



## **Terms and Conditions**

# **THE ROTHERHAM NHS FOUNDATION TRUST FOR THE PROVISION OF EPORTFOLIO CPD**

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## 1 NOTICES AND KEY MANAGERS

Any notices, communication and information required to be given by either party under this contract should be in writing to the key managers at the addresses below.

Any notices required to be given under this Agreement must be in writing and may be served by personal delivery, post (special or recorded delivery or first class post), electronic mail or facsimile, sending the same to:

if to the Commissioner, to the Commissioning Representative;

if to the Provider, to the Provider Representative;

or at such other address as each Party may from time to time give to the other for the purpose of service of notices under this Agreement.

If the notice being given is a Contract Query, Performance Notice, Warning Notice, Incident Notice or Service Variation Notice, it must be in the form as agreed between the parties and clearly state whether it is a Contract Query, Performance Notice, Warning Notice, Service Variation Notice or Incident Notice. The Notice or Contract Query must be sent by electronic mail to the relevant e-mail address notified by each party to the other for this purpose. The subject line of the e-mail must state whether it is a Contract Query, Performance Notice, Warning Notice, Service Variation Notice or Incident Notice.

Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Operational Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

within two 2 hours after sending, if sent on an Operational Day between the hours of 9am and 4pm; or

by 11am on the next following Operational Day, if sent after 4pm on an Operational Day but before 9am on the next following Operational Day

To prove service of a notice, it shall be sufficient to show in the case of a notice delivered by hand that the same was duly addressed and delivered by hand and in the case of a notice served by post that the same was duly addressed prepaid and posted special or recorded delivery or by first class post. In the case of a notice given by facsimile transmission, it shall be sufficient to show that it was despatched in a legible and complete form to the correct telephone number without any error message on the confirmation copy of the transmission.

Notices sent by electronic mail shall be deemed to be served at the time of sending provided that a confirming copy is sent by first class post to the other party within 24 hours after sending and that no notification informing the sender that the message has not been delivered has been received by the sender.

The provisions of this clause shall apply to the negotiation and agreement of all Variations except:

Variations agreed during Review

Variations agreed, decided or awarded pursuant to dispute resolution and

All Variations shall be recorded in a Service Variation Schedule to this Agreement.

Any notices, communication and information required to be given by either party under this contract should be in writing to the key managers at the addresses below.

(the Authority)	The Rotherham NHS Foundation Trust (the Supplier)
CPD User	Moorgate Road Rotherham South Yorkshire S60 2UD

## 2 TERM

The duration of the contract is **1 Year**. It is intended to be a rolling contract although it will be reviewed on an annual basis in line with the agreed service specification or adjusted accordingly to reflect new pay and price levels and any other changes to the services set out herein.

## 3 WHEREAS:-

- a. A reference to the singular shall include the plural and vice versa and a reference to a gender shall include any gender.
- b. The headings in this Agreement shall not affect its interpretation.
- c. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- d. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
- e. Any references to "writing" or "written" include references to any communication effected by post, facsimile and e-mail or any comparable means.
- f. In the event and to the extent only of any conflict between the Clauses, the Recitals and the Schedules, the Clauses shall prevail over the Schedules, which shall prevail over the Recitals.
- g. References to Clauses, Sub-Clauses and Schedules are to Clauses, Sub-Clauses and Schedules of this Agreement and references to Paragraphs and Sub-Paragraphs are references to Paragraphs and Sub-paragraphs of the Schedules to this Agreement unless otherwise stated.

## 4 AIMS OF SERVICE

To provide reliable, efficient and cost effective ePortfolio CPD tool as detailed in Schedule 1.

## 5 SERVICES TO BE PROVIDED

Refer to Schedule 1 - Service Specification

## 7 QUALITY STANDARDS

The Supplier shall ensure that the Service provided meets all relevant statutory regulations.

Any complaints received regarding the Services provided shall be referred to the Supplier's relevant Key Service Manager for investigation and prompt reply.

## 9 REVIEW

### REVIEW

The Supplier shall meet (in person or by telephone) the Authority at regular intervals or by joint agreement to:

review the Schedules;

review the performance of the Parties with regard to their respective duties and obligations under this Agreement including any Performance Notices and Warning Notices issued;

review any suggested improvements, variations, extensions or reductions to the Services;

review the text of this agreement and agree any appropriate amendments

such other matters as the Parties consider necessary for example, quality of service.

Each Review shall be completed by the Authorities Representative and the Suppliers Representative or their deputy with minutes recorded containing a summary of all the matters raised during Review;

on which agreement has been reached or partly reached, with statements of the resulting Variations;

on which dispute has arisen or partly arisen, with a summary of the issues, prepared by the Parties,

On completion of a Review, notwithstanding that there are any matters stated in the record to have been or are intended to be disputed, the provisions of this Agreement and the Schedules as amended by all Variations shall come into, or continue in force. Matters in dispute shall be subject to, and come into force on the terms finally agreed.

### RESOLUTION OF DISPUTES

If a dispute arises between the Provider and the Trust in relation to any matter which cannot be resolved such dispute may be referred to the parties' Key Managers.

If the dispute cannot be resolved within 14 days each of the parties shall arrange for a more senior representative than those referred to above to meet solely in order to resolve the matter in dispute, i.e. the Trust's Director and the Trust's Head of Service. Such meeting(s) shall be minuted and shall be chaired by the Trust (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.

## 10 INDEMNITY

Each Party accepts unlimited liability to the other for:

- death or personal injury caused by the negligence of that Party; and
- fraud committed by or on behalf of that Party.

Save as provided in the above paragraph, the Supplier shall not be liable to the Authority for (a) any indirect or consequential loss or (b) any loss of use or loss of profits, business, contracts, revenues or anticipated savings whether arising from tort (including, without limitation, negligence or breach of statutory duty), breach of contract or otherwise.

Save as provided in the above paragraph, the Suppliers liability whether in contract, tort (including, without limitation, negligence or breach of statutory duty) or howsoever arising shall not exceed the contract price paid to the Supplier in the 12 months previous to the date of the event (or first series of

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related events giving rise to such liability) first arose.

The Supplier and the Authority shall at all times take all reasonable steps to minimise and mitigate any loss for which a Party is entitled to bring a claim against the other Party pursuant to this Agreement.

## **11 CONFIDENTIALITY**

Each of the parties undertakes to keep secret and strictly confidential and shall not use, copy or disclose Confidential Information to any third party, without the other party's prior written consent provided that the provisions of this paragraph shall not apply to any Confidential Information which:

- is in or enters the public domain other than by breach of the Contract; or
- is obtained from a third party who is lawfully authorised to disclose such information; or
- is authorised for release by the prior written consent of the disclosing party.

Nothing in this paragraph shall prevent the Supplier 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.

In this paragraph, Confidential Information shall mean any and all information, data and material of any nature belonging to the parties which either party may receive or obtain in connection with this Contract which is Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998), which relates to any patient of the Trust or his or her treatment or medical history, or other information, the release of which is likely to prejudice the commercial interests of the either party, or which is a trade secret, including Know How.

This paragraph shall survive expiry or earlier termination of this Contract and shall remain binding for a period of 6 (six) years following the expiry or termination of this Contract.

## **12 FREEDOM OF INFORMATION ACT**

Each party acknowledges that they are or may be subject to the Freedom of Information Act 2000 and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 (the EIRs) as may be amended, updated or replaced from time to time ("FOIA") and both parties shall co-operate and aid one another so as to enable them to meet their obligations under the FOIA.

Where a party ("the Disclosing party") receives a written request for information which is covered by the FOIA and which relates to the Other party's Confidential Information ("the Requested Information") the Disclosing party shall notify the Other party of the receipt of such request and of the nature and extent of the information covered by the request. The Disclosing party shall reasonably consider any representations and recommendations made by the Other party. However, the parties acknowledge that in all cases it is for the Disclosing party (having full regard to any guidance or codes of practice issued by the Information Trust or the Department for Constitutional Affairs) to determine whether it is obliged to disclose the Requested Information under the FOIA including where the public interest lies in relation to disclosure.

## **13 DATA PROTECTION**

Each party agrees that in providing the other with information under the terms of this Contract it is not and will not be, in breach of the Data Protection Act 1998 and all subordinate legislation relating thereto.

## **14 INFORMATION GOVERNANCE**

The Parties acknowledge their respective obligations arising under FOIA, DPA and HRA, and under the common law duty of confidentiality, and must assist each other as necessary to enable each other to comply with these obligations.

The Authority acknowledges that the Supplier is subject to the requirements of the FOIA. The Authority must assist and co-operate with the Supplier to enable it to comply with its disclosure obligations under the FOIA.

## **16 FORCE MAJEURE**

Neither party shall be in breach of the agreement if there is any total or partial failure of performance by it of its duties and obligations under the agreement occasioned by an event of force majeure including by way of illustration and not exclusively; any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from hindrance in obtaining raw materials, energy or other supplies, labour disputes of third parties of whatever nature and any other reason beyond its control.

## **20 FINANCE/PAYMENT**

The cost of one license for ePortfolio CPD is **£99 per annum** paid upfront and in full to grant 12 months access to the software system.

The contract value will be determined each year by the Supplier and the Authority for the subsequent contract year and will be based on any changes to the services and the level of inflation to be retained within the Contract value.

Indicative levels of activity and trigger points for variation in required activity, within this Contract are to be negotiated and agreed in year in order to determine service levels and cost. All such adjustments will be reflected via a Contract Variation.

Any significant adjustments to be made to the financial value in year will be summarised and agreed by means of a Contract Variation.

Payment of any invoice shall be made within 30 days from the date of such invoice, unless the amount invoiced is disputed. The Supplier will submit the invoice to the Authority together with the following minimum data sets at monthly intervals, following the month end to which the invoice relates:

invoice number; service details as per schedule 1, invoice total, due date;

The Authority shall make Payment by BACS (Bank Automated Clearing System)

If the Authority acting in good faith, disputes all or part of payments, the undisputed amount of the payment shall be paid by the Authority. The Parties to the dispute shall use all reasonable endeavours to resolve the dispute in question within 30 operational days of the dispute arising. Following resolution of the dispute, any amount agreed or determined to have been payable shall be paid forthwith by the Authority to the Supplier.

## **22 INTELLECTUAL PROPERTY**

The parties agree that each party shall be subject to any written agreement to the contrary retain all and any intellectual property belonging to it and not developed in relation to the services and brought to the parties' joint working in accordance with this agreement.

Copyright and all other Intellectual Property Rights in the information and data templates and any formats or tables or other works arising from the performance of Services (the Results) shall belong to the Supplier.

## **23 TERMINATION**

Subject to the following Clauses, there shall be no termination of this Agreement during the first 6 months of the Contract Term.

The Authority may terminate this Agreement voluntarily as to the whole (but not part) of the Services appropriate to the Commissioner by giving not less than **3 months** written notice to the Supplier.

The Supplier may voluntarily terminate this Agreement as to the whole (but not part) of the Services by giving not less than **3 months** written notice to the Authority.

The Supplier shall be entitled to terminate this Agreement as to the whole (but not part) of the Services set out in its appropriate Schedule by written notice to the Authority, if the Authority shall fail to make any payment, or payments in the aggregate, due to them under this Agreement and not in dispute, and such failure is not remedied within 30 (thirty) days of receipt of written notice from the Supplier requiring payment to be made.

The Supplier or the Authority shall be entitled to terminate this Agreement in its entirety forthwith by written notice to the other, if an Event of Force Majeure persists for more than 30 (thirty) working days without the Parties agreeing alternatives terms.

Without prejudice to any other right or remedy the Supplier may by written notice to the Authority having immediate effect:

if the Authority fails to make a payment, without terminating the whole of this Agreement, terminate the Agreement in respect of part only of the Services set out in its appropriate part of Schedule 1 thereafter provide or procure the provision of such part of the Services itself;

## **REMEDIES**

Save as may be expressly set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity, by statute or otherwise.

Neither the expiration nor the termination of this Agreement shall prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Supplier or to the Authority.

## **PROVISIONS SURVIVING TERMINATION**

Any rights, duties or obligations of any of the Parties which are expressed to survive, or which otherwise by necessary implication survive the expiry or termination for any reason of this Agreement, together with all indemnities, shall continue after such expiry or termination, subject to such limitations of time as are expressed in this Agreement.

## **24 GENERAL PROVISIONS**

Nothing in this Contract shall be construed as establishing or implying a partnership or joint venture between the parties or shall be deemed to constitute either party as the agent of the other or allow either party to hold itself out as acting on behalf of the other.

This Contract supersedes all previous understandings and negotiations in respect of the parties' obligations as provided in this Contract. The parties acknowledge that in entering into the Contract neither of the parties has relied on or shall have any remedy for any representation or statement which is not expressly included in this Contract.

All representations (save in respect of fraudulent misrepresentation), warranties, conditions and other terms whether implied by statute or otherwise which are not expressly included in this Contract and which might otherwise relate to this Contract are hereby excluded.

No variation to this Contract, including any variation to the volume or manner in which the services are provided shall be effective unless a Contract Variation is completed and signed by both parties.

The failure by any 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 the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

If any provision of this Contract is agreed or held to be invalid, unenforceable or void, such provision shall not have the effect of invalidating or rendering void the remainder of this Contract and the parties agree that they shall immediately commence in good faith negotiations to vary the terms of this Contract in order to remedy such invalidity, unenforceability or illegality.

Neither party shall assign its rights under this Contract or any part thereof without the prior written consent of the other party save that either party may assign such rights and obligations to any successor organisation which takes over some or all of the party's functions as part of an internal reorganisation of the NHS.

## **25 THIRD PARTY RIGHTS**

A person who is not a party to this Contract shall have no right pursuant to the Contracts (Rights of Third parties) Act 1999 to enforce any term of this Contract.

## **26 WAIVER**

The rights and remedies of the Parties in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by any Party to the other or others nor by failure of, or delay by any 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 any Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that other provision affecting any Party or Parties.

No waiver of any provision of this Agreement shall be effective unless it is agreed.

## **27 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matters of this Agreement.

Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty.

Nothing in this Clause shall exclude any liability for fraud or fraudulent misrepresentation.

## **28 SEVERABILITY**

If at any time any part of this Agreement (including any one or more of the Clauses of this Agreement, sub-Clause or paragraph part of one or more of these Clauses) is held to be or becomes void or otherwise unenforceable for any reason under applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

## **29 ASSIGNMENT AND SUB CONTRACTING**

Save as may be expressly permitted by the terms of this Agreement (including the Supplier's right to provide the Services using Consultants and clinical and non-clinical staff engaged by the Supplier (including agency nurses) neither Party shall assign, delegate, sub-contract, transfer, charge or otherwise dispose of all of its rights or obligations under this Agreement without the prior written consent of the other party.



The Supplier is permitted to provide the Services using, or using the assistance of any of its Sub-contractors being the bodies or individuals from time to time specified.

This Agreement shall be binding on and shall ensure to the benefit of the Supplier and the Authority and their respective successors and permitted transferees and assigns.

### **30 COSTS AND EXPENSES**

Every Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

### **31. LAW**

The parties submit to the exclusive jurisdiction of the English courts and agrees that this Contract is to be governed and construed according to English law.

## THE SERVICE

<b>Service</b>	<b>ePortfolio CPD</b>
<b>Trust Lead</b>	<b>Debbie Harrison</b>
<b>Period</b>	<b>One Year</b>
<b>Date of Review</b>	<b>1<sup>st</sup> June 2017</b>

## 1. Purpose

### 1.1 Aims and objectives of the service

The CPD E-portfolio system is designed to be used by non-training grade medical staff and Advance Clinical Practitioners to allow them to capture and evidence all of their work based and classroom based learning. The system has been developed by NHS Education Scotland and is based on the current foundation E-portfolio. It has been developed specifically for NHS staff.

## 2. Service Scope

The following Services are covered by this Agreement;

- Continued access to the system whilst being a fully paid subscriber
- 100MB of space per user to use for uploading documentation and information.
- Set up of users and provision of training materials
- Remote support accessed via email
- Planned or emergency onsite assistance (at additional cost)

## 3. Service Delivery

### 3.1 Use of the System

System is web based and can be accessed online from any suitably connected location.

### 3.2 System uptime

24 hours a day, 365 days a year. Users will be given 48 hours' notice of any planned downtime.

### 3.3 Adding a user

Users will be added upon receipt of a completed application form and confirmed payment method within two working days.

### 3.4 Archiving a user

Users will remain on the system and will be renewed on a rolling contract unless notice is received to archive the user. Once a user is archived, they will have read only access to the ePortfolio CPD. The ePortfolio will be downloadable as a PDF.

### 3.5 System requirements

ePortfolio CPD supports use <https://www.nhseportfolios.org> in the following browsers:

- Google Chrome - <http://www.google.com/chrome>
- Mozilla Firefox - <https://www.firefox.com>

A screen resolution of at least 1280x1024 and a reliable Internet connection with at least 0.5Mbps download speed is recommended.

As with the majority of web based applications, both JavaScript and cookies must be enabled in the browser.

To identify what browser and version you are currently using, visit the following site:

<http://whatbrowser.org>

### **3.6 System support**

*For support issues, [CPDEPortfolio@rothgen.nhs.uk](mailto:CPDEPortfolio@rothgen.nhs.uk) will be monitored Monday to Friday excluding bank holidays, 9am to 4pm.*

*Technical support may be differed to NES.*

### **3.7 Training**

*User guides are available on the E-portfolio and access is provided as part of the use of the system.*

*Additional training sessions over the phone can be arranged by contacting the support desk. For larger groups, onsite training can be arranged but will be at additional cost.*