



**SERVICE CONDITIONS FOR THE PROVISION OF CLINICAL OR OTHER SERVICES IN THE
ABSENCE OF A SIGNED CONTRACT**

| | |
|------------------------|--------------|
| Valid From Date | October 2018 |
|------------------------|--------------|

RECITALS

Whereas:

- (A) The Customer (the organisation raising the Purchase Order) wishes to receive the Services specified in the Purchase Order from the Provider;
- (B) The Provider (East Suffolk and North Essex NHS Foundation Trust) will provide the Services to the Customer on the terms and conditions as set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. The Agreement will be interpreted in accordance with the definitions at Schedule 1.
- 1.2. In reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.3. Any reference to the Agreement or to any other document shall include any permitted variation, amendment or supplement to such document.
- 1.4. Headings included in the Agreement are for ease of reference only and shall not affect the interpretation or construction of the Agreement.
- 1.5. References to clauses, paragraphs, Parts, Appendix, Schedules and Annexures are, unless otherwise provided, references to the clauses, paragraphs, Parts, Appendix, Schedules and Annexures to the Agreement.
- 1.6. The entire Agreement comprises of:
 - 1.6.1. clauses of this Agreement;
 - 1.6.2. the Schedules;
 - 1.6.3. the Purchase Order; and
 - 1.6.4. any required Technical Agreement relating specifically to the Services, which in the event of any conflict shall take precedence in the order in which they appear above.

2. COMMENCEMENT AND DURATION

- 2.1. This Agreement shall commence on the Commencement Date and shall continue up to and including the Expiry Date.

3. THE SERVICES

- 3.1. The Services shall be carried out at the Agreed Premises at such times and dates as set out in the Purchase Order or as agreed between the Parties.
- 3.2. Subject to the terms of this Agreement, both Parties agree to meet their obligations under this Agreement in accordance with:
 - 3.2.1. the terms of this Agreement;
 - 3.2.2. all applicable Law;
 - 3.2.3. Good Clinical Practice; and
 - 3.2.4. Good Industry Practice.and with regard to:
 - 3.2.5. all applicable NHS Requirements;

- 3.2.6. all Care Quality Commission's (or successor body's) guidelines; and
- 3.2.7. any required Technical Agreement
- 3.3. The Provider shall use all reasonable endeavours to meet any performance dates specified in the Purchase Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4. STAFF

- 4.1. The Provider shall provide all Staff as are required to carry out the Services under this Agreement.
- 4.2. The Provider will use reasonable endeavours to ensure that all Staff receives such training and instructions as are appropriate and adequate for the performance of the Services and that such Services are carried out with due care and diligence.
- 4.3. The Provider shall ensure that all its Staff engaged in the provision of the Services:
 - 4.3.1. are properly managed to perform their required duties in accordance with the Specification and other provisions of this Agreement;
 - 4.3.2. have been vetted in accordance with the Care Quality Commission's (or successor body's) requirements, including enhanced disclosure and barring service checks;
 - 4.3.3. have been checked in accordance with the Safeguarding Vulnerable Groups Act 2006; and
 - 4.3.4. fulfil the requirements for registration to practice with the relevant UK registration body and are so registered. The Provider shall provide evidence of such registration at any time if requested by the Customer.
- 4.4. During the Agreement Term and for a period of one (1) year after expiry or termination of the Agreement, neither Party shall solicit any employee engaged in the provision of the Services, including in the case of the Provider's Staff, without the other Party's prior written consent.
- 4.5. Neither Party shall be considered to be in breach of their obligations in clause 4.4 where an individual becomes an employee of, or engaged by, a Party as a result of a response by that individual to an advertisement placed by or on behalf of the relevant Party for the recruitment of staff and where it is apparent from the wording of the advertisement, the manner of its publication or otherwise that the principal purpose of the advertisement was equally likely to attract applications from individuals who were not employees or staff of the relevant Party.

5. THE CUSTOMER'S OBLIGATIONS

- 5.1. The Customer shall:
 - 5.1.1. ensure that the Purchase Order is complete and accurate;
 - 5.1.2. co-operate with the Provider in all matters relating to the Services;
 - 5.1.3. pay the Service Fees (payable in accordance with the terms of this Agreement), and maintain any Required Insurances;
 - 5.1.4. at all times, retain responsibility for all clinical governance in connection with the Services;
 - 5.1.5. perform any requirements of any Technical Agreements required for the Services;
 - 5.1.6. provide the Provider, its employees, agents, consultants and sub-contractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Provider for the provision of the Services;
 - 5.1.7. provide the Provider with all such information, documentation, and material as the Provider may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 5.1.8. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 5.1.9. keep all materials, equipment, documents and other property of the Provider ("**Provider Materials**") at the Customer's premises in safe custody at its own risk, maintain the Provider Materials in good condition until returned to the Provider and not dispose of or use the Provider Material other than in accordance with the Provider's written instructions or authorisation.
- 5.2. If the Provider's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 5.2.1. without limiting or affecting any other right or remedy available to it, the Provider shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Provider's performance of any of its obligations;
 - 5.2.2. the Provider shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Provider's failure or delay to perform any of its obligations as set out in clause 5.2;
 - 5.2.3. the Customer shall reimburse the Provider on written demand for any costs or losses sustained or incurred by the Provider arising directly or indirectly from the Customer Default.

6. SERVICE FEE(S) AND PAYMENT

- 6.1. In consideration for the Provider's provision of the Services in accordance with this Agreement, the Customer shall pay the Service Fee(s) to the Provider.

- 6.2. The Customer shall pay to the Provider the Service Fee on the Due Date following the submission of a valid invoice by the Provider.
- 6.3. The Service Fee shall be exclusive of VAT which shall be payable (if applicable), by the Customer in addition to such Service Fee upon receipt of a valid tax invoice at the prevailing rate in force from time to time.
- 6.4. Where there is a failure to provide the Services the Customer may dispute the Service Fee, in the proportion of the Service Fee that represents the failure to provide. Where this is the case and all or a proportion of the Service Fee is disputed, the Customer will notify the Provider immediately. The Parties shall resolve the dispute in accordance with the dispute resolution procedure.
- 6.5. The Customer will not be entitled to offset any other Losses or payments arising outside of this Agreement by withholding or disputing the Service Fee.
- 6.6. If payment is not made by the Due Date in addition to its rights under the Late Payment of Commercial Debts (Interest) Act 1998 the Provider may cancel and or suspend the Services unless the Customer shall upon written notice immediately pay for any Services provided or pay in advance for any Services Ordered but not provided, all at the Provider's option.
- 6.7. An Annual Service Fee Review will take place within 30 Working Days after the end of each financial year that the Agreement is in place. Following the Annual Service Fee Review, the Provider shall, within 5 Working Days, notify the Customer in writing of any changes to the Service Fee. The changes to the Service Fee will be applicable from the commencement of the following financial year, regardless as to whether a formal change control agreement, or otherwise executed or sealed document has been produced to support that amendment to the Service Fee.

7. REMEDIES FOR POOR PERFORMANCE

- 7.1. If the Provider fails to supply the Services in accordance with this Agreement (and in the Customer's reasonable opinion such failure is capable of remedy), the Customer shall notify the Provider of such failure in writing requesting that the Provider and Customer meet to jointly agree an action plan to resolve that failure to perform within fourteen (10) Working Days detailing the agreed proposals to rectify the failures by each Party (the "**Action Plan**").
- 7.2. If the Action Plan fails to rectify the failures in the notice, the Parties shall agree any amendments to the Action Plan required to adequately rectify the failures within the following ten (10) Working Days.
- 7.3. The Customer shall monitor the performance and implementation of the Action Plan.
- 7.4. If the Action Plan fails to resolve the failure to the satisfaction of either Party, that Party shall be entitled to set out in writing any unacceptable failures to the other in writing, and commence the dispute resolution process set out in this Agreement.
- 7.5. If the Parties agree that the failure to supply the Services is not capable of remedy either Party may terminate this Agreement in accordance with the provisions of Clause 10 (Termination).

8. DISPUTE RESOLUTION

- 8.1. Where a Party agrees to resolve any dispute which arises out of this Agreement ("**Dispute**") by negotiation, then each Party is to be represented by a person who
 - 8.1.1. is a director or person of equivalent status with a Party; and
 - 8.1.2. has had no direct day to day involvement in the relevant matter to settle the Dispute.
- 8.2. If the Parties are unable to settle the Dispute by negotiation under Clause 8.1 within ten (10) Working Days of commencement of negotiations, the Parties will attempt to settle the Dispute in accordance with the Model Mediation Procedure of the Centre for Effective Dispute Resolution.
- 8.3. If after mediation the Dispute remains unresolved between the Parties the Dispute shall be referred to and finally resolved by arbitration under the Rules of the Chartered Institute of Arbitrators.
- 8.4. The Parties shall notwithstanding that any Dispute is subject to the dispute resolution procedure set out in this Clause 8, continue to carry out their obligations in accordance with this Agreement.

9. VARIATION

- 9.1. All changes to the Agreement shall be publicised on the Provider's website and notified to the Customer with 30 days' notice as far as reasonably practicable.

10. TERMINATION

- 10.1. Either Party shall be entitled to terminate this Agreement at any time during the Agreement Term by giving the other Party not less than three (3) months' written notice of termination.
- 10.2. Without affecting any other rights or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
 - 10.2.1. the other Party commits a material breach of any term of the Agreement and, if such breach is remediable, fails to remedy that breach within 30 days of that Party being notified in writing to do so;
 - 10.2.2. the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the

- court, unless for the purpose of a solvent restructure), having a receiver appointed to any of its assets or ceasing to carry on business;
- 10.2.3. the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.2.4. the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 10.3. Without affecting any other rights or remedy available to it, the Customer may by notice in writing with immediate effect (or at such later date as it may specify) terminate the Agreement in the event that the Provider is served with a notice revoking the Provider's licences, permissions or authorisation to undertake the Services.
- 10.4. On expiry or earlier termination of the Agreement:
- 10.4.1. The Customer shall immediately pay to the Provider all of the Provider's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Provider shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 10.4.2. The Customer shall return all of the Provider Materials which have not been fully paid for. If the Customer fails to do so, then the Provider may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement.
- 10.5. The termination of this Agreement for any reason shall be without prejudice to any rights or obligations which shall have accrued or become due between the Parties prior to the date of expiry or termination.
- 10.6. The termination of this Agreement for any reason shall not affect the coming into force or the continuation in force of any provision of this Agreement, which is expressly or by implication intended to come into or continue in force on or after such termination.

11. CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY AND DATA PROCESSING

Confidential Information

- 11.1. The Parties acknowledge that the information shared between them may be of a confidential nature.
- 11.2. The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement and the Services and shall not disclose to any person any Confidential Information, except as permitted by clause 11.3.
- 11.3. Each Party may disclose the other Party's Confidential Information:
- 11.3.1. to its officers, employees, sub-contractors and agents who need to know such information for the purposes of carrying out the Party's obligations under the Agreement. Each Party shall ensure that its officers, employees, sub-contractors and agents to whom it discloses the other Party's Confidential Information comply with this clause 11; and
- 11.3.2. as may be required by law, a competent jurisdiction or any governmental or regulatory authority; and
- 11.3.3. as may be permitted by law to a Party's insurers, insurance advisers or professional advisers.
- 11.4. The Parties shall only use the Confidential Information for the purpose of performing their obligations under this Agreement.

Data Processing

- 11.5. Both Parties shall comply with all applicable requirements of the Data Protection Legislation.
- 11.6. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Provider is the processor.
- 11.7. Without prejudice to the generality of clause 11.5, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Provider for the duration and purposes of the Agreement.
- 11.8. Without prejudice to the generality of clause 11.5, the Provider shall, in relation to any personal data processed in connection with the performance by the Provider of its obligations under the Agreement:
- 11.8.1. process that personal data only on the documented written instructions of the Customer unless the Provider is required by applicable Laws to otherwise process that personal data. Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those applicable Laws prohibit the Provider from so notifying the Customer;
- 11.8.2. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner

- after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;
- 11.8.3. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - 11.8.4. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled;
 - 11.8.4.1. the Customer or the Provider has provided appropriate safeguards in relation to the transfer;
 - 11.8.4.2. the data subject has enforceable rights and effective legal remedies;
 - 11.8.4.3. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - 11.8.4.4. the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data.
 - 11.8.5. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect of security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 11.8.6. notify the Customer without undue delay on becoming aware of a personal data breach;
 - 11.8.7. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by applicable Law to store the personal data; and
 - 11.8.8. maintain complete and accurate records and information to demonstrate its compliance with this Clause 11.8 and immediately inform the Customer if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation.

Intellectual Property Rights

- 11.9. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in material provided by the Customer) shall be owned by the Provider.
- 11.10. The Customer grants the Provider a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Provider for the Agreement Term for the purpose of providing the Services to the Customer.

Freedom of Information

- 11.11. The Customer acknowledges the Provider's duties under the Freedom of Information Act 2000 and shall give all reasonable assistance to the Provider where appropriate or necessary to comply with such duties.

12. POSTPONEMENT AND CANCELLATION

- 12.1. If at any time during the Agreement Term either Party becomes aware of any, or any proposed, act or omission which hinders or prevents its performance of this Agreement it shall notify the other Party of the same without delay.
- 12.2. Where the Provider is unable to provide the Service on any date under the Agreement because of the postponement or cancellation or default or non-payment by the Customer, without prejudice to any other remedy which the Provider may have, the Provider shall be entitled to invoice the Customer for the reasonable and properly incurred costs, charges and expenses incurred by it as a result of such postponement, cancellation, non-payment or default.

13. FORCE MAJEURE

- 13.1. Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform any of its obligations under this Agreement if such delay or failure results from an event of Force Majeure.
- 13.2. A Party's obligation under this Agreement shall be suspended during an event of Force Majeure and shall continue until such time after this period it is reasonably practicable for the Services to resume. It is at this point that the affected Party must inform the other Party in writing of the re-commencement of provision of the Services.
- 13.3. If the event of Force Majeure continues for a period of sixty (60) days either Party shall have the right to terminate the Agreement upon giving fourteen (14) days' notice of termination to the other Party.

14. BRIBERY CORRUPT GIFTS AND FRAUD

- 14.1. For the purpose of this section Prohibited Acts shall be construed as:
 - 14.1.1. to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to:
 - 14.1.1.1. induce that person to perform improperly a relevant function or activity; or
 - 14.1.1.2. reward that person for improper performance of a relevant function or activity;
 - 14.1.2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
 - 14.1.3. committing any offence:
 - 14.1.3.1. under the Bribery Act 2010;
 - 14.1.3.2. under legislation creating offences concerning fraudulent acts;

- 14.1.3.3. at common law concerning fraudulent acts relating to this Agreement or any other agreement with the Customer;
- 14.1.4. defrauding, attempting to defraud or conspiring to defraud the Customer or the Provider (as relevant).
- 14.2. The Parties shall not, and shall procure that their personnel shall not, in connection with this Agreement commit a Prohibited Act.
- 14.3. Each Party shall, if requested, provide the other with any reasonable assistance, at the Party's reasonable cost, to enable the other to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.
- 14.4. The Provider shall have an anti-bribery policy to prevent any personnel or any sub-contractor from committing a Prohibited Act and shall enforce it where appropriate.

15. CHANGE IN LAW

15.1. The Provider shall take all steps reasonably necessary to ensure that the Services are performed in accordance with the terms of this Agreement following any Change in Law.

General Change in Law:

15.2. The Provider shall comply with any General Change in Law at the Provider's sole risk and cost.

Qualifying Change in Law

15.3. If a Qualifying Change in Law occurs or is due to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

15.3.1. any necessary change in the Services and any consequent change in the Service Fee;

15.3.2. whether any variation is required to the terms of this Agreement; and

15.3.3. whether relief from compliance with the terms of this Agreement is required, including the obligation on the Provider to achieve the Commencement Date, milestones or to meet any Performance Measures.

15.4. As soon as practicable after any notification in accordance with Clause 15.3 (*Qualifying Change in Law*) the Parties shall discuss and agree the matters referred to in Clause 15.3 (*Qualifying Change in Law*).

15.5. Any increase in the Service Fee, relief from the Provider's obligations agreed by the Parties or any variation to the Agreement required pursuant to this Clause 15 (*Qualifying Change in Law*) shall be considered and implemented, in accordance with these terms. If the Parties are unable to agree changes to the Service Fees or amendments to the Agreement, following a Qualifying Change in Law, the issue will be dealt with in accordance with the dispute resolution procedure.

16. LIABILITY AND INSURANCE

16.1. Each Party shall for the Agreement Term procure and maintain any Required Insurances.

16.2. Each Party shall provide to the other Party evidence on request of any Required Insurances.

16.3. Without affecting its liability for breach of any of its obligations under this Agreement, the Customer will be liable to the Provider for, and must indemnify and keep the Provider indemnified against:

16.3.1. any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services but excluding all loss of profits, loss of sale, loss of anticipated savings etc.) whatsoever in respect of:

16.3.2. any loss of or damage to property (whether real or personal); and

16.3.3. any injury to any person, including injury resulting in death; and

16.3.4. any Losses of the Provider,

that result from or arise out of the Customer's negligence or breach of contract in connection with the performance of this Agreement except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Provider.

16.4. Without affecting its liability for breach of any of its obligations under this Agreement, the Provider will be liable to the Customer for, and must indemnify and keep the Customer indemnified against:

16.4.1. any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services, but excluding all loss of profits, loss of sale, loss of anticipated savings etc.) whatsoever in respect of:

16.4.2. any loss of or damage to property (whether real or personal); and

16.4.3. any injury to any person, including injury resulting in death; and

16.4.4. any Losses of the Customer,

that result from or arise out of the Provider's or any Sub-Contractor's negligence or breach of contract in connection with the performance of this Agreement or the provision of the Services except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Customer, its employees or agents.

16.5. Nothing in this Agreement limits any liability which cannot legally be limited, including liability for

16.5.1. death or personal injury caused by negligence; and

16.5.2. fraud or fraudulent misrepresentation.

16.6. The Provider's total liability to the Customer (including liability in contract, tort, and breach of statutory duty or otherwise arising in connection with the Agreement) shall not exceed the total Service Fees payable by the Customer under this Agreement.

16.7. This clause shall survive termination of the Agreement.

17. GENERAL

17.1. The Provider may at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.

17.2. The Customer shall not assign, novate or transfer to any other person any of its rights or obligations under the Agreement.

17.3. The rights and remedies of either Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence or forbearance or extension or any time by such Party to the other not by failure of, or delay by the said Party in ascertaining or exercising of any such rights or remedies or in insisting upon strict performance of any provision of this Agreement. The waiver by either Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provisions shall not be deemed to be a waiver or any subsequent breach of that or any other provision. No waiver of any provision of this Agreement shall be effective, unless it is agreed by both Parties in writing.

17.4. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

17.5. Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties.

18. LAW AND JURISDICTION

18.1. The validity, construction and performance of this Agreement shall be governed by English Law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

19. THIRD PARTIES

19.1. For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement, this Agreement is not intended to, and does not; give any person who is not party to it any right to enforce any of its provisions.

20. Notices

20.1. Any notice given to a Party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first class post or other next Working Day delivery services at its principal place of business. Any notices shall be deemed to have been received:

20.1.1. If delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

20.1.2. If sent by pre-paid first call post, the next Working Day after posting.

20.2. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

Schedule 1 – Definitions

In this Agreement and associated Purchase Order and Technical Agreements unless the context otherwise requires the following terms shall have the meanings given below:

| | |
|--------------------------------|--|
| “Action Plan” | has the meaning ascribed to it in clause 7. |
| “Agreement” | means this agreement and schedules attached to it, including any agreed amendments or additions. |
| “Agreement Term” | means the period from and including the Commencement Date to the Expiry Date or, if earlier, the Termination Date. |
| “Agreed Premises” | means the premises where specified in a Purchase Order. |
| “Annual Service Fee Review” | means the review process that the Provider will undertake in each financial year to identify any required adjustments to the Service Fee(s). This may include inflation, prices of products or services relating to the Services, increases in Staff costs, or any other financial review in order to confirm any proposed changes to the Service Fee(s). |
| “Change in Law” | means the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgment of a relevant court of law which changes binding precedent in England after the Commencement Date of this Agreement. |
| “Claims” | means all demands claims, proceedings, penalties fines and liability (whether criminal or civil, in contract, tort or otherwise). |
| “Commencement Date” | means the date the Provider first provides the Services, or where there is a Purchase Order, the date the Purchase Order has been accepted. |
| “Confidential Information” | means information that ought to be considered as confidential (however it is conveyed or on whatever format it is stored) and may include information which disclosure would, or would likely to, prejudice the commercial interest of any person, trade secrets, intellectual property and know how or either Party and all Personal Data and sensitive data within the meaning of the Data Protection Legislation. |
| “Customer Default” | has the meaning ascribed to it in clause 5.2. |
| “Data Protection Legislation” | means shall mean, for the periods in which they are in force in the United Kingdom, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable Laws and regulations and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time. |
| “Due Date” | means the date falling thirty (30) days after the date of an invoice. |
| “Expiry Date” | means the date specified on the Purchase Order for the Services provided under this agreement. |
| “Force Majeure” | means any act of God, fire, act of government or state, war, civil unrest, insurrection, embargo, prevention from or hindrance in obtaining raw materials, energy or other supplies, labour disputes of third parties of whatever nature and any other reason beyond its control. |
| “General Change in Law” | means a Change in Law which is not directly specific to the Services being provided; |
| “Good Clinical Practice” | means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced clinician engaged in the provision of clinical services. |
| “Good Industry Practice” | means the exercise of the degree of skill, diligence 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 the Agreement and which are in accordance with any codes of practice published by relevant trade associations. |
| “Intellectual Property Rights” | means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in design, database rights, rights to use, and protect the confidentiality of, confidential information, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and |

| | |
|----------------------------|---|
| “Law” | rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. means: (a) any applicable statute or proclamation or any delegated or subordinate legislation; (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (c) any applicable guidance, direction or determination with which the Parties are bound to comply; (d) any NHS commissioning rules relevant to the provision of the Services; and (d) any applicable judgement of a relevant court of law which is a binding precedent in England. |
| “Losses” | means all direct losses including without limitation, financial losses, damages, liabilities, costs and other expenses (including legal and other professional fees and expenses) of any nature whatsoever whether arising under statute, contract or at common law, or in connection with judgment, proceeding, internal costs or demands. |
| “NHS Requirements” | means any relevant Department of Health guidance, information, direction, circulars and specifications. |
| “Party/Parties” | means a Party to this Agreement, as set out at the beginning of the document; |
| “Performance Standards” | means the service standards set out in the Purchase Order. |
| “Permitted Third Party” | means anyone of the Commission for Quality of Care, the Independent Regulator of the NHS Foundation Trusts, the National Audit Office or any other body that is delegated or empowered to carry out the functions of those organisations. |
| “Personal Data” | has the meaning as set out in the Data Protection Legislation which forms part of the Data. |
| “Provider Materials” | has the meaning ascribed to it in clause 5.1.9. |
| “Purchase Order” | means the Purchase order raised by the Customer, which acts as an offer to enter into the contract with the Provider, and demonstrates their intention to be bound by the terms where the offer is accepted by the Provider. |
| “Qualifying Change in Law” | means any Change in Law which specifically relates to the Services being provided under this Agreement or impacts the provision of a service being the same as or similar to the Services. |
| “Required Insurances” | means: Employers Liability Insurance; and Public Liability Insurance; and Professional Indemnity; and Any other insurances required by law and/or specified in the Specification as being required. Membership of the NHS Resolution schemes for Trusts will be considered appropriate cover for the Provider. |
| “Responsible Officer” | means the person with operational responsibility to ensure that the Services are delivered in line with the terms of the Agreement. |
| “Services” | means the Services set out in the Purchase Order to be provided by the Provider; |
| “Service Fee(s)” | means the fee(s) payable to the Provider by the Customer under this Agreement for the full and proper performance of the Services. |
| “Specification” | means the specification of services where one is submitted with the Purchase Order. |
| “Staff” | means all staff (whether clinical or non-clinical) employed or engaged by the Provider (including consultants and agency personnel) in any activity related to or connected with the provision of the Services. |
| “Technical Agreement | sometimes also called a quality agreement or quality technical agreement is a contractual agreement which states the technical, manufacturing, regulatory and quality control provisions as well as any MHRA or other regulatory provisions required. They will set out responsibilities of both parties and be considered a part of the contract where relevant |
| “Working Hours” | means the hours between 9 am and 5 pm Monday to Friday excluding Bank Holidays. |