each stage?	<b>W</b>	There is one overall lifecycle process, but you can create many different lifecycles using quality gate sets. You can then attach documents to these different gateway sets. You can also create project templates which reflect different lifecycles. Each project template can have different project standards attached to them.
31	Transferability - data can be moved from this system to another e.g, SharePoint, Excel, Word, PDF, Power BI etc.	<b>W</b>	Yes. PM3 integrates with SharePoint and Project. The DataMart plug-in also allows you to transfer data to virtually any application including Excel, PowerBI, Business Objects, etc
32	Allows customisation of pages specific to the individual or to the organisation set up	<b>W</b>	Many pages can be configured organisationally. Individuals also have the ability to turn on or off fields or columns within each screen. PM3 'remembers' each individual screen configuration.
32.1	Allows GUI level access – different user levels can be given access to differing areas within the solution/tool.		Main screens and sub tabs can be turned on or off for individual or groups of users, e.g. project managers. This simplifies the look and feel of PM3 and greatly helps with user adoption. Our GUI level access supports our philosophy of only showing information or screens that are relevant to each user.
	<b>System automation</b>		
33	The Functionality supports setting up of various reminders for example for reporting timescales – reminds users of pending actions prior to and after	<b>S</b>	PM3 has a facility to send reports by email on a time schedule, so there is no need for reminders. However, if you want to set

	deadlines.		reminders for reports you can do this using the action logs. Automatic alerts will be sent to the individuals responsible for sending or compiling the reports.
34	Functionality to set up email groups	<b>W</b>	In PM3 you can set up email groups to send reports or other group actions like plan access. This is done in the Reports screen.
35	Can export to other applications? Excel, PDF, Outlook, Word etc.	<b>M</b>	PM3 can export to Excel, PDF, Word, PNG formats. Also, data can be exported via BI tools like PowerBI and Business Objects.
	<b>Internal function Flexibility</b>		
36	Ability to select, cut and paste or download information into Excel, PDF and other windows application for further off-system data analysis (especially for IPR) and vice versa	<b>M</b>	Yes. All data in PM3 can be exported into other applications by using standard windows cut and paste functionality.
37	Ability to Multi Delete - projects, tasks, risks, issues, milestones etc	<b>S</b>	PM3 does support multi-project deletion on the Home pages.
38	Archiving of programmes, projects and portfolios within the functionality, but available for reference?	<b>W</b>	Yes. PM3 is designed to keep projects in the system even after they have gone live. To archive plans, clients typically create an archive portfolio which can then be used for future reference purposes but are separated from in-flight projects.
	<b>Reporting</b>		
39	Functionality to support or is configurable to allow HEE project managers to report on Projects progress (Highlight reporting) online	<b>M</b>	PM3 has over 200 reports available and the majority of these can be configured by the user. There are a large number of different format highlight reports that can be chosen. All reporting can be done online using IPads, Android tablets, PC or Mac.
40	Allows online review and report (status reports) of Programmes and projects. These are to be downloadable and reflect project deliverables/milestones or key activity	<b>M</b>	Projects, Programmes, BCPs or Portfolios can be viewed on line using on-line dashboards or highlight reports. All reports can be downloaded into a variety of formats including PDF, Word, PNG and excel. There are many reports that reflect project deliverables, milestones and activities. We have built a number of HEE designed reports that meet this requirement '40'. We believe that these reports are widely used by HEE.
41	Dashboards – configurable and provides options to change formatting, graph types and data parameters for display and extraction/copy or paste elsewhere	<b>W</b>	Many dashboards are configurable and with the Datamart you can create or configure your own reports. Some reports are in graphical format whereas others are tabular. In PM3 the reports are

			of a high quality. Data can be cut and pasted from the on-line report screens into other applications.
42	Should be configurable to match organisation currencies/terminologies including organisation logo and colour scheme	<b>M</b>	In PM3 we can add your logo to the application including reports. Currency can also be selected. You can also choose which colour you wish to use for each portfolio. An overall colour scheme for the application is not possible.
43	Ability to send notifications e.g. if risk impact date approaching, task completion or other key action	<b>S</b>	Yes. PM3 has numerous, configurable alerts in the system. Alerts are sent via email to relevant individuals when risk mitigation actions are late, or milestones are late. Alerts are sent to the owner of the action and the project manager.
44	Ability to create bespoke reports or include integrated online data analysis functions for eg Power BI	<b>S</b>	Bespoke reports are possible by using MS Report Writer or specialist BI reporting tools like PowerBI or Excel. Many clients are using the DataMart as is HEE to design their own graphical reports.
45	System should allow setting of reporting schedules for users' example when its time to produce status reports (highlight reports) or sign off required?	<b>W</b>	Reports can be automatically scheduled to one person or a group of people. The schedule can be daily, weekly, bi-weekly monthly, or quarterly. Typically, users set highlight reports to be sent automatically 2 days after a reporting cycle. Some clients also use the action register to fire off alerts to project managers reminding them when key reporting schedules are due and therefore when they need to update their progress reports or updates.
46			

47	Should allow graphical representation of data shown online to be reflect in printed reports i.e. RAGS, status graphics etc	<b>M</b>	There are a number of graphical reports available in PM3 and with DataMart you can create more sophisticated dashboards and graphs using Excel, PowerBI and other BI tools. These reports can also be viewed using an iPad or Android device.
	<b>Dashboards</b>		
48	Be able to configure dashboard content to show different data fields	<b>M</b>	PM3 has 2 on screen dashboards with different fields and many dashboard reports. Dashboards can be easily configured using

			Excel, PowerBI and other BI tools. In future releases we are going to introduce the concept of dashlets which the user can choose and then drag and drop on the screen.
49	Be able to configure dashboard charts and graphs to different types, colours, labels etc.	<b>M</b>	Dashboards can be easily configured using Excel, PowerBI and other BI tools.
50	Be able to configure dashboard layout to move more items around	<b>M</b>	You can move the online dashboards around and configure the layout that way. Again, tableau or PowerBI may be used to build dashboard items and drag these around.
	<b><i>Risk &amp; Issue Management</i></b>		
51	Allow full risk management functionality- project level, programme level and portfolio level.	<b>M</b>	<p>PM3 has a comprehensive risk management system. The Administrator can choose which matrix is applicable for their organisation. Risk category and risk type fields can be configured using look up tables. Uniquely, PM3 has the ability to promote or escalate risks from the project to higher programme levels in the Work Breakdown Structure. This enables a true programme risk register to be produced from the underlying project risk registers. Risks can also be grouped by portfolio. Risk trends are also produced so you can see if the severity / probability of a risk has changed since it was first registered. Risk mitigation actions automatically create an action in the relevant person's action register. Our risk and issue registers also include trends which highlight when a risk or issue is getting worse in terms of probability or severity.</p> <p>We support the NHS standard five by five risk matrix.</p>
52	Allows full issue management functionality- project level, programme level and portfolio level.	<b>M</b>	PM3 has a comprehensive issue management system. Uniquely, PM3 has the ability to promote or escalate issues from the project to higher programme levels in the Work Breakdown Structure. This enables a true programme issue register to be produced from the underlying project issue registers. Issues can also be grouped by portfolio. Issue trends are also produced so you can see if the severity of an issue has changed since it was first registered.

53	Be able to produce report on full/selectable risk/issues positions/status at the above levels (configurable) (online and offline)	<b>M</b>	There are a number of reports that report on the top 3 or top 5 risks and issues. The risk and issue registers can be sorted by virtually any column. This allows you to export to excel and select whichever groups of risk and issues you need. You can also run reports on screen or in print that show risks or issues that meet certain criteria.
54	Risk rating configurable to match Major Projects Authority (MPA) 5 scale definitions	<b>M</b>	PM3 supports the (MPA) 5 scale definitions
55	The system should inform of updates made to risks or issues via email	<b>W</b>	If a risk or issue goes overdue or a new one is created an alert is sent to the project manager and the mitigation owner. An update is not sent every time a risk is updated as this would result in a plethora of emails. Instead we use the email alerts when mitigation actions are delayed.
55.1	Be able to assign risks/issues directly to milestones, tasks and or benefits.	<b>S</b>	Risk and issues cannot be assigned to milestones risks or benefits, but you can have a milestone, task and benefit 'category' in your risk and issue registers
<b><i>Budget/Financial Management</i></b>			
56	Provide functionality for annual profiling process with Monthly profile of expenditure types - Planned spend and actual spend	<b>M</b>	PM3 provides monthly profile of budget, forecast and actual expenditure by Capex categories and Opex categories. Planned spend is represented by either a budget or a forecast column. Actual spend can be entered into the actual column. All variances between actual budget and forecasts can be calculated on screen in the finance details tab.
57	Clear project, programme and portfolio reporting for financial activity	<b>S</b>	Programme and BCP finances are automatically calculated from the component projects or programmes. Projects and Programmes can be grouped into many portfolios which can then be used to report financial activity. PM3's powerful portfolio capability allows you to group projects into a portfolio and generate a portfolio financial report in seconds.
58	Should allow cost centre numbers (cost codes) to be added to the project/programme	<b>M</b>	Yes. Typically, clients create a drop-down list of cost centre codes using our administration configuration facility. These codes are typically selected from the project details pages.
59	Be able to categorise Budgets to	<b>M</b>	Yes. Budgets can be created at

	multiple levels		<p>project level and these are automatically rolled-up into Programme and BCP levels. In the next release (July / August) we are introducing another 'original budget' field on the financial status page. This is so that an original business case budget number can be entered and then compared against forecasts and 're- budgets'.</p> <p>You can also add budget at a summary level, i.e. Capex and Opex and within Capex and Opex you can create sub-categories.</p>
60	Budget/Financial Management within project, programme and portfolio at these and aggregate level	<b>M</b>	Yes. Budgets can be created at project level and these are automatically rolled-up into Programme and BCP levels. There are many reports that show budget and finances at project, programme and portfolio levels.
61	Forecast outturn and projected spend functionality (manually and automated)	<b>M</b>	Forecast outturn and projected spend can be manually entered into the financial status page. This is typically used for early project planning and then Forecast out turn and projected spend can be automatically calculated in the financial details pages.
62	Financial reports and data exportable into Excel or other data analysis tool e.g Tableau, Power BI.	<b>M</b>	Yes. PM3 uses a 'DataMart' plugin that allows data to be extracted into Excel, PowerBI, Tableau and a range of BI tools. HEE already use this facility.
	<b><i>Benefits Management</i></b>		
63	Benefits management at portfolio, programme and project level as well as aggregate views	<b>S</b>	Yes. PM3 has a sophisticated benefits management module. Benefits can be financial or non-financial and these are entered at project level and then automatically rolled up to Programme, BCP and Portfolio levels. There are a number of different reports / views available to view benefits.
64	Provide function for Qualifiable benefits as well as quantifiable	<b>S</b>	Yes. Benefits can be either quantifiable or non-quantifiable. Each benefit within a project can be categorised as financial or non-financial.
65	Provide function for reporting on benefits delivery progress	<b>S</b>	Yes. There are a number of different reports / views available to view benefits. We have tabular benefit reports and some bespoke NHS dashboards.

	<b>Resource management</b>		
66	Provides clear resource (people management function) to support HEE resourcing strategy or configurable to match	<b>S</b>	PM3's latest release comes with an upgraded resource management module. This allows you to define your own organisation roles with associated skill sets. You can allocate time to either an individual or a role, e.g project manager. Our latest release simplifies resource management so that it is simple but very powerful.
67	Allows capability level assigned to resources	<b>S</b>	Yes. PM3 has the facility to group resources into roles with similar skillsets, e.g. senior project manager. The new PM3 resource module allows you to add skills to resource types.
68	Allows resource levelling at portfolio, programme and project level with resources assigned to multiple programmes and projects	<b>S</b>	<p>Yes. Individuals can have a default capacity which can be inherited from their resource type. Each project manager or plan owner can enter 'demand requests' for people or roles and the PM3 system can instantly show the availability by week or by month of individual resources or the roles. Resource demand and availability can be viewed by week, by month by project, by programme by portfolio.</p> <p>Resource capability can be categorised in PM3 so that you can determine what % of availability is a particular colour. For example, if a resource or group of resources are under-utilised these can be easily seen by using a colour configured by the Administrator. Alternatively, if a person or resource group is over capacity you can also see this by a colour, e.g. Red.</p> <p>PM3 can show which resources are allocated to which projects.</p>
	<b>Other</b>		
69	Should be able to undertake escalation of risks and or milestones within the tool	<b>M</b>	PM3 allows you to escalate risks, issues and milestones from the project to the programme to the BCP levels. We believe that this is unique in PM3.

## Non-functional requirements

ID	Brief Description	Priority Level	Best outcome Response
1.1	UK based user support 24/7	<b>S</b>	Our official support is 8:45 to 5:30 but if 24/7 support is required we can provide this at an extra cost.
1.2	Secure EU data storage (preferably UK)	<b>S</b>	All data is stored in the UK. We are one of the few PPM providers that has ISO27001 (information security) accreditation. Our application and infrastructure are penetration tested annually.
1.3	SAAS/Cloud based	<b>M</b>	PM3 is a 100% cloud-based system. It requires no software on the client device apart from a supported browser.
1.4	Uptime >99%	<b>M</b>	Our uptime is in excess of 99.99 %. HEE can confirm that PM3 is very robust and has very good availability figures.
1.5	Flexible to fit HEE current and future planned IT infrastructure	<b>M</b>	Being 100% cloud based we cannot imagine a scenario where PM3 could not operate on future HEE's infrastructure. We are a flexible organisation and will within reason accommodate any required changes to HEE's infrastructure
1.6	Streamlined functionality and intuitive, changeable GUI	<b>M</b>	In PM3's latest release that HEE are using you can change the interface in a number of ways. The Administrator can set up User Interface groups so that different groups of people, e.g. Project Managers can see certain tabs and even sub-tabs. If required, this UI configuration can be done for each individual in the organisation. In addition to this, most PM3 screens allow the user to turn off columns or fields that are not required. PM3 'remembers' every screen configuration that every user selects.
1.7	Undo/redo functions. If a user performs an incorrect action they should be able to undo it.	<b>M</b>	PM3 has the ability to refresh many operations that the user performs. This is in effect an 'undo'. However, some operations are not able to be undone as we have made a conscious design decision to save on

ID	Brief Description	Priority Level	<i>Bestoutcome Response</i>
			data entry. This not only saves the user continually having to save every operation, but it also prevents the user from entering a lot of data and then losing it because they have lost internet connection or have forgotten to save it. This is the direction most cloud applications are moving.
<b>1.8</b>	Low cost and low Admin	<b>M</b>	PM3 is a low-cost application considering the functionality that we have available. The new Administration module has built in context sensitive help which allows HEE to administer the application without any reference to Bestoutcome. We also have a comprehensive help guide for the Administrator. This means that HEE can administer the application in a very cost-effective manner. This has been proven by HEE's use of PM3 in the last 3 years.
<b>1.9</b>	Appreciable storage capacity, including adequate system backups	<b>M</b>	<p>Our server disks are backed up daily and kept for 30 days by our hosting provider.</p> <p>In addition, our database is backed up daily and copied off site to our in-house Bestoutcome servers.</p> <p>7 days of database backups are retained on the Live server for quick availability if restore is required.</p> <p>30 days of database backups are retained off-site.</p> <p>Every customer database is kept separate.</p> <p>Database restores are tested offsite each quarter</p>

Method Statement	
Supplier and customer interactions throughout the process.	<p>As we have already implemented PM3 at HEE, we will not need to project manage the implementation as PM3 is already operational at HEE. What needs to happen is a wider roll-out. We would be happy to help with managing this process but we believe that with our training package HEE has the skills and experience of PM3 to manage the wider roll-out of PM3.</p> <p>Our interactions during the implementation process will be similar to our current interactions. Specifically, we will manage your account and support the wider implementation of PM3 by providing:</p> <ul style="list-style-type: none"> <li>• Weekly phone calls to our HEE account manager, Jack Watson.</li> <li>• Quarterly account meetings face to face with Jack and David Walton (Account Director);</li> <li>• Support desk and support email.</li> </ul> <p>In addition to this proven account management process we will provide HEE with the following resources and tools to ensure the successful wider roll-out of PM3, i.e.:</p> <ul style="list-style-type: none"> <li>• Training package;</li> <li>• Updated quick start guide</li> <li>• Resource management and capacity planning guidance</li> <li>• Viewer guide</li> <li>• Administrator guide</li> <li>• Videos (10 currently but these will be augmented during the year)</li> </ul> <p>We pride ourselves on our account management, responsiveness to queries and attention to detail. This can be evidenced by our interactions with HEE over the last three years.</p> <p>As an organisation, our objective is to build long lasting relationships with our clients. We are in for the long term not the short term.</p>

Method Statement	
<b>User experience (system)</b>	<p>We have totally re-developed the front-end and interface of PM3. Bestoutcome employed a user experience consultancy to help design the user experience and user journeys in the new PM3 product. This interface has been praised strongly by our existing clients and numerous prospects.</p> <p>Central to our redesign is the principle of only displaying screens and fields on the screens that each user or type of user requires to be able to perform his or her role.</p> <p>In PM3 you can create an almost unlimited set of User interface groups where you can determine which tabs and sub tabs that each UI group can see when they log on to the system.</p> <p>Other user enhancements include a much-improved help system with user videos. Most fields in the system have a roll-over help facility whereby a short help text can be seen to describe the field's meaning and purpose.</p> <p>Having implemented PM3 in many clients, we firmly believe that the User Interface is one of the most important factors in successful take-up of PM3 or any PPM tool.</p> <p>Many screens have been designed to be clean and uncluttered. This improves user navigation and understanding.</p>

Method Statement	
<b>The proposed solution meet HEEs specified requirements</b>	<p>We have summarised your requirements in this document and explained how PM3 meets these requirements</p> <p><b><i>Supports Project Managers in managing their projects.</i></b> PM3 has been built by project managers so it works the way project managers work. PM3 is designed so that the information that is entered is the information that needs to be updated by the project manager on a regular basis. PM3 supports the project manager by containing the following functionality: planning, reporting, RAIDD management, benefits management, financial management and resource management.</p> <p><b><i>Consistency and Centralised Reporting.</i></b> Reporting is one of PM3's strengths. There are over 200 reports in PM3 many of which can be configured. This saves project manager time</p>

	<p>compiling reports and drives consistency of reporting.</p> <p><b><i>Alignment of Projects and Programmes Nationally and Regionally.</i></b> Projects can be categorised/prioritised by region and nationally. PM3's portfolio structure is ideal to manage/categorise/prioritise projects at regionally and national levels.</p> <p><b><i>Reporting on Mandate milestones and business plan priorities.</i></b> PM3 has many milestone reports, some which HEE specified, and we built for you. PM3 can also report on business plan priorities either by using portfolios (each portfolio is a business priority) or by using our strategic value factors.</p> <p><b><i>Be the central (PfMO) data repository, information management and Portfolio reporting tool from local teams through to HEE exec – everything at a central point and readily available in real time.</i></b> PM3 is a real time central repository. It also has different views for access by different levels of resources. PM3 can be accessed by an iPad or similar Android device which is an ideal platform for senior executives.</p> <p><b><i>Projects, programmes and portfolio budget and resource management.</i></b> PM3 supports financial and resource management. Its WBS structure enables resource and financial data to be automatically added up from projects to programmes to BCPs and portfolios.</p> <p><b><i>Provision of a rich picture of HEE's project investments and their delivery health.</i></b> PM3 contains many reports and dashboards that can be viewed to ascertain the delivery health of HEE's projects. The objective RAGs on dashboards enable the true health of HEE's projects/ programmes to be understood.</p> <p><b><i>Strategic risks and issues management.</i></b> Risk and Issue management are a strong area of functionality within PM3. The type and/ or category fields can be used to categorise risks/ issues as strategic. These strategic risks and issues can easily be reported on.</p> <p><b><i>Ability to RAG rate key milestones (KPI's) and provide narrative against these areas.</i></b> Milestones can be categorised as 'key'. You can also manually override the delivery RAG of a milestone and provide narrative against this key milestone using the description field in the milestone screen.</p> <p><b><i>Effective internal project lifecycle governance tool (end to end).</i></b> PM3 manages projects from initial idea to delivery of the initiative or termination. PM3 covers the entire project lifecycle.</p>
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	<p><b>Streamlining processes and promoting efficiency.</b> There are many areas where PM3 promotes efficiency. By eliminating spreadsheets, Word documents etc and integrating all processes into a central repository, this generates a lot of process improvement. Simply not having each project or programme manager building their own highlight reports delivers a huge productivity gain especially for large numbers of PM3 users.</p> <p><b>Project/programme/portfolio Benefits management.</b> Benefits management is one of our strongest areas. We have talked to our NHS clients and have rebuilt the benefits functionality. Uniquely, we link benefits to delivery milestones and PM3 alerts the project manager when a benefits plan may be at risk due to a late milestone. We also support 'global benefits' financial / non-financial benefits, stakeholder beneficiaries and probability.</p> <p><b>Integration with other office solutions for example – Microsoft o365, SharePoint, Tableau and or Power BI.</b> PM3 integrates will all these products and HEE currently use these integrations.</p>
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Method Statement	
<p><b>Provider demonstrate knowledge of the organisation and its specific requirements</b></p>	<p>At Bestoutcome, we work extensively in the NHS sector and have a good understanding of how the NHS works. Specifically, we have worked with HEE for over three years and believe during that time we have developed a good understanding of HEE's business. We have regular account meetings in person and a weekly phone call with HEE's account manager. This gives us a good insight into how HEE operates.</p> <p>One of the big differences in how HEE operates compared to other organisations that we work with is the federated structure of HEE. PM3's portfolio capability and the Admin license allows PM3 to support your federated structure. We know how important this is to you.</p> <p>We understand HEE's mission to: <i>support the delivery of</i></p>

	<i>excellent healthcare and health improvement to the patients and public of England by ensuring that the workforce of today and tomorrow has the right numbers, skills, values and behaviours, at the right time and in the right place.</i>
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Method Statement	
Does the provider instil confidence and evidence of their ability to manage size of organisation and the breadth of potential user?	<p>For us to instil confidence that we are of a size and type of organisation that can support HEE, we have documented this below in the following sections:</p> <ul style="list-style-type: none"> <li>• Technical Ability;</li> <li>• Organisational Ability; and</li> <li>• Financial Stability.</li> </ul> <p><b>Technical Ability.</b> We already run PM3 instances for hundreds of users for other clients. We have redeveloped the architecture of PM3 so that it is scalable with no or little degradation of performance. PM3's database is SQL server, and this is a high-performing database engine. We have recently moved from a physical server infrastructure to a virtual server infrastructure. This allows us to easily turn on more computer power if that is needed.</p> <p><b>Organisational Capability.</b> From an organisational point of view, we have our own development and support team based in the UK. This is not outsourced. We have recently increased our staff numbers both in terms of PM3 account managers and development and support staff. Our account managers are of a high calibre and are either from a big 4 consultancy or a blue chip organisation.</p> <p>We are further investing in new support tools including a web chat function. We are also extending our library of training videos and a FAQ page where users can get support.</p> <p><b>Financial Stability.</b> If required, we can provide 3 years of accounts. Bestoutcome has a strong balance sheet and has made a profit in all but one year of our operation. This is important as it allows us to invest more in our products and services which will benefit HEE and our other clients. Our strong financial position has allowed us to undertake a major investment and re-write the front-end of PM3 in a new framework.</p> <p>Bestoutcome has no debt and no charges against the organisation.</p>

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Method Statement	
Experience and successful delivery in similar environment	<p>We have provided the PM3 tool and service to HEE for a period of 3 years.</p> <p>During this time, we have seen the number of PM3 available licenses rise to 175. We have built some bespoke reports for HEE which we believe are being heavily used. We have also developed our DataMart plug-in with guidance and requirements from HEE.</p> <p>We are proud of our close working relationship with HEE. As part of our account management we have regular face to face meeting and every Friday our account manager, [REDACTED], has a weekly update call with the HEE project manager, [REDACTED]. We also have made a number of enhancements to PM3 at HEE's request. A notable enhancement was the addition of a new Administrator license. Because of HEE's federated organisation it was important to have an Administrator role that could perform admin functions on a number of portfolios rather than all portfolios. To achieve this, we introduced a new license type, Administrator Reader. This has been very successful and is seen as essential to how HEE operates its PPM application, PM3, and associated processes.</p> <p>In terms of other organisations, we have implemented PM3 at Whitbread, Premier Inn, Costa Coffee, Medical Defence Union, UCL, Trinity College Dublin and over 20 NHS organisations from relatively small CCGs to large NHS Foundation Trusts. We believe we are the largest PPM tool in use in the NHS.</p> <p>Since the release of PM3 (Cloud) we are increasing our market share in the NHS. This major release of PM3 included many observations and requirements from HEE.</p> <p>We are also very, very responsive to client issues whether they are genuine errors or queries with how our tool works. For example, we had a query from [REDACTED] on 8<sup>th</sup> June and we fixed an error in 10 minutes from receiving the query. This is a typical response from our development and support team which we are sure HEE will agree with.</p> <p>A key part of any PPM implementation is the approach and</p>

	<p>training. If we are successful in winning the tender at HEE, there will be little, or no configuration required as this is already in place.</p> <p>Best outcome also is a team of practitioners rather than simply tool vendors. This means that we have delivered projects, programmes and managed portfolios. This practitioner knowledge is evidenced in the way PM3 is designed and also, we can support clients better in their tool implementation as we can communicate from a position of knowledge and experience.</p> <p>Training is a very important part of our implementation. We have recently totally redeveloped our training material and training database. To be able to expand PM3 into other parts of HEE, it would be advisable to adopt a train the trainer approach. We know that the HEE has an excellent understanding of how PM3 works. We can offer HEE our training material including delegate packs, course slides and training database to use. This will greatly reduce the cost of a wider PM3 roll-out and is a high-quality training programme.</p> <p>The latest PM3 release also contains a number of PM3 training videos that can be viewed for a refresher or for new PM3 users.</p>
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## Assumptions & Additional Offer

PM3 is already well established in HEE and currently HEE carry out all training of new PM3 users. Part of our tender and solution is for us to provide our new training system that HEE can use to train its new or existing PM3 users. Our new training system comprises;

- Training slides including over 35 hands-on exercises;
- Delegate Packs;
- Training database set-up for trainees to follow the exercises.

As well as investing in the new PM3 cloud system, we have totally re-developed our training course which is now based on building the Olympic games. This course is much improved on our original one and we recommend that HEE use this course and our materials to run their own training courses. We are assuming that HEE will continue to run its own PM3 training courses which will reduce the cost of implementation.

We have not included a quotation for Bestoutcome to run training courses, but we can do this if required.

To get the best out of the new training material, we are recommending 3 days consulting and support for us to help the PMO team understand the new material and how to configure the database after each course.

### **Benefits Management**

We understand that you would like us to include train the Trainer Support for Benefits Management. We have assumed that this is training your Benefit Managers in structuring the benefits engine, developing a high-level guide and training the Benefit Managers so they can train other HEE staff responsible for tracking and realising benefits.

### **Reports**

We have now included report writing in to the proposed solution.

Each 'simple' report typically costs [REDACTED] excluding VAT. A complex report consisting of many pages of differing PM3 information would cost approximately [REDACTED]. Even a simple report requires development, testing, embedding within our reporting engine and a release. We understand that you want to have some reports 'costed'; so that you can budget accordingly.

As an act of goodwill, we will supply the following for years 1-3 of the contract: -

- Reports will be discounted by 50% if greater than 3 reports commissioned in one year
- Reports will be discounted by 25% of cost if 2 reports commissioned in one year
- Reports will be discounted by 40% of cost if 3 reports commissioned in one year
- Reports for years 4 and 5 will be charged at the standard rate.

### **Resource & Capacity Management**

As requested we have not included Resource Management and Capacity Planning (train the Trainer and Support) at this stage.

Should you require this support in the future we would recommend that you budget £3000 - 2 days consulting for our consultants to work with you and 1 day for us to develop the appropriate documentation. This is an optional item and if you decide not to use our support for resource / capacity planning you will not be charged.

### **Expenses**

We have included our figure of [REDACTED] for expenses. However as agreed we will bill you the exact expenses and provide the appropriate receipts. We will travel second class and stay in moderate rated hotels as appropriate.

### **Project Management**

As PM3 has already been configured and rolled out to many users, and has been in use for over 3 years, we do not envisage we will need to provide any project management resources for the wider PM3 implementation. We will continue to provide a high-level of project management support during the wider roll-out. If HEE decide that they would like us to provide training support or extra project management we can provide these costs when we understand your requirements.

## Key Performance Indicators

- Percentage (80%) of service requests resolved within an agreed-upon/acceptable period of time (2days)
- Cost of service delivery as defined in the contract based on a set period such as month or quarter
- > 99.9 % of non-outage (unavailability) due to implementation of planned changes, relative to the service hours
- Average time (e.g. in hours) between the occurrence of an incident and its resolution (critical incidents to be resolved within 2 business days and minor incidents up to 3 hours)
- Downtime – the percentage of the time service is available – Service should be available as per specification 99.9% of a typical work week.
- Number of outstanding actions against last contract review should not exceed 3 assuming the number was greater than 3.
- The deviation of the planned budget (cost) is the difference in costs between the planned baseline against the actual budget of the contract
- > 99.9% of queries via phone or email replied to in 24 hrs (business week)
- <5 complaints received within a two-month period and the customer issues that were solved by the first phone call

### **Schedule 6**

#### **Commercial Schedule**

Item Description	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost
Up to 500 PM3 licenses (Maximum of 50 Admin licenses). HEE can then allocate the licenses among whatever user type they wish, e.g. Creator, Executive Portal, etc.					
Train the Trainer System Support		0	0	0	0
Benefits Management (train the Trainer and Support)		0	0	0	0
Training Database, Delegate Packs, Training Course	Included in price	Included in price	Included in price	Included in price	Included in price
Upgrades to HEE PM3 Live instance	Included in price	Included in price	Included in price	Included in price	Included in price
Dedicated account management	Included in price	Included in price	Included in price	Included in price	Included in price
Support	Included in price	Included in price	Included in price	Included in price	Included in price
Expenses					
<b>TOTAL</b>	<b>77,500</b>	<b>72,000</b>	<b>76,000</b>	<b>79,800</b>	<b>83,790</b>

### **Schedule 7**

#### **Change Control Process**

Any changes to this Contract, including to the Services, shall be recorded and agreed in the Change Control Notification form detailed below:

**CCN Number:**

<b>Title of Change</b>	
<b>Service Line</b>	
<b>Operations Lead</b>	
<b>HEE originator</b>	

**Change Control Notice (CCN to the following agreement:**

<b>Agreement name</b>		<b>Date of Agreement</b>
<b>Date Change Requested</b>	<b>Date CCN Raised</b>	<b>Expiry date of CCN</b>

**Contact Information for the proposed change**

<b>Originator</b>	<b>Other Party</b>
<b>Name:</b>	<b>Name:</b>
<b>Company:</b>	<b>Company:</b>
<b>Telephone:</b>	<b>Telephone:</b>
<b>Email:</b>	<b>Email:</b>

**Clauses and Schedules affected**

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**Associated Change Control Notices**

<b>CCN No.</b>	<b>Name of Agreement</b>	<b>Date of Agreement</b>

**Reason for change**

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**Description of Change**

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<b>Changes to contract charges and revised payment schedules</b>
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<b>Price to implement change</b>
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<b>Impact of change on other agreement provisions</b>
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<b>Timetable for implementation</b>
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<b>Acceptance</b>
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<b>Signed for and on behalf of:</b> <b>Health Education England</b>	<b>Signed:</b>  <b>Print Name:</b>  <b>Title:</b>  <b>Date:</b>
<b>Signed for and on behalf of:</b> <b>Bestoutcome Ltd</b>	<b>Signed:</b>  <b>Print name:</b>  <b>Title:</b>  <b>Date:</b>

## **Schedule 8**

### **Expert Determination**

#### **1 Dispute Process**

- 1.1 During any Dispute, including a Dispute as to the validity of the Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 1.2 In the case of a Dispute the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and shall follow the procedure set out in this Schedule 8.
- 1.3 In the event of a Dispute either Party may serve a Dispute Notice on the other Party to commence formal resolution of the Dispute. The Dispute Notice shall set out:
  - 1.3.1 the material particulars of the Dispute; and
  - 1.3.2 the reasons why the Party serving the Dispute Notice believes the Dispute has arisen.
- 1.4 Following the service of a Dispute Notice the Parties shall first seek to resolve the Dispute by convening a meeting between the Authority's Contract Manager and the Supplier's Contract Manager (together the "**Contract Managers**").
  - 1.4.1 The meeting of the Contract Managers must take place within five (5) Business Days of the date of the Dispute Notice (the "**Dispute Meeting**").
  - 1.4.2 The Contract Managers shall be given ten (10) Business Days following the date of the Dispute Meeting to resolve the Dispute.
  - 1.4.3 The Contract Managers can agree to further meetings at levels 2 and/or 3, as referred to at clause 5.1 of the Key Provisions in Schedule 1, in addition to the Dispute Meeting, but such meetings must be held within the ten (10) Business Day timetable set out in paragraph 1.4.2 of this Schedule 8.
  - 1.4.4 If at any point it becomes clear that the timetable set out cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the timetable. Any agreed extension to the timetable shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
- 1.5 If the procedure set out in paragraph 1.4 of this Schedule 8 has been exhausted and fails to resolve the Dispute either Party may request the Dispute be resolved by way of a binding expert determination (pursuant to paragraph 1.6 of this Schedule 8). For the avoidance of doubt, the Expert shall determine all matters (including, without limitation, matters of contractual construction and interpretation) in connection with any Dispute referred to binding expert determination pursuant to paragraph 1.6 of this Schedule 8.
- 1.6 Where the Dispute is referred to binding expert determination the following process will apply:

- 1.6.1 The Party wishing to refer the Dispute to expert determination shall give notice in writing to the other Party informing it of its wish to refer the Dispute to expert determination and giving brief details of its position in the Dispute.
- 1.6.2 The Parties shall attempt to agree upon a single expert (who must have no connection with the Dispute unless both Parties have consented in writing) (an “**Expert**”). For the avoidance of doubt, where the Dispute relates to contractual interpretation and construction, the Expert may be Queen’s Counsel. In the event that the Parties fail to agree upon an Expert within five (5) Business Days following the date of the notice referred to in paragraph 1.6.1 of this Schedule 8 (or if the person agreed upon is unable or unwilling to act), the Parties agree that the Expert will be nominated and confirmed to be appointed by the Centre for Effective Dispute Resolution.
- 1.6.3 The Expert must be willing and able to complete the expert determination process within thirty (30) Business Days of the Date of Final Representations (as defined in paragraph 1.6.5 of this Schedule 8).
- 1.6.4 The Expert shall act as an expert not as an arbitrator or legal advisor. There will be no formal hearing and the Expert shall regulate the procedure as he sees fit.
- 1.6.5 The Parties shall each have the right to make written representations to the Expert and will, with reasonable promptness, provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision. Such representations must be made within twenty eight (28) Business Days of the Expert being appointed, or fourteen (14) Business Days after the last documents requested by the Expert have been provided to the Expert, whichever is the later (“**Date of Final Representations**”). Any documents provided to the Expert and any correspondence to or from the Expert, including email exchanges, shall be copied to the other Party simultaneously.
- 1.6.6 The Expert shall have the power to open up, review and revise any certificate, opinion, requisition or notice and to determine all matters in Dispute (including his jurisdiction to determine matters that have been referred to him).
- 1.6.7 The Expert may take such advice and assistance from professional advisers or other third parties as he reasonably considers appropriate to enable him to reach a determination of the Dispute and may issue orders that one or both of the Parties are to pay such third party costs, stating the proportion. For the avoidance of doubt, where the Expert is not Queen’s Counsel, and the Expert requires advice or assistance on matters of contractual interpretation and construction, the expert may take such advice and assistance from a third party Queen’s Counsel of their choosing under this paragraph 1.6.7 of this Schedule 8. The Parties will pay any such third party costs incurred pursuant to this paragraph 1.6.7 of this Schedule 8 in such proportions as the Expert shall order. In the absence of such order such third party costs will be paid equally.
- 1.6.8 The Expert shall provide the Parties with a written determination of the Dispute (the “**Expert’s Decision**”) within thirty (30) Business

- 1.6.9 s Days of the Date of Final Representations, which shall, in the absence of fraud or manifest error, be final and binding on the Parties.
- 1.6.10 The Expert's Decision shall include reasons.
- 1.6.11 The Parties agree to implement the Expert's Decision within five (5) Business Days of the Expert's Decision being provided to them or as otherwise specified as part of the Expert's Decision.
- 1.6.12 The Parties agree that the Expert shall be entitled to proceed to give his binding determination should one or both Parties fail to act in accordance with the procedural timetable set out above.
- 1.6.13 The Parties will pay the Expert's costs in such proportions as the Expert shall determine. In the absence of such determination such costs will be shared equally.
- 1.6.14 The Parties agree to keep confidential all information arising out of or in connection with the expert determination, including details of the underlying Dispute, except where disclosure is required by Law.
- 1.7 Nothing in this Contract shall prevent:
  - 1.7.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
  - 1.7.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party (including Intellectual Property Rights) or which relates to the safety of patients and other service users or the security of Confidential Information, pending the resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 1.8 Subject to paragraph 1.7 of this Schedule 8 neither Party may commence legal proceedings in relation to a Dispute until the dispute resolution procedures set out in this Schedule 8 have been exhausted. For the avoidance of doubt, either Party may commence legal proceedings to enforce the Expert's Decision.
- 1.9 This Schedule 8 shall survive the expiry of or earlier termination of this Contract for any reason.