

Final signature version [redacted]

Date: [redacted]

(1) NHS England
[redacted]

Commercial agreement relating to
[redacted] **dated [redacted] " the Agreement "**

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This Agreement is made on 28 of February 2023 ("**the Agreement Effective Date**") between:

- (1) **NHS England** whose principal office is at Quarry House Quarry Hill, Leeds LS2 7UE ("**NHSE**");
- (2) [REDACTED] a company registered in England and Wales with registered company number [REDACTED] and registered address [REDACTED]

Each a "**Party**" and together the "**Parties**"

RECITALS

- A. NHSE and [REDACTED] entered into a commercial agreement relating to [REDACTED] on 23 December 2020 ("**the Commercial Agreement**").
- B. Under the terms of the Commercial Agreement [REDACTED]
- C. To enable NHSE [REDACTED]
- D. NHSE will issue a contract notice upon signing of this agreement.
- E. The Commercial Agreement [REDACTED]

AGREEMENT

IT IS AGREED as follows:

1 DEFINITIONS

- 1.1 All defined terms used in this Agreement shall have the meaning set out in the Commercial Agreement unless specifically defined in this Agreement.
- 1.2 The following terms and expressions used in this Agreement shall have the meanings set out below:
- 1.2.1 [REDACTED]
- 1.2.2 [REDACTED]
- 1.2.3 [REDACTED]
- 1.2.4 "**Dependency**" means each of the following:
- (a) that NHSE, NHS Digital or any party which has a relationship with either of them ([REDACTED])

(b)

(c)

(d)

1.2.5

1.2.6

1.2.7 **"the Full Specification"** means the full specification for the Deliverables agreed by the Parties in accordance with clause 3.6 at the end of the Discovery Phase which will be based on the Outline Specification;

1.2.8 **"Good Industry Practice "** means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a supplier who is skilled and experienced in the activities to be undertaken by [REDACTED] pursuant to the Commercial Agreement if, as an ancillary activity, they are engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Agreement;

1.2.9 **"Guidance"** means any applicable industry standard guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available together with any specific guidance or policies which apply to the Services that have been notified to [REDACTED] by NHSE issued by the Department of Health and Social Care, the Medicines and Healthcare products Regulatory Agency, the Care Quality Commission, the National Institute for Health and Care Excellence and/or any other regulator or competent body;

1.2.10 **"the Outline Specification"** means the high-level specification of the Deliverables set out in Schedule 1 Part B, based only on the information known to [REDACTED] and NHSE as of the Effective Date

- 1.2.11 **"Policies "** means the applicable policies, rules and procedures of NHSE as notified to [REDACTED] prior to the date of this Agreement or agreed through the Change Control Process;
- 1.2.12 **"the Roadmap"** means the timetable set out in Schedule 1 Part C in accordance with which the Services will be delivered;
- 1.2.13 **"the Services"** means the services to be provided by [REDACTED] under the terms of the Agreement to deliver the Deliverables in accordance with the Roadmap ("the **Development Services**") and to provide the Support and Maintenance Services if called off in accordance with clause 3.7;
- 1.2.14 **"the Support and Maintenance Services Commencement Date"** means the date agreed by the parties in accordance with clause 3.7;
- 1.2.15 **"the Support and Maintenance Services"** means the services set out in Schedule 4;
- 1.2.16 **"the Support and Maintenance Fees"** means the fees payable if the Support and Maintenance Services are provided by [REDACTED] NHSE as set out in Schedule 2;
- 1.2.17 **"the Support and Maintenance Services Term "** means the period agreed by the parties in accordance with clause 3.7.

2 AGREEMENT EFFECTIVE DATE AND DURATION

- 2.1 The Commercial Agreement shall be varied as set out below and the Parties rights and obligations under this Agreement shall come into effect on the Agreement Effective Date.
- 2.2 This Agreement shall come into full force and effect on the Agreement Effective Date. Unless terminated earlier in accordance with clause 4 of the Commercial Agreement (which shall apply to this Agreement and references in that clause to the Commercial Agreement shall include the Commercial Agreement as varied by this Agreement), or in accordance with clause 2.3 of this Agreement, the specific obligations under this Agreement shall remain in full force and effect:
- 2.2.1 in relation to the Development Services from the Agreement Effective Date until delivery and acceptance of the Deliverables by NHSE in accordance with clause 6 and the Roadmap; and
- 2.2.2 if the Support and Maintenance Services are called off in accordance with clause 3.7, in relation to the Support and Maintenance Services from the Support and Maintenance Services Commencement Date for the Support and Maintenance Services Term
- but shall in no event continue beyond the expiry or termination of the Commercial Agreement.
- 2.3 NHSE shall have the right to immediately terminate this Agreement on written notice to [REDACTED] in the event that any challenge is received by NHSE from a third party following the issuing of the Contract Notice. In such event NHSE's only liability to [REDACTED] be to pay [REDACTED] all

costs it has actually incurred and non-cancellable commitments it has actually made for work done in relation to the Services up to the date of the notice of termination.

- 2.4 For the avoidance of doubt the remainder of the Commercial Agreement shall remain in full force for the Term as defined in clause 4 of the Commercial Agreement.

3 THE SERVICES

- 3.1 [REDACTED] agrees to provide the Services to NHSE in accordance with the terms of this Agreement:

- 3.1.1 in accordance with the Roadmap;
- 3.1.2 in accordance with all other provisions of this Agreement;
- 3.1.3 in accordance with the Law and with Guidance;
- 3.1.4 in accordance with Good Industry Practice;
- 3.1.5 in accordance with the Policies.

- 3.2 [REDACTED] will employ sufficient staff to ensure that it complies with its obligations under this Agreement. This will include, but not be limited to, [REDACTED] providing a sufficient reserve of trained and competent staff to deliver the Services during staff holidays or absence.

- 3.3 [REDACTED] shall:

- 3.3.1 employ only those staff who are appropriately careful, skilled and experienced in the duties required of them;
- 3.3.2 ensure that every member of staff is properly and sufficiently trained and instructed;
- 3.3.3 ensure all staff have the qualifications to carry out their duties;
- 3.3.4 comply with the NHSE's staff vetting procedures and other staff protocols, as may be relevant to this Agreement and which have been notified to [REDACTED] by NHSE in writing before this Agreement was signed or agreed through the Change Control Process.

- 3.4 In addition to the warranties given in clause 20.4 of the Commercial Agreement, [REDACTED] hereby warrants in relation to the provision of the Services that:

- 3.4.1 [REDACTED]
- 3.4.2 [REDACTED]

3.4.3

[REDACTED]

- 3.5 Any warranties provided under this Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
- 3.6 At the Effective Date the Parties have agreed an Outline Specification of the Deliverables, subject to agreement to the Enabled Functionality Categories during the Discovery Phase, and they agree that until the Discovery Phase has been completed, a Full Functional Specification cannot be agreed and signed off. In accordance with the Roadmap, the Parties will as an output of the Discovery Phase use their best endeavours to agree a Full Functional Specification through the Digital Sub-Group (as defined in Schedule 3) which, when agreed will be incorporated as part of Schedule 1 Part B. In the event that such matter cannot be agreed the matter will be escalated firstly to the implementation group set up pursuant to the Commercial Agreement (“**Implementation Group**”) and then to the Joint Steering Committee and if it still cannot be agreed then the provisions of clause 11.6 of the Commercial Agreement will apply to resolve such non agreement.
- 3.7 If requested by NHSE on NHSE giving [REDACTED] 1 month’s prior written notice which notice shall propose a Support and Maintenance Services Commencement Date, the Parties shall use their best endeavours to agree a Support and Maintenance SLA through the Digital Sub-Group which shall be based on the outline SLA set out in Schedule 5 Part 2. In the event that a Support and Maintenance SLA cannot be agreed the matter will be escalated initially to the Implementation Group and then to the Joint Steering Committee and if it still cannot be agreed the matter shall be escalated in accordance with clause 11.6 of the Commercial Agreement.
- 3.8 If there is any delay to the delivery of a Viable System for use in the Interim Funding/Phase 2 as defined in the Commercial Agreement, each of the subsequent dates or milestones impacted by such a delay will be adjusted by an equivalent period including without limitation the dates set out in clause 8.6 of the Commercial Agreement in relation to Phase 2 Interim Funding. In the event that either Party objects to such an adjustment on reasonable grounds (including whether any date or milestone should be adjusted, or the period of any adjustment) then the matter will be escalated initially to the Implementation Group and then to the Joint Steering Committee and if it still cannot be resolved the matter shall be escalated in accordance with clause 11.6 of the Commercial Agreement. “**Viable System**” means a System meeting the Full Specification which has been accepted in accordance with clause 6.
- 3.9 [REDACTED] obligations and liability are subject to the Dependencies and [REDACTED] shall not have any liability whatsoever for any breach of its obligations to the extent the same results from any material failure by any Dependency to be true, complete and accurate at all times.
- 3.10 Except as expressly set forth in this Agreement and subject always to clause 3.8, the Parties’ obligations under the Commercial Agreement shall not be impacted by the fulfilment or non-fulfilment of any obligation or requirement of this Agreement.

4 FEE AND PAYMENT TERMS

4.1 In consideration for provision of the Development Services, NHSE shall pay [REDACTED] the Deliverables Fees.

4.2 In the event that the Support and Maintenance Services are provided by [REDACTED] NHSE shall pay [REDACTED] the Support and Maintenance Fees.

4.3 The Fees shall be payable in accordance with the terms set out in Schedule 2.

4.4 The Fees are fixed and based on the information known to [REDACTED] as of the Effective Date and subject to the assumptions and exclusions set forth in Schedule 1 to this Agreement and the Parties acknowledge that the Fees may be subject to change due to factors [REDACTED] becomes aware of including due to requests or requirements NHSE (e.g., as a result of changing requirements as described in clause 11.20) during the Discovery Phase but can only be increased in accordance with this clause 4.4:

4.4.1 In the event that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.4.2 In the event that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.5 The following payment terms apply to the payment of the Fees only (and not any monies paid in accordance with clause 9 of the Commercial Agreement).

4.6

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.7

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 4.8 The Fees are exclusive of VAT, which, if properly chargeable, NHSE shall pay at the prevailing rate subject to receipt from [REDACTED] of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 4.9 NHSE shall verify and pay each valid and invoice received in accordance with Clause 4.6 within thirty (30) days of receipt of such invoice at the latest subject to any bona fide dispute. However, NHSE shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 4.9, the invoice shall be regarded as valid and undisputed for the purposes of this Clause 4.9 after a reasonable time has passed.
- 4.10 Where NHSE raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred initially to the Joint Steering Committee in accordance with clause 11. If the dispute still remains unresolved then the Parties agree that clause 9.4 of the Commercial Agreement shall be varied so as to include disputes relating to invoices due in relation to the Services as well. For the avoidance of doubt, NHSE shall not be in breach of any of its payment obligations under this Agreement in relation to any queried or disputed invoice sums unless the process referred to in this Clause 4 has been followed and it has been determined that the queried or disputed invoice amount is properly due to [REDACTED] and NHSE has then failed to pay such sum within a reasonable period following such determination.
- 4.11 If a Party fails to pay any undisputed sum properly due to the other Party under this Agreement, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

5 GOVERNANCE

- 5.1 Clause 11.2 of the Commercial Agreement shall be varied such that the following additional responsibilities shall be added as a new clauses:

" 11.2.11 agreeing the Full Functional Specification if escalated in accordance with clause 3.6 of the Agreement

11.2.12 agreeing the Support and Maintenance SLA if escalated in accordance with clause 3.7 of the Agreement

11.2.13 dealing with any disputed invoices relating to the Services

11.2.14 agreeing any changes to the Deliverable Fees in accordance with clause 4.4.1 of the Agreement. "

6 TESTING AND ACCEPTANCE

- 6.1 The Parties will as an output of the Discovery Phase use their best endeavours to agree an acceptance testing procedure including relevant acceptance criteria based on the following principles:

- 6.1.1 [REDACTED] will run [REDACTED]
- 6.1.2 As part of each PID (as defined Part C of Schedule 1) [REDACTED]
- 6.1.3 [REDACTED]
- 6.1.4 Before going live, [REDACTED]
- 6.1.5 [REDACTED]

6.2 The Parties will implement any Acceptance Testing Procedure agreed pursuant to clause 6.1 in accordance the terms of that procedure.

7 INTELLECTUAL PROPERTY

- 7.1 [REDACTED]
- 7.2 For the avoidance of doubt, [REDACTED]
- 7.3 In the event that the Parties negotiate a Long Term Commercial Agreement in accordance with the Commercial Agreement, [REDACTED]
- 7.4 [REDACTED]
- 7.5 [REDACTED]
- 7.6 Liability under Clause 7.5 shall be unlimited.
- 7.7 [REDACTED]

7.7.1 [REDACTED]

7.7.2 [REDACTED]

7.8 [REDACTED]

8 INFORMATION GOVERNANCE

8.1 As part of the Discovery Phase as defined in Part C of Schedule 1, the Parties agree to clarify what if any Personal Data may be processed by either Party and to thereafter agree to all necessary processing schedules as contemplated by clause 15.4 of the Commercial Agreement. The parties confirm that clause 15 of the Commercial Agreement shall apply fully in relation to any Personal Data processed in carrying out the Services.

9 TUPE

Parties agree that at the commencement of the provision of Services by [REDACTED], TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of NHSE to [REDACTED]

10 LIMITATIONS OF LIABILITY

10.1 This clause 10 shall only apply to the provision of the Services in accordance with the terms of the Agreement and not any other part of the Commercial Agreement.

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

10.2.1 for death or personal injury resulting from its negligence;

10.2.2 for fraud or fraudulent misrepresentation; or

10.2.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

10.3 Subject to Clauses 7.5, 8, 10.2 and 10.4, the total liability of each Party to the other under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: [REDACTED]

10.4 There shall be no right whatsoever to claim losses, damages and/or other costs and expenses under or in connection with this Agreement whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for

the purposes of this Agreement the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

- 10.4.1 extra costs incurred purchasing replacement or alternative services;
- 10.4.2 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
- 10.4.3 the costs of extra management time; and/or
- 10.4.4 loss of income due to an inability to provide health care services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Agreement.

- 10.5 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Agreement.
- 10.6 Clause 10 shall survive the expiry of or earlier termination of this Agreement for any reason.

11 GENERAL

- 11.1 As a minimum level of protection, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 11.2 [REDACTED] warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 11.3 11.3 [REDACTED] shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to NHSE that insurance arrangements taken out by the Supplier pursuant to Clause 11 are fully maintained.
- 11.4 [REDACTED] shall comply in all material respects with applicable environmental, social and labour Law requirements in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Supplier shall, in relation to the Services:
 - 11.4.1 Develop and maintain relevant policy statements documenting [REDACTED] significant labour, social and environmental aspects as relevant to the Services being supplied and provided and as proportionate to the nature and scale of the Supplier's business operations; and

- 11.4.2 Develop and maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 11.5.1.
- 11.5 In performing the Services [REDACTED] shall comply with:
 - 11.5.1 the Modern Slavery Act 2015 ("**Slavery Act**"); and
 - 11.5.2 NHSE's anti-slavery policy as provided to [REDACTED] by NHSE from time to time ("**Anti-Slavery Policy**").
- 11.6 In relation to the Services [REDACTED] shall:
 - 11.6.1 implement due diligence procedures for other participants in its supply chains in accordance with Good Industry Practice with the aim of avoiding slavery or trafficking in its supply chains;
 - 11.6.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by NHSE from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
 - 11.6.3 upon request from NHSE, prepare and deliver to NHSE each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in relation to the Services;
 - 11.6.4 maintain a complete set of records to trace the supply chain if any of all services purchased and/or supplied by [REDACTED] connection with this Agreement;
 - 11.6.5 implement a system of training for its employees to ensure compliance with the Slavery Act; and
 - 11.6.6 ensure that any sub-contracts contain anti-slavery provisions consistent with the Supplier's obligations under Clause 11.
- 11.7 [REDACTED] on an ongoing basis that in relation to the Services:
 - 11.7.1 it conducts its business in a manner consistent with all applicable Laws including the Slavery Act and all analogous legislation in place in any part of the world in which its supply chain if any relevant to the Services;
 - 11.7.2 its responses to all slavery and trafficking due diligence questionnaires issued to it by NHSE from time to time are complete and accurate; and
 - 11.7.3 neither [REDACTED] nor any of its sub-contractors, nor any other persons associated with it (including any staff) involved in performing Services:
 - (a) has been convicted of any offence involving slavery or trafficking; or
 - (b) has been, or is currently, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or

regulatory body relating to any offence committed regarding slavery or trafficking,

not already notified to NHS England in writing in accordance with Clause 11.9.

11.8 [REDACTED] shall notify NHSE as soon as it becomes aware of the following in relation to the Services:

11.8.1 any breach, or potential breach, of the Anti-Slavery Policy; or

11.8.2 any actual or suspected slavery or trafficking in its supply chain.

11.9 If [REDACTED] notifies NHSE pursuant to Clause 11.9, it shall respond promptly to NHSE's enquiries, co-operate with any investigation, and allow NHSE to audit any books, premises, facilities, records and/or any other relevant documentation in accordance with this Agreement.

11.10 If the Supplier is in breach of its obligations relating to the Slavery Act or the Anti Slavery Policy above, in addition to its other rights and remedies provided under this Agreement, NHSE may:

11.10.1 by written notice require [REDACTED] to remove from performance of any contract or framework agreement with NHSE (including this Agreement) any sub-contractor, staff or other persons associated with it involved in performance of the Services whose acts or omissions have caused the breach; or

11.10.2 terminate this Agreement immediately by issuing a termination notice to [REDACTED]

11.11 [REDACTED] shall take appropriate steps to ensure that neither [REDACTED] nor any staff are placed in a position where, in the reasonable opinion of NHSE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of [REDACTED] and the duties owed to NHSE under the provisions of this Agreement. [REDACTED] will disclose to NHSE full particulars of any such conflict of interest which may arise.

11.12 NHSE reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of NHSE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of [REDACTED] the duties owed to NHSE under the provisions of this Agreement. The actions of NHSE pursuant to this Clause 11.13 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the NHSE.

11.13 [REDACTED] shall take all reasonable steps to prevent fraud by staff and [REDACTED] (including its owners, members and directors). [REDACTED] shall notify NHSE immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

11.14 If [REDACTED] or its staff commits fraud NHSE may terminate this Agreement and recover from [REDACTED] the amount of any direct loss suffered by NHSE resulting from the termination.

11.15 [REDACTED] warrants and represents that:

11.15.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**");

- (a) offered, given or agreed to give any officer or employee of NHSE any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with NHSE or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with NHSE; or
- (b) in connection with this Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to NHSE; and
- (c) it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

11.16 If [REDACTED] its staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of [REDACTED] relation to this Agreement NHSE shall be entitled to terminate this Agreement and

- (a) recover from [REDACTED] any other loss or expense to the extent sustained by NHSE in consequence of the carrying out of the Prohibited Act or the commission of the offence [REDACTED] its staff (or anyone acting on its or their behalf) under the Bribery Act 2010;

11.17 [REDACTED] shall:

11.17.1 ensure that

- (a) it does not, whether as employer, or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and
- (b) it complies with all its obligations as an employer, or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its staff do not unlawfully discriminate within the meaning of the Equality Legislation;

11.17.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with NHSE in light of NHE's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. [REDACTED] shall take such reasonable and proportionate steps as NHSE considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

11.17.3 [REDACTED] impose on all its sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 11.18.

11.18 [REDACTED] shall meet reasonable requests by NHSE for information evidencing [REDACTED] compliance with the provisions of Clause 11. For purposes of compliance with this Clause [REDACTED]

NHSE agree that sub-contractors means only those individuals or legal entities who have entered into contract with [REDACTED] execution or carrying out part of the Services set out in this Agreement (and sub-contracts means such contracts with subcontractors) and does not include any third party software provider contracted by [REDACTED] nor any NHS entity.

- 11.19 [REDACTED] acknowledges to NHSE that NHSE's requirements for the Services may change during the term of this Agreement and [REDACTED] shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Outline Specification or Full Specification or the Roadmap, as may be requested by NHSE from time to time provided such variations include (where agreed by the parties) agreed increases to the Deliverables Fees as reasonably required for such changes.
- 11.20 Subject to Clause 11.21, any change to the Services or other variation to this Agreement shall only be binding once it has been agreed in accordance with the Change Control Process.
- 11.21 Throughout the term of this Agreement, [REDACTED] use its reasonable endeavours to ensure that its Business Continuity Plan operates effectively alongside NHSE's business continuity plan. "**Business Continuity Plan**" means [REDACTED] business continuity plan which includes its plans for continuity of the provision of the Services during a Business Continuity Event. "**Business Continuity Event**" means any event or issue that could have a material impact on the operations of [REDACTED] its ability to provide the Services including a pandemic of force majeure event. Throughout the term of this Agreement, [REDACTED] will ensure that its Business Continuity Plan provides for continuity during a Business Continuity Event. [REDACTED] undertakes to test its Business Continuity Plan at least annually and the Parties agree to meet thereafter to review the adequacy of [REDACTED] in the light of such testing. During a Business Continuity Event, [REDACTED] will implement and comply with its Business Continuity Plan and provide regular written reports to NHSE on its implementation. During and following a Business Continuity Event, [REDACTED] shall use its reasonable endeavours to continue to provide the Services in accordance with this Agreement.

IN WITNESS WHEREOF the authorised representatives of the Parties have signed this Agreement on the date shown below

Signed by **NHS ENGLAND**:

DocuSigned by:

[REDACTED]

Full Name:

[REDACTED]

Job Title/Role:

[REDACTED]

Date Signed:

[REDACTED]

Signed by [Redacted]

DocuSigned by:
[Redacted]

Full Name: [Redacted]

Job Title/Role: [Redacted]

Date Signed: [Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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Part C Roadmap

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Schedule 2

FEES

Part A Deliverables Fees

The overall budget available for the provision of the services to deliver the Deliverables set out in schedule 1 is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] payment structure is set out below which is subject to agreement by the Digital Sub Group

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

Part B Support and Maintenance Fees

The overall budget available for the provision of the Support and Maintenance Services for the live service in fiscal years 2024-25 & 2025-26 is [REDACTED] subject [REDACTED] per annum.



Part B invoices will be issued quarterly, 30 days in advance of the performance period:

<i>Invoice Schedule</i>	<i>Invoice Date</i>	<i>Amount</i>
[Redacted Table Content]		

The Parties will undertake a review of the Support and Maintenance Fees in the event that NHSE serves notice under clause 3.7 and final costs will be set out in the Support and Maintenance SLA.

Payment of the Support and Maintenance Fees will be quarterly per the invoice schedule, and subject to delivery of KPIs set out in Support and Maintenance SLA.

Schedule 3

GOVERNANCE

Under the Commercial Agreement a Joint Steering Committee has been set up as well as an Implementation Group (as more fully described in Schedule G to the Commercial Agreement). The Joint Steering Committee is responsible for agreeing the constitution of the Implementation Group and overseeing the activities undertaken by that group and will set out terms of reference for the Implementation Group (and its sub group the Digital Sub Group) to undertake the roles and activities allocated to it under this Agreement.. A sub-group to this Implementation Group has been established to oversee the development of the digital infrastructure required to roll out the Deliverables, consisting of representatives of both Parties (**the 'Digital Sub-Group'**). This group will be accountable to the implementation group and through it to the Joint Steering Committee for the governance and successful delivery of the Services.

Responsibilities and Escalation

In addition to the oversight responsibilities described above, the Digital Sub-Group will agree on matters expressly provided for in this Agreement. Other specific responsibilities of the Digital Sub-Group shall consist of addressing any other issues which arise in relation to such matters, and issue escalation (for those issues that cannot be resolved by the Digital Sub-Group) to the Implementation Group or through the implementation Group to the Joint Steering Committee. Where this Agreement provides for any matter to be agreed between the Parties through the Digital Sub-Group, the Parties must each use their best endeavors to agree that matter in that forum. If the Parties, having used their best endeavors, are unable to agree the relevant matter at that committee, the matter will be escalated to initially to the Implementation Group and then if necessary to the Joint Steering Committee.

Reporting

[REDACTED] will provide regular reports on progress towards successful development of the Deliverables.

- [REDACTED]

[REDACTED]

[REDACTED]. It will include details of [REDACTED]

Schedule 4

SUPPORT AND MAINTENANCE SERVICES

Part 1 Outline of services

The services shall include:

- [REDACTED]
- [REDACTED]

'The Viable System' shall include all functionality developed by [REDACTED] under this agreement during the Implementation Period.

Part 2 Outline SLA

Should support and maintenance be required in line with Clause 3.7, a detailed SLA and service specification will be agreed through the Digital sub-group. That SLA will include roles and responsibilities for [REDACTED] expected to include:

- Manage the end-to-end service provision covering Incidents, Problems, Change and Release Management.
- Maintain appropriately trained and resourced staff.
- Attend Digital sub-group to review service levels, performance, trends, changes and problems
- Provide prompt and accurate notification of service failures via the Service Management Incident process
- Escalate live or potential issues and problems with NHS England.
- Processes for agreeing timing of planned maintenance and any system downtime

The Support services to be agreed will include:

- Definition of incident severity and priority and a responsibility to deal with calls raised in line with agreed priorities and response/resolution targets.
- Ensure that appropriate service delivery staff are available to support all services during "in hours" service times.
- Where an Incident or Problem requires further work to lead to a full resolution (e.g. software fix or upgrade required), [REDACTED] will use best endeavours to provide, where possible, temporary solutions to enable normal operations to resume as soon as possible.
- A responsibility to ensure that Incidents remain open until a satisfactory resolution has been reached in agreement with the user, with exception to be made in the event that contact has not been possible, for example, that three attempts have been made over a 7-day period to contact the User via either email or telephone.
- Definition of support to be provided on specific days, for example:



Schedule 5

Change Control Process

1. [REDACTED] keep a change control log which allows for unique internal numbering of change requests.
2. Where a change is identified a change request form will be generated by the requesting party (the **"Sending Party"**).
3. The change request form is then e-mailed by the Sending Party to the other Party's authorised representative (the **"Receiving Party"**). The receipt of the form will be confirmed by the Receiving Party to the Sending Party with details of the internal change request number allocated for use in future enquiries, and indicative timescales for completion of internal review by the Receiving Party.
4. After internal review (including additional associated costs) by the Receiving Party and any joint review or governance oversight required in accordance with the Agreement, the change request will either be accepted or rejected by the Receiving Party. If the Receiving Party rejects the change request, then the Receiving Party shall confirm the reasons for such rejection in writing to the Sending Party. If the Receiving Party accepts the change request, then any required implementation controls and additional charges shall be agreed between the Parties. Where such implementation controls include consequential amendments to this Agreement or the Commercial Agreement then such amendments shall be agreed in writing and signed by both Parties and shall constitute a variation to the Commercial Agreement.
5. On completion of implementation of the change request the Parties shall agree a date for review of the implementation as agreed between the Parties.
6. Progression of outstanding change requests will be reported in accordance with the governance process.