



*Litigation Authority*

**Invitation to Tender (ITT)  
Provision of a Specialist Assessment Service on behalf of  
the National Clinical Assessment Service  
Tender Number 01\_16/ITT\_SHAS/NHSLA**

**Part 3  
NHS LA Conditions of Contract for the Supply of Services  
and  
Travel Expenses and Reimbursement Policy**

## **NHS LA conditions of contract for the supply of services**

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**This contract** is made on xx

**BETWEEN:**

of, and any successor to its business (the Authority)

And

**(CONTRACTOR)** ADDRESS (the Contractor).

The NHS LA wishes to engage the Contractor and the Contractor has agreed to provide X to the National Clinical Assessment Service (NCAS) a division of the NHS Litigation Authority, as more particularly described in the Specification (Schedule 1) on the Terms and Conditions set out below.

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## IT IS NOW AGREED AS FOLLOWS:

### 1 Defined Terms and Interpretation

1.1 In these terms and conditions the words and expressions below will be interpreted to have the meanings adjacent to them:-

- 1.1.1 **"Affected Party"** means, in the context of Clause 35 the Party whose obligations under the Contract have been affected by the Force Majeure Event;
  - 1.1.2 **"Authorised Officer"** means a person designated as such by the Authority from time to time as notified in writing to the Contractor to act as the representative of the Authority for all purposes connected with the Contract, including any authorised representative of such person;
  - 1.1.3 **"Authority"** means the Beneficiary placing the Order or, if a Third Party Beneficiary places the Order;
  - 1.1.4 **"Commencement Date"** means the date agreed by the Parties in writing or detailed in the Specification, on which the provision of the Services is to start;
  - 1.1.5 **"Contract"** means the agreement between the Authority and the Contractor comprising the Order, these terms and conditions and schedules hereto, and the Specification;
  - 1.1.6 **"Contractor"** means the provider of the Services pursuant to the Contract;
  - 1.1.7 **"Contract Period"** means (subject to earlier termination in accordance with its terms or by operation of law) the duration of the Contract, starting on the Commencement Date, as set out in the Order and/or the Specification;
  - 1.1.8 **"Contract Price"** means the monies payable by the Authority or any Beneficiaries to the Contractor for the provision of the Services as set out in the Order;
  - 1.1.9 **"Force Majeure Event"** means one or more of the following to the extent that it is not attributable to the Contractor or the Contractor's staff: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the provision of the Services, but which is not confined to the workforce of the Contractor or is site specific; pestilence; the actions of governmental authorities to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under the Contract;
  - 1.1.10 **"Good Industry Practice"** means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar
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to the Services under the same or similar circumstances as those applicable to the Contract and which are in accordance with any codes of practice published by relevant trade associations;

- 1.1.11 **"Intellectual Property"** means any and all patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, Know-How (as defined below), unregistered trade marks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world; the right for the maker of a database to prevent extraction or reutilisation or both of the whole or a substantial part of the content of that database, as described in Directive 96/9/EC on the legal protection of databases; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition "Intellectual Property"; and rights of the same or similar effect or nature as or to those above in each case in any jurisdiction;
- 1.1.12 **"In writing"** shall be interpreted to include any document which is recorded in manuscript, typescript, any electronic communication as defined in Section 15 of the Electronic Communications Act 2000 but excluding mobile telephone text messages;
- 1.1.13 **"Party"** means any party to the Contract individually and **"Parties"** refers to all of the parties to the Contract collectively. A Party shall include all permitted assigns of the Party in question. All persons who are not a Party to the Contract are third parties;
- 1.1.14 **"Personal Data"** means data as defined by the Data Protection Act 1998 which relates to a living individual who can be identified from such data, and/or from such data and other information which is in the possession of, or is likely to come into the possession of the Contractor and includes any expression of opinion about an individual and any indication of the intentions of the Contractor in respect of an individual;
- 1.1.15 **"Services"** means the services provided by the Contractor pursuant to, and in accordance with, the Contract;
- 1.1.16 **"Specification"** means the description of the Services together with (where applicable) a brief description of Deliverables to be provided pursuant to such Services as referred to, set out in or attached to the Order (or, if no such description is set out in or attached to the Order, as set out in or attached to any documentation inviting the Contractor to tender for the appointment to provide the Services, including any documentation issued, or made available, to the Contractor by any Beneficiary);
- 1.1.17 **"Third Party Beneficiary"** means each of the non-NHS bodies set out in the list attached at Schedule 1, as supplied from time to time by the Authority to the Contractor;
- 1.1.18 **"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses;
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1.1.19 “**Year**” means during the Contract Period, any 12 month period commencing on the Commencement Date or an anniversary thereof..

- 1.2 Any headings to Clauses, together with the front cover and the Index are for convenience only and shall not affect the meaning of these terms and conditions.
- 1.3 Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning. The Parties have had equal opportunity to take legal advice and the *contra proferentem* rule shall not apply to the interpretation of these terms and conditions.
- 1.4 Where a term of these terms and conditions provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list.
- 1.5 In these terms and conditions, words importing any particular gender include all other genders.
- 1.6 In these terms and conditions, words importing the singular only shall include the plural and vice versa.
- 1.7 In these terms and conditions “staff” and “employees” shall have the same meaning.
- 1.8 Any reference to a Party "procuring" another person to act or omit to act in a certain manner shall mean that the Party so procuring shall be liable for any default on the part of the person acting or omitting to act in that manner.
- 1.9 All references to the Contract include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.

## **2. Provision of Services**

- 2.1 The Authority appoints the Contractor and the Contractor agrees to provide the Services:
- 2.1.1 promptly and in any event within any time limits as may be set out in this Contract;
- 2.1.2 in accordance with all other provisions of this Contract;
- 2.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions;
- 2.1.4 in accordance with the Law and with Guidance;
- 2.1.5 in accordance with Good Industry Practice;
- 2.1.6 in accordance with the Policies; and
- 2.1.7 in a professional and courteous manner.

In complying with its obligations under this Contract, the Contractor shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.

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2.2 The Contractor shall commence delivery of the Services on the Services Commencement Date.

2.3 The Contractor shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.

2.4 The Contractor shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.

### 3. **Cooperation with third parties**

The Contractor shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.

### 4. **Performance of the Services**

4.1 Subject to Clause 15.1, the Contractor shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of the Services to the Contract Standard.

4.2 The contractor shall provide the services in accordance with the Specification at Schedule 1.

4.3 Time shall be of the essence with regard to the obligations of the Contractor under the Contract.

4.4 In providing the Services, the Contractor shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Authority's or, as the case may be, to any Beneficiary's computer systems.

4.5 The Authority and any Beneficiary shall provide the Contractor with copies of its policies, rules, procedures and quality standards (and shall promptly inform the Contractor of any amendments to such documents) to enable the Contractor to comply with its obligations under the Contract.

4.6 The Contractor will immediately notify the Authorised Officer of any actual or potential problems relating to the Contractor's own contractors that affects or might affect his ability to provide the Services.

### 5. **Deliverables**

5.1 Wherever the Services require the Contractor to provide a Deliverable:

5.1.1 the Authority or any Beneficiary may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Specification or the requirements otherwise made known to the Contractor by the Authority or any Beneficiary;

5.1.2 the Authority or any Beneficiary will not reject any Deliverable (wholly or in part) without providing written reasons to the Contractor as to why such Deliverable has been rejected; and

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- 5.1.3 any Deliverables which are rejected shall be replaced by the Contractor (at no extra charge to the Authority or any Beneficiary) by Deliverables which are reasonably satisfactory to the Authorised Officer.

## **6. Performance Measurement**

- 6.1 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Contractor to provide the Services to the Contract Standard which in all respects shall be to the satisfaction of the Authorised Officer.
- 6.2 The Contractor shall institute and maintain a properly documented system of quality control as set out in the Specification and which is to the satisfaction of the Authorised Officer to ensure that the Contract Standard is met.
- 6.3 If any part of any Service is found to be defective or different in any way from the Specification or otherwise has not been provided to the Contract Standard other than as a result of a default or negligence on the part of the Authority or any Beneficiary, the Contractor shall at its own expense re-perform the Services in question (without additional remuneration therefore) within such time as the Authority or any Beneficiary may reasonably specify failing which the Authority or any Beneficiary shall be entitled to procure performance of the defective Services from a third party or to execute the tasks in question itself. If the cost to the Authority or any Beneficiary of executing or procuring such Services exceeds the amount that would have been payable to the Contractor for such Services, the excess shall be paid by the Contractor to the Authority or any Beneficiary on demand in addition to any other sums payable by the Contractor to the Authority or any Beneficiary in respect of the breach of Contract.

## **7. Contract Management**

- 7.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Contractor confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 7.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Contractor under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.

## **8. Contract Price and Payment**

- 8.1 In consideration of the Contractor's due and proper performance of its obligations under the Contract, the Contractor may charge the Authority or, as the case may be, any Beneficiary the Contract Price in accordance with this Clause 8.
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- 8.2 In accordance with the Contract, where the Contractor is required to provide Deliverables, the Authority or any Beneficiary shall be entitled to withhold payment of the Contract Price pending receipt and acceptance of the Deliverables in accordance with the Specification.
- 8.3 Unless otherwise agreed in writing by the Authority and the Contractor, within 15 days of the end of each calendar month, the Contractor shall invoice the Authority or, as the case may be, for any Services provided by the Contractor in that calendar month. Such invoice shall be rendered on the Contractor's own invoice form clearly marked with the Authority's order number (if any).
- 8.4 Subject to Clauses 6.2, 6.5 and 6.6 the Authority shall pay any invoice submitted by the Contractor in accordance with Clause 6.3 within 30 days of receipt by the Authority or the Beneficiary of such invoice. The Authority or the Beneficiary shall pay such invoice(s) by BACS (Bank Automated Clearing System) if it so chooses or any alternate means as agreed between the Authority or the Beneficiary and the Contractor.
- 8.5 The Authority and any Beneficiary shall be entitled to deduct from any monies due or to become due to the Contractor any monies owing to the Authority or the Beneficiary from the Contractor.
- 8.6 Where the performance of the Contractor does not meet the required standard then a deduction as set out in the Specification or as agreed by the Parties may be made.

## **9. Resources**

- 9.1 The Contract Price includes payment in full for all facilities and resources required by the Contractor to provide the Services in accordance with the Contract. Any facilities or resources needed or used by the Contractor to perform the Services shall be provided by the Contractor without additional cost to the Authority or any Beneficiary.
- 9.2 The Contractor confirms its satisfaction of its abilities and experience in all respects to perform the Services pursuant to the Contract to the reasonable satisfaction of the Authority.

## **10. Contract Period**

- 10.1 The Contract shall commence on the day on which it is signed and remain in force until delivery of the services has been completed in accordance with Schedule 1
- 10.2 The Authority may, by notice in writing, extend the Contract Period, provided that the said notice shall have been given to the Contractor no later than 4 weeks before the end of the Contract Period.

## **11. Authorised Officers**

- 11.1 Any notice, information or communication given to or made by an Authorised Officer shall be deemed to have been given or made by the Authority.
- 11.2 The Contractor shall decline from providing the Services to any of the Authority's staff who are not Authorised Officers.

## **12. Employees**

- 12.1 The Contractor shall be entirely responsible for the employment and conditions of service of his staff employed in the Contract.
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12.2 The Contractor shall ensure that employees of appropriate levels of experience and expertise perform the Services to achieve cost efficiency.

12.3 The Authority reserves the right to reject staff whom they consider to be unsuitable for the duties proposed. Where staff are rejected the Contractor shall supply alternative staff. In addition, the Authorised Officer may (but not unreasonably or vexatiously) instruct the Contractor to take disciplinary action against or to remove from work in or about the provision of the Services any person employed by the Contractor and the Contractor shall immediately comply with such instruction, and in the case of a removal from work shall, as soon as it is reasonably practicable thereafter provide a substitute.

12.4 The Contractor shall ensure that any employees to whom reference is made by name in the Specification are actively involved in the provision of the Services or are replaced with employees acceptable to the Authorised Officer.

### **13. Control and Supervision of Staff**

13.1 Any notice, information, instruction or other communication given or made to the Project Manager shall be deemed to have been given or made to the Contractor.

13.2 The Contractor shall forthwith give notice in writing to the Authorised Officer of the identity of the person appointed as Project Manager and of any subsequent appointment.

13.3 The Contractor shall ensure that the Project Manager, or a competent deputy who is duly authorised to act on his behalf, is available to the Authority at all times when any employee of the Contractor is on duty for the provision of the specified Services.

### **14. Health and Safety**

14.1 While at the Location, the Contractor shall comply, and shall ensure that its employees comply with, the requirements of relevant Health and Safety and other relevant legislation, including regulations and codes of practice issued thereunder, and with the Authority's and any Beneficiary's own policies and procedures.

14.2 The Contractor shall at all times maintain a specific Health and Safety at Work policy relating to the employment of his own staff whilst carrying out their duties in relation to the Contract on the Authority's or any Beneficiary's premises.

14.3 The Contractor shall ensure the co-operation of its employees in all prevention measures designed against fire, or any other hazards, and shall notify the Authority of any change in the Contractor's working practices or other occurrences likely to increase such risks or to cause new hazards.

### **15. Use of Authority Sites**

15.1 The Contractor shall use the Sites only in connection with the provision of the Services and shall ensure that the Contractor's staff use the Sites only for that purpose.

### **16. Loan of Authority Equipment**

16.1 The Contractor shall satisfy himself that any Loaned Equipment is suitable for the purpose intended.

16.2 The Contractor shall be liable for any damage to any Loaned Equipment caused by misdirection or misuse due to negligence on the part of the Contractor, his servants or agents.

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16.3 The Authority shall not be liable for any damage to the Loaned Equipment caused by a defect in or faulty operation of the Loaned Equipment.

16.4 The Authority shall have the right to withdraw Loaned Equipment at any time and shall be under no liability whatsoever for failing to lend equipment at any time.

17. **Assignment**

17.1 The Contractor shall not assign the whole or any part of the Contract without the prior written consent of the Authority.

18. **Sub-Contractors**

18.1 The Contractor shall not sub-contract the supply of any Services without the previous consent in writing of the Authorised Officer (such consent not to be unreasonably withheld).

19. **Business continuity**

19.1 The Contractor shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the provision of the Services.

19.2 Throughout the Term, the Contractor will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Contractor confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

19.2.1 the criticality of this Contract to the Authority; and

19.2.2 the size and scope of the Contractor's business operations, regarding continuity of the provision of the Services during and following a Business Continuity Event.

19.3 The Contractor shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Contractor's business operations. The Contractor shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Contractor tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this contract and reasonable and proportionate information regarding the outcome of such tests. The Contractor shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

19.4 The Authority may suggest reasonable and proportionate amendments to the Contractor regarding the Business Continuity Plan at any time. Where the Contractor, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Contractor will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Contractor not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.

19.5 Should a Business Continuity Event occur at any time, the Contractor shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.

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- 19.6 During and following a Business Continuity Event, the Contractor shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

**20. Limitation of liability**

- 20.1 Neither Party shall be liable to the other Party for any loss or damage, costs or expenses incurred or suffered by the other Party as a result of any breach of the terms of the Contract, unless the same were in the reasonable contemplation of the Parties at the time when they entered into the Contract.
- 20.2 Except in the case of death or personal injury caused by negligence, and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law, the liability of either Party under or in connection with the Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the contract price.
- 20.3 The Contract Price of the Services under the Contract has been negotiated and agreed on the basis that the Parties may limit their liability to each other as set out in the Contract and the Parties each confirm that they will themselves bear or insure against any loss for which the other Party has limited its liability under the Contract.

**21. Insurance**

- 21.1 The Contractor shall insure against its liability with a minimum limit of indemnity of £1 million per annum or such other sum as may be agreed between the Authority and the Contractor in writing. The Contractor shall maintain professional indemnity insurance to cover all liability under the Contract and provide evidence of such professional indemnity insurance as the Authority may reasonably request from time to time.
- 21.2 The Contractor shall hold employer's liability insurance in respect of the Contractor's staff in accordance with any legal requirement for the time being in force.

**22. Variation of the contract**

- 22.1 Any variation to the terms of the Contract must be recorded in writing and executed by an authorised signatory of the Contractor and the Authority.
- 22.2 Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.
- 22.3 Save as provided in any such record of variation, the Contract will continue in full force and effect.

**23. Dispute Resolution Procedure**

- 23.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Contractor shall continue its performance of the provisions of the Contract (unless the Authority or any Beneficiary requests in writing that the Contractor does not do so).
- 23.2 If a dispute arises between the Authority and the Contractor in relation to any matter which cannot be resolved by the Authorised Officer and the Project Manager either of them may refer such dispute to the Dispute Resolution Procedure.
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- 23.3 In the first instance each of the Authority and the Contractor shall arrange for a more senior representative than those referred to in Clause 23.2 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Authority (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.
- 23.4 If the meeting(s) referred to in Clause 23.3 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). Neither Party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

## 24. **Environmental Considerations**

- 24.1 The Contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practices as if they were incorporated into English law subject to those voluntary agreements being cited in tender documentation.

## 25. **Termination**

- 25.1 The Authority may terminate the Contract (in whole or in part) by serving written notice on the Contractor in any of the following circumstances:-
- 25.1.1 a material failure (in whole or in part) by the Contractor to perform any material obligation of the Contractor provided that (if capable of remedy) such failure has not been remedied to the Authority's reasonable satisfaction within a period of 10 working days following written notice demanding remedy of the failure in question being served by the Authority on the Contractor; or
- 25.1.2 the Contractor fails (in whole or in part) to perform any material obligation of the Contractor owed to the Authority or any Beneficiary on more than 3 occasions; or
- 25.2 The Authority shall be entitled to recover from the Contractor the amount of any Loss resulting from termination under Clause 25.1. For the purpose of this Clause, Loss shall include reasonable cost to the Authority of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services.
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25.3 The Contractor may terminate the Contract in the following circumstance, by giving 1 month's written notice:

25.3.1 if the Authority or any Beneficiary has committed a material breach of the Contract; and

25.3.2 the Contractor has brought the breach of Contract to the attention of the Authorised Officer; and

25.3.3 the Authority or such Beneficiary has not corrected the said breach of Contract within a reasonable period of time.

25.4 The Contractor agrees that upon termination for any reason (under Clause 25.1 or otherwise) or expiry of the Contract it shall not be entitled to make a claim against the Authority in relation to costs incurred by the Contractor in providing the Services or costs incurred in acquiring equipment and/or materials used in the provision of the Services or in engaging third parties in connection with the Services whether or not such costs were amortised in the calculation of the Contract Price payable by the Authority or any Beneficiary under the Contract. For the avoidance of doubt, the Contractor will not be restricted from making any claim in respect of the Contract Price to the extent the Contract Price is outstanding and due and payable.

25.5 The Authority and the Contractor agree that termination (in whole or in part) or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the termination or expiry of the Contract or the continuance of the part or parts not terminated where the Contract is terminated in part only.

25.6 Any termination (in whole or in part) of the Contract will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effect.

## 26. **Arrangements on Termination**

26.1 The Authority and the Contractor agree that termination or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the expiration or termination of the Contract.

26.2 After termination or expiry all data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services (including any Deliverables which remain to be completed as at the date of termination or expiry) and all other items provided on loan or otherwise to the Contractor by the Authority or, as the case may be, any Beneficiary shall be delivered by the Contractor to the Authority.

## 27. **Intellectual Property**

27.1 For the purposes of this contract the following definitions shall apply.

27.1.1 **"Background IPR"** shall mean all Intellectual Property used in connection with the Services which exists as at the Commencement Date; and

27.1.2 **"Foreground IPR"** shall mean all Intellectual Property arising from or relating to the Services, including without limitation Intellectual Property in any material, document or in any work (in whatever format), which is brought into existence as part of the Services.

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- 27.2 Ownership of all Background IPR shall remain with the party introducing the Background IPR. To the extent the Authority is required to use Background IPR in order to use, develop and otherwise benefit from the Foreground IPR the Contractor hereby grants the Authority a perpetual, irrevocable, royalty free licence to use, including sublicense, the Contractor's Background IPR.
- 27.3 Foreground IPR shall be jointly owned and controlled by the parties from the moment it is created.
- 27.4 The Contractor hereby warrants and represents in respect of its Background IPR and any Foreground IPR ("**Contractor Intellectual Property**") that:
- 27.4.1 it properly licensed to use and grant sub-licences of the Background IPR for the purposes of and in connection with the Contract and the Services; and
- 27.4.2 the Contractor Intellectual Property is not subject to any limit as to time or any other limitation, right of termination, reassignment or restriction; and
- 27.4.3 the Contractor Intellectual Property is not and will not be subject to any claim, opposition, attack, assertion or other arrangements of whatever nature which may impugn upon the use, adaptation, modification, licensing, validity, enforceability or ownership of any such Contractor Intellectual Property by the Authority, and there are no grounds or other circumstances which may give rise to the same.
- 27.5 The Contractor hereby indemnifies the Authority in full and holds the Authority indemnified in full against all claims and proceedings, losses, costs, claims, and expenses incurred or suffered by the Authority or by any Beneficiary which may arise as a result of any claim or allegation that use by the Authority of the Contractor's Intellectual Property in accordance with this Contract infringes any person's Intellectual Property Rights; and/or any breach by the Contractor of the warranties in this Clause 24, and for the avoidance of doubt this Clause 24 shall survive termination of the Contract and thereafter continue in full force and effect.
28. **Records retention and right of audit**
- 28.1 Subject to any statutory requirement and Clause 28.2 of this contract, the Contractor shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 28.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 28.3 The Authority shall have the right to audit the Contractor's compliance with this Contract. The Contractor shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities,
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books and records reasonably required to audit the Contractor's compliance with its obligations under this Contract.

28.4 Should the Contractor subcontract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Contractor shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Contractor's obligations under this Contract that are subcontracted to such third party. The Contractor shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.

28.5 The Contractor shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Contractor's compliance with this Contract for the purposes of:

28.5.1 the examination and certification of the Authority's accounts; or

28.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.

28.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as they consider necessary. Clause 22 of this contract does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under section 6(3)(d) and 6(5) of the National Audit Act 1983.

28.7 The Contractor shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.

28.8 The Contractor shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Contractor's compliance with the requirements of this Contract.

## **29. Warranty**

29.1 The Contractor warrants to the Authority that it has all necessary corporate standing and authorisation to enter into and be bound by the terms of the Contract. At all times in connection with the Contract, the Contractor shall be an independent contractor and nothing in the Contract shall create a relationship of agency or partnership or a joint venture as between the Contractor and the Authority and accordingly the Contractor shall not be authorised to bind the Authority.

## **30. Relationship of the Parties**

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- 30.1 The Contractor shall not incur any liabilities on behalf of the Authority or, make any representations or give any warranty on behalf of the Authority or, enter into any contract or obligation on behalf of the Authority.

31. **General.**

- 31.1 The failure by the Authority, the Contractor or, as the case may be, any Beneficiary to insist upon the strict performance of any provision, term or condition of the Contract or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 31.2 Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Contract including all costs legal fees and other expenses so incurred.
- 31.3 The Contractor warrants represents and undertakes to the Authority that there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Contractor and that there are no material contracts existing to which the Contractor is a party which prevent it from entering into the Contract; and that the Contractor has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
- 31.4 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by the general law, or by any other contract or document. In this provision "general law" includes the law of a country other than England, and "right" includes any power, privilege, remedy, or proprietary or security interest.

32. **Third Party Rights**

- 32.1 A person who is not a Party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 32.2 All or any of the provisions of the Contract may be rescinded or varied by the Parties in their entirety or in part without the consent of or the need to give any notice to any person not a Party to it.

33. **Equality and Non-discrimination**

- 33.1 The contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and any relevant or equivalent legislation or statutory modification or re-enactment including any relevant provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
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34. **Notices**

34.1 Any notice to be given under the Contract shall either be delivered personally, sent by facsimile or sent by first class recorded delivery post (airmail if overseas) or electronic mail. The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:

34.1.1 if personally delivered, at the time of delivery;

34.1.2 if sent by facsimile at the time of transmission;

34.1.3 if posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and

34.1.4 if sent by electronic mail, a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

34.2 In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or airmail letter (as appropriate) or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice as the case may be.

35. **Force Majeure**

35.1 No Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party or incur any liability to the other Party for any Loss or damages incurred by that party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event of force majeure.

35.2 In the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

35.3 As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

36. **Law**

36.1 The Contractor submits to the jurisdiction of the English courts and agrees that the Contract is to be governed and construed according to English law.

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## **Schedule 1**

### **Information Governance Provisions**

#### **1 Confidentiality**

In respect of any Confidential Information it may receive directly or indirectly from the other Party ("Discloser") and subject always to the remainder of Clause 1 of this Schedule 3, each Party ("Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;

1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:

(i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;

(ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

(iii) which is authorised for disclosure by the prior written consent of the Discloser;

(iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or

(v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

1.2 Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("FOIA"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("Codes of Practice") or the Environmental Information Regulations 2004 ("Environmental Regulations").

1.3 The Authority may disclose the Contractor's Confidential Information:

1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;

1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;

1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

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1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or

1.3.6 on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this O.

1.4 The Contractor may only disclose the Authority's Confidential Information, and any other information provided to the Contractor by the Authority in relation this Contract, to the Contractor's Staff or professional advisors who are directly involved in the performance of or advising on the Contractor's obligations under this Contract. The Contractor shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Contractor shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Contractor's obligations in this Contract.

1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Contractor shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Contractor to the Authority and/or make any other announcements about this Contract.

1.6 Clause 1 of this Schedule 3 shall remain in force:

without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and

for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

## **2 Data protection**

2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties.

2.2 Where the Contractor is Processing Personal Data under or in connection with this Contract, the Contractor must, in particular, but without limitation:

2.2.1 only Process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instructions given by the Authority under this Contract;

2.2.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements of Clause 2 of this Schedule 3, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by unauthorised or unlawful Processing or by its loss, damage or destruction;

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2.2.3 take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in Clause 2 of this Schedule 3; and

2.2.4 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Authority.

2.3 The Contractor and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).

2.4 Where, as a requirement of this Contract, the Contractor is Processing Personal Data (to include, without limitation, Sensitive Personal Data) relating to patients and/or service users as part of the Services, the Contractor shall:

2.4.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;

2.4.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;

2.4.3 nominate an information governance lead able to communicate with the Contractor's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Contractor's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;

2.4.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;

2.4.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;

2.4.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);

2.4.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract; and

2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings.

2.5 Where any Personal Data is Processed by any subcontractor of the Contractor in connection with this Contract, the Contractor shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such subcontractor were the Contractor.

2.6 The Contractor shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or

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proceedings whatsoever or howsoever arising from the Contractor's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

## **Freedom of Information and Transparency**

2.7 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.

2.8 The Contractor shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Contractor agrees:

2.8.1 that this Contract and any recorded information held by the Contractor on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;

2.8.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;

2.8.3 that where the Contractor receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Contractor itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;

2.8.4 that where the Contractor receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Contractor is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;

2.8.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Contractor and this Contract; and

2.8.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.

2.9 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.

2.10 Notwithstanding any other term of this Contract, the Contractor consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.

2.11 In preparing a copy of this Contract for publication under Clause 2.10 of this Schedule 3, the Authority may consult with the Contractor to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.

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2.12 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

2.13 Where any information is held by any subcontractor of the Contractor in connection with this Contract, the Contractor shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such subcontractor were the Contractor.

### **Information Security**

2.14 Without limitation to any other information governance requirements set out in this Schedule 3, the Contractor shall:

2.14.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and

2.14.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.

2.15 Where required in accordance with the Specification and Tender Response Document, the Contractor will ensure that it puts in place and maintains an information security management plan appropriate to the Services and the obligations placed on the Contractor under this Contract. The Contractor shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.

2.16 Where required in accordance with the Specification and Tender Response Document, the Contractor shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.



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# TRAVEL EXPENSES AND REIMBURSEMENT POLICY

## NO. FINP 004

This policy applies to:	All employees and non-executive directors
Date of Board Approval:	January 2014
Review Date:	January 2016

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## **Travel Expenses and Reimbursement Policy**

### **Introduction**

1. The primary purpose of this document is to set out the NHS LA's policy on the reimbursement of additional costs incurred by staff when travelling on NHS LA business away from their normal place of work. All staff have a designated base for contractual purposes and this is the "normal place of work" for the purposes of this policy.
2. The arrangements in this policy apply to all travel within the U.K. Arrangements for European or other overseas travel will require the prior approval of the Chief Executive. Travel for the Chief Executive should be authorised by the Chair
3. The expenditure limits quoted are deemed adequate to cover the costs likely to be incurred for the duties undertaken and only actual costs will be reimbursed, except where allowances for particular areas of expenditure are set. Expenditure outside these limits will not be reimbursed without the express permission of the Chief Executive or by another member of the NHS LA's Board where the expenditure relates to the Chief Executive.
4. Receipts for expenses will be required, except where stated otherwise or if one is not provided (e.g. oyster cards), or where a fixed allowance is specified.
5. Employees are encouraged to use public transport wherever appropriate.
6. The NHS LA will at all times consider carefully the use of public funds for both travel and subsistence and will take steps to avoid inappropriate or excessive spending. It is recognised that as a national authority the NHS LA and its Board Members and staff will be required to travel extensively and, further, that in order to actively manage the relationships throughout the NHS with Customers and stakeholders
7. All vehicles should be used safely, in accordance with any applicable laws and regulations and with thought to their impact of the environment.
8. This policy is in line with the arrangements in the Agenda for Change: NHS Terms and Conditions of Service Handbook.

### **Equality Impact Assessment**

9. As part of its development, this policy and its impact on equality have been reviewed in consultation with trade union and other employee representatives in line with the NHS LA's Equal Opportunities Policy and the Public Sector Equality Duty. The purpose of the assessment is to minimise and if possible remove any disproportionate impact on employees and service users in relation to the protected characteristics: race, sex, disability, age, sexual orientation, religious or other belief, marriage and civil partnership, gender reassignment and pregnancy and maternity. No detriment was identified.

### **Good corporate citizen**

10. In line with its policy to support sustainable development, the NHS LA discourages the use of cars when appropriate alternatives are available. Walking, cycling or taking public transport should be considered where these are viable options and car share could be considered where possible. Videoconferencing, telephone and email should be considered as alternatives to travel.

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## **Eligibility**

11. These arrangements apply to all staff who incur additional expenses whilst on NHS LA business.
12. This policy does not apply to staff in respect of relocation or external secondment, when separate arrangements apply. Internal secondments, which may involve a change of base (normal place of work), are covered by this policy.
13. The policy does not apply to individuals employed by agencies or other contractors.
14. In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of the NHS LA's Equal Opportunities Policy. Special attention should be paid to ensuring the policy is understood when using it for staff new to the NHS or NHS LA, by staff whose literacy or use of English is weak or for persons with little experience of working life.

## **Authorisation of Travel**

15. Managers are responsible for the authorisation of travel within their areas of responsibility. Where travel is a normal requirement of a job, then prior authorisation of individual journeys would be inappropriate and managers should make more general arrangements for this.
16. Where travel is not a normal requirement of a job, the staff should seek prior authorisation for the proposed journey, the means of travel etc.
17. The method of transport to be used and the route to be taken should be the most economical, taking into account the nature of the task, the time of the journey, its urgency, and the availability of transport to the individual.

## **Travel Policy**

### **18. Lease Car Holders**

Where travel by car is the most appropriate method of transport, taking into account distance, time, urgency and cost, staff that have a lease car will be expected to use the car. Details of the lease car policy can be seen at annex 1.

### **19. Private/lease Cars or Private Motorcycle**

Managers may authorise the use of a private vehicle or lease car for business purposes only when:

- ❖ The driver holds a valid driving licence and;
- ❖ when it is a private vehicle, the driver is insured through their own motor insurance policy for business travel (including the carrying of passengers where appropriate) and;
- ❖ public transport is not available or cannot be used economically or practically for the proposed journey and;
- ❖ the driver does not have a lease car.

20. Managers may authorise the use of a lease car when the above conditions are met and when:

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- ❖ either the traveller does not have (the required insurance cover for) his or her own vehicle;
  - ❖ or, the proposed journey is in excess of 120 miles per day over the hire period;
  - ❖ when a lease car will be more economic than a private car.

All lease cars should be booked through framework providers

#### 21. When a car is leased:

- ❖ cars should only be leased for the actual days required, with delivery the night before for early starts and collection the next day for late returns. Arrangements should be made for the delivery and collection of the car on the days when it will not be in use.
- ❖ any out-of-pocket expenses incurred as a result of leasing a car may be claimed. This will normally be limited to receipted fuel expenses.

#### 22. Mileage Allowances

- ❖ Staff who are based at a designated office shall be paid the Standard Rate or Public Transport Rate as appropriate, limited to the distance which would have been travelled if the journey had started and finished at the designated base, or the distance actually travelled if less.

Staff who are based at home for mileage purposes shall be paid the Standard Rate or Public Transport Rate as appropriate for all journeys by the most direct route from their home to all places necessarily visited on duty and back to their home. The AA route planner will be utilised to verify journeys claimed.

- ❖ Staff authorised to use their own private vehicle will normally be reimbursed at the standard mileage rate.
- ❖ The mileage allowances paid per mile are shown in Annex 3.

#### 23. Mobile Telephones

- ❖ In the interests of health and safety and compliance with the law, it is **strictly** prohibited for staff to use a mobile telephone while driving on NHS LA business in any vehicle. Staff should ensure that all calls are diverted to voicemail when driving. The NHS LA does not provide hands-free kits for its vehicles.

#### 24. Rail Travel

All rail travel must be booked through the Organisation's Travel Management System. Rail travel should be standard class unless there are exceptional circumstances and only with authorisation of the Chief Executive.

Journeys should be done through pre-booking tickets to travel on specific (timed) trains

Booking open tickets should only occur in exceptional circumstances, such as unknown timings of return journeys.

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## 25. Air

All travel by air requires the prior authorisation of a relevant Director. All staff must use economy class on domestic or European flights.

All air travel must be booked through the Organisation's Travel Management System.

## 26. Taxis

The cost of taxi journeys will not normally be reimbursed and Travelling Persons should use and claim for public transport wherever possible instead. The only exceptions to this rule are:

- ❖ where shared use of taxis by several Staff Members is more cost effective.
- ❖ where no public transport facility exists.
- ❖ where the route/timing of public transport facilities prevent Travelling Persons from discharging their duties effectively.
- ❖ where parking fees for private car use would exceed the cost of the taxi.
- ❖ where Health & Safety concerns are paramount
- ❖ Disability
- ❖ Emergency
- ❖ Heavy luggage
- ❖ Travel times /personal safety an issue.

Any requirement for a taxi due to exceptions such as above and is identified in advance, should be booked through a contract supplier.

Receipts must be submitted with any claims for taxi's booked outside of contract supplier with justification for use.

If conditions above are not met the claim may be reduced to public transport rates

## Accommodation Policy

### 27. Hotels

- ❖ All accommodation must be booked through the Organisation's Travel Management System.
- ❖ for the first 30 nights in a location
  - Within the M25 Motorway up to £150 per overnight stay to over the cost of a single room and breakfast
  - All other UK locations up to £100 per overnight stay to cover the cost of a single room and breakfast
  - Where exceptionally, individuals receive authority to book their own accommodation, receipts are required.

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- ❖ After 30 nights in the same location

- Up to £40 per overnight stay.
- Where exceptionally, individuals receive authority to book their own accommodation, receipts are required.

❖ Where the maximum limit is to be exceeded for genuine business reasons (e.g. the choice of hotel is not within the employee's control or cheaper hotels are fully booked), the Chief Executive may authorise a higher limit. All such variations must be agreed before the expenditure is incurred.

- Receipts are required.

## 28. Other accommodation Arrangements

- ❖ If an individual wishes to stay with friends or relatives instead of in commercial accommodation, £30 per overnight stay may be claimed to cover the cost of accommodation on a room, breakfast and evening meal basis. A simple form of receipt will be required from the host.

## Subsistence Policy

### 29. Meals Whilst Staying in a Hotel

- ❖ Eating in the hotel

Breakfast - full English or continental breakfast

Evening meal – up to £20 to cover the cost of an evening meal. The cost of alcoholic drinks will not be reimbursed.

Receipts are required

- ❖ Eating outside the hotel

Evening Meal – up to £15 per overnight stay. The cost of alcoholic drinks will not be reimbursed.

Receipts are required.

### 30. Meals Whilst Travelling to and from Business

Meal allowances may be claimed by all staff who are required to travel outside their main base on NHS LA business.

- ❖ Breakfast expenses of up to £5 may be claimed by staff who have to leave home earlier than usual and before 7a.m. Employees are required to certify accordingly on each occasion for which a meal allowance is claimed but a receipt is not required.
- ❖ Lunch expenses of up to £6 may be claimed when staff are required to work at least five miles from their normal base for at least 5 hours including the lunchtime period between 12pm to 2pm. This allowance is only payable when an employee necessarily spends more on a meal than would have been spent at their normal base. Employees are required to

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certify accordingly on each occasion for which a meal allowance is claimed but a receipt is not required.

- ❖ Evening meal expenses of up to £15 may be claimed by staff who are required to work at least five miles away from their normal base for at least 10 hours, returning after 7pm. This allowance is only payable when an employee necessarily spends more than on a meal than would have been spent at their normal base. Employees are required to certify accordingly on each occasion for which a meal allowance is claimed but a receipt is not required.
- ❖ Incidentals Allowance

£5.00 per overnight stay may be claimed in addition to the cost of any accommodation or meals (this payment is to cover all incidentals including refreshments, telephone calls, newspapers etc.) Receipts are not required.

**N.B. All payments of this allowance will be subject to the deduction of income tax and National Insurance contributions.**

### **Employee Responsibilities**

#### 31. Driving Licence

- ❖ An employee authorised to claim business mileage expenses must hold a valid driving licence. The original copy of the driving license must be presented (both parts if it is a photo driving license) to the line manager prior to an initial business mileage claim and on an annual basis thereafter to ensure compliance.
- ❖ An employee is required to advise their line manager of any driving offences which may lead to loss of licence whilst in the NHS LA's employment.

#### 32. Insurance

- ❖ Employees must ensure that they have the appropriate level of motor insurance to cover them for vehicle use that will result in travel expense claims including where appropriate business mileage cover. The original copy of the motor insurance certificate must be presented to the line manager prior to an initial travel expense claim and on an annual basis thereafter to ensure compliance.

#### 33. Traffic Offences

- ❖ The NHS LA does not accept responsibility for traffic offences of any type (including parking fines), that occur during business or private motoring. The employee responsible for the vehicle at the time of the offence is responsible for payment, within the stipulated period, of any penalties, excess charges or fines that occur when they are using a vehicle.
- ❖ All statutory notices sent in the first instance to the NHS LA will be returned to the relevant local authority police force with your home address – this is a legal requirement. The issuing authority will then write to you directly.

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## **Fraud**

- 34. Fraud in the context of travel and mileage claims can take the form of false, exaggerated or duplicate claims. Suspicions of fraudulent activity or any collusion to falsify claim forms will be reported to the Local Counter Fraud Specialist and investigations may result in civil, criminal or disciplinary sanctions being applied.
- 35. Deliberately giving false information on a claim form may constitute the offence of fraud.

## **Claims Procedure**

- 36. All claims should be made using the NHS LA's Expenses Claims Form, normally at the end of the calendar month in which they are incurred. Expenses must be claimed by the end of the 3rd calendar month after which they are incurred, otherwise they may not be reimbursed.
- 37. All expenses will be reimbursed through the payroll system.

## **Corporate Credit Card**

- 38. If staff are incurring significant levels of expenditure on a monthly basis (£150 or more) they are eligible to apply for a corporate credit card. Where staff do not reach this level of expenditure but feel a financial burden due to the levels of expenditure they are incurring they can also put forward a case to be considered for a corporate card.
- 39. All applications should be made in writing to the Director of Finance and Corporate Performance.



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## Annex 1

### Fleet Policy and Driver Guidelines

#### Overview

The NHS LA car policy has been formulated on the following basis:

Lease cars are provided to employees who are required to travel on NHS LA business as a significant part of their working duties. This is currently restricted to claims inspectors.

Very senior managers may be provided with a car or an allowance by the Remuneration Committee.

The provision of a lease car is subject to the employee holding and continuing to hold a current, full driving licence.

All lease cars will be on a banded basis linked to the seniority of the post holder. These levels will fit into the following three bands:

- **Executive Staff:** A maximum annual amount of £5,000.00 including maintenance & RAC cover.
- **Senior Managers:** A maximum annual amount of £4,029.00 including maintenance & RAC cover.
- **Managers and staff:** A maximum annual amount of £3,830.00 including maintenance & RAC cover.

Vehicles will usually be on a three year, 20,000 miles per annum contract and will include maintenance and breakdown cover. Drivers are able to choose any vehicle; there are no restriction in number of doors, body type or manufacturer.

An example vehicle listing will be supplied in order to provide a list of vehicles that will fall within your range.

#### Fuel and Mileage Management

Fuel will be claimed back via expenses.

Mileage logs will need to be completed in order for the contract mileage to be monitored, if a vehicle has completed significantly more or less mileage than originally contracted for the contract can be re-scheduled with the leasing company.

#### Servicing and Maintenance

All vehicles are covered by a maintenance agreement, vehicles can be booked in for a Service, Technical Repair, Tyres, Batteries and Exhausts by contact the leasing companies Service Booking Line (the telephone number can be found in the driver information card in the tax disc holder). In most instances the Service Booking line will be able to supply a courtesy car or offer a collection and delivery service.

#### Foreign Travel Requests

If you wish to take your NHS LA car abroad, you must apply to the leasing company for authorisation. They will supply you with a letter of authority and a VE103. You will also be required to take your certificate of motor insurance.

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## MOT Certificate

On the third anniversary, your car will require a MOT. The cost of the MOT is part of the contract hire agreement and needs to be arranged at least 14 days in advance of the required date. The MOT certificate needs to be forwarded to the leasing company by first class post. **Please note that the delay in obtaining a MOT certificate may in turn delay the dispatch of your Road Fund Licence.**

## Fines and Penalties

The NHS LA accepts no responsibility for fines or penalties incurred by the user. You are required to settle fines or penalties in accordance with current statutory requirements. NHS LA will not assist in disputes over fines and traffic offences between drivers and third parties. The NHS LA reserves the right to settle any penalty notices upon receipt and to recover the relevant amounts from the user's next possible salary payment, including where the driver at the time of the incident was not the user.

It is in your best interest to settle fines or penalties as soon as possible, as additional administration costs will be incurred from the leasing company.

If you are a Lease Car user you must report to your Manager details of any disqualification from driving, whether the cause of the disqualification occurs in the course of your work or while you are driving on private business.

*The NHS LA reserves the right to terminate the employment of anyone who is disqualified from driving and for whom the maintenance of a valid licence is essential to the satisfactory performance of the job whether the cause of the disqualification occurs in the course of your work or while you are driving in a private capacity.*

## Mobile Phones

It is **strictly prohibited** to use your mobile phone while driving, please ensure that you have diverted all calls to your answer phone.

## General

You may not customise or add accessories to the car under any circumstances. If there is a requirement for accessories i.e. tow bar, this must be coordinated by the leasing company. If a tow bar is authorised, you are reminded that the insurance arrangements for the trailer (i.e. caravan, boat) are your responsibility and not covered by the fleet policy.

You must ensure that:

- Regular servicing is completed in accordance with manufacturer service intervals;
- Oil, fluid and tyre levels are maintained and the car is kept in a roadworthy conditions at all times;
- Replacement parts and fittings comply with manufacturer recommendations;
- Service books are updated and remain with the car;
- Cars are kept in a clean and tidy condition inside and out;
- Body repairs are effected promptly by authorised suppliers and that all damage, however caused is, is reported to the lease company.

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As the driver of a lease car please ensure the lease company are kept informed of any change of address or contact telephone numbers.

Other than in emergency (which would normally be outside of office hours) you will not be permitted to change cars temporarily or permanently either with another employee or another car without the express prior permission from the NHS LA.

Prior to driving an NHS LA car for the first time, you will be required to produce your driving licence and complete a driver record form to advise of any endorsements, convictions or penalties. It is your responsibility to advise the NHS LA of any subsequent endorsements etc. Failure to comply with this requirement may be treated as gross misconduct. The NHS LA will carry out periodic checks of driving licences with which you are required to cooperate.

### **Relief/Replacement Cars**

In this first instance a courtesy car needs to be arranged with the servicing/repairing garage. If this is not an option a daily rental car can be arranged by the leasing company. Authorisation will be required from NHS LA and only requests arranged by the leasing company will be classed as authorised. Relief/Replacement bookings are only required when absolutely necessary. The booking will be for a Group C car and to be monitored on a daily basis. Bookings made direct by yourself, will be at your expense.

### **Accident and Insurance Claims**

#### **Insurance Policy**

NHS LA are insured fully comprehensive and you will be supplied with an insurance certificate.

For insurance purposes, the use of any NHS LA car for any purpose other than NHS LA business or social, domestic and pleasure is expressly prohibited. NHS LA cars must not be used for:

- The carriage of goods or passengers for hire or reward;
- Racing, competition or rallies;
- In connection with business competitive with the NHS LA;
- Giving driving tuition in return for payment.

#### **Eligibility and Excess**

The current excess is £100.00, if an accident occurs which is deemed to be the user's fault and not while on NHS LA business the excess will be re-charged to the user.

#### **Third Party Cars**

NHS LA policy allows NHS LA personnel to driver third party cars i.e. hire cars or courtesy cars.

#### **Accident Procedure**

At the scene of an accident:

- **Stay Calm – do not discuss liability**

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- Organise control of traffic to avoid further accidents/ damage
  - Inform emergency services (if required) to attend to any injured party
  - Make notes on incident
  - Contact Police within 24 hours – if injury involved
  - Contact Claims Advisory Service – see below
  - Upon receipt of claim form, complete and return as soon as possible

### **Damage to Third Party**

In the event of damage to a Third Party give the Third Party the helpline number who will assess liability and if appropriate, arrange to have their car repaired.

### **User Purchases**

If you are interested in purchasing your car at the end of its contract please refer to the leasing company who will arrange for a quote . Please supply the approximated end of contract mileage and date of anticipated purchase.

## **Annex 2**

### **Daily Car & Van Rental Procedure**

Arrangements have been made to create a simple procedure to enable all departments to arrange rental of cars or vans on a daily basis.

1. Please allow wherever possible at least 48 hours notice before the period of hire is to commence.
2. Driver(s) must have their driving licence available for inspection.
3. All vehicles will be fully comprehensively insured.
4. Delivery will be to NHS LA sites or a more suitable location.
5. The model will be appropriate for the required journey taking into account distance to be travelled.
6. A Driver name must be provided for invoicing.
7. All invoicing will be processed by the Finance Department.

## **Annex 3**

### **Mileage Rates**

Except where stated, rates are drawn from the AFC Service handbook and will be automatically updated by any changes to it. In case of doubt, the national rates apply. Current national rates can be found on the NHS LA intranet as follows – Documents/Forms/Finance/Travel Rates