

**Order Form**  
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## Order Form

CALL-OFF REFERENCE: C182530

THE BUYER: NHS England ("**Buyer**" or "**Customer**")

BUYER ADDRESS Quarry House, Quarry Hill, Leeds LS1 7UE

THE SUPPLIER: Palantir Technologies UK, Ltd ("**Supplier**" or "**Palantir**")

SUPPLIER ADDRESS: New Penderel House, 4th Floor, 283 - 288 High Holborn, London, WC1V 7HP

REGISTRATION NUMBER: 07042994

DUNS NUMBER: 216241882

SID4GOV ID: **N/A**

### APPLICABLE FRAMEWORK CONTRACT

This Order Form is for the provision of the Call-Off Deliverables and dated 12 June 2023.

It's issued under the Framework Contract with the reference number RM6195 for the provision of Big Data & Analytics.

### CALL-OFF LOT:

Lot 2: Commercial off-the-shelf (COTS) Software

## Order Form

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### 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) RM6195
3. Framework Special Terms
4. The following Schedules in equal order of precedence:
  - Joint Schedules for RM6195
    - 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
    - Call-Off Schedule 1 (Transparency Reports)
    - Call-Off Schedule 2 (Staff Transfer)
    - Call-Off Schedule 3 (Continuous Improvement)
    - Call-Off Schedule 6 (ICT Services) (excluding paragraph 4 (Supplier-Furnished Terms) and Annex 1 (Palantir Terms of Service) of Call-Off Schedule 6)
    - Call-Off Schedule 8 (Business Continuity and Disaster Recovery)
    - Call-Off Schedule 9 (Security)
    - Call-Off Schedule 10 (Exit Management)
    - Call-Off Schedule 14 (Service Levels)
    - Call-Off Schedule 15 (Call-Off Contract Management)
    - Call-Off Schedule 20 (Call-Off Specification)
    - Call-Off Schedule 21 (MOUs)
5. CCS Core Terms (version 3.0.11)
6. Joint Schedule 5 (Corporate Social Responsibility) RM6195
7. Paragraph 4 (Supplier-Furnished Terms) and Annex 1 (Palantir Terms of Service) of Call-Off Schedule 6 (ICT Services)).

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:

Framework Ref: RM6195  
Project Version: v1.1  
Model Version: v3.8

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No.	Special Term	Description
A.	<b>Service recipients</b>	<p>LOs (as defined below) may benefit from the terms of the Call-Off Contract under Contracts (Rights of Third Parties) Act 1999 (<b>CRTPA</b>) as set out in Call-Off Schedule 20 (Call-Off Specification) and below. The consent of such third parties is not required to a variation or a rescission of this Call-Off Contract.</p> <p>The Supplier acknowledges that the Buyer may permit use of the Service by certain users within central government departments, agencies and NHS and local government bodies, to the extent such users are expressly set out (and for the purposes set out) in Call-Off Schedule 20 (Call-Off Specification), such users to be deemed as users under the Supplier terms included in Call-Off Schedule 6 (ICT Services) ("<b>Supplier Terms</b>").</p> <p>Organisations from the Local Systems (as defined in Call-Off Schedule 20 (Call-Off Specification), including Users under MoUs ("<b>LOs</b>") may procure from the Supplier access to certain services as further agreed in the relevant agreement between such LO(s) and the Supplier ("<b>LO Agreement</b>"). Subject to the Buyer's consent provided before any LO Agreement is entered into and further to arrangements relating to the funding, governance and information governance between Buyer and each LO ("<b>Local Arrangement</b>"), for the duration of each LO Agreement, Buyer agrees that such LO(s) will benefit from the Buyer's Single Environment Base Foundry Licence (PT-CAP-BASE), and from Buyer's payment of any applicable usage fees incurred by the LO pursuant to the LO Agreement as if they were incurred by the Buyer hereunder. Such LO's users of the Supplier software and services (within the scope of use defined in the LO Agreement) shall not constitute users for the purposes of numerical limits on users within this Call-Off Contract. Buyer will demonstrate to Supplier that Local Arrangements are in place with any particular Local System prior to its entry into an LO Agreement. The Supplier may benefit from the terms of a Local Arrangement under CRTPA as set out in Call-Off Schedule 20 (Call-Off Specification), an MOU and this Call Off Contract.</p>

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		<p>The Supplier shall provide support services in relation to the Services in accordance with Call-Off Schedule 14 (Service Levels), or such materially equivalent or higher standard of support service as may be described in a replacement to that service level agreement and approved by the Buyer (such approval not to be unreasonably withheld).</p> <p>The term “User” or “user” as used herein shall have the same meaning as “User” as defined in the Supplier terms set out in Call-Off Schedule 6.</p>
<b>B.</b>	<b>Location:</b>	The Services will be delivered on a remote basis to the Buyer.
<b>C.</b>	<b>Limit on Parties' liability:</b>	<p>The Supplier's obligations in clauses 9.5-9.6 are replaced by the Supplier's compliance with the obligations in section 8 of the Supplier Terms and the Buyer shall observe the obligations of the Customer in that section 8 in relation to any IPR Claim. For the avoidance of doubt, Clause 11 of the Core Terms shall be read accordingly.</p> <p>Notwithstanding the Framework Award Form or anything else in this Call-Off Contract, the Data Protection Liability Cap is [REDACTED] pounds).</p> <p>The parties acknowledge that the limit on liability in clause 11.6 and in this Order Form: (a) apply to Supplier's liability to Buyer and any User and/or LO in aggregate for claims in contract, statute, tort (including negligence) or otherwise that relate to or arise in connection with Government Data under this Call-Off Contract and all data processing agreements made between Supplier and Users or LOs under this Call-Off Contract (<b>DPAs</b>); and (b) is reduced by any amounts paid or payable by Supplier in respect of liability to Users, LOs or Buyers under or in respect of claims under DPAs.</p>
<b>D.</b>	<b>Insurance:</b>	<p>The following additional insurance is required:</p> <p>Cyber liability insurance underwritten by a reputable insurer approved by the Buyer acting reasonably, with a limit of indemnity of at least [REDACTED] sterling each and every claim.</p>
<b>E.</b>	<b>Audit:</b>	The Supplier will, in addition to any other record-keeping obligations in this Call-Off Contract maintain

Framework Ref: RM6195

Project Version: v1.1

Model Version: v3.8

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		<p>the records required by clause 6 (Record keeping and reporting) and Call-Off Schedule 1 (Transparency Reports) during the Term.</p> <p>An Audit (including a security audit as referenced below): (a) may be carried out not more than once during each Contract Year; and (b) the Audit may not cover records relating to Supplier's other customers (it also being acknowledged that the Buyer has access to certain data within the Services, and therefore it is able to audit its own data separately from an Audit and does not require Supplier's assistance with such audits of its own data). Supplier will provide Buyer with its standard pen testing attestation (performed at least annually), upon request. The Buyer may also conduct its own security assessment of the Services provided it complies with the Supplier's penetration testing policy and is carried out no more than once during each Contract Year. The Parties acknowledge that in the provision of Services, the Supplier does not have access to Personal Data which identifies Data Subjects, except where and as expressly permitted hereunder and provided such processing is set out in Joint Schedule 11 (Processing Data).</p> <p>(Acknowledging that the Supplier has developed a Security Management Plan and an Information Security Management System meeting the requirements of Call-Off Schedule 9 (Security) and section 14.4 of the Core Terms (<b>IS Practice</b>), Supplier will comply with requests for information security audit of the Products from the Buyer and the National Cyber Security Centre (<b>NCSC</b>), and undertakes to notify the Buyer and NCSC of any material changes to IS Practices on request.)</p>
<b>F.</b>	<b>Buyer's responsibilities:</b>	<p>Buyer responsibilities are set out below. Where a Local System accesses NHS Foundry these responsibilities apply to such Local System as applicable. Buyer may be required to procure access or assistance from persons who are not its employees or contractors where necessary in relation to the Capabilities (as defined in Call-Off Schedule 20 (Call-Off Specification)) (e.g. assistance from Cabinet Office and/or Local Systems) ("<b>Dependencies</b>"):</p> <ol style="list-style-type: none"> <li>1) Data Access <ol style="list-style-type: none"> <li>a. Timely access to or provisioning of relevant data</li> </ol> </li> </ol>

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		<p>b. Timely access to or provisioning of necessary network components for the purposes of data ingestion and integration</p> <p>c. Timely information governance approvals required for the use of relevant data</p> <p>d. Ensuring provision of data to, and use of data by, Supplier as envisaged in this Call-Off Contract complies with applicable law and policies</p> <p>e. Anonymising or pseudonymising personal data where possible</p> <p>2) User and Subject Matter Expert Access</p> <p>a. Timely provision of technical personnel for data integration, pipeline and ontology maintenance and data analytics</p> <p>b. Timely access to Buyer test users and subject matter experts for implementation and configuration support</p> <p>c. Timely assistance from Buyer's technical experts, data owners to ensure proper operation of the Supplier Service (meaning the Service as defined in the Supplier Terms) with Buyer data and technology systems and infrastructure</p> <p>d. Timely assistance from Buyer's technical experts, data owners to ensure proper operation of the Supplier Service with Buyer data and technology systems and infrastructure</p> <p>e. Provision of L1 and L2 response and triage service for Supplier Service support under the Service Levels, as set out in Call-Off Schedule 14 (Service Levels).</p> <p>f. Provision of technical personnel that can deliver further training (if required beyond the allocated number of hours).</p> <p>3) Timely cooperation from the Replacement Supplier, including without limitation:</p> <ul style="list-style-type: none"> <li>- Provision of an appropriate data warehouse for any data transfer available from the Service;</li> <li>- Sufficient and suitably qualified resources for knowledge and data transfer;</li> <li>- Communication and collaboration from Replacement Supplier on migration timeline and status per product and as agreed with Supplier (the Supplier acting reasonably, in good faith and without delay); and</li> </ul>
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		- Provision of a reasonable testing plan and timeline agreed by Supplier (the Supplier acting reasonably, in good faith and without delay).
<b>G.</b>	<b>Performance of the service and deliverables:</b>	<p>(a) Customer Data (as defined in the Supplier Terms in Call-Off Schedule 6) will be hosted in the UK.</p> <p>(b) The Supplier will enable knowledge transfer in accordance with Call-Off Schedule 20 (Call-Off Specification) and Call-Off Schedule 10 (Exit Management).</p> <p>(c) The exit requirements are set out in Call-Off Schedule 20 (Call-Off Specification) and Call-Off Schedule 10 (Exit Management). In addition, the Supplier shall provide the Buyer with an exit plan meeting the requirements of paragraph 4.3 of Call-Off Schedule 10 (Exit Management), including providing Buyer with access to Customer Data in a format and media reasonably accessible to Buyer for 30 days after the End Date or the end of the Termination Assistance Period (as defined in Schedule 10 (Exit Management)), as applicable.</p> <p>(d) The Supplier's rights to access and use Customer Data are only those set out in this Call-Off Contract and the Supplier is not permitted to collect, perform or retain any inspection, analysis, aggregation, evaluation, reproduction, metrics or analytics of Customer Data or use Customer Data or any information derived from it as the basis for any product or service, subject to paragraph (e).</p> <p>(e) The Supplier is permitted to collect metrics relating to (a) Buyer's use of Services, for the purpose of the continued provision of Services in accordance with this Call-Off Contract (including for purposes relating to the information security of the Services) and (b) (provided such data is not personal data) usage and diagnostics data for the purposes of analysis, maintenance and improvement of Supplier's products and services, such data related only to the performance, management and efficiency metrics of Supplier's products</p>

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		provided as part of the Services and not including any data which is, or which is accessed or derived from, Customer Data.
<b>H.</b>	<b>Warranties, representations:</b>	<p>The following additional warranties are incorporated:</p> <ul style="list-style-type: none"> <li>• Supplier Staff with access to Customer Data will, unless the Buyer agrees otherwise, be based in the UK.</li> </ul>
<b>I.</b>	<b>Supplemental requirements in addition to the Call-Off terms:</b>	<p>The Parties agree that:</p> <ol style="list-style-type: none"> <li>Notwithstanding anything to the contrary in this Call-Off Contract, clause 4.1 (Customer Data Ownership) of the Supplier Terms applies to "<b>Customer Data</b>" (as defined in the Supplier Terms) and as between the Parties, Buyer retains all rights, title, and interest in and to the Customer Data. The Supplier agrees to waive or (at Buyer's option) transfer to Buyer all IPRs in Customer Data where any such IPRs vest in Supplier.</li> <li>In respect of Customer Data which is Personal Data, Supplier shall not take or permit Supplier Staff to take any action directed towards, where applicable, the identification of any data subject, the reversal of any de-identification, anonymisation or pseudonymisation steps or methods applied to such data, the attribution of personal data to a data subject or the acquisition or processing of any additional information in pursuit of any of those objectives, unless otherwise requested by Buyer as part of Service performance.</li> <li>The Supplier will comply with such access controls relating to Customer Data as the Buyer may from time to time require.</li> <li>In respect of Services where the Supplier may be required to process Personal Data, it will process such data in compliance with the data protection requirements set out in this Call-Off Contract.</li> </ol>



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		<p>(e) Except as set out in Joint Schedule 11 (Processing Data), the Supplier will not process or transfer any Personal Data within Customer Data outside the UK.</p> <p>(f) The Supplier will at the Buyer's reasonable request collaborate, advise and co-operate in the preparation of system level security policies and processing annexes (as described below) affecting Government Data.</p> <p>(g) Where the Services require any additional processing of Personal Data, the Buyer shall notify the Supplier of the details of such processing and such details shall be added as, and shall take the form of, additional annexes to Joint Schedule 11 (Processing Data).</p> <p>(h) The provisions of this Order Form (including without limitation those relating to Customer Data and Personal Data, subject to Data Protection Legislation and Local Arrangements) apply where applicable to data or other content created or provided within cloud-based Supplier solutions and Service (<b>Cloud Solutions</b>) by any such Local System under Schedule 1 of this Call-Off Contract as if they were Customer Data.</p>
<b>J.</b>	<b>Buyer specific amendments to/refinements of the Call-Off Contract terms:</b>	<p>The Buyer and the Supplier agree and acknowledge that:</p> <p>(a) Subject to paragraph (b) below, Sections 2.2 (Data Connection Software) and, 2.3 (Sample Materials) of the Supplier Terms shall apply in full and shall, in the case of any conflict, have precedence over the Framework Agreement and Call-Off Contract;</p> <p>Defined terms in the Supplier Terms bear the same meanings where used in this Call-Off Contract;</p> <p>(b)</p>

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		<ul style="list-style-type: none"> <li>a. access to the Services other than as set out in Call-Off Schedule 20 (Call-Off Specification) or by any other third party is permitted only with the prior written agreement of the Supplier;</li> <li>b. The Supplier acknowledges that use of the Services as described in this Call-Off Contract by the Buyer and users (whether employed or engaged by the Buyer or not) is use for the Buyer's internal business purposes and the parties agree that access and use of the Services outside this Call-Off Contract by Local Systems may be granted by Supplier only under a relevant LO Agreement and observing Local Arrangements;</li> <li>c. The Services provide for hosting of the Supplier solution (i.e. the "Service" in the Supplier Terms) on Amazon Web Services infrastructure;</li> </ul> <p>(c) Buyer, LOs and Users are not permitted to use the Services or any output from them, and Buyer acknowledges that the Supplier Service and Services are not intended to be used as the basis for any:</p> <ul style="list-style-type: none"> <li>a. decision affecting any particular individual; and/or</li> <li>b. clinical judgment or decision, diagnostic and/or therapeutic purposes, and/or</li> <li>c. as a medical device or accessory to a medical device (as defined in the EU Council Directive 93/42/EC concerning medical devices, and any implementing, replacement or successor Law).</li> </ul> <p>(d) The Buyer will comply with applicable Laws in its use of the Services and will not breach any rights of third parties in relation to such use.</p> <p>(e) The Buyer will notify users of the Services of the restrictions on its use set out in these terms.</p>
<b>K.</b>	<b>Personal Data and Data Subjects:</b>	Annex 1 of Joint Schedule 11 (Processing Data) has been completed by the Parties.

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<p><b>L.</b></p>	<p><b>Service provision to Users</b></p>	<p>(I) The Services require:</p> <ul style="list-style-type: none"> <li>(a) rollout of workflows to a mutually agreed set of NHS Trusts and integrated care systems (being LOs under this Call-off Contract) for the duration of the IECPP programme (<b>Programme</b>), which LOs shall be Buyer's Users for the purposes of this Order Form, the Supplier Terms and the Call-Off Contract);</li> <li>(b) performance and compliance with pseudonymisation processes and workflows which comply with Law and as specified by Users;</li> <li>(c) where required by Buyer, connections to source systems at LOs, and Supplier will to the extent possible reuse these and other learnings from one LO to the next and use its library of connectors to enable faster onboarding of each new LO, as applicable.</li> </ul> <p>(II) Buyer will procure that LOs enter into memoranda of understanding (each an <b>MoU</b>) not materially different from the relevant form set out in Schedule 21 (MOUs) and acknowledges that each MoU will require Authorised User (as defined in the 2020 Agreement) compliance with applicable terms of use for the Supplier Service (in the form of the Supplier Terms as applying under this Call-Off Contract). Supplier acknowledges that Users (and such other LOs for whom the Buyer and the Supplier may agree access to the Services under the Programme) are entitled to use the Supplier Service (Supplier product number PT-CAP-BASE) on and subject to the terms of this Call-Off Contract and that no further licence fees (PT-CAP-ADD) are payable in respect of use of the Supplier Service for the period up to the Call-Off Expiry Date by Users or LOs as described in this paragraph. Supplier agrees that the Supplier Terms in the form set out in Schedule 6 of Annex 3 of Schedule 21 (MOUs) will not materially differ from the Supplier Terms in clause 4 (Annex 1) of Call-Off Schedule 6. Supplier will in good faith discuss and agree as commercially reasonable with Buyer any modifications to the Supplier Terms in the form set out in the MOUs necessary in consequence of any changes in the Supplier Terms over the version referenced in Clause 4 (Annex 1) of Call Off Schedule 6.</p>
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		<p>(III) Buyer is responsible for infrastructure Charges incurred by Users and LOs using the Supplier Service further to this Call-Off Contract</p> <p>Buyer shall liaise with Users and/or LOs in relation to information governance and data protection matters in order to facilitate the entry into data processing agreements as referred to in paragraph (IV) below.</p> <p>(IV) Supplier shall enter into data processing agreements in the form annexed to the MoU and associated documentation as so annexed with LOs as anticipated under this Call-Off Contract. Buyer will support LOs in the standardisation of processing instructions under such agreements and as set out in the MoU.</p> <p>(V) Under this Call-Off Contract Customer Data includes data supplied to Supplier by a User or generated or accessed by Supplier in the course of Service provision to a User.</p> <p>(VI) Buyer undertakes not to take or omit to take any action designed to prevent Supplier enforcing an MoU as a third party beneficiary.</p> <p>(VII) Buyer agrees to discuss with Supplier any proposed material changes or variations to any MoU prior to their agreement with the User counterparty to such MoU and to obtain the consent of Supplier to changes or variations in advance where they affect the terms on which Users use the Supplier Service.</p>
<b>M.</b>	<b>Existing MoUs</b>	<p>Buyer and Supplier acknowledge that under an agreement effective 12 December 2020 under the Crown Commercial Services G-Cloud 11 framework (the <b>2020 Agreement</b>) Authorised Users (as defined in the 2020 Agreement) benefitted from service provision under the 2020 Agreement as recorded in memoranda of understanding entered into under the 2020 Agreement (<b>Existing MoUs</b>). The parties intend that such service provision is replaced by the performance of Services and the provision of the Supplier Service under this Call-Off Contract and accordingly agree that for the purposes of Special Term M and this Call-Off Contract:</p>

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		<p>(a) the rights and obligations of each of them under the Existing MoUs shall continue after the Call-Off Start Date as if they were MoUs (such continuing Existing MoUs the <b>Ported MoUs</b>);</p> <p>(b) Buyer will exercise its rights under the Ported MoUs in a manner consistent with the terms of this Call-Off Contract and where appropriate notify the counterparty to each Ported MoU of the relevant provisions of this Call-Off Contract;</p> <p>(c) For the purposes of clause 11 and the parties' liability under or in respect of Ported MoUs, any liability of a party (including of a LO) arising on or after the Call-Off Start Date shall be treated as if it arose under this Call-Off Contract and subject to the limitations and exclusions of liability, and other terms, set out in this Call-Off Contract.</p>
<b>N.</b>	<b>Existing DPAs</b>	<p>Buyer and Supplier acknowledge that under the 2020 Agreement, LOs benefitted from service provision as recorded in data processing agreements between Supplier and such LOs (<b>Existing DPAs</b>). The parties intend that such service provision is replaced by the performance of Services and the provision of the Supplier Service under this Call-Off Contract and accordingly agree that for the purposes of this Call-Off Contract:</p> <p>(d) the rights and obligations of each of them under the Existing DPAs shall continue after the Call-Off Start Date as if they were DPAs hereunder (such continuing Existing DPAs the <b>Ported DPAs</b>);</p> <p>(e) Supplier will exercise its rights under the Ported DPAs in a manner consistent with the terms of this Call-Off Contract;</p> <p>(f) For the purposes of clause 11 and the parties' liability under or in respect of Ported DPAs, any liability of a party (including of a LO) arising on or after the Call-Off Start Date shall be treated as if it arose under this Call-Off Contract and subject to the limitations and exclusions of liability, and other terms, set out in this Call-Off Contract.</p>

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O.	6-month break clause	In addition to its other rights and remedies, the Buyer has the right to terminate this Call-Off Contract on 31 December 2023 without reason by giving the Supplier not less than 30 days' prior written notice.
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CALL-OFF START DATE	12 June 2023
CALL-OFF EXPIRY DATE	11 June 2024
CALL-OFF INITIAL PERIOD	12 Months
CALL-OFF OPTIONAL EXTENSION PERIOD	As set out in Call-Off Schedule 10 (Exit Management)

CALL-OFF DELIVERABLES  
See details in Call-Off Schedule 20 (Call-Off Specification).

MAXIMUM LIABILITY  
The limitations of liability for this Call-Off Contract is stated in Clause 11 of the Core Terms and in the Order Form above.

The Estimated Year 1 Charges used to calculate liability in the first Contract Year is £24,925 million pounds in the first 12 months of the Contract.

CALL-OFF CHARGES

The charges for the provision of Services are:

Product/Service Description	Price (excl VAT)	Payment Profile	Period	Explanation
Capability 3 ongoing Capability Licence fee				
Inclusive of a maximum of				

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Capability 3 ongoing Capability Licence fee				
Inclusive of a maximum of				
Transition Package - General				
Transition Package - Documentation supporting knowledge transfer and exit				

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Transition Package – Data documentation				
Transition Package – Technical enhancements				
Shared namespace infrastructure				



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Data sharing management tool				
Trust CCS product roadmap - Inpatient				
Trust CCS product roadmap - Outpatient				

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Trust CCS – RTT Application				
Trust CCS writeback RPA proof of concept				
Integration into single authentication				

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ICB permission infrastructure design				
Usage worth				
Implementation and Engineering Services. Per person per quarter (or equivalent).				

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Usage worth [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]
Implementation and Engineering Services. Per person per quarter (or equivalent).	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
<b>Total:</b>	<b>£24,925,000</b>			

Where the above table states that an amount is 'payable on invoicing', payment shall be made in accordance with Clause 4.4 of the Core Terms.

In the event of termination of this Call-Off Contract prior to the Call-Off Expiry Date: (a) the capability licence charges (as specified in the above table) shall be refunded to the Buyer on a pro-rata basis; and (b) any prepaid usage and ad-hoc implementation services will be refunded by the Supplier on a pro-rata basis based on the Period of the relevant line item in the table above.

**REIMBURSABLE EXPENSES**  
None

**PAYMENT METHOD**

The payment method for this Call-Off Contract is BACS.

The payment profile for this Call-Off Contract is set out in the "Call-Off Charges" section above.

Unless otherwise set out in this Order Form, the Supplier will issue electronic invoices annually in advance. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.

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Invoices will be sent to NHS Shared Services, ODE Payables M408, Topcliffe Lane, Phoenix House, Wakefield, WF3 1FE.

All invoices must include a Purchase Order Number.

Invoices will be sent to the Buyer as set out in this Order Form.

**BUYER'S INVOICE ADDRESS:**

Quarry House, Quarry Hill, Leeds LS1 7UE

[Redacted]

**BUYER'S AUTHORISED REPRESENTATIVE**

[Redacted]

**SUPPLIER'S AUTHORISED REPRESENTATIVE**

[Redacted]

**SUPPLIER'S CONTRACT MANAGER**

[Redacted]

**PROGRESS REPORT FREQUENCY**

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As set out in schedule 1 Transparency Report

### **PROGRESS MEETING FREQUENCY**

As set out in call off schedule 1 Transparency Report and schedule 15 Contract Management

### **KEY SUBCONTRACTOR(S)**

The Key Subcontractors are:

Amazon Web Services, Inc. – hosting services

Datadog, Inc. – telemetry data

Proofpoint Inc. – email security

NHS Commissioning Support Units

Accenture (UK) Limited

PriceWaterhouseCoopers UK Limited

PA Consulting Ltd

KPMG UK Limited

Hexegic Limited

### **COMMERCIALLY SENSITIVE INFORMATION**

Not applicable

### **SERVICE CREDITS**

Service Credits will accrue in accordance with Call-Off Schedule 14 (Service Levels).

### **ADDITIONAL INSURANCES**

As set out Special Term D.


### **GUARANTEE**

Not applicable

### **SOCIAL VALUE COMMITMENT**

The Supplier agrees, in providing the Deliverables and performing its obligations under the Call-Off Contract, that it will comply with the social value commitments as set out in the Framework Agreement and that it will provide a carbon reduction plan upon request by Buyer, as agreed by the parties (acting reasonably).

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For and on behalf of the Supplier:		For and on behalf of the Buyer:	
Name:		Name:	
Signature:		Signature:	 
Date:		Date:	   

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Service

# Core Terms



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# 1. Definitions used in the contract

Interpret this Contract using Joint Schedule 1 (Definitions).

## 2. How the contract works

- 2.1 The Supplier is eligible for the award of Call-Off Contracts during the Framework Contract Period.
- 2.2 CCS does not guarantee the Supplier any exclusivity, quantity or value of work under the Framework Contract.
- 2.3 CCS has paid one penny to the Supplier legally to form the Framework Contract. The Supplier acknowledges this payment.
- 2.4 If the Buyer decides to buy Deliverables under the Framework Contract it must use Framework Schedule 7 (Call-Off Award Procedure) and must state its requirements using Framework Schedule 6 (Order Form Template and Call-Off Schedules). If allowed by the Regulations, the Buyer can:
  - (a) make changes to Framework Schedule 6 (Order Form Template and Call-Off Schedules);
  - (b) create new Call-Off Schedules;
  - (c) exclude optional template Call-Off Schedules; and/or
  - (d) use Special Terms in the Order Form to add or change terms.
- 2.5 Each Call-Off Contract:
  - (a) is a separate Contract from the Framework Contract;
  - (b) is between a Supplier and a Buyer;
  - (c) includes Core Terms, Schedules and any other changes or items in the completed Order Form; and
  - (d) survives the termination of the Framework Contract.
- 2.6 Where the Supplier is approached by any Other Contracting Authority requesting Deliverables or substantially similar goods or services, the Supplier must tell them about this Framework Contract before accepting their order.
- 2.7 The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Relevant Authority no warranty of its accuracy is given to the Supplier.
- 2.8 The Supplier will not be excused from any obligation, or be entitled to additional Costs

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or Charges because it failed to either:

- (a) verify the accuracy of the Due Diligence Information; or
- (b) properly perform its own adequate checks.

2.9 CCS and the Buyer will not be liable for errors, omissions or misrepresentation of any information.

2.10 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

## **3. What needs to be delivered**

### **3.1 All deliverables**

3.1.1 The Supplier must provide Deliverables:

- (a) that comply with the Specification, the Framework Tender Response and, in relation to a Call-Off Contract, the Call-Off Tender (if there is one);
- (b) to a professional standard;
- (c) using reasonable skill and care;
- (d) using Good Industry Practice;
- (e) using its own policies, processes and internal quality control measures as long as they do not conflict with the Contract;
- (f) on the dates agreed; and
- (g) that comply with Law.

3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.

### **3.2 Goods clauses**

3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.

3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.

3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.

3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.

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Model Version: v3.8

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- 3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
- 3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they do not conform with Clause 3. If the Supplier does not do this it will pay the Buyer's costs including repair or re-supply by a third party.

## **3.3 Services clauses**

- 3.3.1 Late Delivery of the Services will be a Default of a Call-Off Contract.
- 3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.
- 3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.
- 3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to each Contract.
- 3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are

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of good quality and free from defects.

- 3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## 4. Pricing and payments

- 4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Order Form.
- 4.2 CCS must invoice the Supplier for the Management Charge and the Supplier must pay it using the process in Framework Schedule 5 (Management Charges and Information).
- 4.3 All Charges and the Management Charge:
- (a) exclude VAT, which is payable on provision of a valid VAT invoice; and
  - (b) include all costs connected with the Supply of Deliverables.
- 4.4 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Order Form.
- 4.5 A Supplier invoice is only valid if it:
- (a) includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer;
  - (b) includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any); and
  - (c) does not include any Management Charge (the Supplier must not charge the Buyer in any way for the Management Charge).
- 4.6 The Buyer must accept and process for payment an undisputed Electronic Invoice received from the Supplier.
- 4.7 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 4.8 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, CCS or the Buyer can publish the details of the late payment or non-payment.
- 4.9 If CCS or the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables, then CCS or the Buyer may require the Supplier to replace its existing commercial terms

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with the more favourable terms offered for the relevant items.

- 4.10 If CCS or the Buyer uses Clause 4.9 then the Framework Prices (and where applicable, the Charges) must be reduced by an agreed amount by using the Variation Procedure.
- 4.11 The Supplier has no right of set-off, counterclaim, discount or abatement unless they are ordered to do so by a court.

## **5. The buyer's obligations to the supplier**

5.1 If Supplier Non-Performance arises from an Authority Cause:

- (a) neither CCS or the Buyer can terminate a Contract under Clause 10.4.1;
- (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability and Deduction under this Contract;
- (c) the Supplier is entitled to additional time needed to make the Delivery; and
- (d) the Supplier cannot suspend the ongoing supply of Deliverables.

5.2 Clause 5.1 only applies if the Supplier:

- (a) gives notice to the Party responsible for the Authority Cause within 10 Working Days of becoming aware;
- (b) demonstrates that the Supplier Non-Performance would not have occurred but for the Authority Cause; and
- (c) mitigated the impact of the Authority Cause.

## **6. Record keeping and reporting**

6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Order Form.

6.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract:

- (a) during the Contract Period;
- (b) for 7 years after the End Date; and
- (c) in accordance with UK GDPR, including but not limited to the records and accounts stated in the definition of Audit in Joint Schedule 1.

6.3 The Relevant Authority or an Auditor can Audit the Supplier.

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### **6.4 During an Audit, the Supplier must:**

- (a) allow the Relevant Authority or any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit; and
- (b) provide information to the Relevant Authority or to the Auditor and reasonable co-operation at their request.

### **6.5 Where the Audit of the Supplier is carried out by an Auditor, the Auditor shall be entitled to share any information obtained during the Audit with the Relevant Authority.**

### **6.6 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:**

- (a) tell the Relevant Authority and give reasons;
- (b) propose corrective action; and
- (c) provide a deadline for completing the corrective action.

### **6.7 The Supplier must provide CCS with a Self Audit Certificate supported by an audit report at the end of each Contract Year. The report must contain:**

- (a) the methodology of the review;
- (b) the sampling techniques applied;
- (c) details of any issues; and
- (d) any remedial action taken.

### **6.8 The Self Audit Certificate must be completed and signed by an auditor or senior member of the Supplier's management team that is qualified in either a relevant audit or financial discipline.**

## **7. Supplier staff**

### **7.1 The Supplier Staff involved in the performance of each Contract must:**

- (a) be appropriately trained and qualified;
- (b) be vetted using Good Industry Practice and the Security Policy; and
- (c) comply with all conduct requirements when on the Buyer's Premises.

### **7.2 Where a Buyer decides one of the Supplier's Staff is not suitable to work on a contract,**

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the Supplier must replace them with a suitably qualified alternative.

- 7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.
- 7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.
- 7.5 The Supplier indemnifies CCS and the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## 8. Rights and protection

- 8.1 The Supplier warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform each Contract;
  - (b) each Contract is executed by its authorised representative;
  - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
  - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Contract;
  - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract;
  - (f) it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract;
  - (g) it is not impacted by an Insolvency Event; and
  - (h) it will comply with each Call-Off Contract.
- 8.2 The warranties and representations in Clauses 2.10 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 8.3 The Supplier indemnifies both CCS and every Buyer against each of the following:
- (a) wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract; and
  - (b) non-payment by the Supplier of any Tax or National Insurance.
- 8.4 All claims indemnified under this Contract must use Clause 26.
- 8.5 The description of any provision of this Contract as a warranty does not prevent CCS or a Buyer from exercising any termination right that it may have for breach of that

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clause by the Supplier.

- 8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify CCS and every Buyer.
- 8.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## 9. Intellectual Property Rights (IPRs)

- 9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:
- (a) receive and use the Deliverables; and
  - (b) make use of the deliverables provided by a Replacement Supplier.
- 9.2 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.
- 9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 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.
- 9.5 If there is an IPR Claim, the Supplier indemnifies CCS and each Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- (a) obtain for CCS and the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR; or
  - (b) replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 9.7 In spite of any other provisions of a Contract and for the avoidance of doubt, award of a Contract by the Buyer and placement of any contract task under it does not



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constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Supplier acknowledges that any authorisation by the Buyer under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific IPR involved.

## **10. Ending the contract or any subcontract**

### **10.1 Contract Period**

10.1.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

10.1.2 The Relevant Authority can extend the Contract for the Extension Period by giving the Supplier no less than 3 Months' written notice before the Contract expires.

### **10.2 Ending the contract without a reason**

10.2.1 CCS has the right to terminate the Framework Contract at any time without reason by giving the Supplier at least 30 days' notice.

10.2.2 Each Buyer has the right to terminate their Call-Off Contract at any time without reason by giving the Supplier not less than 90 days' written notice.

### **10.3 Rectification plan process**

10.3.1 If there is a Default, the Relevant Authority may, without limiting its other rights, request that the Supplier provide a Rectification Plan, within 10 working days .

10.3.2 When the Relevant Authority receives a requested Rectification Plan it can either:

- (a) reject the Rectification Plan or revised Rectification Plan, giving reasons; or
- (b) accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.

10.3.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:

- (a) must give reasonable grounds for its decision; and
- (b) may request that the Supplier provides a revised Rectification Plan within 5 Working Days.

10.3.4 If the Relevant Authority rejects any Rectification Plan, including any revised

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Rectification Plan, the Relevant Authority does not have to request a revised Rectification Plan before exercising its right to terminate its Contract under Clause 10.4.3(a).

**10.4 When CCS or the buyer can end a contract**

10.4.1 If any of the following events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

- (a) there is a Supplier Insolvency Event;
- (b) there is a Default that is not corrected in line with an accepted Rectification Plan;
- (c) the Supplier does not provide a Rectification Plan within 10 days of the request;
- (d) there is any material Default of the Contract;
- (e) there is any material Default of any Joint Controller Agreement relating to any Contract;
- (f) there is a Default of Clauses 2.10, 9, 14, 15, 27, 32 or Framework Schedule 9 (Cyber Essentials) (where applicable) relating to any Contract;
- (g) there is a consistent repeated failure to meet the Performance Indicators in Framework Schedule 4 (Framework Management);
- (h) there is a Change of Control of the Supplier which is not pre-approved by the Relevant Authority in writing;
- (i) if the Relevant Authority discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded; or
- (j) the Supplier or its Affiliates embarrass or bring CCS or the Buyer into disrepute or diminish the public trust in them.

10.4.2 CCS may terminate the Framework Contract if a Buyer terminates a Call-Off Contract for any of the reasons listed in Clause 10.4.1.

10.4.3 If any of the following non-fault based events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

- (a) the Relevant Authority rejects a Rectification Plan;
- (b) there is a Variation which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes);
- (c) if there is a declaration of ineffectiveness in respect of any Variation; or
- (d) the events in 73 (1) (a) of the Regulations happen.

**10.5 When the supplier can end the contract**

The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate a Call-Off Contract if the Buyer fails to pay an undisputed

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invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice.

### 10.6 What happens if the contract ends

10.6.1 Where a Party terminates a Contract under any of Clauses 10.2.1, 10.2.2, 10.4.1, 10.4.2, 10.4.3, 10.5 or 20.2 or a Contract expires all of the following apply:

- (a) The Buyer's payment obligations under the terminated Contract stop immediately.
- (b) Accumulated rights of the Parties are not affected.
- (c) The Supplier must promptly repay to the Buyer any and all Charges the Buyer has paid in advance in respect of Deliverables not provided by the Supplier as at the End Date.
- (d) The Supplier must promptly delete or return the Government Data except where required to retain copies by Law.
- (e) The Supplier must promptly return any of CCS or the Buyer's property provided under the terminated Contract.
- (f) The Supplier must, at no cost to CCS or the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

10.6.2 In addition to the consequences of termination listed in Clause 10.6.1, where the Relevant Authority terminates a Contract under Clause 10.4.1 the Supplier is also responsible for the Relevant Authority's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.

10.6.3 In addition to the consequences of termination listed in Clause 10.6.1, if either the Relevant Authority terminates a Contract under Clause 10.2.1 or 10.2.2 or a Supplier terminates a Call-Off Contract under Clause 10.5:

- (a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier; and
- (b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated.

10.6.4 In addition to the consequences of termination listed in Clause 10.6.1, where a Party terminates under Clause 20.2 each Party must cover its own Losses.

10.6.5 The following Clauses survive the termination or expiry of each Contract: 3.2.10, 4.2, 6, 7.5, 9, 11, 12.2, 14, 15, 16, 17, 18, 31.3, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

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### **10.7 Partially ending and suspending the contract**

- 10.7.1 Where CCS has the right to terminate the Framework Contract it can suspend the Supplier's ability to accept Orders (for any period) and the Supplier cannot enter into any new Call-Off Contracts during this period. If this happens, the Supplier must still meet its obligations under any existing Call-Off Contracts that have already been signed.
- 10.7.2 Where CCS has the right to terminate a Framework Contract it is entitled to terminate all or part of it.
- 10.7.3 Where the Buyer has the right to terminate a Call-Off Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends a Contract it can provide the Deliverables itself or buy them from a third party.
- 10.7.4 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.
- 10.7.5 The Parties must agree any necessary Variation required by Clause 10.7 using the Variation Procedure, but the Supplier may not either:
- (a) reject the Variation; or
  - (b) increase the Charges, except where the right to partial termination is under Clause 10.2.
- 10.7.6 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.7.

### **10.8 When subcontracts can be ended**

At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:

- (a) there is a Change of Control of a Subcontractor which is not pre-approved by the Relevant Authority in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4; or
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Relevant Authority.

## **11. How much you can be held responsible for**

- 11.1 Each Party's total aggregate liability in each Contract Year under this Framework Contract (whether in tort, contract or otherwise) is no more than £1,000,000.
- 11.2 Each Party's total aggregate liability in each Contract Year under each Call-Off Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Call-Off Order Form.
- 11.3 No Party is liable to the other for:
- (a) any indirect Losses; or
  - (b) Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 11.4 In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:
- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
  - (c) any liability that cannot be excluded or limited by Law;
  - (d) its obligation to pay the required Management Charge or Default Management Charge.
- 11.5 In spite of Clauses 11.1 and 11.2, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3(b), 9.5, 31.3 or Call-Off Schedule 2 (Staff Transfer) of a Contract.
- 11.6 In spite of Clauses 11.1, 11.2 but subject to Clauses 11.3 and 11.4, the Supplier's aggregate liability in each and any Contract Year under each Contract under Clause 14.8 shall in no event exceed the Data Protection Liability Cap.
- 11.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.
- 11.8 When calculating the Supplier's liability under Clause 11.1 or 11.2 the following items will not be taken into consideration:
- (a) Deductions; and

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(b) any items specified in Clauses 11.5 or 11.6.

11.9 If more than one Supplier is party to a Contract, each Supplier Party is jointly and severally liable for their obligations under that Contract.

## **12. Obeying the law**

12.1 The Supplier must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (Corporate Social Responsibility).

12.2 To the extent that it arises as a result of a Default by the Supplier, the Supplier indemnifies the Relevant Authority against any fine or penalty incurred by the Relevant Authority pursuant to Law and any costs incurred by the Relevant Authority in defending any proceedings which result in such fine or penalty.

12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

## **13. Insurance**

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Joint Schedule 3 (Insurance Requirements) and any Additional Insurances in the Order Form.

## **14. Data protection**

14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Joint Schedule 11 (Processing Data).

14.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.

14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.

14.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Supplier

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must notify the Relevant Authority and immediately suggest remedial action.

14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:

- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Relevant Authority receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
- (b) restore the Government Data itself or using a third party.

14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless CCS or the Buyer is at fault.

14.8 The Supplier:

- (a) must provide the Relevant Authority with all Government Data in an agreed open format within 10 Working Days of a written request;
- (b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
- (d) securely erase all Government Data and any copies it holds when asked to do so by CCS or the Buyer unless required by Law to retain it; and
- (e) indemnifies CCS and each Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

## 15. What you must keep confidential

15.1 Each Party must:

- (a) keep all Confidential Information it receives confidential and secure;
- (b) except as expressly set out in the Contract at Clauses 15.2 to 15.4 or elsewhere in the Contract, not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent; and
- (c) immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if, to the extent not prohibited by Law, the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- (b) if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;

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- (c) if the information was given to it by a third party without obligation of confidentiality;
- (d) if the information was in the public domain at the time of the disclosure;
- (e) if the information was independently developed without access to the Disclosing Party's Confidential Information;
- (f) on a confidential basis, to its auditors;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis; or
- (h) to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

15.3 In spite of Clause 15.1, the Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Relevant Authority at its request.

15.4 In spite of Clause 15.1, CCS or the Buyer may disclose Confidential Information in any of the following cases:

- (a) on a confidential basis to the employees, agents, consultants and contractors of CCS or the Buyer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that CCS or the Buyer transfers or proposes to transfer all or any part of its business to;
- (c) if CCS or the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- (d) where requested by Parliament; or
- (e) under Clauses 4.7 and 16.

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information is not Confidential Information.

15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

## 16. When you can share information

16.1 The Supplier must tell the Relevant Authority within 48 hours if it receives a Request For Information.



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16.2 Within five (5) Working Days of the Buyer's request the Supplier must give CCS and each Buyer full co-operation and information needed so the Buyer can:

- (a) publish the Transparency Information;
- (b) comply with any Freedom of Information Act (FOIA) request; and/or
- (c) comply with any Environmental Information Regulations (EIR) request.

16.3 The Relevant Authority may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Relevant Authority's decision in its absolute discretion.

## **17. Invalid parts of the contract**

If any part of a Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it is valid or enforceable.

## **18. No other terms apply**

The provisions incorporated into each Contract are the entire agreement between the Parties. The Contract replaces all previous statements, agreements and any course of dealings made between the Parties, whether written or oral, in relation to its subject matter. No other provisions apply.

## **19. Other people's rights in a contract**

No third parties may use the Contracts (Rights of Third Parties) Act 1999 (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## **20. Circumstances beyond your control**

20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:

- (a) provides a Force Majeure Notice to the other Party; and
- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

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- 20.2 Either Party can partially or fully terminate the affected Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

## **21. Relationships created by the contract**

No Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## **22. Giving up contract rights**

A partial or full waiver or relaxation of the terms of a Contract is only valid if it is stated to be a waiver in writing to the other Party.

## **23. Transferring responsibilities**

- 23.1 The Supplier cannot assign, novate or transfer a Contract or any part of a Contract without the Relevant Authority's written consent.
- 23.2 The Relevant Authority can assign, novate or transfer its Contract or any part of it to any Central Government Body, public or private sector body which performs the functions of the Relevant Authority.
- 23.3 When CCS or the Buyer uses its rights under Clause 23.2 the Supplier must enter into a novation agreement in the form that CCS or the Buyer specifies.
- 23.4 The Supplier can terminate a Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.
- 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 23.6 If CCS or the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- (a) their name;
  - (b) the scope of their appointment; and

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- (c) the duration of their appointment.

## **24. Changing the contract**

- 24.1 Either Party can request a Variation which is only effective if agreed in writing and signed by both Parties.
- 24.2 The Supplier must provide an Impact Assessment either:
  - (a) with the Variation Form, where the Supplier requests the Variation; or
  - (b) within the time limits included in a Variation Form requested by CCS or the Buyer.
- 24.3 If the Variation cannot be agreed or resolved by the Parties, CCS or the Buyer can either:
  - (a) agree that the Contract continues without the Variation; or
  - (b) terminate the affected Contract, unless in the case of a Call-Off Contract, the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them; or
  - (c) refer the Dispute to be resolved using Clause 34 (Resolving Disputes).
- 24.4 CCS and the Buyer are not required to accept a Variation request made by the Supplier.
- 24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Framework Prices or the Charges.
- 24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give CCS and the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, Framework Prices or a Contract and provide evidence:
  - (a) that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
  - (b) of how it has affected the Supplier's costs.
- 24.7 Any change in the Framework Prices or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.
- 24.8 For 101(5) of the Regulations, if the Court declares any Variation ineffective, the

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Parties agree that their mutual rights and obligations will be regulated by the terms of the Contract as they existed immediately prior to that Variation and as if the Parties had never entered into that Variation.

## **25. How to communicate about the contract**

- 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.
- 25.2 Notices to CCS must be sent to the CCS Authorised Representative's address or email address in the Framework Award Form.
- 25.3 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Order Form.
- 25.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **26. Dealing with claims**

- 26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.
- 26.2 At the Indemnifier's cost the Beneficiary must both:
  - (a) allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
  - (b) give the Indemnifier reasonable assistance with the claim if requested.
- 26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which can not be unreasonably withheld or delayed.
- 26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.
- 26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

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26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- (a) the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or
- (b) the amount the Indemnifier paid the Beneficiary for the Claim.

## 27. Preventing fraud, bribery and corruption

27.1 The Supplier must not during any Contract Period:

- (a) commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); or
- (b) do or allow anything which would cause CCS or the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.

27.2 The Supplier must during the Contract Period:

- (a) create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
- (b) keep full records to show it has complied with its obligations under Clause 27 and give copies to CCS or the Buyer on request; and
- (c) if required by the Relevant Authority, within 20 Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Relevant Authority, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

27.3 The Supplier must immediately notify CCS and the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- (a) been investigated or prosecuted for an alleged Prohibited Act;
- (b) been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
- (c) received a request or demand for any undue financial or other advantage of any kind related to a Contract; or
- (d) suspected that any person or Party directly or indirectly related to a Contract has

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committed or attempted to commit a Prohibited Act.

27.4 If the Supplier notifies CCS or the Buyer as required by Clause 27.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Supplier gives under Clause 27.3 it must specify the:

- (a) Prohibited Act;
- (b) identity of the Party who it thinks has committed the Prohibited Act; and
- (c) action it has decided to take.

## **28. Equality, diversity and human rights**

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
- (b) any other requirements and instructions which CCS or the Buyer reasonably imposes related to equality Law.

28.2 The Supplier must take all necessary steps, and inform CCS or the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

## **29. Health and safety**

29.1 The Supplier must perform its obligations meeting the requirements of:

- (a) all applicable Law regarding health and safety; and
- (b) the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.

29.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of at the Buyer Premises that relate to the performance of a Contract.

## 30. Environment

- 30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

## 31. Tax

- 31.1 The Supplier must not breach any Tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. CCS and the Buyer cannot terminate a Contract where the Supplier has not paid a minor Tax or social security contribution.
- 31.2 Where the Charges payable under a Contract with the Buyer are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify CCS and the Buyer of it within 5 Working Days including:
  - (a) the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
  - (b) other information relating to the Occasion of Tax Non-Compliance that CCS and the Buyer may reasonably need.
- 31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under a Call-Off Contract, the Supplier must both:
  - (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
  - (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
  - (a) the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those

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- requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
- (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
  - (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers is not good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements; and
  - (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## **32. Conflict of interest**

- 32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.
- 32.2 The Supplier must promptly notify and provide details to CCS and each Buyer if a Conflict of Interest happens or is expected to happen.
- 32.3 CCS and each Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

## **33. Reporting a breach of the contract**

- 33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to CCS or the Buyer any actual or suspected breach of:
- (a) Law;
  - (b) Clause 12.1; or
  - (c) Clauses 27 to 32.
- 33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

## **34. Resolving disputes**

- 34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.



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- 34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.
- 34.3 Unless the Relevant Authority refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- (a) determine the Dispute;
  - (b) grant interim remedies; and/or
  - (c) grant any other provisional or protective relief.
- 34.4 The Supplier agrees that the Relevant Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 34.5 The Relevant Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Relevant Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.
- 34.6 The Supplier cannot suspend the performance of a Contract during any Dispute.

## **35. Which law applies**

This Contract and any Disputes arising out of, or connected to it, are governed by English law.

**Joint Schedule 1 (Definitions)**

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**Joint Schedule 1 (Definitions)**

- 1.1 In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In each Contract, unless the context otherwise requires:
  - 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;
  - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
  - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;
  - 1.3.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
  - 1.3.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
  - 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;
  - 1.3.11 the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract;

**Joint Schedule 1 (Definitions)**

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1.3.12 where the Buyer is a Central Government Body it shall be treated as contracting with the Crown as a whole;

1.3.13 any reference in a Contract which immediately before Exit Day was a reference to (as it has effect from time to time):

- (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred; and

1.3.14 unless otherwise provided, references to "**Buyer**" shall be construed as including Exempt Buyers; and

1.3.15 unless otherwise provided, references to "**Call-Off Contract**" and "**Contract**" shall be construed as including Exempt Call-off Contracts.

1.4 In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

<b>"Achieve"</b>	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " <b>Achieved</b> ", " <b>Achieving</b> " and " <b>Achievement</b> " shall be construed accordingly;
<b>"Additional Insurances"</b>	insurance requirements relating to a Call-Off Contract specified in the Order Form additional to those outlined in Joint Schedule 3 (Insurance Requirements);
<b>"Admin Fee"</b>	means the costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the CCS on: <a href="http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a> ;
<b>"Affected Party"</b>	the Party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affiliates"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Annex"</b>	extra information which supports a Schedule;
<b>"Approval"</b>	the prior written consent of the Buyer and " <b>Approve</b> " and " <b>Approved</b> " shall be construed accordingly;
<b>"Audit"</b>	the Relevant Authority's right to:

**Joint Schedule 1 (Definitions)**

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	<ul style="list-style-type: none"> <li>a) verify the accuracy of the Charges and any other amounts payable by a Buyer under a Call-Off Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;</li> <li>c) verify the Open Book Data;</li> <li>d) verify the Supplier's and each Subcontractor's compliance with the Contract and applicable Law;</li> <li>e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Joint Schedule 5 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>g) obtain such information as is necessary to fulfil the Relevant Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract;</li> <li>i) carry out the Relevant Authority's internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts;</li> <li>j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Relevant Authority has used its resources; or</li> <li>k) verify the accuracy and completeness of any Management Information delivered or required by the Framework Contract;</li> </ul>
<b>"Auditor"</b>	<ul style="list-style-type: none"> <li>a) the Relevant Authority's internal and external auditors;</li> <li>b) the Relevant Authority's statutory or regulatory auditors;</li> <li>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li> <li>d) HM Treasury or the Cabinet Office;</li> <li>e) any party formally appointed by the Relevant Authority to carry out audit or similar review functions; and</li> <li>f) successors or assigns of any of the above;</li> </ul>

**Joint Schedule 1 (Definitions)**

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<b>"Authority"</b>	CCS and each Buyer;
<b>"Authority Cause"</b>	any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier;
<b>"BACS"</b>	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"</b>	the relevant public sector purchaser identified as such in the Order Form;
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Call-Off Contract initially identified in the Order Form;
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>"Call-Off Contract"</b>	the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the Framework Contract), which consists of the terms set out and referred to in the Order Form;
<b>"Call-Off Contract Period"</b>	the Contract Period in respect of the Call-Off Contract;
<b>"Call-Off Expiry Date"</b>	the scheduled date of the end of a Call-Off Contract as stated in the Order Form;
<b>"Call-Off Incorporated Terms"</b>	the contractual terms applicable to the Call-Off Contract specified under the relevant heading in the Order Form;
<b>"Call-Off Initial Period"</b>	the Initial Period of a Call-Off Contract specified in the Order Form;
<b>"Call-Off Optional Extension Period"</b>	such period or periods beyond which the Call-Off Initial Period may be extended as specified in the Order Form;
<b>"Call-Off Procedure"</b>	the process for awarding a Call-Off Contract pursuant to Clause 2 (How the contract works) and Framework Schedule 7 (Call-Off Award Procedure);
<b>"Call-Off Special Terms"</b>	any additional terms and conditions specified in the Order Form incorporated into the applicable Call-Off Contract;
<b>"Call-Off Start Date"</b>	the date of start of a Call-Off Contract as stated in the Order Form;
<b>"Call-Off Tender"</b>	the tender submitted by the Supplier in response to the Buyer's Statement of Requirements following a Further Competition Procedure and set out at Call-Off Schedule 4 (Call-Off Tender);

Framework Ref: RM6195

Project Version: v1.1

Model Version: v3.10

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<b>"Capability Down-Select Matrix"</b>	means the matrix available for buyers to create shortlists of suppliers on Lot 1 by capability to run a down-select further competition
<b>"Catalogue"</b>	means the online repository of supplier product & service offerings and pricing
<b>"CCS"</b>	the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"CCS Authorised Representative"</b>	the representative appointed by CCS from time to time in relation to the Framework Contract initially identified in the Framework Award Form;
<b>"Central Government Body"</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Call-Off Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in the Framework Award Form or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<b>"Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of CCS, the Buyer or the Supplier, including IPRs, together with

**Joint Schedule 1 (Definitions)**

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	information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " <b>confidential</b> ") or which ought reasonably to be considered to be confidential;
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to CCS or any Buyer under a Contract, in the reasonable opinion of the Buyer or CCS;
<b>"Contract"</b>	either the Framework Contract or the Call-Off Contract, as the context requires;
<b>"Contract Period"</b>	the term of either a Framework Contract or Call-Off Contract on and from the earlier of the: a) applicable Start Date; or b) the Effective Date up to and including the applicable End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under a Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
<b>"Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and " <b>Controlled</b> " shall be construed accordingly;
<b>"Controller"</b>	has the meaning given to it in the UK GDPR;
<b>"Core Terms"</b>	CCS' terms and conditions for common goods and services which govern how Suppliers must interact with CCS and Buyers under Framework Contracts and Call-Off Contracts;
<b>"Costs"</b>	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables: e) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including: i) base salary paid to the Supplier Staff; ii) employer's National Insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation;

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	<p>viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</p> <p>ix) reasonable recruitment costs, as agreed with the Buyer;</p> <p>f) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>g) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and</p> <p>h) Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any Deliverables;</p> <p>but excluding:</p> <p>i) Overhead;</p> <p>j) financing or similar costs;</p> <p>k) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Call-Off Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>l) taxation;</p> <p>m) fines and penalties;</p> <p>n) amounts payable under Call-Off Schedule 16 (Benchmarking) where such Schedule is used; and</p> <p>o) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
<b>"CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>"Data Protection Legislation"</b>	(i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy;
<b>"Data Protection Liability Cap"</b>	the amount specified in the Framework Award Form;
<b>"Data Protection Officer"</b>	has the meaning given to it in the UK GDPR;
<b>"DataSecOps"</b>	is the evolution of the 'DevSecOps' model specifically for data management.



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<b>"Data Subject"</b>	has the meaning given to it in the UK GDPR;
<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Day Rate"</b>	means the rate for an eight (8) hour Working Day, exclusive of breaks including lunch
<b>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under a Call-Off Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority;
<b>"Default Management Charge"</b>	has the meaning given to it in Paragraph 8.1.1 of Framework Schedule 5 (Management Charges and Information);
<b>"Delay Payments"</b>	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>"Deliverables"</b>	Goods and/or Services that may be ordered under the Contract including the Documentation;
<b>"Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of a Call-Off Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Call-Off Schedule 13 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"DevOps"</b>	DevOps is a set of practices that combines software development (Dev) and IT operations (Ops). In many cases, this is the name of the team operating a customer's CI/CD pipelines and managing its environments.
<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 34 (Resolving disputes);

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<b>"Documentation"</b>	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under a Contract as:</p> <p>p) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</p> <p>q) is required by the Supplier in order to provide the Deliverables; and/or</p> <p>r) has been or shall be generated for the purpose of providing the Deliverables;</p>
<b>"DOTAS"</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of Tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
<b>"DPA 2018"</b>	the Data Protection Act 2018;
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Authority prior to the Start Date;
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract;
<b>"EIR"</b>	the Environmental Information Regulations 2004;
<b>"Electronic Invoice"</b>	an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;
<b>"End Date"</b>	<p>the earlier of:</p> <p>s) the Expiry Date (as extended by any Extension Period exercised by the Relevant Authority under Clause 10.1.2); or</p> <p>t) if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract;</p>
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;

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<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Order Form;

<b>"Estimated Yearly Charges"</b>	<p>means for the purposes of calculating each Party's annual liability under clause 11.2 :</p> <ul style="list-style-type: none"> <li>i) in the first Contract Year, the Estimated Year 1 Charges; or</li> <li>ii) in the any subsequent Contract Years, the Charges paid or payable in the previous Call-off Contract Year; or</li> <li>iii) after the end of the Call-off Contract, the Charges paid or payable in the last Contract Year during the Call-off Contract Period;</li> </ul>
<b>"Exempt Buyer"</b>	<p>a public sector purchaser that is:</p> <ul style="list-style-type: none"> <li>a) eligible to use the Framework Contract; and</li> <li>b) is entering into an Exempt Call-off Contract that is not subject to (as applicable) any of: <ul style="list-style-type: none"> <li>i) the Regulations;</li> <li>ii) the Concession Contracts Regulations 2016 (SI 2016/273);</li> <li>iii) the Utilities Contracts Regulations 2016 (SI 2016/274);</li> <li>iv) the Defence and Security Public Contracts Regulations 2011 (SI 2011/1848);</li> <li>v) the Remedies Directive (2007/66/EC);</li> <li>vi) Directive 2014/23/EU of the European Parliament and Council;</li> <li>vii) Directive 2014/24/EU of the European Parliament and Council;</li> <li>viii) Directive 2014/25/EU of the European Parliament and Council;</li> <li>or</li> <li>ix) Directive 2009/81/EC of the European Parliament and Council;</li> </ul> </li> </ul>
<b>"Exempt Call-off Contract"</b>	the contract between the Exempt Buyer and the Supplier for Deliverables which consists of the terms set out and referred to in the Order Form incorporating and, where necessary, amending, refining or adding to the terms of the Framework Contract;
<b>"Exempt Procurement Amendments"</b>	any amendments, refinements or additions to any of the terms of the Framework Contract made through the Exempt Call-off Contract to reflect the specific needs of an Exempt Buyer to the extent permitted by and in accordance with any legal requirements applicable to that Exempt Buyer;

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<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
<b>"Exit Day"</b>	shall have the meaning in the European Union (Withdrawal) Act 2018;
<b>"Expiry Date"</b>	the Framework Expiry Date or the Call-Off Expiry Date (as the context dictates);
<b>"Expression of Interest"</b>	means the pre-procurement supplier engagement activity undertaken by the Buyer, whereby suppliers can express their interest to participate in a Further Competition Procedure.
<b>"Extension Period"</b>	the Framework Optional Extension Period or the Call-Off Optional Extension Period as the context dictates;
<b>"FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including: a) riots, civil commotion, war or armed conflict; b) acts of terrorism; c) acts of government, local government or regulatory bodies; d) fire, flood, storm or earthquake or other natural disaster, but excluding any industrial dispute relating to the Supplier, the Supplier Staff or any other failure in the Supplier or the Subcontractor's supply chain;
<b>"Force Majeure Notice"</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>"Framework Award Form"</b>	the document outlining the Framework Incorporated Terms and crucial information required for the Framework Contract, to be executed by the Supplier and CCS;
<b>"Framework Contract"</b>	the framework agreement established between CCS and the Supplier in accordance with Regulation 33 by the Framework Award Form for the provision of the Deliverables to Buyers by the Supplier pursuant to the notice published on the Find a Tender Service;
<b>"Framework Contract Period"</b>	the period from the Framework Start Date until the End Date of the Framework Contract;
<b>"Framework Expiry Date"</b>	the scheduled date of the end of the Framework Contract as stated in the Framework Award Form;

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<b>"Framework Incorporated Terms"</b>	the contractual terms applicable to the Framework Contract specified in the Framework Award Form;
<b>"Framework Optional Extension Period"</b>	such period or periods beyond which the Framework Contract Period may be extended as specified in the Framework Award Form;
<b>"Framework Price(s)"</b>	the price(s) applicable to the provision of the Deliverables set out in Framework Schedule 3 (Framework Prices);
<b>"Framework Special Terms"</b>	any additional terms and conditions specified in the Framework Award Form incorporated into the Framework Contract;
<b>"Framework Start Date"</b>	the date of start of the Framework Contract as stated in the Framework Award Form;
<b>"Framework Tender Response"</b>	the tender submitted by the Supplier to CCS and annexed to or referred to in Framework Schedule 2 (Framework Tender);
<b>"Further Competition Procedure"</b>	the further competition procedure described in Framework Schedule 7 (Call-Off Award Procedure);
<b>"UK GDPR"</b>	the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"General Anti-Abuse Rule"</b>	e) the legislation in Part 5 of the Finance Act 2013 and; and f) any future legislation introduced into parliament to counteract Tax advantages arising from abusive arrangements to avoid National Insurance contributions;
<b>"General Change in Law"</b>	a Change in Law where the change is of a general legislative nature (including Tax or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Goods"</b>	goods made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form ;
<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Data"</b>	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority's Confidential Information, and which:  i) are supplied to the Supplier by or on behalf of the Authority; or

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	ii) the Supplier is required to generate, process, store or transmit pursuant to a Contract;
<b>"Guarantor"</b>	the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (Guarantee) in relation to this Contract;
<b>"Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	Her Majesty's Revenue and Customs;
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Order Form, which is in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>"Impact Assessment"</b>	<p>an assessment of the impact of a Variation request by the Relevant Authority completed in good faith, including:</p> <p>a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</p> <p>b) details of the cost of implementing the proposed Variation;</p> <p>c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Framework Prices/Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</p> <p>d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</p> <p>e) such other information as the Relevant Authority may reasonably request in (or in response to) the Variation request;</p>
<b>"Implementation Plan"</b>	the plan for provision of the Deliverables set out in Call-Off Schedule 13 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
<b>"Indemnifier"</b>	a Party from whom an indemnity is sought under this Contract;
<b>"Independent Control"</b>	where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and <b>"Independent Controller"</b> shall be construed accordingly;
<b>"Indexation"</b>	the adjustment of an amount or sum in accordance with Framework Schedule 3 (Framework Prices) and the relevant Order Form;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;

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<b>"Initial Period"</b>	the initial term of a Contract specified in the Framework Award Form or the Order Form, as the context requires;
<b>"Insolvency Event"</b>	<p>with respect to any person, means:</p> <p>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p>(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p> <p>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</p> <p>(d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within 14 days;</p> <p>(e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(f) where that person is a company, a LLP or a partnership:</p> <p>(i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p>

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	<p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
<b>"Installation Works"</b>	all works which the Supplier is to carry out at the beginning of the Call-Off Contract Period to install the Goods in accordance with the Call-Off Contract;
<b>"Intellectual Property Rights" or "IPR"</b>	<p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>"Invoicing Address"</b>	the address to which the Supplier shall invoice the Buyer as specified in the Order Form;
<b>"IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract;
<b>"IR35"</b>	the off-payroll rules requiring individuals who work through their company pay the same income tax and National Insurance contributions as an employee which can be found online at: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Relevant Authority and the Supplier substantially in the form set out in Annex 2 of Joint Schedule 11 ( <i>Processing Data</i> );
<b>"Joint Controllers"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Key Staff"</b>	the individuals (if any) identified as such in the Order Form;
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;
<b>"Key Subcontractor"</b>	<p>any Subcontractor:</p> <p>a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</p>



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	<p>b) which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</p> <p>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Call-Off Contract,</p> <p>and the Supplier shall list all such Key Subcontractors in section 19 of the Framework Award Form and in the Key Subcontractor Section in Order Form;</p>
<b>"Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;
<b>"Law"</b>	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply;
<b>"Losses"</b>	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Lots"</b>	the number of lots specified in Framework Schedule 1 (Specification), if applicable;
<b>"Management Charge"</b>	the sum specified in the Framework Award Form payable by the Supplier to CCS in accordance with Framework Schedule 5 (Management Charges and Information);
<b>"Management Information" or "MI"</b>	the management information specified in Framework Schedule 5 (Management Charges and Information);
<b>"MI Default"</b>	means when two (2) MI Reports are not provided in any rolling six (6) month period
<b>"MI Failure"</b>	<p>means when an MI report:</p> <p>a) contains any material errors or material omissions or a missing mandatory field; or</p> <p>b) is submitted using an incorrect MI reporting Template; or</p> <p>c) is not submitted by the reporting date (including where a declaration of no business should have been filed);</p>
<b>"MI Report"</b>	means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 5 (Management Charges and Information);

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<b>"MI Reporting Template"</b>	means the form of report set out in the Annex to Framework Schedule 5 (Management Charges and Information) setting out the information the Supplier is required to supply to the Authority;
<b>"Milestone"</b>	an event or task described in the Implementation Plan;
<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"National Insurance"</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>"New IPR"</b>	<p>a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR;</p>
<b>"Occasion of Tax Non-Compliance"</b>	<p>where:</p> <p>a) any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ol style="list-style-type: none"> <li>a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ol> <p>b) any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for Tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;</p>
<b>"Open Book Data "</b>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Call-Off Contract, including details and all assumptions relating to:</p> <p>a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including</p>

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	<p>capital replacement costs) and the unit cost and total actual costs of all Deliverables;</p> <p>b) operating expenditure relating to the provision of the Deliverables including an analysis showing:</p> <ul style="list-style-type: none"> <li>i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>ii) staff costs broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each grade;</li> <li>iii) a list of Costs underpinning those rates for each grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>iv) Reimbursable Expenses, if allowed under the Order Form;</li> </ul> <p>c) Overheads;</p> <p>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</p> <p>e) the Supplier Profit achieved over the Framework Contract Period and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period;</p>
<b>"Order"</b>	means an order for the provision of the Deliverables placed by a Buyer with the Supplier under a Contract;
<b>"Order Form"</b>	a completed Order Form Template (or equivalent information issued by the Buyer) used to create a Call-Off Contract;
<b>"Order Form Template"</b>	the template in Framework Schedule 6 (Order Form Template and Call-Off Schedules);
<b>"Other Contracting Authority"</b>	any actual or potential Buyer under the Framework Contract;

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<b>"Overhead"</b>	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
<b>"Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>"Party"</b>	in the context of the Framework Contract, CCS or the Supplier, and in the in the context of a Call-Off Contract the Buyer or the Supplier. <b>"Parties"</b> shall mean both of them where the context permits;
<b>"Performance Indicators" or "PIs"</b>	the performance measurements and targets in respect of the Supplier's performance of the Framework Contract set out in Framework Schedule 4 (Framework Management);
<b>"Personal Data"</b>	has the meaning given to it in the UK GDPR;
<b>"Personal Data Breach"</b>	has the meaning given to it in the UK GDPR;
<b>"Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of a Party and/or of any Subcontractor and/or Subprocessor engaged in the performance of its obligations under a Contract;
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
<b>"Processing"</b>	has the meaning given to it in the UK GDPR;
<b>"Processor"</b>	has the meaning given to it in the UK GDPR;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Meeting Frequency"</b>	the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Order Form;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Progress Report Frequency"</b>	the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Order Form;
<b>"Prohibited Acts"</b>	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul>

**Joint Schedule 1 (Definitions)**

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	<p>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with each Contract; or</p> <p>c) committing any offence:</p> <p>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</p> <p>ii) under legislation or common law concerning fraudulent acts; or</p> <p>iii) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or</p> <p>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
<b>"Protective Measures"</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Framework Schedule 9 (Cyber Essentials Scheme), if applicable, in the case of the Framework Contract or Call-Off Schedule 9 (Security), if applicable, in the case of a Call-Off Contract.
<b>"Recall"</b>	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the right IPR rights) that might endanger health or hinder performance;
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>"Rectification Plan"</b>	<p>the Supplier's plan (or revised plan) to rectify it's breach using the template in Joint Schedule 10 (Rectification Plan) which shall include:</p> <p>a) full details of the Default that has occurred, including a root cause analysis;</p> <p>b) the actual or anticipated effect of the Default; and</p> <p>c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);</p>
<b>"Rectification Plan Process"</b>	the process set out in Clause 10.3.1 to 10.3.4 (Rectification Plan Process);
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);

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<b>"Reimbursable Expenses"</b>	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <p>a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</p> <p>b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</p>
<b>"Relevant Authority"</b>	the Authority which is party to the Contract to which a right or obligation is owed, as the context requires;
<b>"Relevant Authority's Confidential Information"</b>	<p>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR);</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority's attention or into the Relevant Authority's possession in connection with a Contract; and</p> <p>information derived from any of the above;</p>
<b>"Relevant Person(s)"</b>	anyone who might need access to that information as part of managing or calling off one of our agreements.
<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Reminder Notice"</b>	a notice sent in accordance with Clause 10.5 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables following the Call-Off Expiry Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Subcontractor"</b>	a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
<b>"Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is

**Joint Schedule 1 (Definitions)**

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	providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>"Request For Information"</b>	a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Insurances"</b>	the insurances required by Joint Schedule 3 (Insurance Requirements) or any additional insurances specified in the Order Form;
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in of Part B of Call-Off Schedule 13 (Implementation Plan and Testing) or as agreed by the Parties where Call-Off Schedule 13 is not used in this Contract) granted by the Buyer when the Supplier has met all of the requirements of an Order, Achieved a Milestone or a Test;
<b>"Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to Call-Off Schedule 9 (Security) (if applicable);
<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Order Form, in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Self Audit Certificate"</b>	means the certificate in the form as set out in Framework Schedule 8 (Self Audit Certificate);
<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under the Call Off Contract (which, where Call Off Schedule 14 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>"Service Period"</b>	has the meaning given to it in the Order Form;
<b>"Services"</b>	services made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form;
<b>"Service Transfer"</b>	any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer;
<b>"Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Deliverables are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;</li> </ul>
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;

**Joint Schedule 1 (Definitions)**

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<b>"Special Terms"</b>	any additional Clauses set out in the Framework Award Form or Order Form which shall form part of the respective Contract;
<b>"Specific Change in Law"</b>	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
<b>"Specification"</b>	the specification set out in Framework Schedule 1 (Specification), as may, in relation to a Call-Off Contract, be supplemented by the Order Form;
<b>"Standards"</b>	any: a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) standards detailed in the specification in Schedule 1 (Specification); c) standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time; d) relevant Government codes of practice and guidance applicable from time to time;
<b>"Start Date"</b>	in the case of the Framework Contract, the date specified on the Framework Award Form, and in the case of a Call-Off Contract, the date specified in the Order Form;
<b>"Statement of Requirement"</b>	a statement issued by the Buyer detailing its requirements and work needed in respect of Deliverables issued in accordance with the Call-Off Procedure;
<b>"Storage Media"</b>	the part of any device that is capable of storing and retrieving data;
<b>"Sub-Contract"</b>	any contract or agreement (or proposed contract or agreement), other than a Call-Off Contract or the Framework Contract, pursuant to which a third party: a) provides the Deliverables (or any part of them); b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
<b>"Subcontractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of that Processor related to a Contract;



**Joint Schedule 1 (Definitions)**  
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<b>"Supplier"</b>	the person, firm or company identified in the Framework Award Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Call-Off Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the Framework Award Form, or later defined in a Call-Off Contract;
<b>"Supplier's Confidential Information"</b>	<p>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with a Contract;</p> <p>c) Information derived from any of (a) and (b) above;</p>
<b>"Supplier's Contract Manager"</b>	the person identified in the Order Form appointed by the Supplier to oversee the operation of the Call-Off Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
<b>"Supplier Equipment"</b>	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Call-Off Contract;
<b>"Supplier Marketing Contact"</b>	shall be the person identified in the Framework Award Form;
<b>"Supplier Non-Performance"</b>	<p>where the Supplier has failed to:</p> <p>a) Achieve a Milestone by its Milestone Date;</p> <p>b) provide the Goods and/or Services in accordance with the Service Levels ; and/or</p> <p>c) comply with an obligation under a Contract;</p>
<b>"Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of a Call-Off Contract for the relevant period;
<b>"Supplier Profit Margin"</b>	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;

**Joint Schedule 1 (Definitions)**

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<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Call-Off Contract detailed in the information are properly payable;
<b>"Tax"</b>	<ul style="list-style-type: none"> <li>a) all forms of taxation whether direct or indirect;</li> <li>b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;</li> <li>c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and</li> <li>d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,</li> </ul> <p>in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;</p>
<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables from their requirements as set out in a Call-Off Contract;
<b>"Test Plan"</b>	<p>a plan:</p> <ul style="list-style-type: none"> <li>a) for the Testing of the Deliverables; and</li> <li>b) setting out other agreed criteria related to the achievement of Milestones;</li> </ul>
<b>"Tests "</b>	any tests required to be carried out pursuant to a Call-Off Contract as set out in the Test Plan or elsewhere in a Call-Off Contract and <b>"Tested"</b> and <b>"Testing"</b> shall be construed accordingly;
<b>"Third Party IPR"</b>	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>"Transferring Supplier Employees"</b>	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;
<b>"Transparency Information"</b>	<p>the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for –</p> <ul style="list-style-type: none"> <li>(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Relevant Authority; and</li> <li>(ii) Commercially Sensitive Information;</li> </ul>
<b>"Transparency Reports"</b>	the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in

**Joint Schedule 1 (Definitions)**

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	accordance with the reporting requirements in Call-Off Schedule 1 (Transparency Reports);
<b>"Variation"</b>	any change to a Contract;
<b>"Variation Form"</b>	the form set out in Joint Schedule 2 (Variation Form);
<b>"Variation Procedure"</b>	the procedure set out in Clause 24 (Changing the contract);
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Worker"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Order Form;
<b>"Work Day"</b>	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and
<b>"Work Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks.

**Joint Schedule 2 (Variation Form)**

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**Joint Schedule 2 (Variation Form)**

This form is to be used in order to change a contract in accordance with Clause 24 (Changing the Contract)

Contract Details		
This variation is between:	<b>[delete]</b> as applicable: CCS / Buyer] (" <b>CCS</b> " " <b>the Buyer</b> ") And <b>[insert]</b> name of Supplier] (" <b>the Supplier</b> ")	
Contract name:	<b>[insert]</b> name of contract to be changed] (" <b>the Contract</b> ")	
Contract reference number:	<b>[insert]</b> contract reference number]	
Details of Proposed Variation		
Variation initiated by:	<b>[delete]</b> as applicable: CCS/Buyer/Supplier]	
Variation number:	<b>[insert]</b> variation number]	
Date variation is raised:	<b>[insert]</b> date]	
Proposed variation		
Reason for the variation:	<b>[insert]</b> reason]	
An Impact Assessment shall be provided within:	<b>[insert]</b> number] days	
Impact of Variation		
Likely impact of the proposed variation:	<b>[Supplier to insert]</b> assessment of impact]	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> <li><b>[CCS/Buyer to insert]</b> original Clauses or Paragraphs to be varied and the changed clause]</li> </ul>	
Financial variation:	Original Contract Value:	£ <b>[insert]</b> amount]
	Additional cost due to variation:	£ <b>[insert]</b> amount]
	New Contract value:	£ <b>[insert]</b> amount]

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete]** as applicable: CCS / Buyer]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Joint Schedule 2 (Variation Form)  
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Signed by an authorised signatory for and on behalf of the **[delete]** as applicable: CCS / Buyer]

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

**Joint Schedule 2 (Variation Form)**  
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## Joint Schedule 3 (Insurance Requirements)

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# Joint Schedule 3 (Insurance Requirements)

## 1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, any additional insurances required under a Call-Off Contract (specified in the applicable Order Form) ("**Additional Insurances**") and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than:
  - 1.1.1 the Framework Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
  - 1.1.2 the Call-Off Contract Effective Date in respect of the Additional Insurances.
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

## 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **Joint Schedule 3 (Insurance Requirements)**

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#### **3. What happens if you aren't insured**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Relevant Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

#### **4. Evidence of insurance you must provide**

- 4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

#### **5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Relevant Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

#### **6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Relevant Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Relevant Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

#### **7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables, the Supplier shall co-operate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.



**Joint Schedule 3 (Insurance Requirements)**

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- 7.2 Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

**Joint Schedule 3 (Insurance Requirements)**

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**ANNEX: REQUIRED INSURANCES**

1. The Supplier shall hold the following insurance cover from the Framework Start Date in accordance with this Schedule:
  - 1.1 professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000);
  - 1.2 public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000); and
  - 1.3 employers' liability insurance [with cover for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000).

**Joint Schedule 3 (Insurance Requirements)**  
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# Joint Schedule 4 (Commercially Sensitive Information)

## 1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1	9 June 2023	[REDACTED]	Indefinite
2	9 June 2023	[REDACTED]	Indefinite

**Joint Schedule 5 (Corporate Social Responsibility)**  
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## **Joint Schedule 5 (Corporate Social Responsibility)**

### **1. What we expect from our Suppliers**

- 1.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government.  
([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf))
- 1.2 CCS expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, CCS expects its suppliers and subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility. The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.

### **2. Equality and Accessibility**

- 2.1 In addition to legal obligations, the Supplier shall support CCS and the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
  - 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
  - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

### **3. Modern Slavery, Child Labour and Inhumane Treatment**

**"Modern Slavery Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 3.1 The Supplier:
  - 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
  - 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
  - 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.

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- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
- 3.1.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- 3.1.8 shall prepare and deliver to CCS, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to CCS, the Buyer and Modern Slavery Helpline.

**4. Income Security****4.1 The Supplier shall:**

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- 4.1.3 not make deductions from wages:
  - (a) as a disciplinary measure
  - (b) except where permitted by law; or
  - (c) without expressed permission of the worker concerned;

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- 4.1.4 record all disciplinary measures taken against Supplier Staff;  
and
- 4.1.5 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

## **5. Working Hours**

### **5.1 The Supplier shall:**

- 5.1.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
- 5.1.2 that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- 5.1.3 ensure that use of overtime used responsibly, taking into account:
  - (a) the extent;
  - (b) frequency; and
  - (c) hours worked;

by individuals and by the Supplier Staff as a whole;

- 1.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.
- 1.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
  - 1.3.1 this is allowed by national law;
  - 1.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;  
appropriate safeguards are taken to protect the workers' health and safety; and
  - 1.3.3 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.
- 1.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## **2. Sustainability**

- 2.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

**Joint Schedule 5 (Corporate Social Responsibility)**  
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**Joint Schedule 5 (Corporate Social Responsibility)**  
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**Joint Schedule 10 (Rectification Plan)**  
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## Joint Schedule 10 (Rectification Plan)

Request for [Revised] Rectification Plan		
Details of the Default:	[Guidance: Explain the Default, with clear schedule and clause references as appropriate]	
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]	
Signed by [CCS/Buyer] :		Date:
Supplier [Revised] Rectification Plan		
Cause of the Default	[add cause]	
Anticipated impact assessment:	[add impact]	
Actual effect of Default:	[add effect]	
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]
	[...]	[date]
Timescale for complete Rectification of Default	[X] Working Days	
Steps taken to prevent recurrence of Default	<b>Steps</b>	<b>Timescale</b>
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]
	[...]	[date]

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Signed by the Supplier:		Date:	
<b>Review of Rectification Plan [CCS/Buyer]</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for Rejection (if applicable)	[add reasons]		
Signed by [CCS/Buyer]		Date:	

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## Joint Schedule 11 (Processing Data)

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# Joint Schedule 11 (Processing Data)

### Definitions

1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**“Processor Personnel”** all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;

### Status of the Controller

2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

- (a) “Controller” in respect of the other Party who is “Processor”;
- (b) “Processor” in respect of the other Party who is “Controller”;
- (c) “Joint Controller” with the other Party;
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

### Where one Party is Controller and the other Party its Processor

3. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
4. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
5. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;

**Joint Schedule 11 (Processing Data)**

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- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
6. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
- (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Personal Data Breach;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that :
    - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*) of the Core Terms;
      - (B) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with

**Joint Schedule 11 (Processing Data)**

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- UK GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data, and upon Controller's request, provide to Controller a deletion certificate or equivalent assurance of the deletion or return of the Personal Data.
7. Subject to paragraph 8 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Personal Data Breach.
8. The Processor's obligation to notify under paragraph 7 of this Joint Schedule 11 shall include the provision of further information to the Controller, as details become available.
9. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:

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- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Personal Data Breach; and/or
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
10. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
  - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
11. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
12. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
13. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
- (a) notify the Controller in writing of the intended Subprocessor and Processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor; and
  - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
14. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
15. The Relevant Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an



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applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**Where the Parties are Joint Controllers of Personal Data**

17. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26.

**Independent Controllers of Personal Data**

18. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
19. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
20. Where a Party has provided Personal Data to the other Party in accordance with paragraph 18 of this Joint Schedule 11 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
21. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
22. The Parties shall only provide Personal Data to each other:
  - (a) to the extent necessary to perform their respective obligations under the Contract;
  - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
  - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
23. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as

**Joint Schedule 11 (Processing Data)**

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appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

24. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
25. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):
  - (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
26. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
  - (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

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27. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
28. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
29. Notwithstanding the general application of paragraphs 2 to 16 of this Joint Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 18 to 28 of this Joint Schedule 11.

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**Annex 1 - Processing Personal Data****A) Service-related processing**

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

- 1.1 The contact details of the Relevant Authority's Data Protection Officer are: [REDACTED] such other details as Buyer notifies Supplier.
- 1.2 The contact details of the Supplier's Data Protection Officer are: [REDACTED] or such other details as Supplier notifies Buyer.
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Relevant Authority is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 3 to paragraph 16 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor.</p>
Duration of the Processing	<p>The duration of the Call-Off Contract and any period after that duration, until the return or deletion of all Customer Data being Personal Data by the Supplier in accordance with the Call-Off Contract and applicable Law</p>

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Nature and purposes of the Processing	<p>Performance by the Supplier of activities necessary to provide products or services or otherwise perform its obligations under the Call-Off Contract.</p> <p>Disclosures in accordance with the Call-Off Contract, or as compelled by Law.</p> <p>The specific purposes for the processing are the provision of the data products and services described below and in Call-Off Schedule 20 (Specification):</p> <ol style="list-style-type: none"> <li>1. The vaccines applications;</li> <li>2. Strategic Decision Makers Dashboard (SDMD);</li> <li>3. Performance Overview Dashboard;</li> <li>4. Integrated Urgent Care Dashboard (IUC);</li> <li>5. National Ambulance Control Centre (NACC) Dashboard;</li> <li>6. Trust and National PPE Auto Replenishment System Applications; and Improving Elective Care Co-ordination Patient Programme (IECCP)</li> <li>7. Filling of Posts Implementation Workflow Tool (FOPI);</li> <li>8. Faster Data Flows</li> </ol>
Type of Personal Data	<p>In order to provide the Services or otherwise perform its obligations under the Contract, the Supplier will process the Personal Data provided or made available to the Supplier in relation to the Call-Off Contract.</p> <p>For processing activities numbered 1 – 6 in the 'Nature and purposes of the Processing' section above the Supplier is granted access to Personal Data only after an aggregation and deidentification process meeting NHS standards, and is under a contractual restriction precluding identification of data subjects.</p>

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	<p>For processing activities numbered 7 and 8, the supplier will process data which includes identifiers and special category data, as shown below:-</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Categories of Data Subject	<p>Data Subjects include the individuals about whom data is provided to the Supplier via the Services or otherwise by (or at the direction of) the Buyer or Buyer's users who are authorised to use the Services.</p> <p>These may include, but are not limited to, the following: (i) Employees, contractors, or agents of the Buyer (who are natural persons); (ii) the Buyer's users authorized to use the Service; (iii) the Buyer's clients, customers, or other users of the Buyer's products or services; and/or (iv) Third parties with which the Buyer conducts business and in each case, they include former, present, and/or prospective individuals in these categories; (v) Employees, contractors and agents of third parties providing Buyer or NHS bodies with goods or services; (vi) Members of the public / Patients of NHS Bodies providing clinical services.</p>
<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Union or Member State law to</p>	<p>As set out in the Call-Off Contract. Processor's platform is configured only to retain data for defined periods that can be configured by Controller. Processor will delete or provide access for Controller to remove data from the Controller's Foundry instance at the end of duration of processing.</p> <p>Upon request by the Controller, the Processor shall provide to the Controller evidence in the form of a deletion certificate or similar</p>

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preserve that type of data	assurance that the Processor no longer holds any Personal Data / Special Category Data, as applicable.
Transfers of data outside UK	<p>All data stored in the platform is stored in the UK. For the purposes of data transfer outside the UK there is a distinction between (a) Controller data in the platform hosted in the UK and (b) the logs set out in clause G(e) of the Call-Off Contract Order Form, which may contain data relating to users and usage of the platform and are transferred outside the UK ("<b>Usage Logs</b>").</p> <p>These logs may contain identifying information relating to usage and users of Foundry, such as user identifiers (pseudonymous user IDs) and actions taken on the platform. These logs will be stored, and accessible solely, by Supplier's support and security teams in the United Kingdom and the United States, and are encrypted in transit and at rest. The logs will only be used to monitor or investigate security and/or Buyer support concerns in line with the purposes set out in clause G(e) of the Call-Off Contract Order Form. These Usage Logs are critical in keeping the platform secure and/or meeting the expectations of the Call Off Contract (including security and support requirements) and are pseudonymised prior to export using a random string user ID, and are only re-identifiable to certain Controller-approved Users (including Supplier users) based in the UK with access to the Controller instance of the Foundry platform. Any such transfer is subject to Palantir's intra-group standard contractual clauses as required by applicable law in relation to such transfers.</p>

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**B) Framework Contract Personal Data Processing**

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Relevant Authority is the Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 3 to paragraph 16 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor of the following Personal Data.</p>
Duration of the Processing	Up to five years after the expiry or termination of the Framework Contract
Nature and purposes of the Processing	<p>To facilitate the fulfilment of the Supplier's obligations arising under this Framework Contract including</p> <ol style="list-style-type: none"> <li>I. Ensuring effective communication between the Supplier and the Relevant Authority</li> <li>II. Maintaining full and accurate records of every Call-Off Contract arising under the Framework Contract in accordance with Core Terms Clause 15 (Record Keeping and Reporting)</li> </ol>
Type of Personal Data	<p>Includes:</p> <ol style="list-style-type: none"> <li>I. Contact details of, and communications with, Relevant Authority staff concerned with management of the Framework Contract</li> <li>II. Contact details of, and communications with, Buyer staff concerned with award and management of Order Call-Off Contracts awarded under the Framework Contract,</li> <li>III. Contact details, and communications with, Sub-contractor staff concerned with fulfilment of the Supplier's obligations arising from this Framework Contract</li> </ol>

Framework Ref: RM6195

Project Version: v1.1

Model Version: v4.5



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	Contact details, and communications with Supplier staff concerned with management of the Framework Contract
Categories of Data Subject	<p>Includes:</p> <ul style="list-style-type: none"> <li>I. Relevant Authority staff concerned with management of the Framework Contract</li> <li>II. Buyer staff concerned with award and management of Call-Off Contracts awarded under Framework Contract</li> <li>III. Sub-contractor staff concerned with fulfilment of the Supplier's obligations arising from this Framework Contract</li> </ul> <p>Supplier staff concerned with fulfilment of the Supplier's obligations arising under this Framework Contract</p>
<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Union or Member State law to preserve that type of data</p>	<p>All relevant data to be deleted 5 years after the expiry or termination of this Framework Contract unless longer retention is required by Law or the terms of any Call-Off Contract arising hereunder</p>

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**C) Faster Data Flows Data Processing**

In this Annex references to NHS Digital are to NHS England as the successor body to NHS Digital in its role as provider of a data safe haven for the services formerly performed by NHS Digital in relation to DSCRO operations; and to NHS England, to NHS England as the contracting body under this Call-Off Contract. The Supplier is sub-processor of NHS England in the latter role for personal data as described below.

Description	Details
<b>Identity of the Controller and Processor</b>	<p><i>The parties acknowledge that :</i></p> <p><i>NHS Digital is the Controller</i> <i>NHS England is the Processor</i></p>
<b>Subject matter of the Processing</b>	<p><i>NHS England is providing access to the Foundry System which will enable the DSCROs of NHS Digital to collect, analyse and pseudonymise data.</i></p> <p><i>The Foundry System will provide the hosting as well as supporting the analysis.</i></p> <p><i>The Foundry System will also enable the output to be disseminated to NHS England (and such sharing is subject to the DARs Agreement).</i></p> <p><i>Save as detailed in this table neither NHS England staff nor it's Sub-contractors will have access to NHS Digital data (and if access to such data is required, it will be requested in advance in writing, and nothing in this Agreement or any referenced document gives such permission).</i></p> <p><i>NHS England's and it's Sub-contractors right to access and use data are only those set out in this Agreement. Save as detailed in this table, NHS England and its Sub-contractor are not permitted to collect, perform or retain any inspection, analysis, aggregation, evaluation, reproduction, metrics or analytics of NHS Digital's data or use NHS Digital's data or any information derived from it as the basis for any product or service.</i></p> <p><i>In relation to performance, management and efficiency data only (and not including any data accessed or derived from NHS Digital 'Cloud Content'), NHS England and its Sub-contractor are permitted to collect metrics relating to:</i></p> <div data-bbox="635 1659 1500 1966" style="background-color: black; height: 137px; width: 100%;"></div>

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	<i>“Cloud Content” means any data or other content (including models and related code) that is created or provided by NHS Digital, whether directly or indirectly from a third party, for transmission, storage, integration, import, display, distribution or use in or through use of the Cloud Solutions, including any aggregated or transformed versions thereof and any analytical outputs.</i>
<b>Duration of the Processing</b>	<p><i>Commence Processing the Personal Data from the Start Date, as required in order to provide the Services.</i></p> <p><i>NHS England and its Sub-contractors shall cease processing the Personal Data on the Foundry Services system immediately upon the termination or expiry of the Agreement.</i></p>
<b>Purposes of Processing</b>	<i>The processing is the provision of a system to enable the regular timely collection and pseudonymisation of the data to enable a dissemination of data to NHS England.</i>
<b>Nature of Processing</b>	<p><i>The processing consists of:</i></p> <ul style="list-style-type: none"> <li><i>• collection, recording, organisation, structuring,</i></li> <li><i>• storage, hosting</i></li> <li><i>• adaptation or alteration, retrieval, use,</i></li> <li><i>• disclosure by transmission, dissemination or otherwise making available, alignment or combination,</i></li> <li><i>• restriction, erasure or destruction of data</i></li> <li><i>• pseudonymisation and anonymisation by automated means.</i></li> </ul> <p><i>Data shall be processed in the UK only, save where otherwise agreed in writing.</i></p>

**Call-Off Schedule 1 (Transparency Reports)**

Call-Off Ref:

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## **Call-Off Schedule 1 (Transparency Reports)**

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the Framework Contract, within (7) seven Working Days of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

**Call-Off Schedule 1 (Transparency Reports)**

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**Annex A: List of Transparency Reports**

<b>Title</b>	<b>Content</b>	<b>Format</b>	<b>Frequency</b>
Performance	<p>Performance Monitoring Reports to include:</p> <ul style="list-style-type: none"> <li>• Incidents logged vs Incidents Resolved per month by Priority Level</li> <li>• Overview of any Active Incidents</li> <li>• Incident Resolution Times by Priority Level</li> <li>• Availability Weekly Trend</li> </ul> <p>Notwithstanding the requirements detailed in Schedule 14 Service Levels. “Incidents” as used in this Call-Off Schedule 1 shall have the same meaning as “Error” as defined in the SLA in Call-Off Schedule 14.</p>	<p>Soft copy to be emailed upon request to</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> </ul> <p>or as otherwise agreed by the parties.</p>	<p>upon request by Buyer no more than on a Monthly basis to be delivered 5 working days prior to the scheduled monthly Operational Board Meetings as applicable.</p> <p>In accordance with Schedule 14 (Service Levels) and Schedule 15 (Call Off Contract Management).</p>
Exit Plan Update Report	Update report RAG rated against the Exit Plan, including all actions, issues and risks.	Update report to be provided by email to with a verbal update provided within the monthly Operational Board Meetings.	Exit Plan Update Report to be provided upon request by Buyer no more than on a monthly basis 5 working days prior to the monthly

Framework Ref: RM6195

Project Version: v1.0

Model Version: v3.0

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	<p>Detailed milestones delivered and associated activity against baseline exit and transition plan, risk dependencies and escalations to be included, as applicable.</p> <p>In accordance with Schedule 10 (Exit Management) and Schedule 20 (Specification).</p>	<ul style="list-style-type: none"> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> </ul> <p>In accordance with Schedule 10 (Exit Management)</p>	<p>Operational Board Meetings as applicable.</p> <p>In accordance with Schedule 10 (Exit Management)</p>
Register of Sub-Contracts	<p>As a minimum to include:</p> <ol style="list-style-type: none"> <li>Supplier Name</li> <li>Contract Description</li> <li>Key Terms</li> <li>Whether the contract could be novated to a Replacement Supplier</li> <li>Annual Contract Value</li> <li>Where relevant any costs associated with the novation of the Contract</li> </ol>	<p>Soft copy to be provided by email to</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> </ul>	<p>Upon request by Buyer but no more than, on the Start Date and then every 12 Months thereafter, or as reasonably requested notwithstanding a change of subcontractor.</p> <p>In the event of a change of Sub-Contractor the Register of Sub-Contracts will need to be provided within 1 calendar month before the proposed change or as otherwise agreed by the parties.</p>

Framework Ref: RM6195

Project Version: v1.0

Model Version: v3.0

**Call-Off Schedule 1 (Transparency Reports)**

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Framework Ref: RM6195

Project Version: v1.0

Model Version: v3.0

**Call-Off Schedule 2 (Staff Transfer)**

Call-Off Ref:

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**Call-Off Schedule 2 (Staff Transfer)**

Buyers will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit, and, irrespective of whether TUPE does apply on entry if there are employees eligible for New Fair Deal pension protection then the appropriate pensions provisions will also need to be selected.

If there is a staff transfer from the Buyer on entry (1st generation) then Part A shall apply.

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part B shall apply.

If there is both a 1st and 2nd generation staff transfer on entry, then both Part A and Part B shall apply.

If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and the Buyer shall indicate on the Order Form which Annex shall apply (either D1 (CSPS), D2 (NHSPS), D3 (LGPS) or D4 (Other Schemes)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part C shall apply and Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If the position on staff transfers is not known at the bid stage, include Parts A, B, C and D at the bid stage and then update the Buyer Contract Details before signing to specify whether Parts A and/or B, or C and D apply to the Contract.

Part E (dealing with staff transfer on exit) shall apply to every Contract.

For further guidance on this Schedule contact Government Legal Department's Employment Law Group.

**1. Definitions**

1.1 In this Schedule, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**“Acquired Rights Directive”** 1 the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

2



**Call-Off Schedule 2 (Staff Transfer)**

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**"Employee Liability"**

**3** all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding employment debts and unlawful deduction of wages including any PAYE and National Insurance Contributions;
- f) employment claims whether in tort, contract or statute or otherwise;
- g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**"Former Supplier"**

a supplier supplying services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Subcontractor of such supplier (or any Subcontractor of any such Subcontractor);

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<b>"New Fair Deal"</b>	<p>the revised Fair Deal position set out in the HM Treasury guidance: "<i>Fair Deal for Staff Pensions: Staff Transfer from Central Government</i>" issued in October 2013 including:</p> <ul style="list-style-type: none"><li>(i) any amendments to that document immediately prior to the Relevant Transfer Date; and</li><li>(ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Buyer;</li></ul>
<b>"Old Fair Deal"</b>	<p>HM Treasury Guidance "<i>Staff Transfers from Central Government: A Fair Deal for Staff Pensions</i>" issued in June 1999 including the supplementary guidance "<i>Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues</i>" issued in June 2004;</p>
<b>"Partial Termination"</b>	<p>the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When CCS or the Buyer can end this contract) or 10.6 (When the Supplier can end the contract);</p>
<b>"Relevant Transfer"</b>	<p>a transfer of employment to which the Employment Regulations applies;</p>
<b>"Relevant Transfer Date"</b>	<p>in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D: Pensions and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;</p>

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**"Staffing  
Information"**

in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

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- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**"Supplier's Final Supplier Personnel List"** a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;

**"Supplier's Provisional Supplier Personnel List"** a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**"Term"** the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;

**"Transferring Buyer Employees"** those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring Former Supplier Employees"** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.

**2. INTERPRETATION**

- 2.1 Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.
- 2.2 The provisions of Paragraphs 2.1 and 2.6 of Part A, Paragraph 3.1 of Part B, Paragraphs 1.5, 1.7 and 1.9 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of this Schedule (together "Third Party Provisions") confer benefits on third parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.
- 2.3 Subject to Paragraph 2.2 above, a person who is not a Party to this Call-Off Contract has no right under the CRTPA to enforce any term of this Call-Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

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- 2.4 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.
- 2.5 Any amendments or modifications to this Call-Off Contract may be made, and any rights created under Paragraph 2.2 above may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

**3. Which parts of this Schedule apply**

Only the following parts of this Schedule shall apply to this Call Off Contract:

- Part C (No Staff Transfer on the Start Date)
- Part D (Pensions)
  - - Annex D1 (CSPS)
  - - Annex D2 (NHSPS)
  - - Annex D3 (LGPS)
  - - Annex D4 (Other Schemes)
- Part E (Staff Transfer on Exit)

**Call-Off Schedule 2 (Staff Transfer)**

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## **PART A: STAFF TRANSFER AT THE START DATE OUTSOURCING FROM THE BUYER**

### **1. What is a relevant transfer**

#### **1.1 The Buyer and the Supplier agree that:**

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-contractor and each such Transferring Buyer Employee.

1.2 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Buyer; and (ii) the Supplier and/or any Subcontractor (as appropriate).

### **2. Indemnities the Buyer must give**

2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by the Buyer in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Buyer before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Buyer Employees; and/or

(b) any custom or practice in respect of any Transferring Buyer Employees which the Buyer is contractually bound to honour;

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- 2.1.3 any claim by any trade union or other body or person representing the Transferring Buyer Employees arising from or connected with any failure by the Buyer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Buyer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Buyer to the Supplier and/or any Subcontractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 2.1.5 a failure of the Buyer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Buyer other than a Transferring Buyer Employee for whom it is alleged the Supplier and/or any Subcontractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Buyer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

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- 2.2.1 arising out of the resignation of any Transferring Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Supplier or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Buyer as a Transferring Buyer Employee claims, or it is determined in relation to any person who is not identified by the Buyer as a Transferring Buyer Employee, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing; and
  - 2.3.2 the Buyer may offer (or may procure that a third party may offer) employment to such person, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with Law, within 15 Working Days of receipt of notice from the Supplier and/or any Subcontractor.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that a Subcontractor shall, immediately release the person from his/her employment or alleged employment;
- 2.5 If by the end of the 15 Working Day period referred to in Paragraph 2.3.2:
  - 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,the Supplier and/or any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Subcontractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law and subject also to Paragraph 2.7, the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment pursuant to the provisions of Paragraph 2.5 provided that the



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Supplier takes, or procures that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

**2.7 The indemnity in Paragraph 2.6:**

**2.7.1 shall not apply to:**

**(a) any claim for:**

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or**
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;**

**in any case in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or**

**(b) any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and**

**2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Subcontractor (as appropriate) to the Buyer within 6 months of the Start Date**

**2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Buyer nor dismissed by the Supplier and/or any Subcontractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall procure that the relevant Subcontractor shall, comply with such obligations as may be imposed upon it under applicable Law.**

**3. Indemnities the Supplier must give and its obligations**

**3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of:**

**3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date;**

**3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:**

- (a) any collective agreement applicable to the Transferring Buyer Employees; and/or**

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- (b) any custom or practice in respect of any Transferring Buyer Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Buyer Employees arising from or connected with any failure by the Supplier or any Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Subcontractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Buyer Employees to their material detriment on or after their transfer to the Supplier or the relevant Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Buyer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or any Subcontractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Buyer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Buyer to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Author Buyer ity Employees in respect of the period from (and including) the Relevant Transfer Date;

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- 3.1.8 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier or any Subcontractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
    - 3.1.9 a failure by the Supplier or any Sub-contractor to comply with its obligations under paragraph 2.8 above.
  - 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
  - 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Buyer and the Supplier.
- 4. Information the Supplier must provide**
- 4.1 The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier and any Subcontractor in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 5. Cabinet Office requirements**
- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

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5.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in:

5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.2.2 Old Fair Deal; and/or

5.2.3 The New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

**6. Pensions**

6.1 The Supplier shall, and/or shall procure that each of its Subcontractors shall, comply with:

6.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

6.1.2 Part D: Pensions (and its Annexes) to this Schedule.

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## **PART B: STAFF TRANSFER AT THE START DATE**

### **TRANSFER FROM A FORMER SUPPLIER**

#### **1. What is a relevant transfer**

##### **1.1 The Buyer and the Supplier agree that:**

- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Former Supplier Employee.

##### **1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Buyer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.**

#### **2. Indemnities given by the Former Supplier**

##### **2.1 Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:**

- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

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- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
  - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
    - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
  - 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
  - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Subcontractor as appropriate may be liable by virtue of the relevant Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on

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or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Supplier and/or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Former Supplier as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Former Supplier as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer and in writing and, where required by the Buyer, notify the relevant Former Supplier in writing; and
  - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law, within 15 Working Days of receipt of notice from the Supplier and/or the Subcontractor (as appropriate).
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, , or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period referred to in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person;
- 2.6 Subject to the Supplier and/or any Subcontractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law and subject also to Paragraph 2.7, the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment pursuant to the provisions of Paragraph 2.5

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provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

**2.7 The indemnity in Paragraph 2.6:****2.7.1 shall not apply to:****(a) any claim for:**

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

in any case in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or

- (b) any claim that the termination of employment was unfair because the Supplier and/or Subcontractor neglected to follow a fair dismissal procedure; and

**2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Subcontractor (as appropriate) to the Buyer and, if applicable, the Former Supplier, within 6 months of the Start Date.****2.8 If Subcontractor any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Subcontractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under applicable Law.****3. Indemnities the Supplier must give and its obligations****3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer and/or the Former Supplier against any Employee Liabilities arising from or as a result of:****3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;****3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:**

- (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or



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- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

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- 3.1.7 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
  - 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
  - 3.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.8 above
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements, and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

**4. Information the Supplier must give**

The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier and any Subcontractor in writing such information as is

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necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

**5. Cabinet Office requirements**

5.1 The Supplier shall, and shall procure that each Subcontractor shall, comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

5.1.2 Old Fair Deal; and/or

5.1.3 The New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

**6. Limits on the Former Supplier's obligations**

Notwithstanding any other provisions of this Part B, where in this Part B the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

**7. Pensions**

7.1 The Supplier shall, and shall procure that each Subcontractor shall, comply with:

7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; ; and

7.1.2 Part D: Pensions (and its Annexes) to this Schedule.

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## **PART C: NO STAFF TRANSFER ON THE START DATE**

### **1. What happens if there is a staff transfer**

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 If any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 1.2.1 the Supplier shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing and, where required by the Buyer, notify the Former Supplier in writing; and
  - 1.2.2 the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification from the Supplier or the Subcontractor (as appropriate) or take such other reasonable steps as the Buyer or Former Supplier (as the case may be) it considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Buyer and/or the Former Supplier),, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period referred to in Paragraph 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved;the Supplier may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 1.5 Subject to the Supplier and/or the relevant Subcontractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.8 the Buyer shall:
  - 1.5.1 indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4

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- provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 1.5.2 procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 1.6 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under Law.
- 1.7 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.6, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.
- 1.8 The indemnities in Paragraph 1.5:
- 1.8.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.8.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any

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Subcontractor to the Buyer and, if applicable, Former Supplier within 6 months of the Start Date.

- 1.9 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

**2. Limits on the Former Supplier's obligations**

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

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**PART D: PENSIONS****1. Definitions**

In this Part D and Part E, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes to this Part D:

<b>"Actuary"</b>		a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>		either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement (as defined in Annex D3: LGPS), as the context requires;
<b>"Best Direction"</b>	<b>Value</b>	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
<b>"Broadly Comparable"</b>		<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and <b>"Broad Comparability"</b> shall be construed accordingly;</p>
<b>"CSPS"</b>		the schemes as defined in Annex D1 to this Part D;
<b>"Direction Letter/Determination"</b>		has the meaning in Annex D2 to this Part D;
<b>"Fair Deal Eligible Employees"</b>		each of the CSPS Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (as applicable) (and shall include any

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such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 or 11 of this Part D);

**"Fair Employees"****Deal** any of:

- (a) Transferring Buyer Employees;
- (b) Transferring Former Supplier Employees;
- (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.5 of Parts A or B or Paragraph 1.4 of Part C;
- (d) where the Supplier or a Subcontractor was the Former Supplier, the employees of the Supplier (or Subcontractor);

who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the Buyer;

**"Fund Actuary"**

a Fund Actuary as defined in Annex D3 to this Part D;

**"LGPS"**

the scheme as defined in Annex D3 to this Part D;

**"NHSPS"**

the schemes as defined in Annex D2 to this Part D;

(a)

(b)

**"Statutory Schemes"**

means the CSPA, NHSPS or LGPS.



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**2. Supplier obligations to participate in the pension schemes**

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/ Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
  - 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/ Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
  - 2.3.2 subject to paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Supplier is the Former Supplier (or a Subcontractor is a Subcontractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

**3. Supplier obligation to provide information**

- 3.1 The Supplier undertakes to the Buyer:
  - 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
  - 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed);
  - 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal

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Eligible Employees arising on expiry or termination of the relevant Contract.

### **4. Indemnities the Supplier must give**

4.1 The Supplier shall indemnify and keep indemnified CCS, [NHS Pensions], the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of the relevant Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;
- 4.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

Subcontractor:

- (a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of the relevant Contract; or
  - (b) arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of the relevant Contract; and/or
- 4.1.4 arise out of or in connection with the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

4.2 The indemnities in this Part D and its Annexes:

- 4.2.1 shall survive termination of the relevant Contract; and
- 4.2.2 shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

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**5. What happens if there is a dispute**

5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the CCS and/or the Buyer and/or the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the Buyer and/or the Supplier be referred to an independent Actuary:

- 5.1.1 who will act as an expert and not as an arbitrator;
- 5.1.2 whose decision will be final and binding on the CCS and/or the Buyer and/or the Supplier; and
- 5.1.3 whose expenses shall be borne equally by the CCS and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

**6. Other people's rights**

- 6.1 The Parties agree Clause 19 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

**7. What happens if there is a breach of this Part D**

- 7.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:
- 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
  - 7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

**8. Transferring Fair Deal Employees**

- 8.1 Save on expiry or termination of the relevant Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of

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employment) the Supplier shall or shall procure that any relevant Sub-contractor shall:

- 8.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
- 8.1.2 consult with about, and inform those Fair Deal Eligible Employees of the pension provisions relating to that transfer; and
- 8.1.3 procure that the employer to which the Fair Deal Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

**9. What happens to pensions if this Contract ends**

- 9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of the relevant Contract.
- 9.2 The Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Buyer and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

**10. Broadly Comparable Pension Schemes on the Relevant Transfer Date**

- 10.1 If the terms of any of paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
  - 10.2.1 established by the Relevant Transfer Date;
  - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;

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- 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
  - 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
  - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 10.3 Where the Supplier has set up a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 10.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
  - 10.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
  - 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the

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previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

- 10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract:

- 10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 10.3.3 but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and
- 10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph 10.4.1 been complied with, the Supplier shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this paragraph.

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**11. Broadly Comparable Pension Scheme in Other Circumstances**

- 11.1 If the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 11.2 Such Broadly Comparable pension scheme must be:
- 11.2.1 established by the date of cessation of participation in the Statutory Scheme;
  - 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
  - 11.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
  - 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 11.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
  - 11.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with

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the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and

- 11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Subcontractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or



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the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this paragraph.

**12. Right of Set-off**

12.1 The Buyer shall have a right to set off against any payments due to the Supplier under the relevant Contract an amount equal to:

12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or

12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

12.2 The Buyer shall also have a right to set off against any payments due to the Supplier under the relevant Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraphs 12.1 above.

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**Annex D1:****Civil Service Pensions Schemes (CSPS)****1. Definitions**

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"CSPS Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
<b>"CSPS Eligible Employee"</b>	any CSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPS under a CSPS Admission Agreement;
<b>"CSPS Fair Deal Employee"</b>	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal;
<b>"CSPS"</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

**2. Access to equivalent pension schemes after transfer**

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of the relevant Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Subcontractors shall procure that the CSPS Fair Deal Employees continue to accrue benefits in the CSPS in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

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- 2.2 If the Supplier and/or any of its Subcontractors enters into a CSPA Admission Agreement in accordance with paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of the relevant Contract for any reason at a time when the Supplier or Subcontractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of paragraph 11 of Part D.

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# Annex D2: NHS Pension Schemes

## 1. Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Direction Letter/Determination"</b>		an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Fair Deal Employees;
<b>"NHS Comparable Employees"</b>	<b>Broadly</b>	<p>each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <p>(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or</p> <p>(b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</p> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Buyer has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are</p>

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Broadly Comparable to those provided under the NHSPS.

**"NHSPS Eligible Employees"** any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.

**"NHSPS Fair Deal Employees"** other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter/Determination or other NHSPS "access" facility but who has never been employed directly by the Buyer, an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Fair Deal Employee;

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<b>"NHS Body"</b>	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
<b>"NHS Pensions"</b>	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
<b>"NHSPS"</b>	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;
<b>"NHS Pension Scheme Regulations"</b>	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
<b>"NHS Premature Retirement Rights"</b>	rights to which any NHS Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
<b>"Pension Benefits"</b>	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme.

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**2. Membership of the NHS Pension Scheme**

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under the relevant Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Subcontractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Supplier must ensure that:
  - (a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
  - (b) the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that its Subcontractors (if any) will) Subcontractor provide any guarantee, bond or indemnity required by NHS Pensions in relation to a Direction Letter/Determination.

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**3. Continuation of early retirement rights after transfer**

- 3.1 From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Subcontractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

**4. NHS Broadly Comparable Employees**

- 4.1 The Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with paragraph 5.2 below.

**5. What the buyer can do if the Supplier breaches its pension obligations**

- 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractor) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Subcontractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Subcontractor, as appropriate) shall offer to offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of paragraph 11 of Part D. Subcontractor.

**6. Compensation when pension scheme access can't be provided**

- 6.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:
- 6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
  - 6.1.2 a Broadly Comparable pension scheme,
- the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining



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whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract.

**7. Indemnities that a Supplier must give**

- 7.1 The Supplier must indemnify and keep indemnified the CCS, the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

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**Annex D3:****Local Government Pension Schemes (LGPS)**

**[Guidance: You should take specific legal advice on this Annex D3 and in particular the risk apportionment provisions contained herein.]**

**Please note that this Part D is drafted to reflect the requirements of New Fair Deal. Accordingly, where a contracting authority is a local authority (or other type of best value authority) then it will be subject to the requirements of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 if appropriate) and should take further specific legal advice to ensure compliance with those Directions.**

Note the LGPS unlike the CSPA & NHSPS is a funded scheme which has associated cost implications as follows:

There is not 1 LGPS but approx. 90 different Funds, each with their own separate Scheme Employer and Administering Buyer, it is important to identify the correct one(s) and amend the definition of "Fund" accordingly.

It is important to check whether CCS and or the Buyer can actually participate in the LGPS. Where a government department is taking on services which were formerly the responsibility of a Local Authority it may be necessary to obtain secretary of state approval for participation in the LGPS, this is because the services are being provided to Gov. Dept. and not to a Local Authority.

Unlike New Fair Deal the 2007 Best Value pension direction does not provide a right to bulk transfer past service. Whilst typically before the 2007 direction LA did provide such a right, it is a significant additional cost and therefore bulk transfer wording has been excluded. If required take legal advice due to the exceptionally high costs which can result from a requirement to provide bulk transfers.]

**1. Definitions**

In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"2013 Regulations"</b>	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
<b>"Administering Buyer"</b>	in relation to <b>the Fund [insert name]</b> , the relevant Administering Buyer of that Fund for the purposes of the 2013 Regulations;
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Buyer of that Fund;
<b>"Fund"</b>	<b>[insert name], a pension fund within the LGPS;</b>

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<b>["Initial Contribution Rate"]</b>	[XX %] of pensionable pay (as defined in the 2013 Regulations);]
<b>"LGPS"</b>	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
<b>"LGPS Admission Agreement"</b>	an admission agreement within the meaning in Schedule 1 of the 2013 Regulations;
<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
<b>"LGPS Eligible Employees"</b>	any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;
<b>"LGPS Fair Deal Employees"</b>	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; ;
<b>"LGPS Regulations"</b>	the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

**2. Supplier to become an LGPS Admission Body**

- 2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of the relevant Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under the relevant Contract.

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### **OPTION 1**

#### **2.2 [Any LGPS Fair Deal Employees who:**

2.2.1 were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and

2.2.2 were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so. ]

### **OPTION 2**

[Any LGPS Fair Deal Employees whether:

2.2.3 active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or

2.2.4 eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

2.3 The Supplier will (and will procure that its Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Buyer in relation to an LGPS Admission Agreement.

## **3. Broadly Comparable Scheme**

3.1 If the Supplier and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with paragraph 2.1 because the Administering Buyer will not allow it to participate in the Fund, the Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of paragraph 10 of Part D.

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- 3.2 If the Supplier and/or any of its Subcontractors becomes an LGPS Admission Body in accordance with paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of the relevant Contract for any reason at a time when the Supplier or Subcontractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of paragraph 11 of Part D.

**4. Discretionary Benefits**

Where the Supplier and/or any of its Subcontractors is an LGPS Admission Body, the Supplier shall (and procure that its Subcontractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

**5. LGPS RISK SHARING**

- 5.1 Subject to paragraphs 5.4 to 5.10, if at any time during the term of the relevant Contract the Administering Buyer, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the “Excess Amount”) shall be paid by the Supplier or the Subcontractor, as the case may be, and the Supplier shall be reimbursed by the Buyer.
- 5.2 Subject to paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of the relevant Contract, the Administering Buyer, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Buyer an amount equal to  $A-B$  (the “Refund Amount”) where:
- A = the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and
- B = the amount of contributions or payments actually paid by the Supplier or Subcontractor for that Contract Year, as the case may be, to the Fund.
- 5.3 Subject to paragraphs 5.4 to 5.10, where the Administering Buyer obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by

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the Supplier or any Subcontractor (as the case may be) and the Supplier shall be reimbursed by the Buyer.

**5.4 The Supplier and any Subcontractors shall at all times be responsible for the following costs:**

- 5.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
- 5.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
- 5.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
- 5.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Subcontractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
- 5.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
- 5.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Subcontractor is contractually bound to provide such increases on the Relevant Transfer Date);
- 5.4.7 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;
- 5.4.8 any cost of the administration of the Fund that are not met through the Supplier's or Subcontractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Buyer under Regulation 70 of the 2013 Regulations;

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- 5.4.9 the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Subcontractor from the Fund Actuary; and/or
  - 5.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Subcontractors are responsible for in accordance with paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6 Where the Administering Buyer obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the **"Exit Credit"**), the Supplier shall (or procure that any Subcontractor shall) reimburse the Buyer an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The Supplier shall (or procure that the Subcontractor shall) notify the Buyer in writing within twenty (20) Working Days:
  - 5.7.1 of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
  - 5.7.2 of being informed by the Administering Buyer of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
- 5.8 Within twenty (20) Working Days of receiving the notification under paragraph 5.7 above, the Buyer shall either:
  - 5.8.1 notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
  - 5.8.2 request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
  - 5.8.3 request a meeting with the Supplier to discuss or clarify the information or evidence provided.
- 5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with paragraph 5.8 above, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the

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amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.

- 5.10 Any Excess Amount or Exit Payment agreed by the Buyer or in accordance with the Dispute Resolution Procedure shall be paid by the Buyer within timescales as agreed between Buyer and Supplier. The amount to be paid by the Buyer shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Subcontractor.
- 5.11 Any Refund Amount agreed by the Buyer or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Subcontractor to the Buyer, shall be paid by the Supplier or any Subcontractor forthwith as the liability has been agreed. In the event the Supplier or any Subcontractor fails to pay any agreed Refund Amount, the Buyer shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.
- 5.12 This paragraph 5 shall survive termination of the relevant Contract.



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## **Annex D4: Other Schemes**

**[Guidance:** Placeholder for Pension Schemes other than LGPS, CSPA & NHSPA]

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**Part E: Staff Transfer on Exit****1. Obligations before a Staff Transfer**

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

- 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
- 1.1.3 the date which is 12 Months before the end of the Term; and
- 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.

1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not, and agrees to procure that each Subcontractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Buyer (not to be unreasonably withheld or delayed):

:

- 1.5.1 replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

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- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Staff (including pensions and any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;

and shall promptly notify, and procure that each Subcontractor shall promptly notify, the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or relevant Subcontractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide, and shall procure that each Subcontractor shall provide, to the Buyer such information as the Buyer may reasonably require relating to the manner in which the Services are organised, which shall include:

- 1.6.1 the numbers of employees engaged in providing the Services;
- 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
- 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) (as appropriate); and
- 1.6.4 a description of the nature of the work undertaken by each employee by location.

- 1.7 The Supplier shall provide, and shall procure that each Subcontractor shall provide, all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer

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Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Subcontractor shall provide, to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

**2. Staff Transfer when the contract ends**

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of the relevant Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Buyer and the Supplier agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements, and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including)

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the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:

- 2.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring on or before the Service Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

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- (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
  - 2.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
  - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of the relevant Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or

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- 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
  - 2.5 If any person who is not identified in the Supplier's Final Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
    - 2.5.1 the Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing; and
    - 2.5.2 the Supplier may offer (or may procure that a Subcontractor may offer) employment to such person, or take such other reasonable steps as it considered appropriate to deal the matter provided always that such steps are in compliance with Law, within 15 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor.
  - 2.6 If such offer of is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, Buyer shall procure that the Replacement Supplier shall, or procure that the and/or Replacement Subcontractor shall, immediately release or procure the release the person from his/her employment or alleged employment;
  - 2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
    - 2.7.1 no such offer has been made:
    - 2.7.2 such offer has been made but not accepted; or
    - 2.7.3 the situation has not otherwise been resolved
- the Buyer shall advise the Replacement Supplier and/or Replacement Subcontractor (as appropriate) that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person;
- 2.8 Subject to the Replacement Supplier's and/or Replacement Subcontractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7 and in accordance with all applicable proper employment procedures set out in applicable Law and subject to Paragraph 2.9 below, the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
  - 2.9 The indemnity in Paragraph 2.8:
    - 2.9.1 shall not apply to:

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- (a) any claim for:
  - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

In any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor, or

- (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure; and

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Subcontractor to the Supplier within 6 months of the Service Transfer Date..

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Subcontractor nor dismissed by the Replacement Supplier and/or Replacement Subcontractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee. .

2.11 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (b) the Supplier and/or any Subcontractor; and
- (c) the Replacement Supplier and/or the Replacement Subcontractor.



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- 2.12 The Supplier shall, and shall procure that each Subcontractor shall, promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
  - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
    - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
  - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
  - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or

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- working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement

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Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

## Call-Off Schedule 3 (Continuous Improvement)

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# Call-Off Schedule 3 (Continuous Improvement)

## 1. Buyer's Rights

- 1.1 The Buyer and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), the Buyer may give CCS the right to enforce the Buyer's rights under this Schedule.

## 2. Supplier's Obligations

- 2.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 2.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 2.3 In addition to Paragraph 2.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
- 2.3.1 identifying the emergence of relevant new and evolving technologies;
  - 2.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 2.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 2.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 2.4 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within six (6) Months following the Start Date.

### **Call-Off Schedule 3 (Continuous Improvement)**

Call-Off Ref:

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- 2.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
- 2.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 2.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer or CCS.
- 2.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
- 2.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 2.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 2.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 2.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.

At any time during the Contract Period of the Call-Off Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

**Call-Off Schedule 6 (ICT Services)**

Call-Off Ref:

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## **Call-Off Schedule 6 (ICT Services)**

### **1. Definitions**

- 1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**“Commercial off the shelf Software” or “COTS Software”**

Non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms.

**"Malicious Software"**

any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

**"Specially Written Software"**

any software (including configuration, database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract and Buyer, excluding any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software and any such modifications or enhancements to COTS Software do not constitute New IPR.

## **Call-Off Schedule 6 (ICT Services)**

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## **2. When this Schedule should be used**

- 2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Deliverables.

## **Intellectual Property Rights in ICT**

### **Assignments granted by the Supplier: Specially Written Software**

The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software.

The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software are properly transferred to the Buyer.

### **Licenses for COTS Software by the Supplier and third parties to the Buyer**

The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

Notwithstanding anything else in this Call Off Contract, Supplier shall make available the Service (as defined in Annex 1) to Buyer during the term of the Call Off Contract solely for use by Customer and its Users (as defined below), and LOs and their Users as set forth in Call Off Schedule 20 and/or the Order Form, in accordance with the terms and conditions of this Call Off Contract and the Documentation (as defined in Annex 1).

As between the parties, Supplier owns all rights, title, and interest, including all IPRs, in and to the COTS Software, and any any derivative works, modifications, or improvements of any of the foregoing (including, without limitation, all IPRs embodied in any of the foregoing).

### **Licence granted by the Buyer**

The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on similar or the same terms as set out in Clause 15 (Confidentiality).

**Call-Off Schedule 6 (ICT Services)**

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Notwithstanding the aforementioned, the Buyer grants to the Supplier a perpetual, irrevocable, fully-paid, royalty-free, non-exclusive, worldwide licence with a right to sub-license, reproduce, to use and modify the Specially Written Software or New IPR that may form part of generally applicable data connectors.

**3. Malicious Software**

- 3.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 3.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
- 3.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 3.2 shall be borne by the Parties as follows:
  - 3.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
  - 3.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

**4. Supplier-Furnished Terms****4.1. Software as a Service Terms**

- 4.1.1. Additional terms for provision of the Services are detailed in Annex 1 to this Call-Off Schedule (Palantir Terms of Service).

**4.2. Software Support & Maintenance Terms**

- 4.2.1. Additional terms for provision of Software Support & Maintenance Services are detailed in Call-Off Schedule 14 (Service Levels).



**Call-Off Schedule 6 (ICT Services)**

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**Annex 1 - Palantir Terms of Service**

These Palantir Terms of Service (collectively with any attachments, addenda, or exhibits referenced herein and any Order Forms (as defined below) that reference these Terms of Service, the "**Agreement**") apply to any Order Form(s) between Customer and Palantir (each a "**Party**" and collectively the "**Parties**") and are effective as of the Effective Date of the first Order Form between the Parties.

**1. Certain Definitions.**

- 1.1. "**Affiliate**" means an entity that, directly or indirectly, owns or controls or is owned or controlled by, or is under common ownership or control with, a Party. As used herein, "**control**" means the power to direct, directly or indirectly, the management or affairs of an entity, and "**ownership**" means the beneficial ownership of more than 50% of the voting equity securities or other equivalent voting interests of an entity.
- 1.2. "**Customer Data**" means any data (including aggregated or transformed versions thereof and analytical outputs), models, algorithms, analyses, transformation code, or other content that is provided by, whether directly or indirectly from a third party, or created by Customer or Users using the Service, for integration, use, or other processing in or through the Service.
- 1.3. "**Data Connection Software**" means Palantir software provided for installation locally for Customer to connect Customer Data to the Service.
- 1.4. "**Documentation**" means any technical documentation for the Service made available by Palantir to Customer in connection with the Service.
- 1.5. "**Intellectual Property Rights**" means all rights, title, and interest in and to any trade secrets, patents, copyrights, service marks, trademarks, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, rights of publicity, and any similar rights, including any applications, continuations, or registrations with respect to the foregoing, under the laws or regulations of any governmental, regulatory, or judicial authority.
- 1.6. "**Order Form**" means an ordering document, specifying the Service and/or Professional Services (if applicable) to be provided thereunder that is entered into between Palantir and Customer, including any attachments, addenda, or exhibits thereto.
- 1.7. "**Palantir Technology**" means the Service, Documentation, Data Connection Software, Sample Materials, models, and application programming interfaces (APIs) provided or made available to Customer as a service in connection with this Agreement, and any improvements, modifications, derivative works, patches, upgrades, and updates thereto.
- 1.8. "**Sample Materials**" means any technology and materials provided or made available by Palantir to Customer for use with the Service, including sample code, software libraries, command line tools, data integration code, templates, and configuration files.
- 1.9. "**Service**" means Palantir's proprietary software-as-a-service offering(s) as set forth in an Order Form.
- 1.10. "**Taxes**" means any applicable sales, use, transaction, value added, goods and services tax, harmonized sales tax, withholding tax, excise or similar taxes, and any foreign, provincial, federal, state or local fees or charges (including, but not limited to, environmental or similar fees), duties, costs of compliance with export and import controls and regulations, and other governmental assessments, including any penalties and interest in respect thereof, imposed on, in respect of, or otherwise associated with any transaction hereunder.
- 1.11. "**Third Party Content**" means any third party data, services, or applications that interoperate with the Service which Palantir may, at Customer's sole discretion, facilitate the use of in connection with the Service and subject to an independent agreement between Customer and such third party.
- 1.12. "**Third Party Services**" means third party services that Palantir may utilize in the provision of the Service as set forth in the Documentation (or as otherwise agreed by the Parties).

**2. Provision of Service.**

- 2.1. **Service Access.** Palantir shall make available the Service to Customer during the applicable Order Term (as defined below) solely for use by Customer and its Users (as defined below) in accordance with the terms and conditions of this Agreement and the Documentation for Customer's internal business purposes or as otherwise set forth in an Order Form.
- 2.2. **Data Connection Software License.** If applicable for use of the Service, Palantir grants to Customer during the applicable Order Term a non-exclusive, nontransferable, non-sublicensable, and limited license to use the Data Connection Software for the sole purposes of using and connecting to the Service. Customer shall allow Palantir to access the Data Connection Software remotely as necessary to provide the Service.
- 2.3. **Sample Materials License.** Palantir may make available Sample Materials for use by Customer during the Order Term. If applicable, Palantir grants to Customer during the applicable Order Term a non-exclusive, nontransferable, non-sublicensable, and limited license, to copy, modify, and use Sample Materials solely to the extent necessary for Customer's use of the Service.
- 2.4. **Usage Data.** Palantir may collect and use metrics, analytics, statistics, or other data related to Customer's use of the Service (a) to provide and secure the Service for the benefit of Customer and (b) to analyze, maintain, support, and improve the Service (*provided that* in relation to (b), the data collected shall not include personal data or Customer Data).
- 2.5. **Security.** Palantir has established an Information Security Program ("**ISP**") designed to ensure strong practical security controls and compliance with industry best practice standards and frameworks. A comprehensive list of Palantir's certifications can be found at <https://www.palantir.com/information-security/> under "Compliance and Accreditation." The Palantir ISP additionally is aligned with NIST 800-53, TSC (Trust Service Criteria), and CIS (Center for Internet Security).

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frameworks and management systems. Palantir will make available to Customer upon written request (no more frequently than once per calendar year) Palantir's: (a) ISAE 3000/SSAE18 SOC2 TYPE II Report; (b) Penetration Test Attestation Letter; and (c) ISO 27001 Certificate. Palantir shall provide the above audit reports relating to Palantir's operating practices and procedures to the extent relevant to the Service. Customer acknowledges that Palantir's documentation noted in this Section and other related information are Palantir's Confidential Information (as defined below) hereunder.

- 2.6. Service Levels and Support.** During an Order Term, Palantir will provide Customer the service levels and support consistent with the support terms and service levels in the Palantir Service Level Agreement and Support Policy.

- 2.7. Professional Services.** Palantir shall provide Customer with implementation, enablement, training, or other professional services as specified in an Order Form or otherwise in Palantir's discretion and subject to any fees thereunder ("**Professional Services**"). The performance of any Professional Services shall not affect ownership of the Palantir Technology and other materials provided by Palantir under this Agreement.

**3. Customer Use of Service.**

- 3.1. Accounts.** Customer may provision accounts to access the Service ("**Accounts**") for its (a) employees; (b) contractors; or (c) other users (including its Affiliates' employees or contractors) specified in an Order Form for the purposes authorized hereunder (collectively, "**Users**"). Customer shall be responsible for (i) administering Accounts; (ii) using industry standard security measures to protect Accounts (including, without limitation, using multi-factor authentication); and (iii) any activity on Accounts. Customer shall immediately de-activate any Account upon becoming aware of the compromise or unauthorized use thereof, or upon Palantir's reasonable request.

**4. Proprietary Rights.**

- 4.1. Customer Data Ownership.** As between the Parties, Customer owns all rights, title, and interest, including all Intellectual Property Rights, in and to Customer Data and any modifications made thereto. Subject to the Agreement, Customer grants to Palantir a non-exclusive, worldwide, and royalty-free right and license during the Term (as defined below) to process Customer Data solely to provide the Service and/or Professional Services. Customer further grants to Palantir a worldwide, perpetual, irrevocable, and royalty-free right and license to use, distribute, disclose, and make and incorporate into the Palantir Technology any suggestions, enhancement request, recommendation, or other feedback provided by Customer or Users relating to the Palantir Technology.
- 4.2. Palantir Ownership.** As between the Parties, Palantir owns all rights, title, and interest, including all Intellectual Property Rights, in and to the Palantir Technology, and any other related documentation or materials provided by Palantir and any derivative works, modifications, or improvements of any of the foregoing (including, without limitation, all Intellectual Property Rights embodied in any of the foregoing). Except for the express rights granted herein, Palantir does not grant any other licenses or access, whether express or implied, or any ownership rights to any Palantir Technology, software, services, or Intellectual Property Rights.
- 4.3. Restrictions.** Customer will not (and will not allow any third party to): (a) gain or attempt to gain unauthorized access to the Service or infrastructure, or any element thereof, or circumvent or interfere with any authentication or security measures of the Service; (b) interfere with or disrupt the integrity or performance of the Service; (c) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs through the Service; (d) decompile, disassemble, scan, reverse engineer, or attempt to discover any source code or underlying ideas or algorithms of any Palantir Technology (except to the extent that applicable law expressly prohibits such a reverse engineering restriction, and in such case only upon prior written notice to Palantir); (e) provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use or allow others to use the Service for the benefit of any third party (except as set forth in an Order Form); (f) list or otherwise display or copy any code of any Palantir Technology, except for Sample Materials to the extent necessary for Customer's use of the Service; (g) copy any Palantir Technology (or component thereof) or develop any improvement, modification, or derivative work thereof, except for Sample Materials to the extent necessary for Customer's use of the Service; (h) include any portion of any Palantir Technology in any other service, equipment, or item; (i) allow the transfer, transmission (including, without limitation, making available on-line, electronically transmitting, or otherwise communicating to the public), export, or re-export of any Palantir Technology (or any portion thereof) or any Palantir technical data; (j) perform penetration tests on the Service unless authorized by Palantir; (k) use, evaluate, or view the Palantir Technology for the purpose of designing, modifying, or otherwise creating any environment, software, models, algorithms, products, program, or infrastructure or any portion thereof, which performs functions similar to the functions of the Palantir Technology; or (l) remove, obscure, or alter, or otherwise violate the terms of any copyright notice, trademarks, logos, and trade names and any other notices (including third party open source or similar licenses) or identifications that appear on or in any Palantir Technology and any associated media. Notwithstanding the foregoing, or any statement to the contrary herein, Third Party Content may be made available with notices and open source or similar licenses from such communities and third parties that govern the use of those portions, and Customer hereby agrees to be bound by and fully comply with all such licenses; *however*, the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all such Third Party Content.

- 5. Confidentiality.** Each Party (the "**Receiving Party**") shall keep strictly confidential all Confidential Information of the other Party (the "**Disclosing Party**"), and shall not use such Confidential Information except for the purposes of this Agreement, and shall not disclose such Confidential Information to any third party other than disclosure on a need-to-know basis to the Receiving Party's directors, employees, agents, attorneys, accountants, subcontractors, or other representatives who are

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each subject to obligations of confidentiality at least as restrictive as those herein ("**Authorized Representatives**"). The Receiving Party shall use at least the same degree of care as it uses to prevent disclosure of its own confidential information, but in no event less than reasonable care. The Receiving Party may, without violating the obligations of the Agreement, disclose Confidential Information to the extent required by a valid court or government order, *provided* that the Receiving Party: (a) provides the Disclosing Party with reasonable prior written notice of such disclosure and (b) uses reasonable efforts to limit disclosure and to obtain, or to assist the Disclosing Party in obtaining, confidential treatment or a protective order preventing or limiting the disclosure, while allowing the Disclosing Party to participate in the proceeding. "**Confidential Information**" means (i) in the case of Palantir, Palantir Technology (including any information relating thereto); (ii) in the case of Customer, Customer Data; and (iii) any other information which by the nature of the information disclosed or the manner of its disclosure would be understood by a reasonable person to be confidential, in each case, in any form (including, without limitation, electronic or oral) and whether furnished before, on, or after the Effective Date; *provided, however*, that Confidential Information shall not include any information that (1) is or becomes part of the public domain through no act or omission of the Receiving Party or its Authorized Representatives; (2) is known to the Receiving Party at the earlier of the Effective Date or the time of disclosure by the Disclosing Party (as evidenced by written records) without an obligation to keep it confidential; (3) was rightfully disclosed to the Receiving Party prior to the Effective Date from another source without any breach of confidentiality by the third party discloser and without restriction on disclosure or use; or (4) the Receiving Party can document by written evidence that such information was independently developed without any use of or reference to Confidential Information. The Receiving Party shall be liable for any breaches of this Section by any person or entity to which the Receiving Party is permitted to disclose Confidential Information pursuant to this Section. The Receiving Party's obligations with respect to Confidential Information shall survive termination of this Agreement for five (5) years; *provided, however*, that the Receiving Party's obligations hereunder shall survive termination and continue in perpetuity, or as long as permitted by applicable law, with respect to any Confidential Information that is a trade secret under applicable law.

6. **Fees and Payment; Taxes.** The Service is deemed delivered upon the provision of access to Customer or for Customer's benefit. If there are fees set forth in an Order Form, such fees will be invoiced and payable on an annual upfront basis, or as otherwise set forth in the Order Form. All payments shall be made via wire transfer to an account designated by Palantir in the currency set forth on the corresponding invoice within thirty (30) days after the date of issuance of Palantir's invoice. Any late payments shall be subject to a service charge equal to the lesser of 1.5% per month of the amount due or the maximum amount of interest allowed by applicable law. Unless otherwise stated in an Order Form, fees are exclusive of applicable Taxes. Customer shall be responsible for all Taxes arising under this Agreement (except taxes on or measured by the net income of Palantir) so that after payment of such Taxes the amount Palantir receives is not less than the fees set forth in the Order Form. In the event a double taxation treaty applies, which provides a zero or reduced withholding tax rate, Customer agrees (a) not to withhold taxes in case of a zero withholding tax rate or (b) to withhold at the reduced tax rate in accordance with the double taxation treaty.

7. **Term and Termination.**

- 7.1. **Term.** This Agreement is effective as of the Effective Date and shall continue in effect for six (6) months from the date of expiration of the last to expire Order Form (the "**Term**"), unless otherwise terminated as provided herein. The term of each Order Form shall continue for the duration set forth in the Order Form (the "**Order Term**"), unless otherwise terminated as provided herein.

- 7.2. **Termination for Cause.** Without limiting either Party's other rights, either Party may terminate this Agreement for cause (including any then-current Order Forms) (a) in the event of any material breach by the other Party of any provision of this Agreement and failure to remedy the breach (and provide reasonable written notice of such remedy to the non-breaching Party) within thirty (30) days following written notice of such breach from the non-breaching Party or (b) if the other Party seeks protection under any bankruptcy, receivership, or similar proceeding or such proceeding is instituted against that Party and not dismissed within ninety (90) days. Except where an exclusive remedy is specified in this Agreement, the exercise by either Party of the right to terminate under this provision shall be without prejudice to any other remedies it may have under this Agreement or by law. In the event of termination of this Agreement by Customer for cause pursuant to Section 7.2(a), Palantir shall provide a pro-rated refund of any fees pre-paid for Services not utilized as of the effective date of termination. All non-expired Order Forms shall automatically terminate upon termination of this Agreement.

- 7.3. **Effect of Termination.** Upon any termination or expiration of this Agreement, except as specifically set forth below, all Customer's rights, access, and licenses granted to Palantir Technology shall immediately cease, and Customer shall promptly return or destroy all Data Connection Software, Sample Materials, Documentation, and all other Confidential Information of Palantir and, upon written request, certify its compliance with the foregoing to Palantir in writing within ten (10) days of such request. Upon termination or expiration of all Order Forms, if requested by Customer, Customer shall, subject to the terms of this Agreement, have access to the Service for thirty (30) days solely for the purpose of retrieving Customer Data. Palantir shall thereafter delete all Customer Data. Notwithstanding the foregoing, Palantir shall retain, subject to the other terms of this Agreement, and solely for security purposes, usage information and metadata related to the security of the Service, excluding Customer Data (except for security-related information such as IP addresses, usernames, log-in attempts, and search queries), for a period of two (2) years following the last event logged. No termination or expiration of this Agreement shall limit or affect rights or obligations that accrued prior to the effective date of termination or expiration (including, without limitation, payment obligations). Sections 4, 5, 6, 7, 8, 9, 11, 12, and 13 shall survive any termination or expiration of this Agreement.

8. **Indemnification.**

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- 8.1. Palantir Indemnification.** Palantir shall defend Customer against any claim of infringement or violation of any Intellectual Property Rights asserted against Customer by a third party based upon Customer's use of Palantir Technology in accordance with the terms of this Agreement and indemnify and hold harmless Customer from and against reasonable costs, attorneys' fees, and damages, if any, finally awarded against Customer pursuant to a non-appealable order by a court of competent jurisdiction in such claim or settlement entered into by Palantir. If Customer's use of any of the Palantir Technology is, or in Palantir's opinion is likely to be, enjoined by a court of competent jurisdiction due to the type of infringement specified above, or if required by settlement approved by Palantir in writing, Palantir may, in its sole discretion: (a) substitute substantially functionally similar products or services; (b) procure for Customer the right to continue using the Palantir Technology; or (c) if Palantir reasonably determines that options (a) and (b) are commercially impracticable, terminate this Agreement and refund to Customer a pro-rated portion of the fees paid hereunder for the terminated Palantir Technology that reflects the remaining portion of the Order Terms of any Order Forms in effect at the time of termination. The foregoing indemnification obligations of Palantir shall not apply: (i) if Palantir Technology is modified by or at the direction of Customer or Users, but only to the extent the alleged infringement would not have occurred but for such modification; (ii) if Palantir Technology is combined with non-Palantir products not authorized by Palantir, but only to the extent the alleged infringement would not have occurred but for such combination; (iii) to any unauthorized use of Palantir Technology, any use that is not consistent with the Documentation, or use during any period of suspension; (iv) to any Customer Data; or (v) to any non-Palantir products or services.
- 8.2. Customer Indemnification.** Customer shall defend Palantir against any third party claim asserted against Palantir arising from or relating to (a) Customer's violation of applicable law; (b) Customer Data; or (c) any Customer-offered product or service (except if such claim is primarily attributable to the Service as offered by Palantir) and indemnify and hold harmless Palantir from and against related costs, attorneys' fees, and damages, if any, issued by a competent authority or finally awarded pursuant to a non-appealable order.
- 8.3. Indemnification Procedure.** The obligations of the indemnifying Party shall be conditioned upon the indemnified Party providing the indemnifying Party with: (a) prompt written notice (in no event to exceed twenty (20) days) of any claim, suit, or demand of which it becomes aware; (b) the right to assume the exclusive defense and control of any matter that is subject to indemnification (*provided* that the indemnifying Party will not settle any claim unless it unconditionally releases the indemnified Party of all liability and does not admit fault or wrongdoing by the indemnified Party, unless the indemnified Party otherwise consents in writing); and (c) cooperation with any reasonable requests assisting the indemnifying Party's defense and settlement (at the indemnifying Party's expense). This Section sets forth each Party's sole liability and obligation and the sole and exclusive remedy with respect to any claim of Intellectual Property Rights infringement.
- 9. Palantir Warranty and Disclaimer.**
- 9.1. Palantir Warranty.** Palantir warrants that, during the Term, (a) the Service will be provided substantially in accordance with the applicable Documentation and (b) the Professional Services will be provided in a professional and workmanlike manner. In the event of a breach of an above warranty, Customer may give Palantir written notice of termination of this Agreement, which termination will be effective thirty (30) days after Palantir's receipt of the notice, unless Palantir is able to remedy the breach prior to the effective date of termination. This warranty shall not apply to the extent such breach is caused by Customer Data or misuse or unauthorized modification of the Service or any Customer-selected hardware used in connection with the Service. In the event of termination of this Agreement pursuant to Customer's exercise of its right under this Section, Customer shall be entitled to receive from Palantir, as its sole and exclusive remedy, a refund of a pro-rated portion of the fees paid hereunder that reflects the remaining portion of the Order Terms of any Order Forms in effect at the time of termination.
- 9.2. Disclaimer.** NO AMOUNTS PAID HEREUNDER ARE REFUNDABLE OR OFFSETTABLE EXCEPT AS OTHERWISE EXPLICITLY SET FORTH HEREIN. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PALANTIR TECHNOLOGY AND PROFESSIONAL SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY OTHER WARRANTIES OF ANY KIND, AND PALANTIR AND ITS SUPPLIERS AND SERVICE PROVIDERS HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, RELATING TO THE PALANTIR TECHNOLOGY AND PROFESSIONAL SERVICES PROVIDED HEREUNDER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING LIMITATION, PALANTIR DOES NOT WARRANT THAT THE PALANTIR TECHNOLOGY AND PROFESSIONAL SERVICES WILL MEET CUSTOMER REQUIREMENTS OR GUARANTEE ANY RESULTS, OUTCOMES, OR CONCLUSIONS OR THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. PALANTIR IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY SERVICES (INCLUDING, WITHOUT LIMITATION, UPTIME GUARANTEES, OUTAGES, OR FAILURES), CUSTOMER DATA, OR ANY THIRD PARTY CONTENT. PALANTIR DOES NOT CONTROL THE TRANSFER OF INFORMATION OR CUSTOMER DATA OVER COMMUNICATIONS FACILITIES, THE INTERNET, OR THIRD PARTY SERVICES, AND THE SERVICE MAY BE SUBJECT TO DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PALANTIR IS NOT RESPONSIBLE FOR ANY DELAYS, FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. PALANTIR SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ACTIONS TAKEN OR CONCLUSIONS DRAWN BY CUSTOMER BASED ON CUSTOMER'S USE OF THE SERVICE.
- 10. Customer Warranty.** Customer warrants that (a) Customer has provided all necessary notifications and obtained all necessary consents, authorizations, approvals, and/or agreements as required by any applicable laws or policies, and has informed Palantir of any obligations applicable to Palantir's processing of Customer Data, in order to enable Palantir to process Customer Data, including personal data, according to the scope, purpose, and instructions specified by Customer

**Call-Off Schedule 6 (ICT Services)**

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and that Customer will not direct the processing of Customer Data by Palantir in violation any laws or regulations (including localization requirements) or rights of third parties; and (b) it will not use the Service for any unauthorized or illegal purposes.

11. **Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY (A) COST OF PROCUREMENT OF ANY SUBSTITUTE PRODUCTS OR SERVICES, OR COST OF REPLACEMENT OR RESTORATION OF ANY CUSTOMER DATA; (B) ECONOMIC LOSSES, EXPECTED OR LOST PROFITS, REVENUE, ANTICIPATED SAVINGS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF OR DAMAGE TO GOODWILL OR REPUTATION; AND/OR (C) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE, WHETHER ARISING OUT OF PERFORMANCE OR BREACH OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE PALANTIR TECHNOLOGY, EVEN IF THE PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH LOSS OR DAMAGES. EXCEPT FOR THE PARTIES' OBLIGATIONS SET FORTH IN SECTIONS 4 AND 8 OF THIS AGREEMENT AND CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY AND ITS AFFILIATES TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS OF ANY KIND SHALL NOT EXCEED THE GREATER OF (I) THE FEES PAID OR PAYABLE TO PALANTIR BY CUSTOMER UNDER THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM FOR THE SERVICE OR PROFESSIONAL SERVICES THAT GAVE RISE TO SUCH CLAIM OR (II) ONE HUNDRED THOUSAND DOLLARS (USD 100,000), AND THAT SUCH REMEDY IS FAIR AND ADEQUATE. THE LIMITATIONS SET FORTH IN THIS SECTION 11 SHALL APPLY REGARDLESS OF WHETHER AN ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY.
12. **Dispute Resolution.** Any dispute, controversy, or claim arising from or relating to this Agreement, including arbitrability, that cannot be resolved following good faith discussions within sixty (60) days after notice of a dispute shall be finally settled by arbitration. If Customer is located in the Americas, then the governing law shall be the substantive laws of the State of New York, without regard to conflicts of law provisions thereof, and arbitration shall be administered in New York, New York, United States under the Comprehensive Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services, Inc. ("JAMS") and the Federal Rules of Evidence (notwithstanding JAMS Rule 22(d) or any other JAMS Rule to the contrary). If Customer is located outside of the Americas, then the governing law shall be the substantive laws of England and Wales, without regard to conflicts of law provisions thereof, and without regard to the United Nations Convention on Contracts for the International Sale of Goods, and arbitration shall be administered in London, United Kingdom under the Rules of Arbitration of the International Chamber of Commerce. Notwithstanding the foregoing, each Party shall have the right to institute an action at any time in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator(s), *provided* that (a) the Party instituting the action shall seek an order to file the action under seal (or at a minimum do so for any filings containing Confidential Information or trade secrets) in order to limit disclosure as provided in Section 5 of this Agreement; and (b) a permanent injunction and damages shall only be awarded by the arbitrator(s).

**Miscellaneous.** Palantir shall provide the Service and Professional Services consistent with laws and regulations applicable to Palantir's provision of such Service and Professional Services generally (including, but not limited to, those regarding data protection and international transfers of personal data), without regard to Customer's specific utilization of the Service except to the extent set forth in an Order Form, and subject to Customer's compliance with this Agreement. If applicable, the Parties shall comply with the Palantir AIP Addendum available at <https://palantir.pactsafe.io/aip-legal-3791.html>, which is hereby incorporated by reference. Except with Palantir's prior written consent, neither this Agreement nor the access or licenses granted hereunder may be assigned, transferred, or sublicensed by Customer, including, without limitation, pursuant to a direct or indirect change of control of Customer, a merger involving Customer where Customer is not the surviving entity, or a sale of all or substantially all of the assets of Customer (collectively, a "Change of Control"); any attempt to do so shall be void. Customer must provide written notice to Palantir prior to a Change of Control, and Palantir may terminate this Agreement in the event of a Change of Control. Palantir may subcontract this Agreement or portions thereof. Any notice required or permitted hereunder shall be in writing to the parties at the addresses set forth in the applicable Order Form and if by email, notifications to Palantir shall be sent to [REDACTED]. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and be enforceable. Any and all modifications, waivers, or amendments must be made by mutual agreement and shall be effective only if made in writing and signed by each Party. No waiver of any breach shall be deemed a waiver of any subsequent breach. The Service is controlled under 5D002.c.1, ENC. Customer shall ensure that all exports, reexports, transfers, end-uses, and Users of the Service comply with the export and sanctions laws and regulations of the United States and other applicable jurisdictions, including, without limitation, those of the U.S. Bureau of Industry & Security and the Office of Foreign Assets Control. Customer represents that it is not subject to restrictions under any U.S. government restricted end user lists, and that it is not 50% or more, directly or indirectly, owned or controlled by any individuals or entities identified on such lists. Customer will immediately notify Palantir if Customer becomes subject to any such restrictions. Customer shall refrain from taking any action that causes Palantir to violate applicable export and sanctions laws and regulations. Except for the obligation to pay money, neither Party will be liable for any failure or delay under this Agreement due to any cause beyond its reasonable control, including, without limitation, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, failure of the Internet, telecommunications, or hosting service provider, computer attacks, or malicious acts; *provided* that the delayed Party: (a) gives the other Party prompt notice of such cause; and (b) uses commercially reasonable efforts promptly to correct such failure or delay in performance. Palantir has the right to immediately suspend access to the Service: (a) if Customer is in material breach of this Agreement; (b) to prevent a security incident impacting Customer, Customer Data, or the Service; or (c) if continued access would violate applicable laws or if required to do so pursuant to applicable law or regulation or requests or orders of governmental, regulatory, or judicial authorities. There are no third-party beneficiaries under this Agreement, whether express or implied. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes

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and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. The Parties have freely negotiated all clauses of this Agreement, in written exchanges, telephone conversations, or meetings, and pursuant to these negotiations have agreed to adopt this Agreement and hereby acknowledge the negotiated nature of this Agreement. In the event of a conflict between these Terms of Service and any Order Forms or exhibit, the terms of such Order Form or exhibit will prevail. Palantir is in no way affiliated with, or endorsed or sponsored by, The Saul Zaentz Company d.b.a. Tolkien Enterprises or the Estate of J.R.R. Tolkien.

**Call-Off Schedule 8 (Business Continuity and Disaster Recovery)**

Call-Off Ref:

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## **Call-Off Schedule 8 (Business Continuity and Disaster Recovery)**

### **Short Form SaaS Business Continuity & Disaster Recovery**

1. The Supplier's business continuity and disaster recovery obligations are appended at Annex 1 hereto.
2. The Supplier's business continuity and disaster recovery services are part of the Services and will be performed by the Supplier if required at no additional cost to the Buyer.
3. If requested by the Buyer prior to entering into this Call-Off Contract, the Supplier must ensure that its business continuity and disaster recovery plan is consistent with the Buyer's own plans.

**Call-Off Schedule 8 (Business Continuity and Disaster Recovery)**

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**Annex 1**

**Supplier Business Continuity & Disaster Recovery**

1. The Supplier shall establish and maintain business continuity and disaster recovery arrangements relating to its operations supporting Service performance in accordance with Good Industry Practice and complying with the following and clause 14 of the Core Terms, and provide a copy to the Buyer for review on request:
  - 1.1. The Supplier will have a clear business continuity and disaster recovery plan in their service descriptions.
  - 1.2. The Supplier's business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required.
  - 1.3. In lieu of clause 14.3 of the Core Terms, the Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send or make available to the Buyer copies every 6 Months in accordance with Supplier's continuity and disaster recovery plan.



**Call-Off Schedule 9 (Security)**

Call-Off Ref:

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**Call-Off Schedule 9 (Security)****Short Form Security Requirements****1. Definitions**

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Breach of Security"</b>	<p><b>1 the occurrence of:</b></p> <p>a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or</p> <p>b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,</p> <p><b>2 in either case as more particularly set out in the Security Policy where the Buyer has required compliance therewith in accordance with paragraph 2.2;</b></p>
<b>"Security Management Plan"</b>	<p><b>3 the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and as updated from time to time.</b></p>

**2. Complying with security requirements and updates to them**

- 2.1 The Buyer and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), CCS shall have the right to enforce the Buyer's rights under this Schedule.

### **Call-Off Schedule 9 (Security)**

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- 2.2 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer that has undertaken a Further Competition it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 2.3 Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 2.4 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Variation to the Buyer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.
- 2.5 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

### **3. Security Standards**

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
  - 3.2.1 is in accordance with the Law and this Contract;
  - 3.2.2 as a minimum demonstrates Good Industry Practice;
  - 3.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and
  - 3.2.4 where specified by the Buyer in accordance with paragraph 2.2 complies with the Security Policy and the ICT Policy.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

## **Call-Off Schedule 9 (Security)**

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## **4. Security Management Plan**

### **4.1 Introduction**

- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

### **4.2 Content of the Security Management Plan**

- 4.2.1 The Security Management Plan shall:

- a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;
- b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
- c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
- f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with paragraph 2.2 the Security Policy; and
- g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

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**4.3 Development of the Security Management Plan**

- 4.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.

**4.4 Amendment of the Security Management Plan**

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
- a) emerging changes in Good Industry Practice;
  - b) any change or proposed change to the Deliverables and/or associated processes;
  - c) where necessary in accordance with paragraph 2.2, any change to the Security Policy;
  - d) any new perceived or changed security threats; and
  - e) any reasonable change in requirements requested by the Buyer.
- 4.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and

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amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:

- a) suggested improvements to the effectiveness of the Security Management Plan;
- b) updates to the risk assessments; and
- c) suggested improvements in measuring the effectiveness of controls.

4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.

4.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

**5. Security breach**

5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:

5.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:

- a) minimise the extent of actual or potential harm caused by any Breach of Security;
- b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
- c) prevent an equivalent breach in the future exploiting the same cause failure; and
- d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or

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attempted Breach of Security, including a cause analysis where required by the Buyer.

- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

**Call-Off Schedule 10 (Exit Management)**

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**Call-Off Schedule 10 (Exit Management)****1. Definitions**

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Exclusive Assets"</b>	Supplier Assets used exclusively by the Supplier or a Key Subcontractor in the provision of the Deliverables;
<b>"Exit Information"</b>	has the meaning given to it in Paragraph 3.1 of this Schedule;
<b>"Exit Manager"</b>	the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Exit Plan"</b>	the plan produced and updated by the Supplier during the Initial Period in accordance with Paragraph 4 of this Schedule;
<b>"Net Book Value"</b>	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Framework Tender or Call-Off Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	those Supplier Assets used by the Supplier or a Key Subcontractor in connection with the Deliverables but which are also used by the Supplier or Key Subcontractor for other purposes;
<b>"Registers"</b>	the register and configuration database referred to in Paragraph 2.2 of this Schedule;
<b>"Replacement Goods"</b>	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether

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	those goods are provided by the Buyer internally and/or by any third party;
<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of this Schedule;
<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
<b>"Transferable Assets"</b>	Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in Paragraph 8.2.3 of this Schedule.

**2. Supplier must always be prepared for contract exit**

2.1 The Supplier shall within 1 month from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2 During the Contract Period, the Supplier shall promptly:

2.2.1 create and maintain a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and

2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables

("Registers").



### **Call-Off Schedule 10 (Exit Management)**

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#### **2.3 The Supplier shall:**

- 2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
- 2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

- 2.4 Each Party shall appoint an Exit Manager within 1 month of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

### **3. Assisting re-competition for Deliverables**

- 3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five 5 Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

### **4. Exit Plan**

- 4.1 The Supplier shall, within 1 Month after the Start Date, deliver to the Buyer an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty 20 Working Days of the latest date for its submission pursuant

**Call-Off Schedule 10 (Exit Management)**

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to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

- 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;
- 4.3.2 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
- 4.3.3 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
- 4.3.4 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
- 4.3.5 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
- 4.3.6 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
- 4.3.7 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
- 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
- 4.3.9 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
- 4.3.10 any requirements detailed in Schedule 20 (Specification) paragraph 3.0 Transition & Exit Services; and
- 4.3.11 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.

4.4 The Supplier shall:

- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
  - (a) every 1 month throughout the Contract Period; and
  - (b) no later than ten (10) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
  - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
  - (d) as soon as reasonably possible following, and in any event no later than ten (10) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and

## **Call-Off Schedule 10 (Exit Management)**

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4.4.2 jointly review, verify and update the Exit Plan on a monthly basis within the Operational Board Meetings and more frequently if required by the Buyer and promptly correct any identified failures.

4.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.

4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier. As at the Effective Date of the Call-Off Contract, the Exit Plan is contained in Call-Off Schedule 20.

## **5. Termination Assistance**

5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least three (3) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

5.1.1 the nature of the Termination Assistance required; and

5.1.2 the start date and initial period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.

5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:

5.2.1 no such extension shall extend the Termination Assistance Period beyond the date twelve (12) Months after the End Date; and

5.2.2 the Buyer shall notify the Supplier of any such extension no later than twenty (20) Working Days prior to the date on which the Termination Assistance Period is otherwise due to expire.

5.3 The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.

5.4 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

Any Termination Assistance which involves services not covered in Schedule 20 and or any updated Exit Plan agreed by the parties in writing, shall be priced for and agreed in writing separately by the Parties.

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### **6. Termination Assistance Period**

6.1 Throughout the Termination Assistance Period the Supplier shall:

- 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract subject to the Charges in the Call-Off Agreement as applicable and, if required by the Buyer, provide the Termination Assistance;
  - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
  - 6.1.3 use all commercially reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
  - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI's) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
  - 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;
  - 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

### **7. Obligations when the contract is terminated**

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
  - 7.2.1 vacate any Buyer Premises;
  - 7.2.2 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;

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7.2.3 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to three (3) Months after expiry or termination to:

- (a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
- (b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.

7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## **8. Assets, Sub-contracts and Software**

8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

- 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
- 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

8.2 Within twenty 20 Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:

- 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");
- 8.2.2 which, if any, of:
  - (a) the Exclusive Assets that are not Transferable Assets; and
  - (b) the Non-Exclusive Assets,the Buyer and/or the Replacement Supplier requires the continued use of; and

8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which

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Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

- 8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 8.7 The Buyer shall:
- 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
- 8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

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**9. No charges**

9.1 Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule but shall comply with any payment obligations in accordance with the terms of this Call-Off Contract for Transition Services and/or Termination Assistance.

**10. Dividing the bills**

10.1 All outgoing, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

Call-Off Schedule 14 (Service Levels)  
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# Call-Off Schedule 14 (Service Levels)

## Part A: Service Levels and Service Credits

### PALANTIR FOUNDRY SERVICE LEVEL AGREEMENT (“SLA”)

This SLA concerns the use of Palantir Foundry (“**Foundry**”) by Customers of Palantir. This SLA supplements, but does not modify, the Palantir Terms of Service or other agreement governing your use of Foundry, including any attachments, exhibits, and appendices thereto (collectively, the “**Agreement**”). In the event of a conflict between the terms and conditions of this SLA and the Agreement, the terms and conditions of this SLA shall supersede and control, unless the Agreement specifically establishes precedence. This SLA may be updated by Palantir from time to time, provided that such changes do not result in a material reduction in functionality or security for Customer. Unless otherwise defined herein, all capitalised terms used in this SLA will have the meanings given to them in the Agreement.

1. **Performance Commitment**
- a.

During the Term of the applicable Order Form, Palantir will make commercially reasonable efforts to provide Availability of **99.9%** to Customer on the terms set forth below (the “**Performance Commitment**”). The Performance Commitment is defined in terms of Workflows that correspond to core product capabilities. If Palantir does not meet the Performance Commitment, Customer may be eligible to receive Service Credits as defined below.
- b.

Availability for each Workflow is calculated as (x) the Calendar Minutes, minus (y) the number of cumulative minutes in rolling 10-minute intervals—starting from the first minute of Unavailability and continuing for at least 10 minutes—during which the Workflow is Unavailable in a given calendar month, with at least ten (10) execution attempts made during such interval, divided by (z) the Calendar Minutes. If no Workflow execution attempts are made in a given 10-minute interval, that interval is assumed to be 100% Available.

Table 1: Workflow Descriptions and Unavailability Definitions		
Workflow	Description	Unavailable Definition
Authentication	Authenticates identity of Users to manage access to Foundry and all associated resources within.	User authentication request fails with Internal Error returned.
Authoring	An integrated development environment to author code-based data transformations that constitute the individual elements in a data pipeline.	Request to load Authoring user interface fails with Internal Error returned.
Builds	Manages the processes involved in creating new versions of datasets after they have been cleaned or transformed.	Request to initiate job fails with Internal Error returned.
Code Workbook	Open-ended coding environment embedded in Foundry permitting advanced analytical analysis using industry-standard languages and libraries.	Request to execute code fails with Internal Error returned.
Contour	Point-and-Click tool allowing top-down analysis of large-scale data.	Request to initiate Contour job fails with Internal Error returned.
Data Access	Navigation, browsing, and previewing of datasets and any resource created in the Foundry file system.	Request to preview or open dataset via the Foundry UI fails with Internal Error returned.
Data Connection	Data extraction and ingestion, comprising the data connection adapter (installed in external	Request to execute data ingestion job fails with Internal Error returned.



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	network environment) and data connection coordinator (within Foundry).	
Data Health	Provides information on the current health of all data connection and transformation pipelines, along with alerting capabilities.	Request to calculate health check fails with Internal Error returned.
Objects	Allows viewing of data represented as the object types (for example people, places, and relationships) that give them contextual meaning across tabular datasets.	All API requests from the Object Explorer UI to Foundry services return with an Internal Error.
Reports	Visual reporting tool, allowing highly configurable creation and sharing of analyses.	All API requests from the Reports UI to Foundry services return with an Internal Error.
Slate	Configurable dashboarding tool allowing highly configurable creation of interactive dashboards displaying data within Foundry.	All API requests from the Slate UI to Foundry services return with an Internal Error.

**2. Service Credits**

- a. If Availability for a Workflow within scope of the Performance Commitment falls below the applicable threshold set forth in Section 1 of this SLA (a "**Service Level Failure**"), then Customer may submit a request for Service Credits corresponding to the Service Credit Percentage set forth in Table 2 and calculated as follows.
- i. Service Credits are calculated as a percentage of the Pro Rata Monthly Foundry Usage Fees paid or payable by Customer to Palantir for a given calendar month for Workflows that suffered a Service Level Failure. Each Workflow accounts for an equal proportion of the applicable Pro Rata Monthly Foundry Usage Fees (e.g.,  $1/n$ , where  $n$  is the number of Workflows).

*Example: The Code Workbook Workflow is Unavailable such that Availability for a given calendar month is determined to be 99.5%. Customer may request Service Credits for that month in the amount of 10% multiplied by  $1/11$  multiplied by the Pro Rata Monthly Foundry Usage Fees attributable to that calendar month.*

<b>Table 2: Service Credit Percentages</b>	
<b>Availability</b>	<b>Service Credit Percentage</b>
Less than 99.9% but equal to or above 99.0%	10%
Less than 99.0% but equal to or above 98.0%	20%
Less than 98.0% but equal to or above 97.0%	30%
Less than 97.0% but equal to or above 96.0%	40%
Less than 96.0	50%

- b. The maximum aggregate amount of Service Credits to be issued by Palantir arising from Service Level Failures in any given calendar month shall not exceed 5% of the total Pro Rata Monthly Foundry Usage Fees (for all Workflows) attributable to that calendar month.
- c. To request a Service Credit, Customer must notify Palantir within thirty (30) days from the time the alleged Service Level Failure occurred by submitting a written request to [REDACTED] with, at a minimum, the following details:
- The words "Palantir Service Credit Request" in the subject header;
  - A detailed description, including dates and times, explaining when and why the Customer believes the specified Workflow was Unavailable;
  - If available, any corroborating resource IDs, datasets, objects, logs or data, with sensitive or confidential information removed by Customer.
- d. Palantir will review Service Credit requests within 30 business days upon receipt of a valid request. Palantir will apply any Service Credits owing against Customer's next payment or, if applicable, as a refund at the end of your Order Term, in its discretion. Service Credits are not transferable or assignable. Service Credits, where applicable, are the sole and exclusive remedy for failure of the Performance Commitment. Failure to submit a Service Credit request as set forth herein will disqualify you from eligibility for receiving Service Credits.

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**3. Definitions**

- a. **Availability** is calculated for each Workflow as set forth in Section 1 of this SLA.
- b. **Calendar Minutes** is the total number of minutes in a given calendar month.
- c. **Internal Error** is a 5XX HTTP Response Code.
- d. **Emergency Maintenance** shall occur in the event of an information security-related event or in the event of a mandatory emergency restore from backup. Palantir reserves the right to take immediate downtime to remedy the situation but will notify the Customer as far in advance as possible.
- e. **Pro Rata Monthly Foundry Usage Fees** means the Quarterly Foundry Usage Fees divided by three (3).
- f. **Quarterly Foundry Usage Fees** shall include: (a) the portion of prepaid fees attributable to the relevant calendar quarter for the Customer's minimum committed usage of Foundry Compute and Foundry Ontology as set forth in the applicable Order Form (the "**Minimum Commitment**"), calculated on a pro rata quarterly basis over the applicable Order Term, and (b) fees payable for Customer's use of Foundry Compute and Foundry Ontology in excess of the Minimum Commitment, if applicable, for the relevant calendar quarter, according to the rates as set forth in the applicable Order Form.
- g. **Scheduled Maintenance** means a pre-determined period of time occurring on the first Saturday of each calendar month at 10h00 GMT for a duration of two (2) hours. In the event that Palantir needs more than two (2) hours of downtime for an individual maintenance window, Palantir will provide the Customer with two (2) week's advance notice.
- h. **Service Credit** is a dollar credit, calculated as described herein, that Palantir may credit back to an eligible Customer account against future payments. Service Credits are non-transferrable and may not be exchanged or converted for monetary disbursements.
- i. **Unavailable** is defined for each Workflow as set forth in Section 2 of this SLA.
- j. **Workflow** means a component of Foundry defined in Table 1 for which Availability is measured as part of the Performance Commitment.

**4. Exclusions**

- a. Palantir will have no liability for any failure to meet the Performance Commitment to the extent arising from: (a) use of the Palantir Technology by Customer, its Affiliates, and/or Authorized Users other than as authorized under the Agreement or Documentation, including alterations, modifications or damage but not limited to any negligence, wilful misconduct or use; (b) Customer Content; (c) Customer or User equipment; (d) any use of Palantir Technology not classified as Generally Available in Palantir's discretion; (e) third party acts or omissions, or services, products, or systems not provided by Palantir; (f) any matter constituting force majeure or factors beyond Palantir's reasonable control, including but not limited to general Internet problems; (g) evaluation or proof-of-concept use of the Palantir Technology under a no-cost agreement of any kind; (h) Unavailability caused by errors for which Palantir has released a Product Update that remains unimplemented due to Customer's action or inaction; (i) custom scripts or code not provided with the Palantir Technology ; (j) Scheduled Maintenance or Emergency Maintenance.

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**Part B: Support & Maintenance****PALANTIR FOUNDRY SERVICE LEVEL AGREEMENT ("SLA")**

This Support Policy concerns Palantir's support offering ("**Palantir Support**") in connection with Errors in the use of Palantir Foundry ("**Foundry**"). Palantir Support shall be provided if specified in the Palantir Terms of Service, the applicable Order Form, or other agreement governing your use of Foundry, including any attachments, exhibits, and appendices thereto (collectively, the "**Agreement**"). In the event of a conflict between the terms and conditions of this Support Policy and the Agreement, the terms and conditions of this Support Policy shall supersede and control, unless the Agreement specifically establishes precedence. This Support Policy may be updated by Palantir from time to time, provided that such changes do not result in a material reduction in functionality or security for Customer. Unless otherwise defined in this Addendum, all capitalised terms used in this Support Policy will have the meanings given to them in the Agreement and/or the Palantir Service Level Agreement, as applicable.

**1. Palantir Support**

- a. During the applicable Order Term, Palantir shall provide English language (or other language where specifically set forth in an applicable Order Form) remote Technical Support to Customer Technical Contacts to respond to and answer questions arising from any Error, including triage, analysis, troubleshooting, and workarounds.
- b. Palantir Support includes extensive self-directed training resources and Documentation available to all Users.

**2. Reporting Errors**

- a. In the event of an Error, a Customer Technical Contact shall submit an Error report including, at a minimum:
  - i. the Severity Level of the Error, in accordance with Table 3;
  - ii. information sufficient to enable Palantir Support personnel to replicate the Error (including, where applicable, error messages); and
  - iii. the contact details (phone number and email) of the Customer Technical Contact assigned to liaise with Palantir on the issue.
- b. **P0 Errors:** Customer Technical Contacts may file a P0 Error report by sending an email to the P0 reporting email address provided by Palantir.
- c. **P1 - P3 Errors:** Customer Technical Contacts may submit P1 - P3 Error reports through Foundry Issues, the in-application Error reporting service (or a successor service made available by Palantir). In the event Foundry Issues is not accessible, Customer Technical Contacts may file a P1-P3 Error report by sending an email to the P1-P3 reporting email address provided by Palantir.
- d. Error reports containing feature requests shall be considered closed once forwarded internally to applicable internal teams.

**3. Error Severity Levels**

<b>Table 3: Error Severity Level Definitions</b>	
P0	Error which causes serious business impact or disruption to Customer's business activities by (a) rendering a Workflow materially inoperative or unavailable, (b) substantially degrading the performance of a Workflow as if it were materially inoperative or unavailable, or (c) materially limiting Customer's use of all or part of a Workflow.
P1	Error which materially limits or restricts Customer's use of a Workflow for normal business purposes by (a) substantially degrading the performance of a Workflow where a business-enabling workaround exists, or (b) potentially having serious business impact or disruption to the Customer's business activities if not resolved in timely manner.
P2	Error which (a) causes only a minor impact to the Customer's use of Workflow, or (b) marginally affects normal business activities of the Customer.
P3	Error which (a) causes only a very minor impact on the Customer's use of Workflow, or (b) has limited to no effect on the normal business activities of the Customer.

**4. Error Response**

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- a. Upon receipt of an Error report, Palantir will review and confirm in its reasonable discretion the Severity Level based on the definitions provided in Table 3 and use commercially reasonable efforts to meet the Initial Response Time for the applicable Severity Level set forth in Table 4, as defined for the applicable Regional Business Hours set forth in Table 5. In the event of a conflict between the Customer reported Severity Level and Palantir's reasonable designation, Palantir's designation shall prevail and Palantir will promptly notify Customer of such designation. If Customer provides Palantir a reasonable basis for disagreeing with Palantir's assigned Error Severity Level, each of Customer and Palantir will escalate the disagreement within their respective organizations to personnel positioned to undertake good faith efforts to mutually agree on an appropriate Error Severity Level. Following initial triage and response, Palantir shall begin Error Correction and provide Customer with periodic reports and updates via the Status Utility or, if the Status Utility is not available, to the Customer Technical Contact via email. If the Customer Technical Contact is unresponsive or unreachable, Palantir may downgrade the Severity Level by one level.

Table 4: Error Severity Level Response			
Severity Level	Initial Response Time	Coverage	Targeted Resolution Support
P0	30 Minutes	24x7x365	Error Correction commencing within 1 clock hour of Response Time until Error is resolved or downgraded
P1	8 Business Hours	Applicable Regional Business Hours	Error Correction commencing from Initial Response Time until Error is resolved or downgraded.
P2	24 Business Hours	Applicable Regional Business Hours	Error Correction at Palantir's discretion in a Product Update
P3	60 Business Hours	Applicable Regional Business Hours	Error Correction at Palantir's discretion in a Product Update

5. **Support Hours**

- a. For P1 - P3 Errors, Customers may select one Default Support Region, defined as the Support Region of (or geographically closest to) the "Ship To" location contained in the applicable Order Form, or as otherwise agreed between the Parties. In the absence of a selection, US East shall be the Default Support Region. Support Hours in more than one Support Region may be purchased separately.

Table 5: Palantir Support Hours P1 - P3 Errors			
Support Region	Regional Business Days	Regional Business Hours	Excluded Holidays
GMT	Monday - Friday	09h00 - 17h00	UK Bank Holidays; Annual Winter Closure
Central European Time	Monday - Friday	09h00 - 17h00	UK Bank Holidays; Annual Winter Closure
US Eastern Time Zone	Monday - Friday	09h00 - 17h00	US National Holidays; Annual Winter Closure
US Western Time Zone	Monday - Friday	09h00 - 17h00	US National Holidays; Annual Winter Closure

6. **Definitions**

- a. **Annual Winter Closure** means the Business Days on or between December 20<sup>th</sup> and January 10<sup>th</sup> on an annual basis in which Palantir offers reduced P1-P3 Support Hours. Exact dates are communicated on an annual basis with no less than two (2) months' notice and shall not exceed ten (10) Business Days in total.

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- b. **Business Hours** means hours of the day in a particular Support Region during which Palantir Support is available.
- c. **Business Days** means days of the week in a particular Support Region during which Palantir Support is available.
- d. **Customer Technical Contacts** means up to five (5) personnel designated by Customer as the primary technical counterparts for Palantir, with email addresses whitelisted for escalated privileges, such as filing of Error reports. Customer Technical Contacts must be reasonably familiar with Foundry and shall use commercially reasonable efforts to ensure any reported Errors do not arise from any applicable Exclusion.
- e. **Error** means bugs, defects, or errors in Foundry reported by a Customer Technical Contact.
- f. **Error Correction** means the use of commercially reasonable efforts to correct Errors, provide a workaround, or make available an Update to correct Errors.
- g. **Status Utility** means a Customer accessible web page where material degradations to the performance status of Workflows may be published by Palantir.
- h. **Technical Support** means technical support assistance via in-person, email, telephone, approved remote access or other technical means provided by Palantir to the Customer.

### 7. Exclusions

Palantir will have no obligations to provide, and shall bear no liability for any failure to provide, Palantir Support for (i) Errors reported other than as set forth in this Policy, (ii) Palantir Technology not classified as generally available in Palantir's discretion, (iii) third party software or services, (iv) Customers that impose geographic or technical restrictions on access by Palantir personnel, (v) Customer or User equipment; and/or (vi) custom scripts or code not provided with Foundry. Professional Services provided by Palantir, including but not limited to data modelling, integration, ontology configuration, and training, are subject to the terms of the Agreement and are excluded from Palantir Support.

**Call-Off Schedule 15 (Call-Off Contract Management)**

Call-Off Ref:

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# **Call-Off Schedule 15 (Call-Off Contract Management)**

## **1. DEFINITIONS**

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**"Operational Board"** the board established in accordance with paragraph 4.1 of this Schedule;

**"Project Manager"** the manager appointed in accordance with paragraph 2.1 of this Schedule;

## **2. PROJECT MANAGEMENT**

2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.

2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

2.3 Without prejudice to paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

## **3. ROLE OF THE SUPPLIER CONTRACT MANAGER**

3.1 The Supplier's Contract Manager's shall be:

3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;

3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Contract Manager's responsibilities and obligations;

3.1.3 able to cancel any delegation and recommence the position himself; and

3.1.4 replaced only after the Buyer has received notification of the proposed change.

3.2 The Buyer may provide revised instructions to the Supplier's Contract Manager's in regards to the Contract and it will be the Supplier's Contract Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.

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- 3.3 Receipt of communication from the Supplier's Contract Manager's by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

**4. ROLE OF THE BOARDS AND GROUPS**

- 4.1 The Boards and Groups shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 In relation to each Board and Group, the:
- 4.2.1 Buyer Board Members and Buyer Group Members;
  - 4.2.2 Supplier Board Members and Supplier Group Members;
  - 4.2.3 frequency that the Boards and Groups shall meet (unless otherwise agreed between the Parties);
  - 4.2.4 location of the Boards and Group meetings: and
  - 4.2.5 planned start date by which the Boards and Groups shall be established,
- are as set out in Annex 1 to this Call-Off Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed Board Members and/or Group Members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer Board Member and/or Buyer Group Member shall have at all times a counterpart Supplier Board Member and/or Supplier Group Member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its Board Members and Group Members shall make all reasonable efforts to attend Board and Group meetings at which that Board Member's or Group Member's attendance is required. If any Board Member or Group Member is not able to attend a Board or Group meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Board or Group meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the Board or Group meeting.
- 4.5 The purpose of the Board and Group meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Supplier and communicated to the Buyer in advance of that meeting.
- 4.6 The proposed governance framework is as set out in Figure 1 below.

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*Figure 1 - Governance Framework*

- 4.7 The Boards and Groups are to take place on time with meetings conducted using an agreed medium that is sensible for effective operation including face to face, video conference or teleconference.
- 4.8 The agenda for each Board and Group meeting shall be provided pursuant to paragraph 4.10.2 below. The Supplier shall distribute such agenda to all appointed Board Members and Group Members and optional attendees (as determined by the Buyer acting reasonably) at least five (5) Working Days in advance of each meeting.
- 4.9 Agenda items or issues that cannot be concluded, resolved or exceed the decision making responsibilities of the relevant Board or Group shall be escalated to the next Board or Group in the governance framework set out in Paragraph 4.6.
- 4.10 In agreement with the Buyer, the Supplier shall appoint a chairperson for each Board and Group as identified in Annex 1 to this Call-Off Schedule. The chairperson shall be responsible for:
- 4.10.1 scheduling Board or Group meetings;
  - 4.10.2 setting the agenda for Board or Group meetings and circulating it to all attendees in accordance with Paragraph 4.8 above;
  - 4.10.3 chairing the Board or Group meetings;
  - 4.10.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board or Group meetings;
  - 4.10.5 ensuring that minutes for Board or Group meetings are recorded and disseminated electronically to all Board Members or Group Members of the applicable Board or Group and to such other persons as the applicable Board or Group shall specify within five (5) Working Days after the Board or Group meeting; and



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4.10.6 facilitating the process or procedure by which any decision agreed at any Board or Group meeting is given effect in the appropriate manner.

- 4.11 Board and Group meetings shall be quorate as long as at least two representatives from each Party are present.
- 4.12 The Parties shall ensure, as far as reasonably practicable, that all Boards and Groups shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall ensure that Board Members and Group Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.
- 4.13 The Parties acknowledge and agree that it may be appropriate for Buyer representatives, including third parties, to attend Board or Group meetings where required (as determined by the Buyer acting reasonably).
- 4.14 The Parties acknowledge that additional Groups may be required throughout the duration of the Contract and agree additional Groups will be appointed by the Operational Board as required.

**5. ROLE OF THE OPERATIONAL BOARD**

5.1 The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.

5.2 The Operational Board shall:

- 5.2.1 provide senior level guidance, leadership and strategy for the overall delivery of the Deliverables;
- 5.2.2 manage the delivery and development of the Deliverables provided by the Supplier;
- 5.2.3 manage the delivery and change process of the Exit Management Plan;
- 5.2.4 consider issues in relation to the operational aspects of the Deliverables including:
  - (a) reviewing any requested root cause analysis;
  - (b) review and resolution of escalations from the Delivery and Operational Group(s) relating to key service delivery issues;
  - (c) ensure that this Contract is operated throughout the Contract Period in a manner which optimises the value for money and operational benefit derived by the Buyer and the commercial benefit derived by the Supplier;
  - (d) confirming the submission of any other relevant reports required by this Contract and agreeing relevant Performance

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Monitoring Reports (as set out in Annex A of Call-Off Schedule 1 (Transparency Reports);

- (e) receive and review reports from the Delivery and Operational Group(s);
- (f) review operational delivery risks and issues and update the appropriate risks and issues registers; and
- (g) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Deliverables.

5.3 The minutes of the preceding Operational Board Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.

**6. ROLE OF THE DELIVERY AND OPERATIONAL GROUP(S)**

6.1 The Delivery and Operational Group(s) shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.

6.2 The Delivery and Operational Group(s) shall be responsible for the management of the Deliverables and shall:

- 6.2.1 be accountable to the Operational Board for comprehensive oversight of the management of the Deliverables;
- 6.2.2 report to the Operational Board on significant issues requiring decision and resolution by the Operational Board and on progress against the Exit Management Plan;
- 6.2.3 receive reports from the service managers on matters such as issues relating to the delivery of the Deliverables and performance against Service Levels, progress against the Exit Management Plan and possible future developments;
- 6.2.4 review the Weekly Incident Report in accordance with Schedule 1 (Transparency Reports);
- 6.2.5 review contract performance;
- 6.2.6 review commercial and financial risks and issues and the appropriate risk and issued register;
- 6.2.7 review and report to the Operational Board on service management, co-ordination of individual projects and any Exit Management issues;
- 6.2.8 deal with the prioritisation of resources and the appointment of service managers on behalf of the Parties;

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- 6.2.9 review and approve the submission of any proposed Variations in relation to the Deliverables before submission for assessment through the Variation Procedure;
- 6.2.10 review and report to the Operational Board on the status of Disputes (including Disputes as to the cause of a Delay or the performance of the Deliverables); and
- 6.2.11 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

## **7. CONTRACT MANAGEMENT RISK**

- 7.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Call-Off Contract.
- 7.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
  - 7.2.1 the identification and management of risks;
  - 7.2.2 the identification and management of issues; and
  - 7.2.3 monitoring and controlling project plans.
- 7.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 7.4 The Supplier will maintain a risk register of the risks relating to the Call Off Contract which the Buyer's and the Supplier have identified.

## **8. OTHER REPORTS**

- 8.1 In addition to the provision of Transparency Reports (as set out in Call-Off Schedule 1 (Transparency Reports), the Buyer may require any or all of the following reports:
  - 8.1.1 Delay reports;
  - 8.1.2 reports relating to Testing and tests carried out under Call-Off Schedule 9 (Security) and Call-Off Schedule 8 (Business Continuity and Disaster Recovery);
  - 8.1.3 reports which the Supplier is required to supply as part of any management information specified in Call-Off Schedule 9 (Security) and/or Call-Off Schedule 8 (Business Continuity and Disaster Recovery);
  - 8.1.4 annual reports on the Required Insurances;
  - 8.1.5 security reports;
  - 8.1.6 Force Majeure Event reports;
  - 8.1.7 the social value commitment reports set out in Annex 2 to this Call-Off Schedule 15 (Contract Management); and

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- 8.1.8 any other reports required as set out in this Contract, including those set out in Call-Off Schedule 20 (Specification).
- 8.2 All such reports (including Transparency Reports, as set out in Call-Off Schedule 1 (Transparency Reports)) shall be provided within the scope of the Charges.
- 8.3 All reports required under Paragraph 10 shall be delivered to the Buyer according to the format and content agreed with the Buyer. The Supplier shall modify the format and/or content of any report as requested by the Buyer during the Call-Off Contract Period, provided that if and to the extent that such changes would result in the Supplier incurring material additional cost, the treatment of such costs shall be discussed and agreed in advance in accordance with the Variation Procedure.
- 8.4 In addition to any other reporting requirements in this Contract, the Supplier shall prepare and provide a reasonable number of custom 'ad-hoc' reports as the Buyer may require from time to time during the Call-Off Contract Period. 'Ad-hoc' reports will typically be one-off documents unless both Parties agree that there is a benefit in making these ongoing or periodic reports.
- 8.5 Where the Parties identify that an aspect of the Services that should be reported on is not specified in this Call-Off Schedule 15, or not otherwise referred to in this Contract, the Parties shall act in good faith to agree the inclusion of relevant additional reports. Where such reports could reasonably have been expected to be included in the provision of the Deliverables or this Call-Off Schedule 15, the Supplier shall provide such reports at no additional cost.

**Call-Off Schedule 15 (Call-Off Contract Management)**

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**Annex: Contract Governance**

The Parties agree to operate the following boards and meetings at the locations and at the frequencies set out below:

**OPERATIONAL BOARD MEETING**

Buyer Members	<div></div> <div></div> <div></div> <div></div> <div></div>
Supplier Members	<div></div> <div></div>
Start Date	TBC
Frequency	Monthly
Location	Physical

**DELIVERY GROUP**

Buyer Members	<div></div> <div></div> <div></div> <div></div> <div></div>
Supplier Members	<div></div> <div></div>
Start Date	TBC
Frequency	Weekly
Location	Virtual

**OPERATIONAL GROUP**

Buyer Members	<div></div> <div></div> <div></div>
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	<div></div>
Supplier Members	<div></div> <div></div>
Start Date	TBC
Frequency	Weekly
Location	Virtual

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## 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

Supplier is referred to as “**Palantir**” and Buyer as “**Customer**” in this Schedule.  
Capitalized terms used herein shall have the meaning set forth in the Call-Off Contract.

### **1.0 NHS Foundry Single Environment Base Licence**

Palantir shall provide a Palantir single environment base Foundry licence subscription (PT-CAP-BASE), as a Software-as-a-Service (SaaS), which is currently hosted on Amazon Web Services in the UK region, for use by Buyer’s Authorised Users within the scope described in the Call-Off Contract and below (together “**NHS Foundry**”).

As part of the single environment base Foundry licence, Palantir will provide:

- product documentation, coding and other platform-based self-serve training to enable Buyer’s Authorised Users to operate NHS Foundry;
  - training materials and library of documentation for general user education, troubleshooting, new feature and best practice guidance for development of NHS Foundry and (as part of the Capabilities licenses) the Capabilities;
  - The ability for users to compile custom reports that can be shared within and exported from NHS Foundry; and
  - L3 support services in accordance with Palantir’s Service Level Agreement, where L3 support means support for platform errors. [REDACTED]
- [REDACTED]
- [REDACTED]

Palantir will provide the Buyer with a dashboard that shows allocation of infrastructure use across the projects on NHS Foundry and enables Buyer to manage and limit (through access control) the use of NHS Foundry by Local Systems incurring Infrastructure Charges (as defined below).

For the purposes of this Call-Off Contract, “**Local System**” means an integrated care board, NHS trusts, NHS foundation trusts and GP Practices (or any one of these bodies) within one of the 42 ICSs in England, and any group of such bodies including PCNs, and any other local or regional bodies or groups of bodies that are commissioning or delivering NHS services in England within one of the 42 ICSs (all as defined in the National Health Service Act 2006 (the “**2006 Act**”)), and any other NHS Body (as defined in the 2006 Act); “**GP Practice**” means a provider of general medical services to NHS England under arrangements to which Part 4 of the 2006 Act applies; “**ICS**” means a collaborative arrangement through which NHS organisations, in partnership with local authorities and others, take collective responsibility for managing

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resources, delivering NHS standards, and improving the health of the population they serve, as described at <https://www.england.nhs.uk/integratedcare/integrated-care-systems/>; “PCN” means a locally-established network of GP Practices, as described at <https://www.england.nhs.uk/gp/gpfpv/redesign/primary-care-networks/>; in each case including such a body as governed, managed, established or succeeded by another body under an Act or any regulations or guidance made under such an Act.

## **2.0 Capabilities**

Palantir shall provide the following capability Foundry licence subscriptions (“**Capabilities**”) as a Software-as-a-Service (“**SaaS**”), which is currently hosted on Amazon Web Services in the UK region, for use by Buyer’s Authorised Users within the scope described in the Call-Off Contract and below.

Buyer and Palantir acknowledge that the Capabilities include the delivery of a unique and bespoke configuration of Palantir Foundry for the Buyer’s use, in accordance with the Buyer’s specifications (as provided through the Initial Services) and engineering and associated services to ensure that, as described below, the NHS Foundry meets Buyer’s agreed requirements.

The Capabilities so far as they describe the Products (as defined in the Supplier Terms) are provided “as is” on the Effective Date of the Call-Off Contract. [REDACTED]

[REDACTED]

[REDACTED] No further Palantir implementation and professional services are included in the Capabilities other than as set out above.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] below; or, in relation to a new Capability, the scope of permitted Consume use.

### **2.1 Data Integration and Analytics Capability for Self-Service**

Authorised Users are permitted to create and modify Tools within the platform. Authorised Users may also use such Tools or the results of such integrations or analytics. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **2.1.1 Ongoing Capability Licence Only**

**Description:** The Data Integration and Analytics Capability for Self-Service provides functionality for integrating activity data sources, modelling activity data in an object-based data model (ontology) and performing analytics and reporting tasks to support operational decision-making.



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**Benefits:** The Data Integration and Analytics Capability enables the following on NHS Foundry:

- The ability to ingest structured and unstructured activity data sources and perform data cleaning and transformation tasks in a range of technical and non-technical data management applications in core NHS Foundry.
- The ability to model activity data in the form of common objects, such as (by way of example) regions, hospitals, episodes, and treatments so that it can be used and interpreted via NHS Foundry's analytical and operational applications.
- Data management, access layers, security and data governance capabilities as described in the Big Data Analytics Framework RM6195
- The provision of configurable user-facing applications, including flexible dashboards, tools for analysis by technical users such as data scientists, and non-technical operational users, forms for data collection, and reporting functions; and
- The integration with the activity data for example in SIP, NCDR and UDAL data sources to provision tools and dashboards that have been developed within the Foundry Platform and potential to integrate with systems and applicable tools deployed by Local Systems provided such Local Systems and/or Buyer pays and subscribes to the relevant PT-CAP-ON and PT-CAP-ADD licences (as applicable).

The ability for Buyers Authorised Users to continue to develop their own analytics and modelling activity data

#### **Authorised User groups:**

- Buyer's personnel only (i.e. employees or workers of NHS England and NHS Body, where "workers" is read according to section 230(3)(b) of the Employment Rights Act 1996)
- Buyer senior decision makers and their representatives
- External users to Buyer (Consumer):
  - Civil Contingencies Secretariat division of the Cabinet Office; and
  - Key Local System level decision makers expressly authorised to access the products and services by Buyer's executives.
  - Senior decision makers in:
    - Cabinet Office and UK Government departments;
    - Local authorities where integrated or collaborating formally with a Local System;
    - Key Local System decision makers, where granted by the Buyers' senior decision makers.
- The Supply Management Capability supports, who may belong to any of the following groups:
  - Buyer:
    - Regional procurement teams;
    - Regional leads;

Framework Ref: RM6195

Project Version: v1.0

Model Version: v3.0

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- Supply chain leads;
- National supply chain cells.
- External users to Buyers (Consume):
  - Local system procurement / logistics planning teams;
  - Public Health England and any organisation (or part thereof) succeeding to its functions e.g. NIHP;
- third party providers of healthcare services funded by an NHS Body;
- Local authority users responsible for the coordination of delivery of social care (Consume); and
- Nominated personnel from Association of Directors of Adult Social Services (ADASS), Local Government Association (LGA), Better Care Fund, STP/ICS and Public Health England and other Local Systems, who are responsible for the coordination of delivery of social care (Consume).

## **2.2 Live Services Support**

The National Data Platform (Foundry) is critical to support a number of operational workflows. Core Activity is performed out of hours to ensure the service is available 24/7 and overnight processing complete successfully to provide daily figures to key dashboards and decision makers both across NHS, Authorised Users and external stakeholders.

### **Objectives**

The Supplier shall provide pro-active monitoring of the dashboards and applications (**Tools**), as well as reactive response in the event of failures to restore Service to ensure minimal impact during out of hours periods. The Supplier shall also provide critical configurations as required and support the roll out to Authorised Users. The dashboards that are in scope are:

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

### **Expected Outcomes and Deliverables**

Framework Ref: RM6195

Project Version: v1.0

Model Version: v3.0

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The Monitoring Fault Response and resolution with regards to the Dashboards during the support windows are listed below. The handover to the relevant day teams will happen following these hours.

The following SLAs set out in Figure 1 apply to P0 and P1 Error Severity Levels only.

Figure 1:

Dashboard/Application	Support Window - Weekdays	Support Window - Weekends	Support Window - Bank Holidays	SLA for P0 and P1 Error Severity Levels
██████████	6am - 10pm	7am - 6pm	7am -6pm	In hours (9am-5pm): 2 hours  Out of hours (6am - 9am & 5pm - 10pm) : 30 mins
██████████	9am – 6pm	9am - 6pm	9am -6pm	2 hours
████████████████████ ██████████	9am - 6pm	9am - 6pm	9am -6pm	2 hours
██████████ ████████████████████	9am – 6pm	9am - 6pm	9am -6pm	2 hours
████████████████ ████████████████████	8am - 6pm	8am - 6pm	8am -6pm	30 mins
██████████████ ████████████████████	8am - 6pm	9am - 6pm	9am -6pm	2 hours
████████████████████ ██████████	8am - 6pm	9am - 6pm	9am -6pm	2 hours
██████████	8am - 6pm	9am - 6pm	9am -6pm	2 hours

The following Deliverables should be included within the service:

- Proactive monitoring of all data builds and pipelines critical to support the Dashboards during the support windows;
- Reactive response to any alerts or failures on data builds and pipelines critical to support the Dashboards during the support windows;
- Resolution of failures and service management including, but not limited to, communication to partners, root cause analysis, tactical resolution, and recommendation for long term solution;
- Incident report and handover to working-day team and vice versa where resolution

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overlaps with core operating times; and

- Report of incidents, root cause analysis and continual improvement as per service management requirements.

## Assumptions

Assumptions applicable to this Call-Off Contract are as follows:

- The teams that currently monitor and support each Dashboard and upstream data pipeline will continue to do so;
- Palantir engineers allocated to support this monitoring will be familiar with the NHS data pipelines and can work independently to resolve issues during the Support Window;
- All alerts and resolutions will be documented within the Palantir Health alerts and where recommendations for root cause resolution or continual improvement is identified, this will be issued in writing to the NHS E&I Central Team;
- Palantir support engineers will be made aware of any ongoing development plans and activity, and the impact this may have (if any) on this support. Where a substantive code or scheduling change is to be made by Palantir, this will be documented and discussed with the internal Buyer team before going live to ensure we can effectively provide support;
- To minimise alerts and failures, code changes made to the workflows will follow best engineering practices including code reviews and testing.

## SLA

Palantir will manage in-scope data assets to triage and respond to critical health check alerts as described in the agreed SLAs save for Level P0 and P1 Severity Level Errors which will be as described in Figure 1 of this Schedule. Palantir's team will work to resolve alerts in a timely manner or escalate alerts through to the relevant NHS upstream data team where needed:

- If an upstream issue occurs (not fixable by Palantir), Palantir will escalate to NHS engineers via the mechanism(s) mutually agreed between NHS and Palantir, with the expectation that this escalation process will involve escalating to a sounding board who will be equipped with the knowledge required to action upon these issues;
- For other issues that are not immediately fixable, Palantir will identify the root cause and escalate to the relevant teams, as necessary; and
- Changes or additions to the in-scope data assets should be discussed in advance and significant additions or modifications may require additional commercial discussions and/or alterations to monitoring infrastructure. In-scope data assets are defined as those used to power the Dashboards that are deemed critical to update on non-working days.

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### **3.0 Transition & Exit Services**

#### **3.1 General**

- 3.1.1 All data (raw, manually collected and derived) is shared by Palantir via S3/Azure blob storage, including all available versions, exported in open file formats (Parquet or CSV), within a clear file/folder structure, with a manifest which includes file name, purpose, metadata, and checksum. This shall happen at the start of transition, with periodic updates throughout the Contract Period. At the point a product (and its associated files) has been successfully migrated to the new platform, as agreed by the Buyer, the periodic updates of those files will stop.
- 3.1.2 All git-based code artefacts (source and compiled), including models, logic, and all other code modules, is shared by Palantir via a git repo(s) clone into an BUYER owned git repo(s), in a manifest which includes file name, purpose, metadata. This shall happen at the start of transition, with periodic updates throughout the Contract Period. All other artefacts within Palantir platform (e.g., including but not limited to, Dashboards/Views, Forms, Analyses, Data Governance Records) need to be listed by Palantir in a manifest which includes name, constituent components, purpose, metadata. This shall happen at the start of transition, with periodic updates throughout the Contract Period. Further, the existing provider shall provide exports of these artefacts to BUYER. Palantir shall then provide assistance and guidance to BUYER to understand the Solution.
- 3.1.3 Upon Exit from the Contract and upon approval from the Buyer that the exit is complete, all NHS IP and data shall be deleted from Palantir systems - aligned to "NIST Special Publication 800-88 Revision 1 - Guidelines for Media Sanitization - Cryptographic Erase"
- 3.1.4 Palantir shall demonstrate (via both visual inspection over screenshare, and through metadata extraction) that all data, artefacts, Buyer IP, and code have been removed from the platform at the agreed time and both Parties shall sign off on the completion of transition.

#### **3.2 Documentation supporting knowledge transfer and exit**

- 3.2.1 All Palantir documentation should be organised, well-structured, and easy to understand, so that the Buyer can quickly understand what is available and be able to get up to speed on products and services.
- 3.2.2 The meta data for all products and services shall be accessible by the NHS team. For the NHS team to be able to access/call foundry meta data APIs in order to gather data associated with our products.

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- 3.2.3 User manuals and training material & sessions for products – Palantir shall document and share what user manuals, training materials exists and will provide instructions for end-users, administrators, and other relevant stakeholders. Palantir shall share this with the Buyer within the first 30 days of the Call-Off Contract Start Date,
- 3.2.4 System documentation - Palantir shall provide all diagrams, configuration files, source code, and other relevant technical information, including the specification of all connections with Buyer. Palantir shall export and make available all artefacts and GIT repositories to Buyer.
- 3.2.5 Compliance documentation – Palantir shall provide data governance records. All data governance records shall be exported and stored for compliance purposes.
- 3.2.6 Palantir shall provide documentation which specifies all connections in place from Palantir systems / foundry service. Palantir shall share all credentials which integrate with NHS systems so that Buyer have full transparency of what is/has been connected so that Buyer can confirm disconnect upon exit from the Contract at a date specified by Buyer post termination. The baseline information shall be shared within the first 30 days of the Call-Off Start Date.
- 3.2.7 Documentation of all localisations (across national, regional, and local levels) that are in place. Ensuring documentation is clear and relevant so any / all localisations & differences between instances are known.

### 3.3 Data

The Supplier shall:

- 3.3.1 Support discussions regarding data to ensure the right data source is identified. This includes understanding and documenting where data is currently sourced from, transferred and migrated;
- 3.3.2 Ensure data sources and data sets that are ingested by Palantir at Buyer instruction are fully documented so it is clear what is in place today and recommendations for future;
- 3.3.3 Identify which data shall be migrated and/or transitioned & assess the data quality status. This includes supporting the assessment of migration vs re-process;
- 3.3.4 Palantir to define appropriate archive and retrieval processes in line with information governance. Buyer will instruct Palantir as to what data is to be archived;
- 3.3.5 For data migration and archiving purposes Palantir determines data format and transfer method
- 3.3.6 Plan, test, verify data archiving processes and producers. This

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includes details on timelines, responsibilities, and communication protocols etc.;

- 3.3.7 document, outline the process and include instructions for exporting, importing, and validating data; and
- 3.3.8 Upon exit from the Contract and upon agreement from the Authority of exit completion, all NHS IP and data shall be deleted from Palantir systems - aligned to "NIST Special Publication 800-88 Revision 1 - Guidelines for Media Sanitization - Cryptographic Erase"

### 3.4 Technical enhancements to support ease of transition to new platform

#### 3.4.1 Refactoring / technical debt

Subject to the Buyer providing the Supplier with all necessary permissions and approvals which may reasonably be required, the Supplier shall:

- 3.4.1.1 Update pre-PBAC projects to be managed by PBAC;
- 3.4.1.2 Improve the reporting of native security groups to check for compliance with PBAC;
- 3.4.1.3 Refactor native security groups so that they are managed by PBAC; and
- 3.4.1.4 Update the vaccines project setup so that the projects are compliant with PBAC and best practice.

#### 3.4.2 Streamlining and effective organisation of data sets/assets i.e., patient ontology

The Supplier shall:

- 3.4.2.1 Build a central patient level data model (ontology) and organise datasets based on data domains (Community activity, Inpatient Activity, Emergency Activity, Vaccination events, patient etc.). For example, create a data asset called Inpatient Activity to store and transform all inpatient activity datasets from different sources (Monthly SUS, Faster SUS, Faster Data Flow, SitReps);
- 3.4.2.2 Refactor data pipelines to use datasets from the data domains data assets;
- 3.4.2.3 Identify and remove redundant / duplicate transforms; and
- 3.4.2.4 Identify and remove dependency from legacy location ontology datasets.

#### 3.4.3 Product de-commissioning

The Supplier shall:

- 3.4.3.1 Improve reporting of resources including ontology objects /

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datasets that are not used; and

3.4.3.2 Identify datasets for depreciation, upon approval from the Authority, securely and safely depreciate assets and objects that are not used.

3.4.4 Transition Support – support knowledge transfer and enactment of the transition plan

3.4.4.1 Knowledge Transfer

The Supplier shall:

3.4.4.1.1 Inform effective path and options for transition of product;

3.4.4.1.2 Support and run knowledge transfer sessions with selected supplier;

3.4.4.1.3 Run show and tells and/or knowledge transfer covering architecture and/or products and/or services. For all services including those in live but not yet BAU - e.g., IECCP, faster data flows etc. including an overview of any documentation;

3.4.4.1.4 Provide knowledge transfer covering the intent and technical configuration of the use cases on the Palantir platform targeted at securing a smooth transition with minimal business impact to the extent possible.

Notwithstanding anything to the contrary herein, Supplier is under no obligation to share Supplier IPRs or Confidential Information related to its Foundry platform (i.e. the “Service” under Supplier Terms) with third parties.

3.4.4.2 Dual Running

3.4.4.2.1 There will be dual running of systems - support parallel run activities eg have effective means to disable users through front end so current can continue but not be accessed to prove out new system etc.

3.4.4.3 Test – support education; execution and reporting

The Supplier shall:

3.4.4.3.1 Support through all phases of testing and provide support and undertake root cause analysis as required by the Buyer;

3.4.4.3.2 Conduct and support testing including but not limited to system integration test; Operational



Call-Off Schedule 20 (Call-Off Specification)  
Call-Off Ref:  
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acceptance testing;

3.4.4.3.3 Support data mocks; business simulation; and dress rehearsals.

3.4.4.4 Go Live: -

The Supplier shall provide:

3.4.4.4.1 Support go live cutover support; and

3.4.4.4.2 Support hyper care support.

#### **4.0 Personal data**

Where Services are required in respect of Buyer Data which is Personal Data, Supplier will process such Personal Data only in accordance with Joint Schedule 11 (Processing Data).

#### **5.0 Buyer responsibility**

The Buyer acknowledges that the Supplier's Service performance is dependent on Buyer's fulfilment of Buyer Responsibilities (as set out in the Order Form), provided that Supplier has notified Buyer of the relevant Buyer Responsibility in advance.

#### **6.0 Further Services**

The Buyer may, where permitted by the Framework Agreement, propose a variation to this Schedule (and agree with Supplier) in the form of an additional statement of work setting out further Services and associated Call-Off Contract Charges.

#### **7.0 Local Organisations**

For the purpose of this Schedule:

**Local Arrangements** means an arrangement relating to the funding, governance and information governance between the Buyer and Local Organisation; and

**Local Organisation** means an organisation from the Local System.

The Supplier acknowledges that Buyer will establish Local Arrangements dealing with governance, funding and infrastructure use (and other matters at its discretion) in relation to Local Organisations access to NHS Foundry and will comply with Buyer's instructions in relation to service provision to Local Organisations provided such Local Organisations have given Supplier instructions to do so or as set out in Local Arrangements (it being acknowledged that Local Organisations will provide Supplier with instructions to process Personal Data for the purposes of Data Protection Legislation). As between Buyer and Supplier, Buyer is responsible for enforcing compliance by Local Systems with Local Arrangement.

**Call-Off Schedule 21 (MOUs)**

Call-Off Ref:

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## **Call-Off Schedule 21 (MOUs)**

Both Parties acknowledge that Annexes 1 to 4 of this Schedule are in template form and agree to discuss and agree in good faith any material amendments to the Annexes as necessary, with such agreement to be made in writing.

**Call-Off Schedule 21 (MOUs)**

Call-Off Ref:

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**Annex 1**

**Letter from Buyer to ICB or other NHS Body template**

NHS England  
[address]

[Name and address of ICB or other NHS body participating in ICCP]

Date

Dear [Name of ICB or other NHS body]

**ICCP and the NHS National Data Platform**

We (**we, us**) refer to the memorandum of understanding entered between NHS England and you on or about today's date (**MoU**). Capitalised terms in this letter bear the meanings given to them in the MoU. Please sign and return this letter where indicated below.

Further to the MoU, it is intended that Programme Solutions may be used by:

[Name of CIC or other non-NHS entity using ICCP tools] (**Participant**).

[Participant provides NHS services to you under NHS standard contract terms.][OR other brief description of Participant's role]

In relation to the use by Participant of Programme Solutions:

- (a) You will procure Participant's compliance with the terms of the MoU relating to such use, including Schedule 1 and the authorised user terms at Schedule 2 of the MoU
- (b) References to your Representatives in the MoU include employees, agents and authorised contractors of Participant
- (c) Your use rights under clause 3 of the MoU extend to use by Participant for the purposes of the Programme
- (d) You will procure Participant's compliance with clause 7 of the MoU and its entry into Data Processing Agreements as described in clause 7 where required in relation to any data processing
- (e) You acknowledges that Participant's rights to use Programme Solutions are those set out by the terms of the MoU and this letter and have been procured by NHS England and authorised by the Platform Contractor on and subject to those terms.

Yours faithfully

for NHS England

Acknowledged and agreed

for [Name of ICB or other NHS Body]

**Call-Off Schedule 21 (MOUs)**

Call-Off Ref:

Crown Copyright 2018

**Annex 2**

**Letter from Supplier to Buyer template**

NHS England  
[address]

Palantir Technologies, UK Limited

Date

Dear NHS England

**[Name of Trust/ICB]**

**[Name of Participant]**

Further to your entry into an MoU with the above named [Trust/ICB], we confirm that we have agreed the provision of Programme Solutions under the terms of that MoU and a supplementary letter agreement between the [Trust/ICB] and the above Participant (as defined in that letter agreement), as substantially in the form attached to this letter, further to the [contract reference] dated [date].

Capitalised terms in this letter bear the meanings given to them in the MoU.

Yours faithfully

for Palantir Technologies, UK Limited

**Call-Off Schedule 21 (MOUs)**

Call-Off Ref:

Crown Copyright 2018

**Annex 3**

**Memorandum of Understanding between Buyer and Trust template**

Dated \_\_\_\_\_ 202

(1) **NHS ENGLAND**

- and -

(2) **[TRUST]**

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## **Memorandum of Understanding**

relating to the NHS National Data Platform

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**THIS MEMORANDUM OF UNDERSTANDING (MoU)** is made the .....202  
**BETWEEN:**

- (1) **NHS ENGLAND** of Quarry House, Quarry Hill, Leeds LS1 7UE (**NHS England**);
  - (2) **[TRUST]** of {●} (the **Trust**);
- (each a **“Party”** and together the **“Parties”**).

**RECITALS:**

- (A) NHS England developed the NHS National Data Platform and associated data ontologies (**National Data Platform**) as part of the NHS response to the Covid-19 pandemic.
- (B) NHS England and the Trust wish to collaborate in order to enable the use by the Trust of the National Data Platform in the deployment of certain solutions (**Programme Solutions**) in pursuit of the Programme’s objectives.
- (C) Programme Solutions may utilise data analytics techniques and data ontologies developed by NHS England in the National Data Platform, and deploy analytics tools enabling Trust staff to collect, engineer, assure, analyse, manipulate, interpret and display data integrating information from Trust systems (**Trust Systems**). Trust Systems are supported by various third party contractors (**Trust System Contractors**). The National Data Platform is supported by Palantir Technologies UK, Ltd (in that capacity, the **Platform Contractor**) and together with the Trust System Contractors, the **Contractors**).
- (D) The parties recognise that the use of the National Data Platform may require the processing by the Contractors of anonymised, pseudonymised, otherwise de-identified and in some cases patient-identifiable information for the purposes of processing by the Trust and the Parties agree and acknowledge the principles set out in Schedule 1 (**Data Principles**) in respect of data processing under this MOU.
- (E) The purpose of this MoU is to establish funding, technical and information governance arrangements for pursuit by the Parties of Programme Solutions.

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this MoU the following words and phrases bear the meanings given to them below unless the context otherwise requires.

Confidential Information	all confidential information (however recorded or preserved) disclosed by a Party to another Party and their Representatives whether before or after the date of this agreement in connection with this MoU;
Contractors	as described in recital (C);
Data Principles	as defined in recital (D);
Data Protection Legislation	the Data Protection Act 2018, UK GDPR as defined in and read in accordance with that Act, and all applicable data protection and privacy legislation, guidance and



	codes of practice in force from time to time;
EIR	as described in clause 17.1;
FOIA	as described in clause 17.1;
Funding Plan	as described in clause 5.2;
NHS Body	as defined in the National Health Service Act 2006;
Platform Contract	the agreement between NHS England and the Platform Contractor in relation to the provision of transitional services relating to the National Data Platform of [date];
Platform Contractor	as described in recital (C);
Platform Enterprise Licence	the enterprise licence for the use of Platform Software procured by NHS England;
Platform Software	the software enabling the National Data Platform;
Programme	the programme as described in Schedule 3;
Programme Solution	as described in recital (B);
Representatives	the officers, employees and individual contractors of a Party authorised by it to act in relation to this MoU;
Trust System Contract	as described in clause 6.2.1;
Trust System Contractors	as described in recital (C). For the purposes of this MoU the Platform Contractor is not a Trust System Contractor unless the parties make specific provision having regard to the Platform Contractor's existing relationships with the Trust; and
Trust Systems	as described in recital (C).

1.2 The Schedules to this MoU are an integral part of this MoU and a reference to this MoU includes a reference to the Schedules and words following the words "includes" or "including" are read without limitation.

## 2 PURPOSE

- 2.1 The Parties are working together to deploy and configure Programme Solutions to the Trust.
- 2.2 The Parties recognise that the deployment of Programme Solutions requires them to establish and operate data sharing and information governance arrangements consistent with the Data Principles and complying with Data Protection Legislation.
- 2.3 The Parties intend to be bound by the terms of this MoU.
- 2.4 The Parties shall (and shall procure that any of their Representatives involved in the performance of the Parties' obligations under this MoU) comply with the Data Protection Legislation in connection with this MoU.
- 2.5 The Parties may by agreeing an addendum to this MoU, apply the terms of this MoU (as varied by such addendum) to another Programme Solution. Addendums shall be in the form set out in **Schedule 5** unless the parties otherwise agree.

## 3 USE OF NATIONAL DATA PLATFORM

- 3.1 NHS England agrees to procure the use of the Platform Enterprise Licence for the Trust in relation to the use by the Trust of the Programme Solutions, without end user or other charges applying to such use.
- 3.2 The Trust agrees to comply with the authorised user terms applying to the Platform Enterprise Licence set out in **Schedule 2**.

## 4 PERFORMANCE AND REPORTING

- 4.1 The Parties may agree a project initiation document (a **PID**) detailing the principles and their respective responsibilities in relation to the implementation of Programme Solutions, including project plans, delivery, resourcing and technical assumptions and dependencies on the Trust in relation to Programme Solution implementation and funding. Each Party shall perform its obligations and responsibilities set out in a PID.
- 4.2 The Trust agrees to provide to NHS England on request and in such form as it may request information regarding its use of Programme Solutions in order for NHS England to review and evaluate the Programme. Unless a data sharing arrangement as described in clause 7 is agreed, such information will be aggregated and not identify any person and the Trust is not required to provide any personal data under such an information request.

## 5 FUNDING

- 5.1 NHS England may agree in a Funding Plan to fund certain activities of the Trust in order to deploy Programme Solutions.
- 5.2 A Funding Plan shall set out:
  - 5.2.1 the activities of the Trust to which the funding is to be applied;
  - 5.2.2 the targets and objectives that the funding is intended to achieve;
  - 5.2.3 the arrangements for monitoring and reporting by the Trust to NHS England in relation to the funding;
  - 5.2.4 the arrangements for invoicing, transfer or other means of disbursement of the funding to the Trust by NHS England;
  - 5.2.5 if applicable, the financial years to which the funding is allocated and the capital or revenue nature of the funding and any associated financial management requirements of NHS England.
- 5.3 The Trust shall apply funding in accordance with and comply with the terms of a Funding Plan.

## 6 CONTRACTS

6.1 The Trust agrees to collaborate with NHS England in relation to the design, contracting and implementation of changes to the Trust Systems required in order to enable the use of Programme Solutions. The parties intend to make arrangements with Trust System Contractors centrally in order that such changes are funded once and implemented consistently across all implementations of a particular electronic patient record or other clinical system provider's systems.

6.2 Where a Funding Plan requires activity to be undertaken by a Trust System Contractor:

6.2.1 the Trust shall obtain the approval of NHS England to the contractual documentation binding the Trust System Contractor to the relevant activity (**Trust System Contract**) consistently with the objectives described in this clause;

6.2.2 the Trust shall notify NHS England of any material failure or delay by the Trust System Contractor to comply with a Trust System Contract.

6.3 The Trust acknowledges that NHS England is responsible for contractual arrangements with the Platform Contractor and the Trust will not take any action or make any commitment with or in respect of the Platform Contractor in relation to the Programme without NHS England's approval.

## 7 GOVERNANCE, DATA PROCESSING AND DATA SHARING

7.1 NHS England will establish governance arrangements for the Programme and the Trust may input into Programme governance through its regional delivery managers.

7.2 The Parties will observe the Data Principles in the performance of this MoU and will in respect of data sharing and data processing contemplated by this MoU:

7.2.1 collaborate in the preparation and updating of data protection impact assessments under Data Protection Legislation;

7.2.2 discuss and agree the basis of processing of personal data and legal grounds under which, and purposes for which, data is processed and shared;

7.2.3 establish such steering groups and other arrangements as may be desirable to co-ordinate the operation of the Principles and ensure that the rights and freedoms of data subjects and compliance with Data Protection Legislation are considered at all times;

7.2.4 agree the terms of data sharing arrangements and, where appropriate, joint controller arrangements setting out their respective responsibilities for compliance with Data Protection Legislation in relation to personal data;

7.2.5 co-ordinate and collaborate responses to requests from data subjects in relation to the exercise of their rights under Data Protection Legislation and address complaints under such legislation. The parties intend that the Trust is responsible for such co-ordination and for responses to data subjects in relation to exercise of their rights in relation to processing carried out under the Programme;

7.2.6 ensure that appropriate information security practices, technological and organisational measures and procedures are applied to keep personal data secure; and

7.2.7 agree terms with the Platform Contractor setting out Platform Contractor's instructions and the responsibilities of the parties to the relevant data processing agreement.

7.3 NHS England acknowledges that the Trust will not share personal data with NHS England unless and until a processing basis and other requirements of Data Protection Legislation have been agreed and data sharing arrangements reflecting those requirements put in place, as described in clause 7.2.

7.4 The Parties agree to ensure that all Contractors are engaged in relation to Programme Solutions under data processing agreements meeting the requirements of Data Protection Legislation.

- 7.5 The Trust will enter into data processing agreements with the Platform Contractor in the form set out in Schedule 4 (**Data Processing Agreement**) or such other form as may be agreed with the Platform Contractor, and the Trust and the Platform Contractor may agree additional annexes in relation to additional or specific dataflows under any such data processing agreement, and the entry by such controllers other than the Trust as may be necessary into such agreements.
- 7.6 The parties will discuss and collaborate on the preparation and maintenance of equalities impact assessments and other assessments or reviews of the effect of the CCS on their functions and duties as may be required.

## **8 RELATIONS WITH PLATFORM CONTRACTOR**

- 8.1 NHS England has procured the support of the Platform Contractor for the Programme.
- 8.2 NHS England represents to the Trust that the Trust is entitled to use the Platform Software as a third party beneficiary of the Platform Contract on and subject to the terms of this MoU.
- 8.3 The Trust acknowledges that the Platform Contractor is providing support for the Programme under the Platform Contract which includes provisions and restrictions regarding the use of the Platform, terms required by Data Protection Legislation in relation to the processing of personal data, and provisions and limitations on the Platform Contractor's liability for certain matters, all as set out in the Platform Contract and the orders for services made under it in respect of the Programme. The Trust's use of Platform Software is subject to all such provisions, restrictions, terms and limitations.
- 8.4 NHS England undertakes to provide the Trust with access to the Platform Contract and such orders on its FutureNHS collaboration platform (or such other platform as may replace it from time to time).
- 8.5 The Trust agrees to notify NHS England in the event that any issue or dispute arises in respect of the Trust's use of the Platform Software. NHS England agrees to facilitate the resolution of any such dispute with the Platform Contractor.
- 8.6 The Trust agrees not to make any claim against the Platform Contractor under a Data Processing Agreement where such claim can be made under the Platform Contract as a third party beneficiary and in any case without first notifying NHS England in accordance with clause 8.5 except in an urgent case where action is required to preserve the Trust's rights or remedies or in order to comply with Data Protection Legislation and then provided that the Trust immediately notifies NHS England of such claim further to clause 8.5.

## **9 DISPUTE RESOLUTION**

- 9.1 If a Party has any issues, concerns or complaints regarding the operation of this MoU that Party shall notify the other Party promptly and the Parties will seek to resolve the issue through discussion between them.
- 9.2 Subject as otherwise specifically provided for in this MoU, any dispute arising between the Parties out of or in connection with this MoU will be resolved in accordance with the provisions of this clause.
- 9.3 If the Parties are unable to resolve a dispute by discussion, they may appoint an independent facilitator to determine the dispute in accordance with clause 9.4.
- 9.4 The independent facilitator shall act on the following basis:
- 9.4.1 the independent facilitator shall decide the procedure to be followed in the determination and shall be requested to make their determination within 30 days of their appointment or as soon as reasonably practicable thereafter. The parties shall assist and provide the documentation that the independent facilitator requires for the purpose of the determination;
- 9.4.2 the determination process shall be conducted in private and shall be confidential;
- 9.4.3 The independent facilitator shall have its costs and disbursements met by the Parties.

9.5 The Parties recognise that any dispute or operation of this procedure will be without prejudice to and will not affect the statutory duties of each Party.

9.6 Nothing in this clause shall be construed as prohibiting a Party from applying to a court for interim injunctive relief where it considers that such a step is necessary to prevent irreparable harm to its interests.

## **10 COMPLIANCE**

The Parties shall comply with applicable law in the performance of this MoU.

## **11 DECISION MAKING**

Neither Party delegates to the other any decision or action or authorises the other Party to act in its name or as its agent further to this MoU.

## **12 TERM AND TERMINATION**

12.1 This MoU shall commence on the date on which it is executed by the last Party to sign (the **Commencement Date**) and shall continue in force until termination by agreement in writing by the Parties.

12.2 On termination of this MoU:

12.2.1 The use of the Platform Enterprise Licence by the Trust shall terminate;

12.2.2 The parties shall agree the closure and funding of activities under any uncompleted Funding Plans.

## **13 VARIATION**

This MoU may only be varied by written agreement of the Parties signed by, or on behalf of, each of the Parties.

## **14 CHARGES AND LIABILITIES**

14.1 Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU, including in respect of any losses or liabilities incurred due to their own or their Representatives' actions.

14.2 No Party intends that any other Party shall be liable for any loss it suffers as a result of this MoU.

## **15 NO PARTNERSHIP**

Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party as the agent of another Party, nor authorise any of the Parties to make or enter into any commitments for or on behalf of the other Parties.

## **16 CONFIDENTIALITY**

16.1 Subject to Clause 16.2, each Party shall keep the other Parties' Confidential Information confidential and shall not:

16.1.1 use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or

16.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause.

16.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential Information:

- 16.2.1 which another Party confirms in writing is not required to be treated as Confidential Information;
  - 16.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - 16.2.3 which a Party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including the FOIA or the EIR;
  - 16.2.4 which is in or enters the public domain other than through any disclosure prohibited by this agreement;
  - 16.2.5 which a Party can demonstrate was lawfully in its possession prior to receipt from the another Party; or
  - 16.2.6 which is disclosed by a Party on a confidential basis to any central government or regulatory body.
- 16.3 A Party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the Party's obligations under this agreement, provided that:
- 16.3.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - 16.3.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
  - 16.3.3 and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this Clause.

## **17 FREEDOM OF INFORMATION**

- 17.1 The Parties acknowledge that each is a public authority subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIR**).
- 17.2 Each Party shall, in respect of any requests for information which touch on or relate to this MoU:
- 17.2.1 provide all necessary assistance and cooperation as reasonably requested by the other Parties to enable them to comply with their obligations under FOIA and EIR;
  - 17.2.2 notify the other Parties of requests for information that it receives as soon as practicable and in any event within 5 days of receipt;
  - 17.2.3 provide to the other Parties a copy of any information it holds and which is required in order to respond to a request for information within 5 days (or such other period as the Parties may reasonably specify) of any request for such Information; and
  - 17.2.4 not respond directly to a request for information unless without first consulting with the other Parties.

## **18 GOVERNING LAW AND JURISDICTION**

- 18.1 This MoU shall be governed by and construed in accordance with the laws of England and Wales.
- 18.2 Subject to the provisions of Clause 8, the Parties agree that the courts of England shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this MoU and irrevocably submit to the jurisdiction of those courts.

## **19 FURTHER ASSURANCE**

Each Party shall do all things and execute all further documents necessary to give full effect to this MoU.

## **20 THIRD PARTY BENEFIT**

The Platform Contractor may enforce clauses 3.2, 8.3 and 8.6 of this MoU as a third party. As between the Trust and NHS England the Platform Contractor's consent is not required to a variation to this MoU.

The Parties have signed this MoU on the day and year first above written.

## **Schedule 1**

### **Data principles**

- 1.1 The parties will use a data sharing agreement or a joint controller agreement to document the sharing of personal data.
- 1.2 The parties agree to the accurate, timely, secure and confidential sharing of confidential patient information and pseudonymised and anonymised data where such data sharing is in line with the legal duties of health and care professionals and Caldicott principles.
- 1.3 The parties will ensure that data sharing accords with the Parties' legal, statutory and common law duties, and the requirements of any additional guidance.
- 1.4 Where the sharing of data is necessary, it will be minimised to that which is required and appropriate and only on a "need to know" basis.
- 1.5 The Parties will maintain policies and procedures to meet the NHS requirements for Data Protection, Data Security and Confidentiality.
- 1.6 The processing of data by service providers and third parties contracted by the Parties will be under a data processing agreement which will meet the requirements of Data Protection Legislation.
- 1.7 The parties will ensure effective procedures are in place to ensure transparency for data subjects and address complaints and the exercise of individual rights relating to the use of data.
- 1.8 The parties will complete an assessment of the impact of data use and sharing (either individually or jointly), by the maintenance of data protection impact assessments and reflection on the application of these principles.



## Schedule 2

### National Data Platform Authorised User terms

In these terms (**Terms**) the Trust as User is referred to as “the Customer”.

**Grant of Limited Licence** Subject to Customer’s continued and full compliance with all of the terms and conditions of these Terms, Palantir hereby grants to Customer a non-transferable, non-assignable, nonexclusive, limited licence, without any right to sublicense, during the applicable Term (as defined below) to install, execute and use the Service in object code format solely for Customer’s internal business purposes, and only (i) for use in accordance with the technical specification documentation provided to Customer by Palantir with regard to the Service (“**Documentation**”) and (ii) for the purposes specified *below*. Unless otherwise agreed to in writing by the parties, including in any applicable Order: (a) Customer will be responsible, at its own cost and expense, for the procurement and maintenance of all necessary hardware including, without limitation, servers needed to fully operate and support the Service and (b) database licences are not included.

**Scope** The Service referred to in these Terms is NHS Foundry as defined in the Services Agreement between NHS England and Palantir Technologies, UK Ltd of 11 June 2023 (the **Platform Contract**). Customer benefits from use of NHS Foundry under a Single Environment Base Foundry Licence (PT-CAP-BASE) under that Services Agreement.

**Term** The applicable Term under these terms is the period from the date of acceptance of these terms until 11 June 2023 unless extended by agreement of Palantir.

**Palantir Licensing Terms and Conditions** The terms and conditions at Schedule 6 below (“**Palantir License Terms**”) bind the Customer in relation to use of the Service subject to the terms of the Platform Contract and as amended below. Capitalised terms not defined herein take the meaning set out in the Palantir License Terms.

### Rights to Customer Data and use of personal data

*Customer rights* Clause 4.1 of the Palantir License Terms applies to Customer Data and as between the Parties, Customer retains all rights, title, and interest in and to the Customer Data. Palantir agrees to waive or (at Customer’s option) transfer to Customer all Intellectual Property Rights in Customer Data where any such Intellectual Property Rights vest in Palantir.

*No Palantir access* Palantir’s rights to access and use Customer Data are only those set out in these Terms and any data processing agreement and Palantir is not permitted to collect, perform or retain any inspection, analysis, aggregation, evaluation, reproduction, metrics or analytics of Customer Data or use Customer Data or any information derived from it as the basis for any product or service, except as set out in the paragraph *Metrics* below.

*Metrics* Palantir is permitted to collect metrics relating to (a) Customer’s use of Service, for the purpose of the continued provision of Service in accordance with the Palantir License Terms (including for purposes relating to the information security of the Service) and (b) (provided such data is not personal data) usage and diagnostics data for the purposes of analysis, maintenance and improvement of Palantir’s products and services, such data related only to the performance, management and efficiency metrics of Service and not including any data accessed or derived from Customer Data.

*Re-identification* In respect of Customer Data which is Personal Data, Palantir shall not take or permit Palantir staff to take any action directed towards, where applicable, the identification of any data subject, the reversal of any de-identification, anonymisation or pseudonymisation steps or methods applied to such data, the attribution of Personal Data to a Data Subject or the acquisition or processing of any additional information in pursuit of any of those objectives, unless otherwise requested by Customer as part of the provision of the Products and Service performance.

*Access controls* Palantir will comply with such access controls relating to Customer Data as the Customer may from time to time require.

*Transfers outside the UK* Except as set out in the paragraph *Metrics* above or in accordance with a data processing agreement between Palantir and Customer, Palantir will not process or transfer any Personal Data within Customer Data outside the UK.

**Use of Cloud Solution** The Customer and Palantir agree and acknowledge that:

- a) Access to the Products and Services other than by Customer's authorised users as set out herein or by any third party is permitted only with the prior written agreement of Palantir.
- b) Palantir acknowledges that use of the Service under these Terms for the Programme by the Customer is use for Customer's internal business purposes.
- c) The hosting of the Service is on Amazon Web Services infrastructure.
- d) Customer is not permitted to use the Service or any output from it, and Customer acknowledges that the Service is not intended to be used:
  - a. for automated decision making (including profiling) in relation to an individual without intervention or direction of a natural person;
  - b. as the sole basis for any clinical judgment or for decision, diagnostic and/or therapeutic purposes without the intervention or direction of a clinical professional;
  - c. as a medical device or an accessory to a medical device (as defined in the Medical Devices Regulations 2002).
- e) The Customer will comply with applicable laws in its use of the Service and will not breach any rights of third parties in relation to such use.

**UK hosting** The Foundry instance hosting Customer Data will be in the UK.

**Disaster recovery** Palantir shall establish and maintain business continuity and disaster recovery arrangements relating to its operations supporting Service performance in accordance with good industry practice.

### **Schedule 3**

#### **The programme**

The Programme aims to help Trusts and ICSs across England deliver and fulfil their population health, health system administration and other management, data analytics and reporting functions, to deliver better outcomes for population health, tackle inequalities, co-ordinate care, speed up diagnosis, plan local services, support research into new treatments and boost innovation, and ensure that the NHS can continue to offer cutting-edge care, save lives and deliver better outcomes for patients.

The Trust and Integrated Care System will work with the Platform Contractor to configure or expand the functionalities of the Platform Software or integrate further Trust Systems, in each case to meet the requirements of the Programme. Any use cases currently outside of the scope of the Programme will be discussed and agreed with NHSE prior to forming part of the Programme.

## Schedule 4

### Data processing agreement

<b>Controller</b>	
<b>Processor</b>	
(together the <b>Parties</b> and each a Party)	
<b>Date</b>	

This is an agreement (**Agreement**) between the Parties (as defined above) relating to the processing of personal data, made further to the terms of an agreement for the provision of certain software services between NHS England and the Processor of 11 December 2021 (the **Services Agreement**). Under the terms of the Services Agreement, the Controller is beneficiary of certain software and data processing services which this Agreement governs in relation to Personal Data.

This Agreement is entered into on the date first appearing above.

Capitalised terms used in this Agreement have the meanings given to them in the Data Protection Legislation or the definitions schedule.

- 1) The Parties acknowledge that for the purposes of the Data Protection Legislation, the Processor is a processor and the Controller is the controller (or processor in relation to another controller, if so designated above).
- 2) The processing that the Processor is authorised to do, whether the Controller acts as a controller or processor, is listed in the Annex.
- 3) The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 4) The Processor shall provide all reasonable assistance to the Controller in the preparation of any DPIA prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - b) an assessment of the necessity and proportionality of the Processing in relation to the provision of services under the Services Agreement;
  - c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 5) The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Agreement:
  - a) Process that Personal Data only in accordance with the Annex, unless the Processor is required to do otherwise by applicable law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by applicable law;
  - b) ensure that it maintains physical and IT security that follows Good Industry Practice to ensure that there is no unauthorized access to any Personal Data and has in place appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and

services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of such measures) having taken account of the:

- i) nature of the data to be protected;
  - ii) harm that might result from a Data Loss Event;
  - iii) state of technological development; and
  - iv) cost of implementing any measures;
- c) ensure that:
- i) the Processor Personnel do not Process Personal Data except in accordance with this Agreement (and in particular the Annex, and such other Annexes in relation to specific dataflows or data processing activities as the parties may agree);
  - ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (1) are aware of and comply with the Processor's duties under this Agreement and the obligations to process Personal Data in accordance with the terms of the Services Agreement including in relation to data protection, confidentiality and matters relating to the Freedom of Information Act 2000);
    - (2) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
    - (3) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (4) have undergone adequate training in the use, care, protection and handling of Personal Data;
  - d) not transfer Personal Data outside of the UK and the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer under Data Protection Legislation as determined by the Controller;
    - ii) the Data Subject has enforceable rights and effective legal remedies;
    - iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by law to retain the Personal Data.
- 6) Subject to paragraph 7) of this DPA, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Services Agreement it:
- a) receives a Data Subject Request (or purported Data Subject Request);

- b) receives a request to rectify, block or erase any Personal Data;
  - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Services Agreement;
  - e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - f) becomes aware of a Data Loss Event.
- 7) The Processor's obligation to notify under paragraph 6) of this Agreement shall include the provision of further information to the Controller in phases, as details become available.
- 8) Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6) of this Agreement (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- a) the Controller with full details and copies of the complaint, communication or request;
  - b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d) assistance as requested by the Controller following any Data Loss Event; and/or
  - e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 9) The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- a) the Controller determines that the Processing is not occasional;
  - b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of UK GDPR; or
  - c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 10) The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 11) The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 12) Before allowing any Subprocessor to Process any Personal Data related to the Agreement, the Processor must:
- a) notify the Controller in writing of the intended Subprocessor and Processing;
  - b) obtain the written consent of the Controller;
  - c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this DPA such that they apply to the Subprocessor; and
  - d) provide the Controller with such information regarding the Subprocessor as the Controller may

reasonably require.

- 13) The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 14) The Processor will not process or transfer any Personal Data outside the UK except as provided by the User Terms.
- 15) For the purposes of paragraph 5)d) and without prejudice to the other terms of this DPA Processor undertakes to:
  - a) provide appropriate safeguards in relation to transfers of personal data between Palantir group entities for the purpose of performing Services; and
  - b) ensure that transfers of personal data between the Processor and third party sub-processor, are subject to contractual terms between the Processor and the relevant third party sub-processor providing appropriate safeguards and containing clauses equivalent to the clauses in this DPA.
- 16) The Parties agree to take account of any guidance issued by the Information Commissioner's Office.
- 17) The Processor is not liable for loss or damage suffered by the Controller resulting from the Processor's breach of any obligation under this Agreement to the extent that such loss or damage results from an act, omission or instruction of the Controller.
- 18) For the purposes of paragraph 12), the Controller consents to the use by Processor of the following Subprocessors:

The entities listed in Exhibit A of the data processing agreement found at:  
<https://www.palantir.com/data-protection/agreement/>

The following entities and their affiliates that may be providing contractors for the purpose of training, implementation and support services (as amended from time to time):

NHS Shared Business Services

NHS Commissioning Support Units

Accenture (UK) Limited

PriceWaterhouseCoopers UK Limited

PA Consulting Ltd

Sopra Steria

KPMG UK Ltd

Hexegic Limited

## Definitions schedule

<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
<b>Data Protection Legislation</b>	the Data Protection Act 2018, UK GDPR, and all applicable data protection and privacy legislation, legally binding guidance and codes of practice issued by the Information Commissioner in force from time to time
<b>Data Subject Request</b>	a request made by or on behalf of a Data Subject in accordance with rights granted under the Data Protection Legislation to access their Personal Data
<b>DPIA</b>	an assessment by a controller of the impact of the envisaged Processing on the protection of Personal Data
<b>Good Industry Practice</b>	standards, practices, methods and process conforming to the applicable law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking under the same or similar circumstances.
<b>Processor Personnel</b>	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement
<b>Subprocessor</b>	any third party appointed to process Personal Data on behalf of that Processor related to this Agreement
<b>UK GDPR</b>	UK GDPR as defined in and read in accordance with the Data Protection Act 2018.



## Annex

### Processing Personal Data

- 1) The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
- 2) The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
- 3) The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 4) Any such further instructions shall be incorporated into this Annex or where appropriate another annex describing the relevant Processing in the form of this Annex.

Description	Details
Identity of controller for each Category of Personal Data	[Name] is controller for all Personal Data categories. <sup>1</sup> [Name] is controller for all Personal Data categories and [name] is its processor.
Duration of the Processing	Duration of the Services Agreement or, if shorter, Controller's use of Processor's software.
Nature and purposes of the Processing	<p>Use of Processor's data analytics platform to deliver and fulfil Controller's population health , health system administration and other management, data analytics and reporting functions, to deliver better outcomes for population health, tackle inequalities, co-ordinate care, speed up diagnosis, plan local services, support research into new treatments and boost innovation, and ensure that the NHS can continue to offer cutting-edge care, save lives and deliver better outcomes for patients.</p> <p>Administration of user (staff) data in order to administer use of Processor's platform and for the purposes above.</p> <p>Training in the use of the platform, and configuration of data analytics functionality in the platform (for which purposes Subprocessor's services may be utilised).</p> <p>Processing of patient and user personal data to provide aggregate metrics and performance data for the purpose of sharing with NHSE under Controller's instructions as set out in the MoU.</p> <p>Processor complies with obligations in Services Agreement and in the configuration of its software approved by Controller in relation to access to all Personal Data.</p> <p>Processor's instructions are to provide its platform (NHS Foundry) under the Services Agreement for the above purposes.</p> <p>Processor is additionally required to pseudonymise certain personal data where instructed by the Controller.</p>
Type of Personal Data	{●}
Categories of Data Subject	{●} Controller's staff using Processor's platform.
Plan for return and destruction of the data once the Processing is complete	Processor's platform is configured only to retain data for defined periods that can be configured by Controller. Processor will delete or provide access for Controller to remove data from the Controller's Foundry instance at the end of duration of processing.

<sup>1</sup> Drafting note: delete as appropriate.

UNLESS requirement under Union or Member State law to preserve that type of data	
Transfers of data outside the UK	<p>All data stored in the platform is stored in the UK. For the purposes of data transfer outside the UK there is a distinction between (a) Controller data in the platform and (b) Foundry's Security Logs, which may contain data relating to users and usage of the platform and are transferred outside the UK.</p> <p>All Controller data in the platform will be hosted in the UK. This includes any data that Controller provides to the platform, and any downstream datasets that are derived using that data.</p> <p>The only potential transfer of personal data outside the UK comes from Foundry's Security Logs, which record only security-relevant logs of some actions that users of Foundry attempt to perform in the platform. These logs may contain identifying information relating to usage and users of Foundry, such as user identifiers (IP addresses/email addresses/usernames); login attempts; search queries; and file paths. These logs will be stored, and accessible solely, by Palantir's Information Security Team on a secure SIEM server in the United States, and are encrypted at in transit and at rest. The logs will only be used to monitor or investigate security concerns such as escalation of privileges, attempts to bypass controls, malicious use of applications, and attempts to exfiltrate large amounts of data. These Security Logs are critical in keeping the platform secure and meeting the expectations of the NCSC's Cloud Security Principles.</p> <p>Any such transfer is subject to standard contractual clauses as required by applicable law in relation to such transfers.</p>

Schedule 5

Form of addendum

Addendum to Memorandum of Understanding relating to the ICCP Programme	
Date of MoU	
Parties	NHS England Trust [ ]
Programme Solution	<i>Describe Programme Solution</i>
Additional User terms	<i>Add additional user terms, if any</i>
Funding Plan	<i>Describe or refer to any funding arrangements and the matters described in clause 5.2</i>
Relevant Trust System Contracts	
Additional governance arrangements	
Additional data processing annex	<i>Add, in the form set out in Schedule 4</i>
Other matters	

**Schedule 6**

**Palantir Terms of Service**

## PALANTIR TERMS OF SERVICE

These Palantir Terms of Service (collectively with any attachments, addenda, or exhibits referenced herein and any Order Forms (as defined below) that reference these Terms of Service, the “**Agreement**”) apply to any Order Form(s) between Customer and Palantir (each a “**Party**” and collectively the “**Parties**”) and are effective as of the Effective Date of the first Order Form between the Parties.

### 1. Certain Definitions.

- 1.1 “**Affiliate**” means an entity that, directly or indirectly, owns or controls or is owned or controlled by, or is under common ownership or control with, a Party. As used herein, “**control**” means the power to direct, directly or indirectly, the management or affairs of an entity, and “**ownership**” means the beneficial ownership of more than 50% of the voting equity securities or other equivalent voting interests of an entity.
- 1.2 “**Customer Data**” means any data (including aggregated or transformed versions thereof and analytical outputs), models, algorithms, analyses, transformation code, or other content that is provided by, whether directly or indirectly from a third party, or created by Customer or Users using the Service, for integration, use, or other processing in or through the Service.
- 1.3 “**Data Connection Software**” means Palantir software provided for installation locally for Customer to connect Customer Data to the Service.
- 1.4 “**Documentation**” means any technical documentation for the Service made available by Palantir to Customer in connection with the Service.
- 1.5 “**Intellectual Property Rights**” means all rights, title, and interest in and to any trade secrets, patents, copyrights, service marks, trademarks, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, rights of publicity, and any similar rights, including any applications, continuations, or registrations with respect to the foregoing, under the laws or regulations of any governmental, regulatory, or judicial authority.
- 1.6 “**Order Form**” means an ordering document, specifying the Service and/or Professional Services (if applicable) to be provided thereunder that is entered into between Palantir and Customer, including any attachments, addenda, or exhibits thereto.
- 1.7 “**Palantir Technology**” means the Service, Documentation, Data Connection Software, Sample Materials, models, and application programming interfaces (APIs) provided or made available to Customer as a service in connection with this Agreement, and any improvements, modifications, derivative works, patches, upgrades, and updates thereto.
- 1.8 “**Sample Materials**” means any technology and materials provided or made available by Palantir to Customer for use with the Service, including sample code, software libraries, command line tools, data integration code, templates, and configuration files.
- 1.9 “**Service**” means Palantir’s proprietary software-as-a-service offering(s) as set forth in an Order Form.
- 1.10 “**Taxes**” means any applicable sales, use, transaction, value added, goods and services tax, harmonized sales tax, withholding tax, excise or similar taxes, and any foreign, provincial, federal, state or local fees or charges (including, but not limited to, environmental or similar fees), duties, costs of compliance with export and import controls and regulations, and other governmental assessments, including any penalties and interest in respect thereof, imposed on, in respect of, or otherwise associated with any transaction hereunder.
- 1.11 “**Third Party Content**” means any third party data, services, or applications that interoperate with the Service which Palantir may, at Customer’s sole discretion, facilitate the use of in connection with the Service and subject to an independent agreement between Customer and such third party.
- 1.12 “**Third Party Services**” means third party services that Palantir may utilize in the provision of the Service as set forth in the Documentation (or as otherwise agreed by the Parties).

### 2. Provision of Service.

- 2.1 Service Access. Palantir shall make available the Service to Customer during the applicable Order Term (as defined below) solely for use by Customer and its Users (as defined below) in accordance with the terms and conditions of this Agreement and the Documentation for Customer’s internal business purposes or as otherwise set forth in an Order Form.
- 2.2 Data Connection Software License. If applicable for use of the Service, Palantir grants to Customer during the applicable Order Term a non-exclusive, nontransferable, non-sublicensable, and limited license to use the Data Connection Software for the sole purposes of using and connecting to the Service. Customer shall allow Palantir to access the Data Connection Software remotely as necessary to provide the Service.
- 2.3 Sample Materials License. Palantir may make available Sample Materials for use by Customer during the Order Term. If applicable, Palantir grants to Customer during the applicable Order Term a non-exclusive, nontransferable, non-sublicensable, and limited license, to copy, modify, and use Sample Materials solely to the extent necessary for Customer’s use of the Service.
- 2.4 Usage Data. Palantir may collect and use metrics, analytics, statistics, or other data related to Customer’s use of the Service (a) to provide and secure the Service for the benefit of Customer and (b) to analyze, maintain, support, and improve the Service (provided that in relation to (b), the data collected shall not include personal data or Customer Data).
- 2.5 Security. Palantir has established an Information Security Program (“**ISP**”) designed to ensure strong practical security controls and compliance with industry best practice standards and frameworks. A comprehensive list of Palantir’s certifications can be found at <https://www.palantir.com/information-security/> under “Compliance and Accreditation.” The Palantir ISP additionally is aligned with NIST 800-53, TSC (Trust Service Criteria), and CIS (Center for Internet Security) frameworks and management systems. Palantir will make available to Customer upon written request (no more frequently than once per calendar year) Palantir’s: (a) ISAE 3000/SSAE18 SOC2 TYPE II Report; (b) Penetration Test Attestation Letter; and (c) ISO 27001 Certificate. Palantir shall provide the above audit reports relating to Palantir’s operating practices and procedures to the extent relevant to the Service. Customer acknowledges that Palantir’s documentation noted in this Section and other related information

are Palantir's Confidential Information (as defined below) hereunder.

2.6 Service Levels and Support. During an Order Term, Palantir will provide Customer the service levels and support consistent with the support terms and service levels in the Palantir Service Level Agreement and Support Policy.

2.7 Professional Services. Palantir shall provide Customer with implementation, enablement, training, or other professional services as specified in an Order Form or otherwise in Palantir's discretion and subject to any fees thereunder ("**Professional Services**"). The performance of any Professional Services shall not affect ownership of the Palantir Technology and other materials provided by Palantir under this Agreement.

### 3. Customer Use of Service.

3.1 Accounts. Customer may provision accounts to access the Service ("**Accounts**") for its (a) employees; (b) contractors; or (c) other users (including its Affiliates' employees or contractors) specified in an Order Form for the purposes authorized hereunder (collectively, "**Users**"). Customer shall be responsible for (i) administering Accounts; (ii) using industry standard security measures to protect Accounts (including, without limitation, using multi-factor authentication); and (iii) any activity on Accounts. Customer shall immediately de-activate any Account upon becoming aware of the compromise or unauthorized use thereof, or upon Palantir's reasonable request.

3.2 Data Protection. NOT USED

### 4. Proprietary Rights.

4.1 Customer Data Ownership. As between the Parties, Customer owns all rights, title, and interest, including all Intellectual Property Rights, in and to Customer Data and any modifications made thereto. Subject to the Agreement, Customer grants to Palantir a non-exclusive, worldwide, and royalty-free right and license during the Term (as defined below) to process Customer Data solely to provide the Service and/or Professional Services. Customer further grants to Palantir a worldwide, perpetual, irrevocable, and royalty-free right and license to use, distribute, disclose, and make and incorporate into the Palantir Technology any suggestions, enhancement request, recommendation, or other feedback provided by Customer or Users relating to the Palantir Technology.

4.2 Palantir Ownership. As between the Parties, Palantir owns all rights, title, and interest, including all Intellectual Property Rights, in and to the Palantir Technology, and any other related documentation or materials provided by Palantir and any derivative works, modifications, or improvements of any of the foregoing (including, without limitation, all Intellectual Property Rights embodied in any of the foregoing). Except for the express rights granted herein, Palantir does not grant any other licenses or access, whether express or implied, or any ownership rights to any Palantir Technology, software, services, or Intellectual Property Rights.

4.3 Restrictions. Customer will not (and will not allow any third party to): (a) gain or attempt to gain unauthorized access to the Service or infrastructure, or any element thereof, or circumvent or interfere with any authentication or security measures of the Service; (b) interfere with or disrupt the integrity or performance of the Service; (c) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs through the Service; (d) decompile, disassemble, scan, reverse engineer, or attempt to discover any source code or underlying ideas or algorithms of any Palantir Technology (except to the extent that applicable law expressly prohibits such a reverse engineering restriction, and in such case only upon prior written notice to Palantir); (e) provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use or allow others to use the Service for the benefit of any third party (except as set forth in an Order Form); (f) list or otherwise display or copy any code of any Palantir Technology, except for Sample Materials to the extent necessary for Customer's use of the Service; (g) copy any Palantir Technology (or component thereof) or develop any improvement, modification, or derivative work thereof, except for Sample Materials to the extent necessary for Customer's use of the Service; (h) include any portion of any Palantir Technology in any other service, equipment, or item; (i) allow the transfer, transmission (including, without limitation, making available on-line, electronically transmitting, or otherwise communicating to the public), export, or re-export of any Palantir Technology (or any portion thereof) or any Palantir technical data; (j) perform penetration tests on the Service unless authorized by Palantir; (k) use, evaluate, or view the Palantir Technology for the purpose of designing, modifying, or otherwise creating any environment, software, models, algorithms, products, program, or infrastructure or any portion thereof, which performs functions similar to the functions of the Palantir Technology; or (l) remove, obscure, or alter, or otherwise violate the terms of any copyright notice, trademarks, logos, and trade names and any other notices (including third party open source or similar licenses) or identifications that appear on or in any Palantir Technology and any associated media. Notwithstanding the foregoing, or any statement to the contrary herein, Third Party Content may be made available with notices and open source or similar licenses from such communities and third parties that govern the use of those portions, and Customer hereby agrees to be bound by and fully comply with all such licenses; *however*, the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all such Third Party Content.

5. Confidentiality. Each Party (the "**Receiving Party**") shall keep strictly confidential all Confidential Information of the other Party (the "**Disclosing Party**"), and shall not use such Confidential Information except for the purposes of this Agreement, and shall not disclose such Confidential Information to any third party other than disclosure on a need-to-know basis to the Receiving Party's directors, employees, agents, attorneys, accountants, subcontractors, or other representatives who are each subject to obligations of confidentiality at least as restrictive as those herein ("**Authorized Representatives**"). The Receiving Party shall use at least the same degree of care as it uses to prevent disclosure of its own confidential information, but in no event less than reasonable care. The Receiving Party may, without violating the obligations of the Agreement, disclose Confidential Information to the extent required by a valid court or government order, *provided* that the Receiving Party: (a) provides the Disclosing Party with reasonable prior written notice of such disclosure and (b) uses reasonable efforts to limit disclosure and to obtain, or to assist the Disclosing Party in obtaining, confidential treatment or a protective order preventing or limiting the disclosure, while allowing the Disclosing Party to participate in the proceeding. "**Confidential Information**" means (i) in the case of Palantir, Palantir Technology (including any information relating thereto); (ii) in the case of Customer, Customer Data; and (iii) any other information which by the nature of the information disclosed or the manner of its disclosure would be understood by a reasonable person to be confidential, in each case, in any form (including, without limitation, electronic or oral) and whether



furnished before, on, or after the Effective Date; *provided, however*, that Confidential Information shall not include any information that (1) is or becomes part of the public domain through no act or omission of the Receiving Party or its Authorized Representatives; (2) is known to the Receiving Party at the earlier of the Effective Date or the time of disclosure by the Disclosing Party (as evidenced by written records) without an obligation to keep it confidential; (3) was rightfully disclosed to the Receiving Party prior to the Effective Date from another source without any breach of confidentiality by the third party discloser and without restriction on disclosure or use; or (4) the Receiving Party can document by written evidence that such information was independently developed without any use of or reference to Confidential Information. The Receiving Party shall be liable for any breaches of this Section by any person or entity to which the Receiving Party is permitted to disclose Confidential Information pursuant to this Section. The Receiving Party's obligations with respect to Confidential Information shall survive termination of this Agreement for five (5) years; *provided, however*, that the Receiving Party's obligations hereunder shall survive termination and continue in perpetuity, or as long as permitted by applicable law, with respect to any Confidential Information that is a trade secret under applicable law.

**6. Fees and Payment; Taxes.** The Service is deemed delivered upon the provision of access to Customer or for Customer's benefit. If there are fees set forth in an Order Form, such fees will be invoiced and payable on an annual upfront basis, or as otherwise set forth in the Order Form. All payments shall be made via wire transfer to an account designated by Palantir in the currency set forth on the corresponding invoice within thirty (30) days after the date of issuance of Palantir's invoice. Any late payments shall be subject to a service charge equal to the lesser of 1.5% per month of the amount due or the maximum amount of interest allowed by applicable law. Unless otherwise stated in an Order Form, fees are exclusive of applicable Taxes. Customer shall be responsible for all Taxes arising under this Agreement (except taxes on or measured by the net income of Palantir) so that after payment of such Taxes the amount Palantir receives is not less than the fees set forth in the Order Form. In the event a double taxation treaty applies, which provides a zero or reduced withholding tax rate, Customer agrees (a) not to withhold taxes in case of a zero withholding tax rate or (b) to withhold at the reduced tax rate in accordance with the double taxation treaty.

**7. Term and Termination.**

**7.1 Term.** This Agreement is effective as of the Effective Date and shall continue in effect for six (6) months from the date of expiration of the last to expire Order Form (the "**Term**"), unless otherwise terminated as provided herein. The term of each Order Form shall continue for the duration set forth in the Order Form (the "**Order Term**"), unless otherwise terminated as provided herein.

**7.2 Termination for Cause.** Without limiting either Party's other rights, either Party may terminate this Agreement for cause (including any then-current Order Forms) (a) in the event of any material breach by the other Party of any provision of this Agreement and failure to remedy the breach (and provide reasonable written notice of such remedy to the non-breaching Party) within thirty (30) days following written notice of such breach from the non-breaching Party or (b) if the other Party seeks protection under any bankruptcy, receivership, or similar proceeding or such proceeding is instituted against that Party and not dismissed within ninety (90) days. Except where an exclusive remedy is specified in this Agreement, the exercise by either Party of the right to terminate under this provision shall be without prejudice to any other remedies it may have under this Agreement or by law. In the event of termination of this Agreement by Customer for cause pursuant to Section 7.2(a), Palantir shall provide a pro-rated refund of any fees pre-paid for Services not utilized as of the effective date of termination. All non-expired Order Forms shall automatically terminate upon termination of this Agreement.

**7.3 Effect of Termination.** Upon any termination or expiration of this Agreement, except as specifically set forth below, all Customer's rights, access, and licenses granted to Palantir Technology shall immediately cease, and Customer shall promptly return or destroy all Data Connection Software, Sample Materials, Documentation, and all other Confidential Information of Palantir and, upon written request, certify its compliance with the foregoing to Palantir in writing within ten (10) days of such request. Upon termination or expiration of all Order Forms, if requested by Customer, Customer shall, subject to the terms of this Agreement, have access to the Service for thirty (30) days solely for the purpose of retrieving Customer Data. Palantir shall thereafter delete all Customer Data. Notwithstanding the foregoing, Palantir shall retain, subject to the other terms of this Agreement, and solely for security purposes, usage information and metadata related to the security of the Service, excluding Customer Data (except for security-related information such as IP addresses, usernames, log-in attempts, and search queries), for a period of two (2) years following the last event logged. No termination or expiration of this Agreement shall limit or affect rights or obligations that accrued prior to the effective date of termination or expiration (including, without limitation, payment obligations). Sections 4, 5, 6, 7, 8, 9, 11, 12, and 13 shall survive any termination or expiration of this Agreement.

**8. Indemnification.**

**8.1 Palantir Indemnification.** Palantir shall defend Customer against any claim of infringement or violation of any Intellectual Property Rights asserted against Customer by a third party based upon Customer's use of Palantir Technology in accordance with the terms of this Agreement and indemnify and hold harmless Customer from and against reasonable costs, attorneys' fees, and damages, if any, finally awarded against Customer pursuant to a non-appealable order by a court of competent jurisdiction in such claim or settlement entered into by Palantir. If Customer's use of any of the Palantir Technology is, or in Palantir's opinion is likely to be, enjoined by a court of competent jurisdiction due to the type of infringement specified above, or if required by settlement approved by Palantir in writing, Palantir may, in its sole discretion: (a) substitute substantially functionally similar products or services; (b) procure for Customer the right to continue using the Palantir Technology; or (c) if Palantir reasonably determines that options (a) and (b) are commercially impracticable, terminate this Agreement and refund to Customer a pro-rated portion of the fees paid hereunder for the terminated Palantir Technology that reflects the remaining portion of the Order Terms of any Order Forms in effect at the time of termination. The foregoing indemnification obligations of Palantir shall not apply: (i) if Palantir Technology is modified by or at the direction of Customer or Users, but only to the extent the alleged infringement would not have occurred but for such modification; (ii) if Palantir Technology is combined with non-Palantir products not authorized by Palantir, but only to the extent the alleged infringement would not have occurred but for such combination; (iii) to any unauthorized use of Palantir Technology, any use that is not consistent with the Documentation, or use during any period of suspension; (iv) to any Customer Data; or (v) to any non-Palantir products or services.

**8.2 Customer Indemnification.** Customer shall defend Palantir against any third party claim asserted against Palantir arising

from or relating to (a) Customer's violation of applicable law; (b) Customer Data; or (c) any Customer-offered product or service (except if such claim is primarily attributable to the Service as offered by Palantir) and indemnify and hold harmless Palantir from and against related costs, attorneys' fees, and damages, if any, issued by a competent authority or finally awarded pursuant to a non-appealable order.

8.3 **Indemnification Procedure.** The obligations of the indemnifying Party shall be conditioned upon the indemnified Party providing the indemnifying Party with: (a) prompt written notice (in no event to exceed twenty (20) days) of any claim, suit, or demand of which it becomes aware; (b) the right to assume the exclusive defense and control of any matter that is subject to indemnification (provided that the indemnifying Party will not settle any claim unless it unconditionally releases the indemnified Party of all liability and does not admit fault or wrongdoing by the indemnified Party, unless the indemnified Party otherwise consents in writing); and (c) cooperation with any reasonable requests assisting the indemnifying Party's defense and settlement (at the indemnifying Party's expense). This Section sets forth each Party's sole liability and obligation and the sole and exclusive remedy with respect to any claim of Intellectual Property Rights infringement.

## **9. Palantir Warranty and Disclaimer.**

9.1 **Palantir Warranty.** Palantir warrants that, during the Term, (a) the Service will be provided substantially in accordance with the applicable Documentation and (b) the Professional Services will be provided in a professional and workmanlike manner. In the event of a breach of an above warranty, Customer may give Palantir written notice of termination of this Agreement, which termination will be effective thirty (30) days after Palantir's receipt of the notice, unless Palantir is able to remedy the breach prior to the effective date of termination. This warranty shall not apply to the extent such breach is caused by Customer Data or misuse or unauthorized modification of the Service or any Customer-selected hardware used in connection with the Service. In the event of termination of this Agreement pursuant to Customer's exercise of its right under this Section, Customer shall be entitled to receive from Palantir, as its sole and exclusive remedy, a refund of a pro-rated portion of the fees paid hereunder that reflects the remaining portion of the Order Terms of any Order Forms in effect at the time of termination.

9.2 **Disclaimer.** NO AMOUNTS PAID HEREUNDER ARE REFUNDABLE OR OFFSETTABLE EXCEPT AS OTHERWISE EXPLICITLY SET FORTH HEREIN. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PALANTIR TECHNOLOGY AND PROFESSIONAL SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY OTHER WARRANTIES OF ANY KIND, AND PALANTIR AND ITS SUPPLIERS AND SERVICE PROVIDERS HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, RELATING TO THE PALANTIR TECHNOLOGY AND PROFESSIONAL SERVICES PROVIDED HEREUNDER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING LIMITATION, PALANTIR DOES NOT WARRANT THAT THE PALANTIR TECHNOLOGY AND PROFESSIONAL SERVICES WILL MEET CUSTOMER REQUIREMENTS OR GUARANTEE ANY RESULTS, OUTCOMES, OR CONCLUSIONS OR THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. PALANTIR IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY SERVICES (INCLUDING, WITHOUT LIMITATION, UPTIME GUARANTEES, OUTAGES, OR FAILURES), CUSTOMER DATA, OR ANY THIRD PARTY CONTENT. PALANTIR DOES NOT CONTROL THE TRANSFER OF INFORMATION OR CUSTOMER DATA OVER COMMUNICATIONS FACILITIES, THE INTERNET, OR THIRD PARTY SERVICES, AND THE SERVICE MAY BE SUBJECT TO DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PALANTIR IS NOT RESPONSIBLE FOR ANY DELAYS, FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. PALANTIR SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ACTIONS TAKEN OR CONCLUSIONS DRAWN BY CUSTOMER BASED ON CUSTOMER'S USE OF THE SERVICE.

10. **Customer Warranty.** Customer warrants that (a) Customer has provided all necessary notifications and obtained all necessary consents, authorizations, approvals, and/or agreements as required by any applicable laws or policies, and has informed Palantir of any obligations applicable to Palantir's processing of Customer Data, in order to enable Palantir to process Customer Data, including personal data, according to the scope, purpose, and instructions specified by Customer and that Customer will not direct the processing of Customer Data by Palantir in violation any laws or regulations (including localization requirements) or rights of third parties; and (b) it will not use the Service for any unauthorized or illegal purposes.

11. **Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY (A) COST OF PROCUREMENT OF ANY SUBSTITUTE PRODUCTS OR SERVICES, OR COST OF REPLACEMENT OR RESTORATION OF ANY CUSTOMER DATA; (B) ECONOMIC LOSSES, EXPECTED OR LOST PROFITS, REVENUE, ANTICIPATED SAVINGS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF OR DAMAGE TO GOODWILL OR REPUTATION; AND/OR (C) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE, WHETHER ARISING OUT OF PERFORMANCE OR BREACH OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE PALANTIR TECHNOLOGY, EVEN IF THE PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH LOSS OR DAMAGES. EXCEPT FOR THE PARTIES' OBLIGATIONS SET FORTH IN SECTIONS 4 AND 8 OF THIS AGREEMENT AND CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY AND ITS AFFILIATES TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS OF ANY KIND SHALL NOT EXCEED THE GREATER OF (I) THE FEES PAID OR PAYABLE TO PALANTIR BY CUSTOMER UNDER THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM FOR THE SERVICE OR PROFESSIONAL SERVICES THAT GAVE RISE TO SUCH CLAIM OR (II) ONE HUNDRED THOUSAND DOLLARS (USD 100,000), AND THAT SUCH REMEDY IS FAIR AND ADEQUATE. THE LIMITATIONS SET FORTH IN THIS SECTION 11 SHALL APPLY REGARDLESS OF WHETHER AN ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY.

12. **Dispute Resolution.** Any dispute, controversy, or claim arising from or relating to this Agreement, including arbitrability, that cannot be resolved following good faith discussions within sixty (60) days after notice of a dispute shall be finally settled by arbitration. If Customer is located in the Americas, then the governing law shall be the substantive laws of the State of New York, without regard to conflicts of law provisions thereof, and arbitration shall be administered in New York, New York, United States under the Comprehensive Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services, Inc. ("JAMS") and the Federal Rules of Evidence (notwithstanding JAMS Rule 22(d) or any other JAMS Rule to the contrary). If



Customer is located outside of the Americas, then the governing law shall be the substantive laws of England and Wales, without regard to conflicts of law provisions thereof, and without regard to the United Nations Convention on Contracts for the International Sale of Goods, and arbitration shall be administered in London, United Kingdom under the Rules of Arbitration of the International Chamber of Commerce. Notwithstanding the foregoing, each Party shall have the right to institute an action at any time in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator(s), *provided* that (a) the Party instituting the action shall seek an order to file the action under seal (or at a minimum do so for any filings containing Confidential Information or trade secrets) in order to limit disclosure as provided in Section 5 of this Agreement; and (b) a permanent injunction and damages shall only be awarded by the arbitrator(s).

**13. Miscellaneous.** Palantir shall provide the Service and Professional Services consistent with laws and regulations applicable to Palantir's provision of such Service and Professional Services generally (including, but not limited to, those regarding data protection and international transfers of personal data), without regard to Customer's specific utilization of the Service except to the extent set forth in an Order Form, and subject to Customer's compliance with this Agreement. If applicable, the Parties shall comply with the Palantir Cognitive Services Addendum available at <https://palantir.pactsafe.io/aip-legal-3791.html>, which is hereby incorporated by reference. Except with Palantir's prior written consent, neither this Agreement nor the access or licenses granted hereunder may be assigned, transferred, or sublicensed by Customer, including, without limitation, pursuant to a direct or indirect change of control of Customer, a merger involving Customer where Customer is not the surviving entity, or a sale of all or substantially all of the assets of Customer (collectively, a "**Change of Control**"); any attempt to do so shall be void. Customer must provide written notice to Palantir prior to a Change of Control, and Palantir may terminate this Agreement in the event of a Change of Control. Palantir may subcontract this Agreement or portions thereof. Any notice required or permitted hereunder shall be in writing to the parties at the addresses set forth in the applicable Order Form and if by email, notifications to Palantir shall be sent to [REDACTED]. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and be enforceable. Any and all modifications, waivers, or amendments must be made by mutual agreement and shall be effective only if made in writing and signed by each Party. No waiver of any breach shall be deemed a waiver of any subsequent breach. The Service is controlled under 5D002.c.1, ENC. Customer shall ensure that all exports, reexports, transfers, end-uses, and Users of the Service comply with the export and sanctions laws and regulations of the United States and other applicable jurisdictions, including, without limitation, those of the U.S. Bureau of Industry & Security and the Office of Foreign Assets Control. Customer represents that it is not subject to restrictions under any U.S. government restricted end user lists, and that it is not 50% or more, directly or indirectly, owned or controlled by any individuals or entities identified on such lists. Customer will immediately notify Palantir if Customer becomes subject to any such restrictions. Customer shall refrain from taking any action that causes Palantir to violate applicable export and sanctions laws and regulations. Except for the obligation to pay money, neither Party will be liable for any failure or delay under this Agreement due to any cause beyond its reasonable control, including, without limitation, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, failure of the Internet, telecommunications, or hosting service provider, computer attacks, or malicious acts; *provided* that the delayed Party: (a) gives the other Party prompt notice of such cause; and (b) uses commercially reasonable efforts promptly to correct such failure or delay in performance. Palantir has the right to immediately suspend access to the Service: (a) if Customer is in material breach of this Agreement; (b) to prevent a security incident impacting Customer, Customer Data, or the Service; or (c) if continued access would violate applicable laws or if required to do so pursuant to applicable law or regulation or requests or orders of governmental, regulatory, or judicial authorities. There are no third party beneficiaries under this Agreement, whether express or implied. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. The Parties have freely negotiated all clauses of this Agreement, in written exchanges, telephone conversations, or meetings, and pursuant to these negotiations have agreed to adopt this Agreement and hereby acknowledge the negotiated nature of this Agreement. In the event of a conflict between these Terms of Service and any Order Forms or exhibit, the terms of such Order Form or exhibit will prevail. Palantir is in no way affiliated with, or endorsed or sponsored by, The Saul Zaentz Company d.b.a. Tolkien Enterprises or the Estate of J.R.R. Tolkien.

SIGNATURE PAGE

SIGNED by .....  
for and on behalf of **NHS England**

.....  
.....  
(Signature)  
.....  
(Date)

SIGNED by .....  
for and on behalf of **[Trust]**

.....  
.....  
(Signature)  
.....  
(Date)

## **Annex 4**

### **Memorandum of Understanding between Buyer and ICB template**

Dated \_\_\_\_\_ 202

(1) **NHS ENGLAND**

- and -

(2) **[ICB]**

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## **Memorandum of Understanding**

relating to the NHS National Data Platform

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**THIS MEMORANDUM OF UNDERSTANDING (MoU)** is made the .....202  
**BETWEEN:**

- (1) **NHS ENGLAND** of Quarry House, Quarry Hill, Leeds LS1 7UE (**NHS England**);
- (2) **[ICB][OTHER NHS BODY]** of {●} (the **ICB**);  
(each a “**Party**” and together the “**Parties**”).

**RECITALS:**

- (A) NHS England developed the NHS National Data Platform and associated data ontologies (**National Data Platform**) as part of the NHS response to the Covid-19 pandemic.
- (B) NHS England and the ICB wish to collaborate in order to enable the use by the ICB of the National Data Platform in the deployment of certain solutions (**Programme Solutions**) in pursuit of the Programme’s objectives.
- (C) Programme Solutions may utilise data analytics techniques and data ontologies developed by NHS England in the National Data Platform, and deploy analytics tools enabling ICB staff to collect, engineer, assure, analyse, manipulate, interpret and display data integrating information from ICB systems (**ICB Systems**). ICB Systems are supported by various third party contractors (**ICB System Contractors**). The National Data Platform is supported by Palantir Technologies UK, Ltd (in that capacity, the **Platform Contractor**) and together with the ICB System Contractors, the **Contractors**).
- (D) The parties recognise that the use of the National Data Platform may require the processing by the Contractors of anonymised, pseudonymised, otherwise de-identified and in some cases patient-identifiable information for the purposes of processing by the ICB and the Parties agree and acknowledge the principles set out in Schedule 1 (**Data Principles**) in respect of data processing under this MOU.
- (E) The purpose of this MoU is to establish funding, technical and information governance arrangements for pursuit by the Parties of Programme Solutions.

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this MoU the following words and phrases bear the meanings given to them below unless the context otherwise requires.

<b>Confidential Information</b>	all confidential information (however recorded or preserved) disclosed by a Party to another Party and their Representatives whether before or after the date of this agreement in connection with this MoU;
<b>Contractors</b>	as described in recital (C);
<b>Data Principles</b>	as defined in recital (D);
<b>Data Protection Legislation</b>	the Data Protection Act 2018, UK GDPR as defined in and read in accordance with that Act, and all applicable data protection and privacy legislation, guidance and codes of practice in force from time to time;
<b>EIR</b>	as described in clause 17.1;

<b>FOIA</b>	as described in clause 17.1;
<b>Funding Plan</b>	as described in clause 5.2;
<b>ICB System Contract</b>	as described in clause 6.2.1;
<b>ICB System Contractors</b>	as described in recital (C). For the purposes of this MoU the Platform Contractor is not a ICB System Contractor unless the parties make specific provision having regard to the Platform Contractor's existing relationships with the ICB;
<b>ICB Systems</b>	as described in recital (C);
<b>NHS Body</b>	as defined in the National Health Service Act 2006;
<b>Platform Contract</b>	the agreement between NHS England and the Platform Contractor in relation to the provision of transitional services relating to the National Data Platform of [date];
<b>Platform Contractor</b>	as described in recital (C);
<b>Platform Enterprise Licence</b>	the enterprise licence for the use of Platform Software procured by NHS England;
<b>Platform Software</b>	the software enabling the National Data Platform;
<b>Programme</b>	the programme as described in Schedule 3;
<b>Programme Solution</b>	as described in recital (B); and
<b>Representatives</b>	the officers, employees and individual contractors of a Party authorised by it to act in relation to this MoU.

- 1.2 The Schedules to this MoU are an integral part of this MoU and a reference to this MoU includes a reference to the Schedules and words following the words "includes" or "including" are read without limitation.

## 2. PURPOSE

- 2.1 The Parties are working together to deploy and configure Programme Solutions to the ICB.
- 2.2 The Parties recognise that the deployment of Programme Solutions requires them to establish and operate data sharing and information governance arrangements consistent with the Data Principles and complying with Data Protection Legislation.
- 2.3 The Parties intend to be bound by the terms of this MoU.
- 2.4 The Parties shall (and shall procure that any of their Representatives involved in the performance of the Parties' obligations under this MoU) comply with the Data Protection Legislation in connection with this MoU.
- 2.5 The Parties may by agreeing an addendum to this MoU, apply the terms of this MoU (as varied by such addendum) to another Programme Solution. Addendums shall be in the form set out in Schedule 5 unless the parties otherwise agree.

### 3. **USE OF NATIONAL DATA PLATFORM**

- 3.1 NHS England agrees to procure the use of the Platform Enterprise Licence for the ICB in relation to the use by the ICB of the Programme Solutions, without end user or other charges applying to such use.
- 3.2 The ICB agrees to comply with the authorised user terms applying to the Platform Enterprise Licence set out in **Schedule 2**.

### 4. **PERFORMANCE AND REPORTING**

- 4.1 The Parties may agree a project initiation document (a **PID**) detailing the principles and their respective responsibilities in relation to the implementation of Programme Solutions, including project plans, delivery, resourcing and technical assumptions and dependencies on the ICB in relation to Programme Solution implementation and funding. Each Party shall perform its obligations and responsibilities set out in a PID.
- 4.2 The ICB agrees to provide to NHS England on request and in such form as it may request information regarding its use of Programme Solutions in order for NHS England to review and evaluate the Programme. Unless a data sharing arrangement as described in clause 7 is agreed, such information will be aggregated and not identify any person and the ICB is not required to provide any personal data under such an information request.

### 5. **FUNDING**

- 5.1 NHS England may agree in a Funding Plan to fund certain activities of the ICB in order to deploy Programme Solutions.
- 5.2 A Funding Plan shall set out:
  - 5.2.1 the activities of the ICB to which the funding is to be applied;
  - 5.2.2 the targets and objectives that the funding is intended to achieve;
  - 5.2.3 the arrangements for monitoring and reporting by the ICB to NHS England in relation to the funding;
  - 5.2.4 the arrangements for invoicing, transfer or other means of disbursement of the funding to the ICB by NHS England;
  - 5.2.5 if applicable, the financial years to which the funding is allocated and the capital or revenue nature of the funding and any associated financial management requirements of NHS England.
- 5.3 The ICB shall apply funding in accordance with and comply with the terms of a Funding Plan.

### 6. **CONTRACTS**

- 6.1 The ICB agrees to collaborate with NHS England in relation to the design, contracting and implementation of changes to the ICB Systems required in order to enable the use of Programme Solutions. The parties intend to make arrangements with ICB System Contractors centrally in order that such changes are funded once and implemented consistently across all implementations of a particular electronic patient record or other clinical system provider's systems.
- 6.2 Where a Funding Plan requires activity to be undertaken by a ICB System Contractor:
  - 6.2.1 the ICB shall obtain the approval of NHS England to the contractual documentation binding the ICB System Contractor to the relevant activity



**(ICB System Contract)** consistently with the objectives described in this clause;

- 6.2.2 the ICB shall notify NHS England of any material failure or delay by the ICB System Contractor to comply with a ICB System Contract.
- 6.3 The ICB acknowledges that NHS England is responsible for contractual arrangements with the Platform Contractor and the ICB will not take any action or make any commitment with or in respect of the Platform Contractor in relation to the Programme without NHS England's approval.

## 7. **GOVERNANCE, DATA PROCESSING AND DATA SHARING**

- 7.1 NHS England will establish governance arrangements for the Programme and the ICB may input into Programme governance through its regional delivery managers.
- 7.2 The Parties will observe the Data Principles in the performance of this MoU and will in respect of data sharing and data processing contemplated by this MoU:
  - 7.2.1 collaborate in the preparation and updating of data protection impact assessments under Data Protection Legislation;
  - 7.2.2 discuss and agree the basis of processing of personal data and legal grounds under which, and purposes for which, data is processed and shared;
  - 7.2.3 establish such steering groups and other arrangements as may be desirable to co-ordinate the operation of the Principles and ensure that the rights and freedoms of data subjects and compliance with Data Protection Legislation are considered at all times;
  - 7.2.4 agree the terms of data sharing arrangements and, where appropriate, joint controller arrangements setting out their respective responsibilities for compliance with Data Protection Legislation in relation to personal data;
  - 7.2.5 co-ordinate and collaborate responses to requests from data subjects in relation to the exercise of their rights under Data Protection Legislation and address complaints under such legislation. The parties intend that the ICB is responsible for such co-ordination and for responses to data subjects in relation to exercise of their rights in relation to processing carried out under the Programme;
  - 7.2.6 ensure that appropriate information security practices, technological and organisational measures and procedures are applied to keep personal data secure; and
  - 7.2.7 agree terms with the Platform Contractor setting out Platform Contractor's instructions and the responsibilities of the parties to the relevant data processing agreement.
- 7.3 NHS England acknowledges that the ICB will not share personal data with NHS England unless and until a processing basis and other requirements of Data Protection Legislation have been agreed and data sharing arrangements reflecting those requirements put in place, as described in clause 7.2.
- 7.4 The Parties agree to ensure that all Contractors are engaged in relation to Programme Solutions under data processing agreements meeting the requirements of Data Protection Legislation.
- 7.5 The ICB will enter into data processing agreements with the Platform Contractor in the form set out in Schedule 4 (**Data Processing Agreement**) or such other form as may be agreed with the Platform Contractor, and the ICB and the Platform Contractor may agree additional annexes in relation to additional or specific dataflows under any such

data processing agreement, and the entry by such controllers other than the ICB as may be necessary into such agreements.

- 7.6 The parties will discuss and collaborate on the preparation and maintenance of equalities impact assessments and other assessments or reviews of the effect of the CCS on their functions and duties as may be required.

## **8. RELATIONS WITH PLATFORM CONTRACTOR**

- 8.1 NHS England has procured the support of the Platform Contractor for the Programme.
- 8.2 NHS England represents to the ICB that the ICB is entitled to use the Platform Software as a third party beneficiary of the Platform Contract on and subject to the terms of this MoU.
- 8.3 The ICB acknowledges that the Platform Contractor is providing support for the Programme under the Platform Contract which includes provisions and restrictions regarding the use of the Platform, terms required by Data Protection Legislation in relation to the processing of personal data, and provisions and limitations on the Platform Contractor's liability for certain matters, all as set out in the Platform Contract and the orders for services made under it in respect of the Programme. The ICB's use of Platform Software is subject to all such provisions, restrictions, terms and limitations.
- 8.4 NHS England undertakes to provide the ICB with access to the Platform Contract and such orders on its FutureNHS collaboration platform (or such other platform as may replace it from time to time).
- 8.5 The ICB agrees to notify NHS England in the event that any issue or dispute arises in respect of the ICB's use of the Platform Software. NHS England agrees to facilitate the resolution of any such dispute with the Platform Contractor.
- 8.6 The ICB agrees not to make any claim against the Platform Contractor under a Data Processing Agreement where such claim can be made under the Platform Contract as a third party beneficiary and in any case without first notifying NHS England in accordance with clause 8.5 except in an urgent case where action is required to preserve the ICB's rights or remedies or in order to comply with Data Protection Legislation and then provided that the ICB immediately notifies NHS England of such claim further to clause 8.5.

## **9. DISPUTE RESOLUTION**

- 9.1 If a Party has any issues, concerns or complaints regarding the operation of this MoU that Party shall notify the other Party promptly and the Parties will seek to resolve the issue through discussion between them.
- 9.2 Subject as otherwise specifically provided for in this MoU, any dispute arising between the Parties out of or in connection with this MoU will be resolved in accordance with the provisions of this clause.
- 9.3 If the Parties are unable to resolve a dispute by discussion, they may appoint an independent facilitator to determine the dispute in accordance with clause 9.4.
- 9.4 The independent facilitator shall act on the following basis:
- 9.4.1 the independent facilitator shall decide the procedure to be followed in the determination and shall be requested to make their determination within 30 days of their appointment or as soon as reasonably practicable thereafter. The parties shall assist and provide the documentation that the independent facilitator requires for the purpose of the determination;
- 9.4.2 the determination process shall be conducted in private and shall be confidential;

9.4.3 The independent facilitator shall have its costs and disbursements met by the Parties.

9.5 The Parties recognise that any dispute or operation of this procedure will be without prejudice to and will not affect the statutory duties of each Party.

9.6 Nothing in this clause shall be construed as prohibiting a Party from applying to a court for interim injunctive relief where it considers that such a step is necessary to prevent irreparable harm to its interests.

## 10. **COMPLIANCE**

The Parties shall comply with applicable law in the performance of this MoU.

## 11. **DECISION MAKING**

Neither Party delegates to the other any decision or action or authorises the other Party to act in its name or as its agent further to this MoU.

## 12. **TERM AND TERMINATION**

12.1 This MoU shall commence on the date on which it is executed by the last Party to sign (the **Commencement Date**) and shall continue in force until termination by agreement in writing by the Parties.

12.2 On termination of this MoU:

12.2.1 The use of the Platform Enterprise Licence by the ICB shall terminate;

12.2.2 The parties shall agree the closure and funding of activities under any uncompleted Funding Plans.

## 13. **VARIATION**

This MoU may only be varied by written agreement of the Parties signed by, or on behalf of, each of the Parties.

## 14. **CHARGES AND LIABILITIES**

14.1 Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU, including in respect of any losses or liabilities incurred due to their own or their Representatives' actions.

14.2 No Party intends that any other Party shall be liable for any loss it suffers as a result of this MoU.

## 15. **NO PARTNERSHIP**

Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party as the agent of another Party, nor authorise any of the Parties to make or enter into any commitments for or on behalf of the other Parties.

## 16. **CONFIDENTIALITY**

16.1 Subject to Clause 16.2, each Party shall keep the other Parties' Confidential Information confidential and shall not:

16.1.1 use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or

16.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause.

- 16.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential Information:
- 16.2.1 which another Party confirms in writing is not required to be treated as Confidential Information;
  - 16.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - 16.2.3 which a Party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including the FOIA or the EIR;
  - 16.2.4 which is in or enters the public domain other than through any disclosure prohibited by this agreement;
  - 16.2.5 which a Party can demonstrate was lawfully in its possession prior to receipt from the another Party; or
  - 16.2.6 which is disclosed by a Party on a confidential basis to any central government or regulatory body.
- 16.3 A Party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the Party's obligations under this agreement, provided that:
- 16.3.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - 16.3.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
  - 16.3.3 and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this Clause.

**17. FREEDOM OF INFORMATION**

- 17.1 The Parties acknowledge that each is a public authority subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIR**).
- 17.2 Each Party shall, in respect of any requests for information which touch on or relate to this MoU:
- 17.2.1 provide all necessary assistance and cooperation as reasonably requested by the other Parties to enable them to comply with their obligations under FOIA and EIR;
  - 17.2.2 notify the other Parties of requests for information that it receives as soon as practicable and in any event within 5 days of receipt;
  - 17.2.3 provide to the other Parties a copy of any information it holds and which is required in order to respond to a request for information within 5 days (or such other period as the Parties may reasonably specify) of any request for such Information; and
  - 17.2.4 not respond directly to a request for information unless without first consulting with the other Parties.

**18. GOVERNING LAW AND JURISDICTION**

18.1 This MoU shall be governed by and construed in accordance with the laws of England and Wales.

18.2 Subject to the provisions of Clause 8, the Parties agree that the courts of England shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this MoU and irrevocably submit to the jurisdiction of those courts.

19. **FURTHER ASSURANCE**

Each Party shall do all things and execute all further documents necessary to give full effect to this MoU.

20. **THIRD PARTY BENEFIT**

The Platform Contractor may enforce clauses 3.2, 8.3 and 8.6 of this MoU as a third party. As between the ICB and NHS England the Platform Contractor's consent is not required to a variation to this MoU.

The Parties have signed this MoU on the day and year first above written.

## **Schedule 1**

### **Data principles**

- 1.9 The parties will use a data sharing agreement or a joint controller agreement to document the sharing of personal data.
- 1.10 The parties agree to the accurate, timely, secure and confidential sharing of confidential patient information and pseudonymised and anonymised data where such data sharing is in line with the legal duties of health and care professionals and Caldicott principles.
- 1.11 The parties will ensure that data sharing accords with the Parties' legal, statutory and common law duties, and the requirements of any additional guidance.
- 1.12 Where the sharing of data is necessary, it will be minimised to that which is required and appropriate and only on a "need to know" basis.
- 1.13 The Parties will maintain policies and procedures to meet the NHS requirements for Data Protection, Data Security and Confidentiality.
- 1.14 The processing of data by service providers and third parties contracted by the Parties will be under a data processing agreement which will meet the requirements of Data Protection Legislation.
- 1.15 The parties will ensure effective procedures are in place to ensure transparency for data subjects and address complaints and the exercise of individual rights relating to the use of data.
- 1.16 The parties will complete an assessment of the impact of data use and sharing (either individually or jointly), by the maintenance of data protection impact assessments and reflection on the application of these principles.

## Schedule 2

### National Data Platform Authorised User terms

In these terms (**Terms**) the ICB as User is referred to as “the Customer”.

**Grant of Limited Licence** Subject to Customer’s continued and full compliance with all of the terms and conditions of these Terms, Palantir hereby grants to Customer a non-transferable, non-assignable, nonexclusive, limited licence, without any right to sublicense, during the applicable Term (as defined below) to install, execute and use the Service in object code format solely for Customer’s internal business purposes, and only (i) for use in accordance with the technical specification documentation provided to Customer by Palantir with regard to the Service (“**Documentation**”) and (ii) for the purposes specified *below*. Unless otherwise agreed to in writing by the parties, including in any applicable Order: (a) Customer will be responsible, at its own cost and expense, for the procurement and maintenance of all necessary hardware including, without limitation, servers needed to fully operate and support the Service and (b) database licences are not included.

**Scope** The Service referred to in these Terms is NHS Foundry as defined in the Services Agreement between NHS England and Palantir Technologies UK, Ltd of 11 June 2023 (the **Platform Contract**). Customer benefits from use of NHS Foundry under a Single Environment Base Foundry Licence (PT-CAP-BASE) under that Services Agreement.

**Term** The applicable Term under these terms is the period from the date of acceptance of these terms until 11 June 2023 unless extended by agreement of Palantir.

**Palantir Licensing Terms and Conditions** The terms and conditions at Schedule 6 below (“**Palantir License Terms**”) bind the Customer in relation to use of the Service subject to the terms of the Platform Contract and as amended below. Capitalised terms not defined herein take the meaning set out in the Palantir License Terms.

### Rights to Customer Data and use of personal data

*Customer rights* Clause 4.1 of the Palantir License Terms applies to Customer Data and as between the Parties, Customer retains all rights, title, and interest in and to the Customer Data. Palantir agrees to waive or (at Customer’s option) transfer to Customer all Intellectual Property Rights in Customer Data where any such Intellectual Property Rights vest in Palantir.

*No Palantir access* Palantir’s rights to access and use Customer Data are only those set out in these Terms and any data processing agreement and Palantir is not permitted to collect, perform or retain any inspection, analysis, aggregation, evaluation, reproduction, metrics or analytics of Customer Data or use Customer Data or any information derived from it as the basis for any product or service, except as set out in the paragraph *Metrics* below.

*Metrics* Palantir is permitted to collect metrics relating to (a) Customer’s use of Service, for the purpose of the continued provision of Service in accordance with the Palantir License Terms (including for purposes relating to the information security of the Service) and (b) (provided such data is not personal data) usage and diagnostics data for the purposes of analysis, maintenance and improvement of Palantir’s products and services, such data related only to the performance, management and efficiency metrics of Service and not including any data accessed or derived from Customer Data.

*Re-identification* In respect of Customer Data which is Personal Data, Palantir shall not take or permit Palantir staff to take any action directed towards, where applicable, the identification of any data subject, the reversal of any de-identification, anonymisation or pseudonymisation steps or methods applied to such data, the attribution of Personal Data to a Data Subject or the acquisition or processing of any additional information in pursuit of any of those objectives, unless otherwise requested by Customer as part of the provision of the Products and Service performance.

*Access controls* Palantir will comply with such access controls relating to Customer Data as the Customer may from time to time require.

*Transfers outside the UK* Except as set out in the paragraph *Metrics* above or in accordance with a data processing agreement between Palantir and Customer, Palantir will not process or transfer any Personal Data within Customer Data outside the UK.

**Use of Cloud Solution** The Customer and Palantir agree and acknowledge that:

- a) Access to the Products and Services other than by Customer's authorised users as set out herein or by any third party is permitted only with the prior written agreement of Palantir.
- b) Palantir acknowledges that use of the Service under these Terms for the Programme by the Customer is use for Customer's internal business purposes.
- c) The hosting of the Service is on Amazon Web Services infrastructure.
- d) Customer is not permitted to use the Service or any output from it, and Customer acknowledges that the Service is not intended to be used:
  - a. for automated decision making (including profiling) in relation to an individual without intervention or direction of a natural person;
  - b. as the sole basis for any clinical judgment or for decision, diagnostic and/or therapeutic purposes without the intervention or direction of a clinical professional;
  - c. as a medical device or an accessory to a medical device (as defined in the Medical Devices Regulations 2002).
- e) The Customer will comply with applicable laws in its use of the Service and will not breach any rights of third parties in relation to such use.

**UK hosting** The Foundry instance hosting Customer Data will be in the UK.

**Disaster recovery** Palantir shall establish and maintain business continuity and disaster recovery arrangements relating to its operations supporting Service performance in accordance with good industry practice.



### **Schedule 3**

#### **The programme**

The Programme aims to help ICBs and ICSs across England deliver and fulfil their population health, health system administration and other management, data analytics and reporting functions, to deliver better outcomes for population health, tackle inequalities, co-ordinate care, speed up diagnosis, plan local services, support research into new treatments and boost innovation, and ensure that the NHS can continue to offer cutting-edge care, save lives and deliver better outcomes for patients.

The ICB and Integrated Care System will work with the Platform Contractor to configure or expand the functionalities of the Platform Software or integrate further ICB Systems, in each case to meet the requirements of the Programme. Any use cases currently outside of the scope of the Programme will be discussed and agreed with NHSE prior to forming part of the Programme.

## Schedule 4

### Data processing agreement

<b>Controller</b>	
<b>Processor</b>	
(together the <b>Parties</b> and each a Party)	
<b>Date</b>	

This is an agreement (**Agreement**) between the Parties (as defined above) relating to the processing of personal data, made further to the terms of an agreement for the provision of certain software services between NHS England and the Processor of 11 December 2021 (the **Services Agreement**). Under the terms of the Services Agreement, the Controller is beneficiary of certain software and data processing services which this Agreement governs in relation to Personal Data.

This Agreement is entered into on the date first appearing above.

Capitalised terms used in this Agreement have the meanings given to them in the Data Protection Legislation or the definitions schedule.

- 1) The Parties acknowledge that for the purposes of the Data Protection Legislation, the Processor is a processor and the Controller is the controller (or processor in relation to another controller, if so designated above)).
- 2) The processing that the Processor is authorised to do, whether the Controller acts as a controller or processor, is listed in the Annex.
- 3) The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 4) The Processor shall provide all reasonable assistance to the Controller in the preparation of any DPIA prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - b) an assessment of the necessity and proportionality of the Processing in relation to the provision of services under the Services Agreement;
  - c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 5) The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Agreement:
  - a) Process that Personal Data only in accordance with the Annex, unless the Processor is required to do otherwise by applicable law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by applicable law;
  - b) ensure that it maintains physical and IT security that follows Good Industry Practice to ensure that there is no unauthorized access to any Personal Data and has in place appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and

services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of such measures) having taken account of the:

- i) nature of the data to be protected;
  - ii) harm that might result from a Data Loss Event;
  - iii) state of technological development; and
  - iv) cost of implementing any measures;
- c) ensure that :
- i) the Processor Personnel do not Process Personal Data except in accordance with this Agreement (and in particular the Annex, and such other Annexes in relation to specific dataflows or data processing activities as the parties may agree);
  - ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (1) are aware of and comply with the Processor's duties under this Agreement and the obligations to process Personal Data in accordance with the terms of the Services Agreement including in relation to data protection, confidentiality and matters relating to the Freedom of Information Act 2000);
    - (2) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
    - (3) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (4) have undergone adequate training in the use, care, protection and handling of Personal Data;
  - d) not transfer Personal Data outside of the UK and the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer under Data Protection Legislation as determined by the Controller;
    - ii) the Data Subject has enforceable rights and effective legal remedies;
    - iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by law to retain the Personal Data.
- 6) Subject to paragraph 7) of this DPA, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Services Agreement it:
- a) receives a Data Subject Request (or purported Data Subject Request);

- b) receives a request to rectify, block or erase any Personal Data;
  - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Services Agreement;
  - e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - f) becomes aware of a Data Loss Event.
- 7) The Processor's obligation to notify under paragraph 6) of this Agreement shall include the provision of further information to the Controller in phases, as details become available.
- 8) Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6) of this Agreement (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- a) the Controller with full details and copies of the complaint, communication or request;
  - b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d) assistance as requested by the Controller following any Data Loss Event; and/or
  - e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 9) The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- a) the Controller determines that the Processing is not occasional;
  - b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of UK GDPR; or
  - c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 10) The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 11) The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 12) Before allowing any Subprocessor to Process any Personal Data related to the Agreement, the Processor must:
- a) notify the Controller in writing of the intended Subprocessor and Processing;
  - b) obtain the written consent of the Controller;
  - c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this DPA such that they apply to the Subprocessor; and
  - d) provide the Controller with such information regarding the Subprocessor as the Controller may

reasonably require.

- 13) The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 14) The Processor will not process or transfer any Personal Data outside the UK except as provided by the User Terms.
- 15) For the purposes of paragraph 5)d) and without prejudice to the other terms of this DPA Processor undertakes to:
  - a) provide appropriate safeguards in relation to transfers of personal data between Palantir group entities for the purpose of performing Services
  - b) ensure that transfers of personal data between the Processor and third party sub-processor, are subject to contractual terms between the Processor and the relevant third party sub-processor providing appropriate safeguards and containing clauses equivalent to the clauses in this DPA.
- 16) The Parties agree to take account of any guidance issued by the Information Commissioner's Office.
- 17) The Processor is not liable for loss or damage suffered by the Controller resulting from the Processor's breach of any obligation under this Agreement to the extent that such loss or damage results from an act, omission or instruction of the Controller.
- 18) For the purposes of paragraph 12), the Controller consents to the use by Processor of the following Subprocessors:

The entities listed in Exhibit A of the data processing agreement found at:  
<https://www.palantir.com/data-protection/agreement/>

The following entities and their affiliates that may be providing contractors for the purpose of training, implementation and support services (as amended from time to time):

NHS Shared Business Services

NHS Commissioning Support Units

Accenture (UK) Limited

PriceWaterhouseCoopers UK Limited

PA Consulting Ltd

Sopra Steria

KPMG UK Ltd

Hexegic Limited

## Definitions schedule

<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
<b>Data Protection Legislation</b>	the Data Protection Act 2018, UK GDPR, and all applicable data protection and privacy legislation, legally binding guidance and codes of practice issued by the Information Commissioner in force from time to time
<b>Data Subject Request</b>	a request made by or on behalf of a Data Subject in accordance with rights granted under the Data Protection Legislation to access their Personal Data
<b>DPIA</b>	an assessment by a controller of the impact of the envisaged Processing on the protection of Personal Data
<b>Good Industry Practice</b>	standards, practices, methods and process conforming to the applicable law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking under the same or similar circumstances.
<b>Processor Personnel</b>	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement
<b>Subprocessor</b>	any third party appointed to process Personal Data on behalf of that Processor related to this Agreement
<b>UK GDPR</b>	UK GDPR as defined in and read in accordance with the Data Protection Act 2018.

## Annex

### Processing Personal Data

- 1) The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
- 2) The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
- 3) The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 4) Any such further instructions shall be incorporated into this Annex or where appropriate another annex describing the relevant Processing in the form of this Annex.

Description	Details
Identity of controller for each Category of Personal Data	[Name] is controller for all Personal Data categories. <sup>1</sup> [Name] is controller for all Personal Data categories and [name] is its processor.
Duration of the Processing	Duration of the Services Agreement or, if shorter, Controller's use of Processor's software.
Nature and purposes of the Processing	<p>Use of Processor's data analytics platform to deliver and fulfil Controller's population health, health system administration and other management, data analytics and reporting functions, to deliver better outcomes for population health, tackle inequalities, co-ordinate care, speed up diagnosis, plan local services, support research into new treatments and boost innovation, and ensure that the NHS can continue to offer cutting-edge care, save lives and deliver better outcomes for patients.</p> <p>Administration of user (staff) data in order to administer use of Processor's platform and for the purposes above.</p> <p>Training in the use of the platform, and configuration of data analytics functionality in the platform (for which purposes Subprocessor's services may be utilised).</p> <p>Processing of patient and user personal data to provide aggregate metrics and performance data for the purpose of sharing with NHSE under Controller instructions as set out in the MoU.</p> <p>Processor complies with obligations in Services Agreement and in the configuration of its software approved by Controller in relation to access to all Personal Data.</p> <p>Processor's instructions are to provide its platform (NHS Foundry) under the Services Agreement for the above purposes.</p> <p>Processor is additionally required to pseudonymise certain personal data where instructed by the Controller.</p>
Type of Personal Data	{●}
Categories of Data Subject	{●} Controller's staff using Processor's platform.
Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under Union or Member State law to preserve that type of data	Processor's platform is configured only to retain data for defined periods that can be configured by Controller. Processor will delete or provide access for Controller to remove data from the Controller's Foundry instance at the end of duration of processing.

<sup>1</sup> Drafting note: delete as appropriate.



Description	Details
Transfers of data outside the UK	<p>All data stored in the platform is stored in the UK. For the purposes of data transfer outside the UK there is a distinction between (a) Controller data in the platform and (b) Foundry's Security Logs, which may contain data relating to users and usage of the platform and are transferred outside the UK.</p> <p>All Controller data in the platform will be hosted in the UK. This includes any data that Controller provides to the platform, and any downstream datasets that are derived using that data.</p> <p>The only potential transfer of personal data outside the UK comes from Foundry's Security Logs, which record only security-relevant logs of some actions that users of Foundry attempt to perform in the platform. These logs may contain identifying information relating to usage and users of Foundry, such as user identifiers (IP addresses/email addresses/usernames); login attempts; search queries; and file paths. These logs will be stored, and accessible solely, by Palantir's Information Security Team on a secure SIEM server in the United States, and are encrypted at in transit and at rest. The logs will only be used to monitor or investigate security concerns such as escalation of privileges, attempts to bypass controls, malicious use of applications, and attempts to exfiltrate large amounts of data. These Security Logs are critical in keeping the platform secure and meeting the expectations of the NCSC's Cloud Security Principles.</p> <p>Any such transfer is subject to standard contractual clauses as required by applicable law in relation to such transfers.</p>



**Schedule 5****Form of addendum**

<b>Addendum to Memorandum of Understanding relating to the ICCP Programme</b>	
<b>Date of MoU</b>	
<b>Parties</b>	NHS England ICB [ ]
<b>Programme Solution</b>	<i>Describe Programme Solution</i>
<b>Additional User terms</b>	<i>Add additional user terms, if any</i>
<b>Funding Plan</b>	<i>Describe or refer to any funding arrangements and the matters described in clause 5.2</i>
<b>Relevant ICB System Contracts</b>	
<b>Additional governance arrangements</b>	
<b>Additional data processing annex</b>	<i>Add, in the form set out in Schedule 4</i>
<b>Other matters</b>	

## **Schedule 6**

### **Palantir Terms of Service**

## PALANTIR TERMS OF SERVICE

These Palantir Terms of Service (collectively with any attachments, addenda, or exhibits referenced herein and any Order Forms (as defined below) that reference these Terms of Service, the “**Agreement**”) apply to any Order Form(s) between Customer and Palantir (each a “**Party**” and collectively the “**Parties**”) and are effective as of the Effective Date of the first Order Form between the Parties.

### 14. Certain Definitions.

14.1 “**Affiliate**” means an entity that, directly or indirectly, owns or controls or is owned or controlled by, or is under common ownership or control with, a Party. As used herein, “**control**” means the power to direct, directly or indirectly, the management or affairs of an entity, and “**ownership**” means the beneficial ownership of more than 50% of the voting equity securities or other equivalent voting interests of an entity.

14.2 “**Customer Data**” means any data (including aggregated or transformed versions thereof and analytical outputs), models, algorithms, analyses, transformation code, or other content that is provided by, whether directly or indirectly from a third party, or created by Customer or Users using the Service, for integration, use, or other processing in or through the Service.

14.3 “**Data Connection Software**” means Palantir software provided for installation locally for Customer to connect Customer Data to the Service.

14.4 “**Documentation**” means any technical documentation for the Service made available by Palantir to Customer in connection with the Service.

14.5 “**Intellectual Property Rights**” means all rights, title, and interest in and to any trade secrets, patents, copyrights, service marks, trademarks, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, rights of publicity, and any similar rights, including any applications, continuations, or registrations with respect to the foregoing, under the laws or regulations of any governmental, regulatory, or judicial authority.

14.6 “**Order Form**” means an ordering document, specifying the Service and/or Professional Services (if applicable) to be provided thereunder that is entered into between Palantir and Customer, including any attachments, addenda, or exhibits thereto.

14.7 “**Palantir Technology**” means the Service, Documentation, Data Connection Software, Sample Materials, models, and application programming interfaces (APIs) provided or made available to Customer as a service in connection with this Agreement, and any improvements, modifications, derivative works, patches, upgrades, and updates thereto.

14.8 “**Sample Materials**” means any technology and materials provided or made available by Palantir to Customer for use with the Service, including sample code, software libraries, command line tools, data integration code, templates, and configuration files.

14.9 “**Service**” means Palantir’s proprietary software-as-a-service offering(s) as set forth in an Order Form.

14.10 “**Taxes**” means any applicable sales, use, transaction, value added, goods and services tax, harmonized sales tax, withholding tax, excise or similar taxes, and any foreign, provincial, federal, state or local fees or charges (including, but not limited to, environmental or similar fees), duties, costs of compliance with export and import controls and regulations, and other governmental assessments, including any penalties and interest in respect thereof, imposed on, in respect of, or otherwise associated with any transaction hereunder.

14.11 “**Third Party Content**” means any third party data, services, or applications that interoperate with the Service which Palantir may, at Customer’s sole discretion, facilitate the use of in connection with the Service and subject to an independent agreement between Customer and such third party.

14.12 “**Third Party Services**” means third party services that Palantir may utilize in the provision of the Service as set forth in the Documentation (or as otherwise agreed by the Parties).

### 15. Provision of Service.

15.1 Service Access. Palantir shall make available the Service to Customer during the applicable Order Term (as defined below) solely for use by Customer and its Users (as defined below) in accordance with the terms and conditions of this Agreement and the Documentation for Customer’s internal business purposes or as otherwise set forth in an Order Form.

15.2 Data Connection Software License. If applicable for use of the Service, Palantir grants to Customer during the applicable Order Term a non-exclusive, nontransferable, non-sublicensable, and limited license to use the Data Connection Software for the sole purposes of using and connecting to the Service. Customer shall allow Palantir to access the Data Connection Software remotely as necessary to provide the Service.

15.3 Sample Materials License. Palantir may make available Sample Materials for use by Customer during the Order Term. If applicable, Palantir grants to Customer during the applicable Order Term a non-exclusive, nontransferable, non-sublicensable, and limited license, to copy, modify, and use Sample Materials solely to the extent necessary for Customer’s use of the Service.

15.4 Usage Data. Palantir may collect and use metrics, analytics, statistics, or other data related to Customer’s use of the Service (a) to provide and secure the Service for the benefit of Customer and (b) to analyze, maintain, support, and improve the Service (provided that in relation to (b), the data collected shall not include personal data or Customer Data).

15.5 Security. Palantir has established an Information Security Program (“**ISP**”) designed to ensure strong practical security controls and compliance with industry best practice standards and frameworks. A comprehensive list of Palantir’s certifications can be found at <https://www.palantir.com/information-security/> under “Compliance and Accreditation.” The Palantir ISP additionally is aligned with NIST 800-53, TSC (Trust Service Criteria), and CIS (Center for Internet Security) frameworks and management systems. Palantir will make available to Customer upon written request (no more frequently than once per calendar year) Palantir’s: (a) ISAE 3000/SSAE18 SOC2 TYPE II Report; (b) Penetration Test Attestation Letter; and (c) ISO 27001

Certificate. Palantir shall provide the above audit reports relating to Palantir's operating practices and procedures to the extent relevant to the Service. Customer acknowledges that Palantir's documentation noted in this Section and other related information are Palantir's Confidential Information (as defined below) hereunder.

15.6 Service Levels and Support. During an Order Term, Palantir will provide Customer the service levels and support consistent with the support terms and service levels in the Palantir Service Level Agreement and Support Policy.

15.7 Professional Services. Palantir shall provide Customer with implementation, enablement, training, or other professional services as specified in an Order Form or otherwise in Palantir's discretion and subject to any fees thereunder ("**Professional Services**"). The performance of any Professional Services shall not affect ownership of the Palantir Technology and other materials provided by Palantir under this Agreement.

## 16. Customer Use of Service.

16.1 Accounts. Customer may provision accounts to access the Service ("**Accounts**") for its (a) employees; (b) contractors; or (c) other users (including its Affiliates' employees or contractors) specified in an Order Form for the purposes authorized hereunder (collectively, "**Users**"). Customer shall be responsible for (i) administering Accounts; (ii) using industry standard security measures to protect Accounts (including, without limitation, using multi-factor authentication); and (iii) any activity on Accounts. Customer shall immediately de-activate any Account upon becoming aware of the compromise or unauthorized use thereof, or upon Palantir's reasonable request.

16.2 Data Protection. NOT USED

## 17. Proprietary Rights.

17.1 Customer Data Ownership. As between the Parties, Customer owns all rights, title, and interest, including all Intellectual Property Rights, in and to Customer Data and any modifications made thereto. Subject to the Agreement, Customer grants to Palantir a non-exclusive, worldwide, and royalty-free right and license during the Term (as defined below) to process Customer Data solely to provide the Service and/or Professional Services. Customer further grants to Palantir a worldwide, perpetual, irrevocable, and royalty-free right and license to use, distribute, disclose, and make and incorporate into the Palantir Technology any suggestions, enhancement request, recommendation, or other feedback provided by Customer or Users relating to the Palantir Technology.

17.2 Palantir Ownership. As between the Parties, Palantir owns all rights, title, and interest, including all Intellectual Property Rights, in and to the Palantir Technology, and any other related documentation or materials provided by Palantir and any derivative works, modifications, or improvements of any of the foregoing (including, without limitation, all Intellectual Property Rights embodied in any of the foregoing). Except for the express rights granted herein, Palantir does not grant any other licenses or access, whether express or implied, or any ownership rights to any Palantir Technology, software, services, or Intellectual Property Rights.

17.3 Restrictions. Customer will not (and will not allow any third party to): (a) gain or attempt to gain unauthorized access to the Service or infrastructure, or any element thereof, or circumvent or interfere with any authentication or security measures of the Service; (b) interfere with or disrupt the integrity or performance of the Service; (c) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs through the Service; (d) decompile, disassemble, scan, reverse engineer, or attempt to discover any source code or underlying ideas or algorithms of any Palantir Technology (except to the extent that applicable law expressly prohibits such a reverse engineering restriction, and in such case only upon prior written notice to Palantir); (e) provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use or allow others to use the Service for the benefit of any third party (except as set forth in an Order Form); (f) list or otherwise display or copy any code of any Palantir Technology, except for Sample Materials to the extent necessary for Customer's use of the Service; (g) copy any Palantir Technology (or component thereof) or develop any improvement, modification, or derivative work thereof, except for Sample Materials to the extent necessary for Customer's use of the Service; (h) include any portion of any Palantir Technology in any other service, equipment, or item; (i) allow the transfer, transmission (including, without limitation, making available on-line, electronically transmitting, or otherwise communicating to the public), export, or re-export of any Palantir Technology (or any portion thereof) or any Palantir technical data; (j) perform penetration tests on the Service unless authorized by Palantir; (k) use, evaluate, or view the Palantir Technology for the purpose of designing, modifying, or otherwise creating any environment, software, models, algorithms, products, program, or infrastructure or any portion thereof, which performs functions similar to the functions of the Palantir Technology; or (l) remove, obscure, or alter, or otherwise violate the terms of any copyright notice, trademarks, logos, and trade names and any other notices (including third party open source or similar licenses) or identifications that appear on or in any Palantir Technology and any associated media. Notwithstanding the foregoing, or any statement to the contrary herein, Third Party Content may be made available with notices and open source or similar licenses from such communities and third parties that govern the use of those portions, and Customer hereby agrees to be bound by and fully comply with all such licenses; *however*, the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all such Third Party Content.

18. Confidentiality. Each Party (the "**Receiving Party**") shall keep strictly confidential all Confidential Information of the other Party (the "**Disclosing Party**"), and shall not use such Confidential Information except for the purposes of this Agreement, and shall not disclose such Confidential Information to any third party other than disclosure on a need-to-know basis to the Receiving Party's directors, employees, agents, attorneys, accountants, subcontractors, or other representatives who are each subject to obligations of confidentiality at least as restrictive as those herein ("**Authorized Representatives**"). The Receiving Party shall use at least the same degree of care as it uses to prevent disclosure of its own confidential information, but in no event less than reasonable care. The Receiving Party may, without violating the obligations of the Agreement, disclose Confidential Information to the extent required by a valid court or government order, *provided* that the Receiving Party: (a) provides the Disclosing Party with reasonable prior written notice of such disclosure and (b) uses reasonable efforts to limit disclosure and to obtain, or to assist the Disclosing Party in obtaining, confidential treatment or a protective order preventing or limiting the disclosure, while allowing the Disclosing Party to participate in the proceeding. "**Confidential Information**" means (i) in the case of Palantir, Palantir Technology (including any information relating thereto); (ii) in the case of Customer, Customer Data; and (iii)

any other information which by the nature of the information disclosed or the manner of its disclosure would be understood by a reasonable person to be confidential, in each case, in any form (including, without limitation, electronic or oral) and whether furnished before, on, or after the Effective Date; *provided, however*, that Confidential Information shall not include any information that (1) is or becomes part of the public domain through no act or omission of the Receiving Party or its Authorized Representatives; (2) is known to the Receiving Party at the earlier of the Effective Date or the time of disclosure by the Disclosing Party (as evidenced by written records) without an obligation to keep it confidential; (3) was rightfully disclosed to the Receiving Party prior to the Effective Date from another source without any breach of confidentiality by the third party discloser and without restriction on disclosure or use; or (4) the Receiving Party can document by written evidence that such information was independently developed without any use of or reference to Confidential Information. The Receiving Party shall be liable for any breaches of this Section by any person or entity to which the Receiving Party is permitted to disclose Confidential Information pursuant to this Section. The Receiving Party's obligations with respect to Confidential Information shall survive termination of this Agreement for five (5) years; *provided, however*, that the Receiving Party's obligations hereunder shall survive termination and continue in perpetuity, or as long as permitted by applicable law, with respect to any Confidential Information that is a trade secret under applicable law.

**19. Fees and Payment; Taxes.** The Service is deemed delivered upon the provision of access to Customer or for Customer's benefit. If there are fees set forth in an Order Form, such fees will be invoiced and payable on an annual upfront basis, or as otherwise set forth in the Order Form. All payments shall be made via wire transfer to an account designated by Palantir in the currency set forth on the corresponding invoice within thirty (30) days after the date of issuance of Palantir's invoice. Any late payments shall be subject to a service charge equal to the lesser of 1.5% per month of the amount due or the maximum amount of interest allowed by applicable law. Unless otherwise stated in an Order Form, fees are exclusive of applicable Taxes. Customer shall be responsible for all Taxes arising under this Agreement (except taxes on or measured by the net income of Palantir) so that after payment of such Taxes the amount Palantir receives is not less than the fees set forth in the Order Form. In the event a double taxation treaty applies, which provides a zero or reduced withholding tax rate, Customer agrees (a) not to withhold taxes in case of a zero withholding tax rate or (b) to withhold at the reduced tax rate in accordance with the double taxation treaty.

**20. Term and Termination.**

20.1 Term. This Agreement is effective as of the Effective Date and shall continue in effect for six (6) months from the date of expiration of the last to expire Order Form (the "**Term**"), unless otherwise terminated as provided herein. The term of each Order Form shall continue for the duration set forth in the Order Form (the "**Order Term**"), unless otherwise terminated as provided herein.

20.2 Termination for Cause. Without limiting either Party's other rights, either Party may terminate this Agreement for cause (including any then-current Order Forms) (a) in the event of any material breach by the other Party of any provision of this Agreement and failure to remedy the breach (and provide reasonable written notice of such remedy to the non-breaching Party) within thirty (30) days following written notice of such breach from the non-breaching Party or (b) if the other Party seeks protection under any bankruptcy, receivership, or similar proceeding or such proceeding is instituted against that Party and not dismissed within ninety (90) days. Except where an exclusive remedy is specified in this Agreement, the exercise by either Party of the right to terminate under this provision shall be without prejudice to any other remedies it may have under this Agreement or by law. In the event of termination of this Agreement by Customer for cause pursuant to Section 7.2(a), Palantir shall provide a pro-rated refund of any fees pre-paid for Services not utilized as of the effective date of termination. All non-expired Order Forms shall automatically terminate upon termination of this Agreement.

20.3 Effect of Termination. Upon any termination or expiration of this Agreement, except as specifically set forth below, all Customer's rights, access, and licenses granted to Palantir Technology shall immediately cease, and Customer shall promptly return or destroy all Data Connection Software, Sample Materials, Documentation, and all other Confidential Information of Palantir and, upon written request, certify its compliance with the foregoing to Palantir in writing within ten (10) days of such request. Upon termination or expiration of all Order Forms, if requested by Customer, Customer shall, subject to the terms of this Agreement, have access to the Service for thirty (30) days solely for the purpose of retrieving Customer Data. Palantir shall thereafter delete all Customer Data. Notwithstanding the foregoing, Palantir shall retain, subject to the other terms of this Agreement, and solely for security purposes, usage information and metadata related to the security of the Service, excluding Customer Data (except for security-related information such as IP addresses, usernames, log-in attempts, and search queries), for a period of two (2) years following the last event logged. No termination or expiration of this Agreement shall limit or affect rights or obligations that accrued prior to the effective date of termination or expiration (including, without limitation, payment obligations). Sections 4, 5, 6, 7, 8, 9, 11, 12, and 13 shall survive any termination or expiration of this Agreement.

**21. Indemnification.**

21.1 Palantir Indemnification. Palantir shall defend Customer against any claim of infringement or violation of any Intellectual Property Rights asserted against Customer by a third party based upon Customer's use of Palantir Technology in accordance with the terms of this Agreement and indemnify and hold harmless Customer from and against reasonable costs, attorneys' fees, and damages, if any, finally awarded against Customer pursuant to a non-appealable order by a court of competent jurisdiction in such claim or settlement entered into by Palantir. If Customer's use of any of the Palantir Technology is, or in Palantir's opinion is likely to be, enjoined by a court of competent jurisdiction due to the type of infringement specified above, or if required by settlement approved by Palantir in writing, Palantir may, in its sole discretion: (a) substitute substantially functionally similar products or services; (b) procure for Customer the right to continue using the Palantir Technology; or (c) if Palantir reasonably determines that options (a) and (b) are commercially impracticable, terminate this Agreement and refund to Customer a pro-rated portion of the fees paid hereunder for the terminated Palantir Technology that reflects the remaining portion of the Order Terms of any Order Forms in effect at the time of termination. The foregoing indemnification obligations of Palantir shall not apply: (i) if Palantir Technology is modified by or at the direction of Customer or Users, but only to the extent the alleged infringement would not have occurred but for such modification; (ii) if Palantir Technology is combined with non-Palantir products not authorized by Palantir, but only to the extent the alleged infringement would not have occurred but for such combination; (iii) to any unauthorized use of Palantir Technology, any use that is not consistent with the Documentation, or use during any period of suspension; (iv) to any Customer Data; or (v) to any non-Palantir products or services.

**21.2 Customer Indemnification.** Customer shall defend Palantir against any third party claim asserted against Palantir arising from or relating to (a) Customer's violation of applicable law; (b) Customer Data; or (c) any Customer-offered product or service (except if such claim is primarily attributable to the Service as offered by Palantir) and indemnify and hold harmless Palantir from and against related costs, attorneys' fees, and damages, if any, issued by a competent authority or finally awarded pursuant to a non-appealable order.

**21.3 Indemnification Procedure.** The obligations of the indemnifying Party shall be conditioned upon the indemnified Party providing the indemnifying Party with: (a) prompt written notice (in no event to exceed twenty (20) days) of any claim, suit, or demand of which it becomes aware; (b) the right to assume the exclusive defense and control of any matter that is subject to indemnification (provided that the indemnifying Party will not settle any claim unless it unconditionally releases the indemnified Party of all liability and does not admit fault or wrongdoing by the indemnified Party, unless the indemnified Party otherwise consents in writing); and (c) cooperation with any reasonable requests assisting the indemnifying Party's defense and settlement (at the indemnifying Party's expense). This Section sets forth each Party's sole liability and obligation and the sole and exclusive remedy with respect to any claim of Intellectual Property Rights infringement.

## **22. Palantir Warranty and Disclaimer.**

**22.1 Palantir Warranty.** Palantir warrants that, during the Term, (a) the Service will be provided substantially in accordance with the applicable Documentation and (b) the Professional Services will be provided in a professional and workmanlike manner. In the event of a breach of an above warranty, Customer may give Palantir written notice of termination of this Agreement, which termination will be effective thirty (30) days after Palantir's receipt of the notice, unless Palantir is able to remedy the breach prior to the effective date of termination. This warranty shall not apply to the extent such breach is caused by Customer Data or misuse or unauthorized modification of the Service or any Customer-selected hardware used in connection with the Service. In the event of termination of this Agreement pursuant to Customer's exercise of its right under this Section, Customer shall be entitled to receive from Palantir, as its sole and exclusive remedy, a refund of a pro-rated portion of the fees paid hereunder that reflects the remaining portion of the Order Terms of any Order Forms in effect at the time of termination.

**22.2 Disclaimer.** NO AMOUNTS PAID HEREUNDER ARE REFUNDABLE OR OFFSETTABLE EXCEPT AS OTHERWISE EXPLICITLY SET FORTH HEREIN. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PALANTIR TECHNOLOGY AND PROFESSIONAL SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY OTHER WARRANTIES OF ANY KIND, AND PALANTIR AND ITS SUPPLIERS AND SERVICE PROVIDERS HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, RELATING TO THE PALANTIR TECHNOLOGY AND PROFESSIONAL SERVICES PROVIDED HEREUNDER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING LIMITATION, PALANTIR DOES NOT WARRANT THAT THE PALANTIR TECHNOLOGY AND PROFESSIONAL SERVICES WILL MEET CUSTOMER REQUIREMENTS OR GUARANTEE ANY RESULTS, OUTCOMES, OR CONCLUSIONS OR THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. PALANTIR IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY SERVICES (INCLUDING, WITHOUT LIMITATION, UPTIME GUARANTEES, OUTAGES, OR FAILURES), CUSTOMER DATA, OR ANY THIRD PARTY CONTENT. PALANTIR DOES NOT CONTROL THE TRANSFER OF INFORMATION OR CUSTOMER DATA OVER COMMUNICATIONS FACILITIES, THE INTERNET, OR THIRD PARTY SERVICES, AND THE SERVICE MAY BE SUBJECT TO DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PALANTIR IS NOT RESPONSIBLE FOR ANY DELAYS, FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. PALANTIR SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ACTIONS TAKEN OR CONCLUSIONS DRAWN BY CUSTOMER BASED ON CUSTOMER'S USE OF THE SERVICE.

**23. Customer Warranty.** Customer warrants that (a) Customer has provided all necessary notifications and obtained all necessary consents, authorizations, approvals, and/or agreements as required by any applicable laws or policies, and has informed Palantir of any obligations applicable to Palantir's processing of Customer Data, in order to enable Palantir to process Customer Data, including personal data, according to the scope, purpose, and instructions specified by Customer and that Customer will not direct the processing of Customer Data by Palantir in violation any laws or regulations (including localization requirements) or rights of third parties; and (b) it will not use the Service for any unauthorized or illegal purposes.

**24. Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY (A) COST OF PROCUREMENT OF ANY SUBSTITUTE PRODUCTS OR SERVICES, OR COST OF REPLACEMENT OR RESTORATION OF ANY CUSTOMER DATA; (B) ECONOMIC LOSSES, EXPECTED OR LOST PROFITS, REVENUE, ANTICIPATED SAVINGS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF OR DAMAGE TO GOODWILL OR REPUTATION; AND/OR (C) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE, WHETHER ARISING OUT OF PERFORMANCE OR BREACH OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE PALANTIR TECHNOLOGY, EVEN IF THE PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH LOSS OR DAMAGES. EXCEPT FOR THE PARTIES' OBLIGATIONS SET FORTH IN SECTIONS 4 AND 8 OF THIS AGREEMENT AND CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY AND ITS AFFILIATES TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS OF ANY KIND SHALL NOT EXCEED THE GREATER OF (I) THE FEES PAID OR PAYABLE TO PALANTIR BY CUSTOMER UNDER THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM FOR THE SERVICE OR PROFESSIONAL SERVICES THAT GAVE RISE TO SUCH CLAIM OR (II) ONE HUNDRED THOUSAND DOLLARS (USD 100,000), AND THAT SUCH REMEDY IS FAIR AND ADEQUATE. THE LIMITATIONS SET FORTH IN THIS SECTION 11 SHALL APPLY REGARDLESS OF WHETHER AN ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY.

**25. Dispute Resolution.** Any dispute, controversy, or claim arising from or relating to this Agreement, including arbitrability, that cannot be resolved following good faith discussions within sixty (60) days after notice of a dispute shall be finally settled by arbitration. If Customer is located in the Americas, then the governing law shall be the substantive laws of the State of New York, without regard to conflicts of law provisions thereof, and arbitration shall be administered in New York, New York, United States under the Comprehensive Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services, Inc.

("JAMS") and the Federal Rules of Evidence (notwithstanding JAMS Rule 22(d) or any other JAMS Rule to the contrary). If Customer is located outside of the Americas, then the governing law shall be the substantive laws of England and Wales, without regard to conflicts of law provisions thereof, and without regard to the United Nations Convention on Contracts for the International Sale of Goods, and arbitration shall be administered in London, United Kingdom under the Rules of Arbitration of the International Chamber of Commerce. Notwithstanding the foregoing, each Party shall have the right to institute an action at any time in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator(s), *provided* that (a) the Party instituting the action shall seek an order to file the action under seal (or at a minimum do so for any filings containing Confidential Information or trade secrets) in order to limit disclosure as provided in Section 5 of this Agreement; and (b) a permanent injunction and damages shall only be awarded by the arbitrator(s).

**26. Miscellaneous.** Palantir shall provide the Service and Professional Services consistent with laws and regulations applicable to Palantir's provision of such Service and Professional Services generally (including, but not limited to, those regarding data protection and international transfers of personal data), without regard to Customer's specific utilization of the Service except to the extent set forth in an Order Form, and subject to Customer's compliance with this Agreement. If applicable, the Parties shall comply with the Palantir Cognitive Services Addendum available at <https://palantir.pactsafe.io/aip-legal-3791.html>, which is hereby incorporated by reference. Except with Palantir's prior written consent, neither this Agreement nor the access or licenses granted hereunder may be assigned, transferred, or sublicensed by Customer, including, without limitation, pursuant to a direct or indirect change of control of Customer, a merger involving Customer where Customer is not the surviving entity, or a sale of all or substantially all of the assets of Customer (collectively, a "**Change of Control**"); any attempt to do so shall be void. Customer must provide written notice to Palantir prior to a Change of Control, and Palantir may terminate this Agreement in the event of a Change of Control. Palantir may subcontract this Agreement or portions thereof. Any notice required or permitted hereunder shall be in writing to the parties at the addresses set forth in the applicable Order Form and if by email, notifications to Palantir shall be sent to [REDACTED]. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and be enforceable. Any and all modifications, waivers, or amendments must be made by mutual agreement and shall be effective only if made in writing and signed by each Party. No waiver of any breach shall be deemed a waiver of any subsequent breach. The Service is controlled under 5D002.c.1, ENC. Customer shall ensure that all exports, reexports, transfers, end-uses, and Users of the Service comply with the export and sanctions laws and regulations of the United States and other applicable jurisdictions, including, without limitation, those of the U.S. Bureau of Industry & Security and the Office of Foreign Assets Control. Customer represents that it is not subject to restrictions under any U.S. government restricted end user lists, and that it is not 50% or more, directly or indirectly, owned or controlled by any individuals or entities identified on such lists. Customer will immediately notify Palantir if Customer becomes subject to any such restrictions. Customer shall refrain from taking any action that causes Palantir to violate applicable export and sanctions laws and regulations. Except for the obligation to pay money, neither Party will be liable for any failure or delay under this Agreement due to any cause beyond its reasonable control, including, without limitation, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, failure of the Internet, telecommunications, or hosting service provider, computer attacks, or malicious acts; *provided* that the delayed Party: (a) gives the other Party prompt notice of such cause; and (b) uses commercially reasonable efforts promptly to correct such failure or delay in performance. Palantir has the right to immediately suspend access to the Service: (a) if Customer is in material breach of this Agreement; (b) to prevent a security incident impacting Customer, Customer Data, or the Service; or (c) if continued access would violate applicable laws or if required to do so pursuant to applicable law or regulation or requests or orders of governmental, regulatory, or judicial authorities. There are no third party beneficiaries under this Agreement, whether express or implied. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. The Parties have freely negotiated all clauses of this Agreement, in written exchanges, telephone conversations, or meetings, and pursuant to these negotiations have agreed to adopt this Agreement and hereby acknowledge the negotiated nature of this Agreement. In the event of a conflict between these Terms of Service and any Order Forms or exhibit, the terms of such Order Form or exhibit will prevail. Palantir is in no way affiliated with, or endorsed or sponsored by, The Saul Zaentz Company d.b.a. Tolkien Enterprises or the Estate of J.R.R. Tolkien.

SIGNATURE PAGE

SIGNED by .....  
for and on behalf of **NHS England** (Signature)  
.....  
(Date)

SIGNED by .....  
for and on behalf of **[ICB]** (Signature)  
.....  
(Date)