

Framework Schedule 6 (Order Form Template and Call-Off Schedules)

Order Form

CALL-OFF REFERENCE:

THE BUYER: NHS England

BUYER ADDRESS 7 Wellington Pl, Whitehall Rd, Leeds LS1 4AP

THE SUPPLIER: DLA Piper UK LLP

SUPPLIER ADDRESS:

REGISTRATION NUMBER: OC307847

SID4GOV ID:

APPLICABLE FRAMEWORK CONTRACT RM6179 Lot 1

This Order Form is for the provision of the Call-Off Deliverables and dated 08/01/2024
It's issued under the Framework Contract with the reference number Legal Services
Panel RM6179 for the provision of legal advice and services.

CALL-OFF LOT(S):

Lot 1 – General Legal Advice and Services

CALL-OFF INCORPORATED TERMS

The following documents are incorporated into this Call-Off Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Order Form including the Call-Off Special Terms and Call-Off Special Schedules.
2. Joint Schedule 1(Definitions and Interpretation) RM6179
3. Framework Special Terms
4. The following Schedules in equal order of precedence:
 - Joint Schedules for RM6179
 - Joint Schedule 2 (Variation Form)
 - Joint Schedule 3 (Insurance Requirements)
 - Joint Schedule 4 (Commercially Sensitive Information)
 - Joint Schedule 10 (Rectification Plan)
 - Joint Schedule 11 (Processing Data)
 - Call-Off Schedules for this Agreement
 - Call-Off Schedule 1 (Transparency Reports)
 - Call-Off Schedule 9 (Security)
 - Call-Off Schedule 20 (Call-Off Specification)
 - Call-Off Schedule 24 (Special Schedule)
5. CCS Core Terms (version 3.0.11)
6. Joint Schedule 5 (Corporate Social Responsibility) RM6179

No other Supplier terms are part of the Call-Off Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

CALL-OFF SPECIAL TERMS

The following Special Terms are incorporated into this Call-Off Contract:

None

CALL-OFF START DATE: 08 January 2024

CALL-OFF EXPIRY DATE: 07 January 2026

CALL-OFF INITIAL PERIOD: 2 Years

CALL-OFF OPTIONAL EXTENSION PERIOD: 1 Year

WORKING DAY means any day other than a Saturday, Sunday or Public Holidays in England and Wales

CALL-OFF DELIVERABLES

See details in Call-Off Schedule 20 (Call-Off Specification)

MAXIMUM LIABILITY

The limitation of liability for this Call-Off Contract is stated in Clause 11.2 of the Core Terms, and as amended by the Framework Special Terms.

Total value over the contract term will not exceed **£602,500** (six hundred thousand, five hundred pounds) excluding VAT.

CALL-OFF CHARGES

Rates are as set out in the table in the Framework Agreement and as set out below

The Supplier shall quote in either Hourly Rates, Day Rates or Monthly Rates as may be required by the Customer.

Hourly Rates will be the default unless informed otherwise by the Customer.

Hourly Rates are based on a standard hour of 60 mins. Daily Rates are based on 8 hours and above and Monthly Rates are based on a standard 20 days.

Wherever best value for money is provided, and where possible and applicable, Daily Rates and Monthly Rates should be utilised.

For the avoidance of doubt where applying Daily Rates or Monthly Rates, the Supplier agrees to provide time recording records to cover each hour of the day claimed – with evidence supporting actual work completed.

The Customer may decide to use either:

- the Supplier's Hourly Rate/Daily Rate/Monthly Rate (or a combination); or
- a capped price; or
- a fixed price; or
- a combination of any of the above

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The Charges will not be impacted by any change to the Framework Prices. The Charges can only be changed by agreement in writing between the Buyer and the Supplier because of:

- Indexation
- Specific Change in Law

VOLUME DISCOUNTS

Where the Supplier provides Volume Discounts, the applicable percentage discount (set out in Table 2 of Annex 1 of Framework Schedule 3 (Framework Prices)) shall automatically be applied by the Supplier to all Charges it invoices regarding the Deliverables on and from the date and time when the applicable Volume Discount threshold is met and in accordance with Paragraphs 8, 9 and 10 of Framework Schedule 3.

REIMBURSABLE EXPENSES and DISBURSEMENTS

The rates include all costs and expenses relating to the Services provided and no further amounts shall be payable.

The terms of the Framework apply to travel costs, time and subsistence. The Supplier will be entitled to be paid for such expenses and disbursements as are pre-approved by the Customer in writing provided that such costs are supported by relevant supporting documentation. If there is not supporting documentation or no pre-approval then the expenses will not be honoured.

ADDITIONAL TRAINING CHARGE

N/A

SECONDMENT CHARGE

N/A

PAYMENT METHOD

Any queries regarding outstanding payments should be directed to the Authority's Accounts Payable section by email at financialaccounts@nhs.net.

Invoices should clearly quote the purchase order number, be addressed to NHS England, T56 Payables A125 PO Box 312 Leeds LS11 1HP and be sent as a PDF attachment by email to the following email address: sbs.apinvoicing@nhs.net (one invoice per PDF) and emails must not exceed 10Mb and quote, 'T56 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.

In consideration of the supply of Services by the Supplier, the Authority shall pay the Supplier the invoiced amounts no later than 30 days after Receipt of a valid and undisputed invoice which includes a valid Purchase Order Number.

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All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Authority shall, following the Receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.

BUYER'S AUTHORISED REPRESENTATIVE

[REDACTED]

BUYER'S POLICIES

The Buyer's policies applicable to suppliers are set out at [NHS England » Our policies and procedures](#)

SUPPLIER'S AUTHORISED REPRESENTATIVE AND KEY STAFF MEMBER, WHERE APPROPRIATE

[REDACTED]

SUPPLIER'S CONTRACT MANAGER

[REDACTED]

[REDACTED]

PROGRESS REPORT

The Supplier shall provide updates to the Buyer on each of the matters it is instructed on at least monthly and will update the Thomas Reuters system used by Buyer to track legal matters.

KEY STAFF

[REDACTED]

KEY SUBCONTRACTOR(S)

Not Applicable

COMMERCIALLY SENSITIVE INFORMATION

The rates set out in Call Off Charges Table above, but not details of spend with DLA Piper in aggregate or per matter.

SERVICE CREDITS

Not applicable

ADDITIONAL INSURANCES

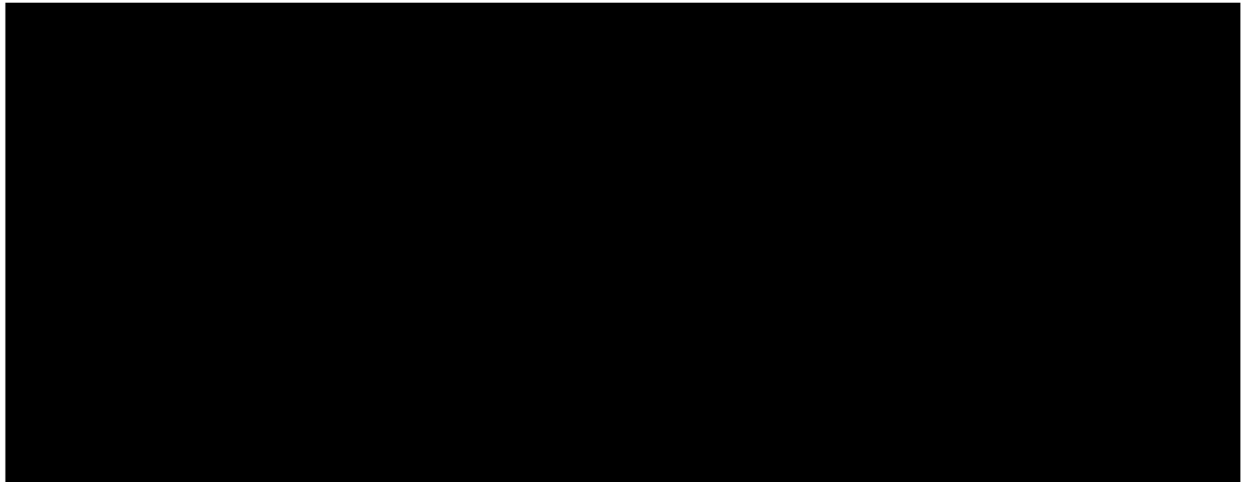
Not applicable

GUARANTEE

Not applicable

SOCIAL VALUE COMMITMENT

Not applicable



Call-Off Schedule 24 (Special Schedule)

LEGAL SERVICES CONTRACT

Where the Services provided under a Call-Off Contract include Legal Services, the following provisions shall apply: -

The Core Terms shall be amended as follows: -

3.1 All Deliverables

- 3.1.3 The Supplier shall bring to the attention of the Buyer any conflict between:
- (a) the Core Terms or Special Terms in a Contract;
 - (b) Call-Off Schedule 24 (Special Schedule); and/or
 - (c) any of the requirements in Clause 3.1.1;
- and shall comply with the Buyer's decision on the resolution of any such conflict.

9. Intellectual Property Rights (IPRs)

9.1 Subject to Clause 9.2, each Party keeps ownership of its own Existing IPRs.

9.2 Unless otherwise provided in the Order Form:

- (a) Intellectual Property Rights in the output from the Deliverables shall vest in the Supplier who shall grant to the Buyer a non-exclusive, unlimited, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change, exploit and sub-license the same; and
- (b) the Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferrable worldwide licence to use, change and sub-licence Supplier's Existing IPR to enable it to both:
 - (i) receive and use the Deliverables; and
 - (ii) make use of the deliverables provided by a Replacement Supplier.

9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing. However, nothing shall prevent a Buyer from using any techniques, ideas, Know-How which the Buyer has gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in the disclosure of the Supplier's Confidential Information or an infringement of IPRs.

9.5 If there is an IPR Claim, the Supplier indemnifies CCS and each Buyer against all Losses incurred as a result.

9.6 If an IPR Claim is made: -

- (a) the Buyer shall notify the Supplier in writing of the IPR Claim and the Buyer shall not make any admissions which may be prejudicial to its defence or settlement. The

Supplier shall at its own expense conduct all negotiations and any litigation arising out of or in connection with the IPR Claim provided always that the Supplier shall: -

- (i) consult CCS and the Buyer on all substantive issues which arise during the conduct of such litigation and negotiations;
- (ii) take due and proper account of the interests of the CCS and the Buyer;
- (iii) consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Buyer into disrepute; and
- (iv) not settle or compromise the IPR Claim without the prior written approval of the Buyer (not to be unreasonably withheld or delayed).

(b) or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- (i) obtain for CCS and the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR; or
- (ii) replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the accuracy, completeness, reliability, functionality or performance of the Deliverables.

11. How much you can be held responsible for

11.11 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Buyer to any document or information provided by the Supplier in its provision of the Deliverables, and no failure of the Buyer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligations of a professional Supplier employed in a buyer / supplier relationship.

11.12 Save as otherwise expressly provided, the obligations of the Buyer under the Contract are obligations of the Buyer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligations upon, or in any other way fetter or constrain the Buyer in any other capacity, nor shall the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the buyer to the Supplier.

11.13 No individual nor any service company of the Supplier employing that individual shall have any personal liability to the Buyer for the Deliverables supplied by that individual on behalf of the Supplier and the Buyer shall not bring any claim under the Contract against that individual or such service company in respect of the Contract save in the case of Fraud or any liability for death or personal injury. Nothing in this Clause 11.13 shall in any way limit the liability of the Supplier in respect of the Deliverables, and such liability shall be uncapped unless otherwise specified in the Order Form.

34 Resolving Disputes

Complaint Handling

34.8 If a Complaint is made by any Buyer, either Party shall notify the other Party in writing of the Complaint which if not resolved by operation of the Supplier's usual Complaint handling procedure within 5 Working Days of becoming aware of the Complaint and, if the Supplier is providing the written notice, such notice shall contain full details of the Supplier's plans to resolve the Complaint.

34.9 Without prejudice to any:

- (a) rights and remedies that a complainant may have at Law (including under a Contract), and

- (b) obligation of the Supplier to take remedial action under the provisions of the Contract,
the Supplier shall use its best endeavours to resolve the Complaint within 10 Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

Call-Off Schedule 20 (Call-Off Specification)

This Schedule sets out the characteristics of the Deliverables that the Supplier will be required to make to the Buyers under this Call-Off Contract

Part 1 - DSIC (previously GPIT)

Current Status

DSIC is formed through a series of contracts and MOUs and will continue to evolve (overview below).

NHSE requires legal input from a firm which has a detailed understanding of the DSIC structure and can respond at pace to queries concerning the DSIC suite of contracts and the suppliers to provide procurement support and legal assistance in countering sub-optimal supplier behaviour. This support is required to take us to the end of calendar year 2024.

In particular, the DSIC programme requires support on:

- The Foundation-class EPR framework (which is being procured between October 2023 to end of February 2024;
- Primary Care Support Solutions Framework (which is being procured between January to April 2024)

The following work will not have been discharged by DLAP by 26 December 2023:

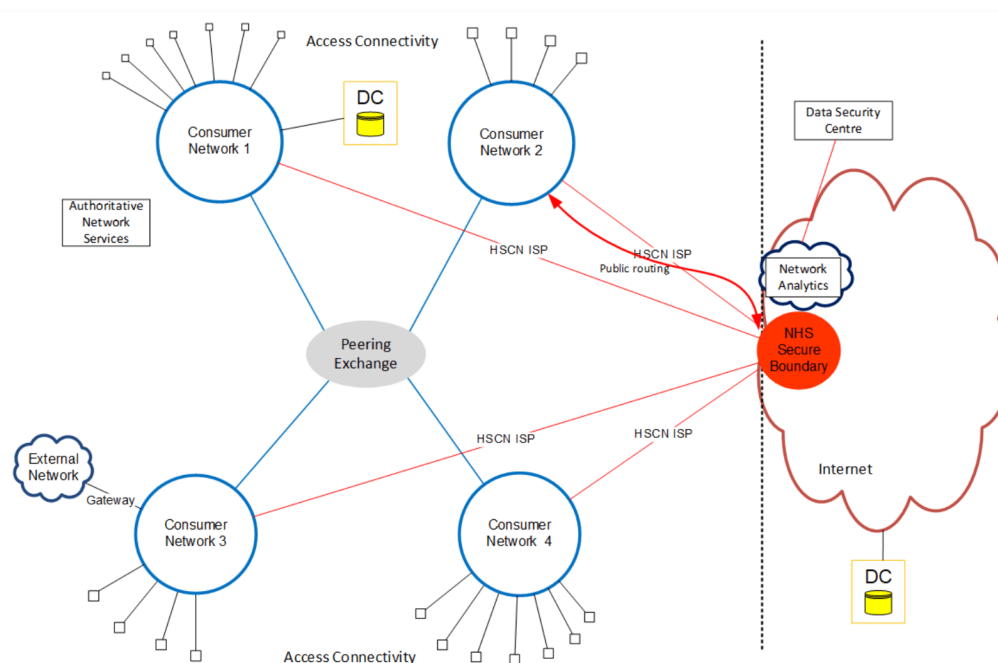
Activity
Phase 2 sequencing
Proposed uplifts to Catalogue Agreement (time-bound, CSR etc)
Review of proposed variations of the contract drafted for Digital Pathways, for each new framework

Framework Agreement and call off template drafting - Foundation-class EPR solutions
Framework Agreement and call off template drafting - Primary Care Support Solutions
Phase 3 sequencing
Framework Agreement and call off template drafting - Research, Development & Engagement
Legal Risk Reviews - approach to ITT [REDACTED]
Phase 4 sequencing
Legal Risk Reviews - evaluation and Contract Award [REDACTED]
General and specific advice on Contract suite, PCR regs, Data Processing Deed etc.
Change control notice for Tech Innovation Framework - provision of Service Access Fee
Legal risk advice on uplift/extension of Better Purchasing Framework (for inclusion of UCaaS services)
General ancillary advice
Supplier management & uplifts to contracts/standards (eg breach remediation (TPP), financial distress / change of ownership (Silicon Practice), change of ownership (EMIS) [REDACTED])
General advice costs (estimated on the basis of the past 12 months from DLAP)
Refresh of DSIC contract guidance detailing the differing forms of contract, MOU and risks and issues

Part 2 – HSCN and DNS

The HSCN commercial model is now firmly established. It is a complex model that has 950 connected organisations across more than 12,000 sites. It provides the health and community with access to a competitive market of compliant HSCN suppliers. Through a Dynamic Purchasing Agreement suppliers can apply to be registered HSCN providers and NHSE undertakes a 3 stage process to ensure suppliers meet the requirements:

- Stage 1 (pre-market): an audit based on obligation which must be met before the Supplier can connect to central capabilities and progress on to the next stage of the compliance process
- Stage 2 (pre-live): an audit based on obligations which must be met, and core infrastructure that must be connected to, before a supplier can begin to marketing, selling, and supplying services to consumers
- Ready for live service: a supplier (CN-SP) who has attained stage 2 compliance and has also completed the live service rehearsal



NHSE contracts centrally with suppliers for the following central services:

- the HSCN Peering Exchange Network (PN) an interconnect between all CN-SPs that enables communications between all CN-SPs and their consumers (procured in 2021/22 to run until 2028)
- the Secure Boundary service – a gateway to the internet for all CN-SP internet traffic that provides cyber security;
- the Network Analytics Service (NAS) – a network security management solution managed and maintained by NHSE (due to be reprocured in 2024/25); and
- the National Domain Name System (DNS) service that provides the backbone to all network connectivity between suppliers on the HSCN (currently under procurement, with final contract negotiations (October/November 2023) and the implementation phase (November 2023 to August 2024).

NHSE requires the following legal advice from the end of December 2023 to end of December 2024:

- **HSCN** BAU support (largely needed where suppliers merge or acquire each other resulting in the need for legal support regarding transition arrangements to protect NHSE and end customer interests).
- **DNS** – support with the implementation of the final contracts.
- **NAS** procurement – unknown at this time.
- **Peering Exchange** – no specialist legal support required.
- **Secure Boundary** – no specialist legal support required.

Part 3 – Microsoft

In June 2023 NHSE awarded a contract with a Reseller, Byte, for the supply of Microsoft licences products. Sitting behind this agreement is a Collaboration Agreement: a five-year national agreement with Microsoft to purchase all the licences required centrally by NHSE and all the licenses purchased by NHS organisations. The Collaboration Agreement is a bulk purchase commitment that was negotiated with Microsoft. As part of this an MOU was also entered into under

which Microsoft agrees that the NHS agreement can be used by any NHS organisation at the agreed rates.

A complex programme, this programme has required legal services to advise on:

- The Reseller Agreement with Byte;
- The Collaboration Agreement terms with Microsoft;
- The MOU with Microsoft under which it agrees to make the Collaboration Agreement rates available to any NHSE related organisation;
- Participation Agreements: MOUs under which any NHSE organisation which seeks to rely on the Collaboration Rates agrees to purchase no less than the number of licences counted as part of obtaining the bulk discount under the Collaboration Agreement; and
- Discussions with other licence providers, to secure additional licenses from the likes of Google, which was a condition of the CO Business Case Approval to ensure competition when the contract is again retendered and which can be purchased under the new Reseller contract with Byte.

NHSE requires ongoing legal advice during 2024 and 2025 to deliver the following:

Contract / Process	Requirement	Date of Requirement	Key points to note
Adhoc advice on the National license deal outputs and clarifications	Support the agreed contractual delivery outputs from the national deal with Microsoft. Ensuring the commitments made by Microsoft and the NHSE deliverables/risks are understood and reflect the agreed contract terms/conditions.	June 23 – March 24	Ongoing work across NHSmail/NHSE Commercial
Strategic MoU with Microsoft underpinning NHS access to the secured commercial agreement	Advice (taking into account the IG, Clinical and security parameters and risk appetites of the NHS and operational and market commercial applications) on response to the request of the Northern Ireland NHS to engage on either a mirror arrangement or NI benefiting directly under the NHSE strategic MoU	Oct 23 – August 24	This nationally important and potentially significant financial and strategic opportunity for NI is currently at an early stage.

Strategic engagements with alternate suppliers to Microsoft	The FBC, Cabinet office approval for the completed agreement require NHSE under the NHSmail Service Integrator provision to deliver innovation, alternative solutions and diversification from Microsoft. Assistance is required with continued engagement with Google (APIM, Cyber, Cloud, Desktop and software collaboration licence solutions). NHSE requires advice which will need a strong understanding of the Collaboration Agreement, Strategic MOU with Microsoft and these national governance stipulations to support the securing of well negotiated legally compliant arrangements	23/24	Negotiations for a strategic MoU with Google are underway. A first submission from google was received in July '23 and dialoge to support a better NHS focused provision is continuing. The expectation is that by March 24 a good position will be able to be put forward for governance and completion thereafter. Further transition and adhoc advice may be needed for the remainder of 2024 / 25.
Participation Agreement outcomes	NHSE Complete an annual survey across all organisations in scope for the National Collaboration license deal, with the outputs driving our true up or down conversations with Microsoft as per the contract. We will require legal support on any of the contractual implications of those in scope and our relationship and commitments across Bytes and Microsoft contracts. A true down could affect our national deal with Microsoft and needs careful management and legal input.	Annual requirement between – Oct/March	Ongoing.

Part 4 – NHS Mail

NHS Mail is how those people working in the NHS all talk to each other. The Platform used for NHS Mail is currently Microsoft (see above). The NHS Mail contract is for a Service Integrator which manages the use of third party suppliers such as Microsoft, unlocking the Microsoft licences we use under the Microsoft Reseller / Collaboration agreements.

Over £1.7m health and care providers use NHS Mail. The current contract is delivered by Accenture. A new [REDACTED] is about to be launched (latest the first week in October 2023).

Service Integration is not a service that can be switched off by a previous supplier, and then on by a new supplier. Under the terms of Accenture's current contract, NHSE has issued Accenture with a Termination Assistance Notice which provides for a continued supply of services by Accenture during the procurement and transition period, as well as working with a new supplier to transition the services to them under the new contract when awarded. As such, this requirement includes continued legal advice on the following:

- Current contract management – assistance on managing and enforcing the obligations on the incumbent under its contract and in accordance with the Termination Assistance Notice;
- Procurement advice – advice on any clarifications during the procurement process and finalising the new contract;
- BAU – any advice required on the day to day operation of the current contract with the incumbent, such as new statements of work.

Contract / Process	Requirement	Date of Requirement	Key points to note
Termination Assistance Notice (TAN)	The NHSmail extension of the incumbent supplier on a 3+3 month expires at the end of September 2023. Advice on the Termination Assistance Notice has already commenced and ongoing support will be needed to ensure that there is a stable transfer and transition following award of the new Service Integrator contract (see below)	Jul 23 – Nov 23 and ongoing work throughout 23/24	This requirement is currently going through the Atamis/DH/CO approvals process with the expectation that the timescales will be met.

Service Integrator Contract Re-procurement	NHSmail are finalising the approvals for the new tender of the NHSmail Service Integrator and are currently due to go to market in early October 23. NHSE will require continued support through the procurement process, including a legal risk evaluation and FBC case approval for closing of the contract in spring 2024. Thereafter, continued advice will be needed on the successful operation of the transition (through the TAN and new contract) to secure that 12 month transition arrangement	Jan 23 – Oct 24	OBC Approvals now at Cabinet Office stage, all requirement and tender documentation in final approval stages.
New Service Integrator	On award of the new contract, ongoing legal support will be needed to ensure the successful transfer to a new supplier (if needed) and to support the move to the new service delivery solution. A key understanding of the current NHSmail contract, the retender requirements and the Collaboration Licence with Microsoft is critical to successful delivery.	Jan 24 – March 25	Ongoing work across NHSmail/NHSE Commercial

Part 5 – Cloud Hosting

NHS England has inherited legacy organisation (NHS Digital, NHS England (incl. NHS Improvement, Ardem & Gem CSU contract) Health Education England and NHS Leadership) contracts for the supply of cloud hosting and associated services.

The legacy contracts expire:

- HEE – March 2024
- NHSD – May 2024
- NHSE - June 2024

- NHSLA – “rolling” (under review)

The contracts vary in scope, contract terms and the terms associated with the hyperscaler (cloud hosting providers), Amazon Web Services and Microsoft Azure. Contract terms in scope of the current contracts and future contracts includes:

- Framework terms and conditions
- Call-off terms and conditions (re-seller/3rd party)
- Hyperscaler (cloud services) terms and conditions
- Discount agreements – pan-government MOUs for preferential pricing from hyperscalers (e.g. OGVA2)

This requires Transformation Directorate Digital Sub-Directorate (Tech Services) and Commercial Directorate to begin business case and commercial strategy activities now for re-procurement and new contracts let for 2024. The governance process is estimated to take 4-5 months for approval to move to tender (with similar timescales for award), this is putting milestones for delivery at risk even at this early juncture. The initial business case is in progress in Atamis (under advice provided by NHSE Commercial Governance and Policy team), with the value of the contract estimated to be £300-400m. This is not committed spend but the estimated whole life of the contract over 5 years, all costs associated with the service are re-charged to relevant product and service portfolio codes.

There are partial overlaps of previous commercial and legal activity associated with the recent Microsoft Collaboration Software Futures project, given a key component will be understanding the legal and contractual agreements with Microsoft, NHS England and re-sellers.

As above a key area of complexity is expected to be inherited Microsoft agreements which are under Cloud Solution Provider programme terms and not Enterprise Agreement terms and how these legally, and therefore commercially, constrain delivery options.

The current and intended future contract landscapes are illustrated below:

The expected legal support required includes:

- Assurance and drafting relating to the contract model design as we incorporate multiple agreements and contract terms (e.g. OGVA, CCS Framework terms, NHS agreements)
- Reviewing existing contract terms, providing options and highlighting risks in the context of options being considered for delivery including extensions and consolidation of existing agreements and delivery timescales
- Reviewing supplier terms and conditions and/or providing a solution to enable them to be incorporated in future
- Reviewing and drafting amendments to CCS terms and conditions in line with NHS and NHS England requirements and precedents on data protection requirements
- Advising on complex matters (e.g. marketplace conditions integration / accommodation – particularly a requirement under the expected CCS framework - Cloud Compute 2)
- Providing legal advice on Public Contract Regulations where options may be required on extensions to existing contracts or justification of hyperscaler technologies
- Legal assurance of commercial strategies (e.g. legal risk assessment)
- Tender document review – targeted to areas of complexity and/or risk

It is expected that legal support will be required across all stages of the project:

- a) business case/strategy support and assurance
- b) ITT assurance,
- c) tender / bid assurance,
- d) award
- e) contract construction.

The outcome of the project and legal activity will:

- contribute to a positive and legally compliant project and procurement activity for a key IT infrastructure service
- ensure continuity of services and drive opportunities for savings for NHS products and services e.g. NHS App, NHS.UK
- potential lessons learned or outcomes which can be shared with other NHS bodies (e.g. Trusts) or public sector bodies who have entered into complex licencing models

Reason for seeking Legal Advice:

As referenced above the legal risks and support required will seek to mitigate:

- Commercial risks: associated with complexity of inheriting multiple contracts and licence models, creating the optimum contractual model incorporating multiple terms and conditions in such a way as can be effectively managed and exited as required.
- PCR2015 risks: associated with the procurement / award stage, assessing any options which could be considered to contain risk e.g. selection of hyperscalers, options for extensions if required – associated reputational and finance risk of PCR2015.

The legal services provider will need the following to support the rapid mobilisation and delivery of priority milestones including those associated with contract and proposed framework terms in support of the Commercial Strategy:

- An understanding of the previous arrangements with NHS Digital's hyperscalers and the recent NHS England on the procurement of its collaboration licences, knowledge of the AWS and Microsoft Azure standard terms and document stacks, and the AWS and Microsoft Data Processing Agreements (and on and offshore data processing arrangements).

- The ability to use efficient reporting methodologies, including the action trackers, template reports and contract walk throughs using previous advice on earlier contracts as a basis for this new procurement.
- Experience in advising on, structuring, drafting, and later negotiating agreements relating to, complex procurements that include multiple vendors, resellers and potential service recipients and how such structures have been delivered previously within NHSE and NHSD.
- Experience advising clients on their arrangements with the hyperscalers and an in-depth market knowledge of the negotiating positions that hyperscalers take to ensure we can maximise NHSE's negotiating position and seek to secure the most commercially advantageous terms as possible.

Specification

- Assurance and drafting relating to the contract model design as we incorporate multiple agreements and contract terms (e.g. discount agreements, CCS Framework terms, NHS agreements)
- Reviewing existing contract terms, providing options and highlighting risks in the context of options being considered for delivery including extensions and consolidation of existing agreements and delivery timescales
- Reviewing supplier terms and conditions and/or providing a solution to enable them to be incorporated in future
- Reviewing and drafting amendments to CCS terms and conditions in line with NHS and NHS England requirements and precedents on data protection requirements
- Advising on complex matters (e.g. marketplace conditions integration / accommodation – particularly a requirement under the expected CCS framework - Cloud Compute 2)
- Providing legal advice on Public Contract Regulations where options may be required on extensions to existing contracts or justification of hyperscaler technologies
- Legal assurance of commercial strategies (e.g. legal risk assessment)
- Tender document review – targeted to areas of complexity and/or risk

Part 6: Data Security Incident Support

Introduction

Purpose: This document outlines the requirements for 24/7 legal services to assist NHS England in obtaining specialist information governance and security legal support where responding to data security incidents, and also the provision of as required advisory support.

Scope: These requirements cover the capabilities, resources, and processes required to provide round-the-clock legal support during data breach incidents.

Required Legal Expertise

Ad-Hoc Information Law Advisory support: The legal team should be able to provide advice and support on specialist privacy, information governance, public law (vires) and security issues and engage counsel where required. The team should be able to provide management consultancy support in implementing advice, where needed, and be able to support on all aspects of central government policy and affairs relating to security and information governance, contracting, enforcement and sanctions, litigation, government indemnities and insurance.

The team should be able to provide embedded collocated support where required and agreed upon.

The team is required to be knowledgeable about NHS England's vires following merger, and knowledgeable about the core systems and programmes that have been provided by NHS England and its pre-merger entities.

Incident response support:

The service provider must have an established managed service approach together with experienced solicitors with deep expertise in data protection, cybersecurity, specialist information law, national security advice, and a deep understanding of the security powers of the UK government, and experience of managing significant cyber incidents impacting multiple parties in the private and public sector.

The service must have existing protocols to provide support and not depend on detailed instructions from the client.

The front-line team should be able to record and engage in an immediate response in the event of an incident.

The second line team must be knowledgeable regarding NHS England's services, programmes, roles, responsibilities and powers and be prepared to provide legal support in case of legal actions resulting from the data breach.

The legal team should possess knowledge of applicable UK laws that govern data breaches, with a specific focus on the security powers granted to the UK government entities. The team should be able to support and provide advice to ensure that responses comply with government regulations, including GDPR, Data Protection Act 2018, Investigatory Powers Act 2016, Computer Misuse Act 1990, Network and Information Systems Regulations 2018 (SI 2018/506), and EU Exit regulation amendments, cyber-crime and the Terrorism Act 2000 common law duties, national

security regulations, and any other relevant laws, including those of the security powers of the UK government.

The team should be familiar with NCSC cyber incident response guidance, powers and procedures, and be able to promptly advise on NHS England's powers to collaborate and support in the event of incidents.

The team should be competent to support evaluations of data breaches and the potential legal implications, including responses and collaboration approaches with private sector and public entities. Support and establish clear communication channels with designated NHS England and government representatives. Provide regular status updates on legal activities and progress to government stakeholders.

The legal team should be able to consider issues relating to the preservation of legal evidence and be able to advise on taking action to support gathering evidence (without interfering with the resolution) of national security incidents.

Response Time

Availability: incident support services must be available 24/7 to respond promptly to data breach incidents. This should include an established front-line desk access to service (as opposed to reliance on ad hoc out-of-hours contact with the legal team via mobile).