

Order Form

National Framework for NHS Back Office Systems, Services and Support

Contract Ref: F15008

To be completed and returned to NHS South of England Procurement Services (holly.smith@soeprocurement.nhs.uk) once the preferred supplier has been identified; NHS South of England Procurement Service holds the Framework Agreement (on behalf of Portsmouth Hospitals University NHS Trust).

This is a call off agreement between the Customer and the Supplier, NHS South of England Procurement Services or its host Trust are not a party to this contract.

The Framework Terms & Conditions provide the outline of the points that the Order Form should cover. Taking into account the requirements as detailed below, the Order Form will allow suppliers to vary the Commercial offer around contracting for these services dependant on the Trusts specific requirements.

From:

Authority	St Helens & Knowsley Teaching Hospitals NHS Trust		
Service Address	Whiston Hospital, Warrington Road, Prescot, Merseyside, L35 5DR		
Invoice Address	RBN Payables B225, Phoenix House, Topcliffe Lane, Wakefield, WF3 1WE		
Contact details	Director of Finance& Information: Gareth Lawrence	Phone:	e-mail: Gareth.Lawrence@sthk.nhs.uk
Contract Manager	Gareth Lawrence		
Name and address for notices	Gareth Lawrence Whiston Hospital, Warrington Road, Prescot, Merseyside, L35 5DR		
Contract Order Reference			
Order Date			

To:

Supplier	NHS Shared Business Services Limited
Address	Three Cherry Trees Lane, Hemel Hempstead, Hertfordshire, HP2 7AH
E-mail	nhs.s.commercialoffice@soprasteria.com
Contract Manager	Gabriella Todd, Commercial Manager email : nhs.s.commercialoffice@soprasteria.com
Name and address for notices	Kathryn Parrish NHS Shared Business Services Limited, Commercial Office, Phoenix House, Topcliffe Lane, Tingley, Wakefield WF3 1WE; or email : nhs.s.commercialoffice@soprasteria.com

1. Services Requirements

Services Commencement Date and Term

1.1. Services Commencement Date: 22nd August 2022

- 1.1.1. This Contract shall commence on the Services Commencement Date and the Term of this Contract shall expire the earlier of completion of the Services or Six (6) months from the Services Commencement Date ("Initial Term"), with an option for the Authority to extend the Initial Term by 3 months by giving the Supplier written notice no less than one (1) month prior to the date on which this Contract would have otherwise expired., provided that the duration of this Contract shall be no longer than [10] years in total.

1.2. Scope of Services:

- Baseline current processes, costs, people and structures against which improvements and recommendations can be measured, as well as identifying areas of non-compliance
- Focus on 18 NHS Provider Organisations, together with key processes for Cheshire & Merseyside ICB
- Aligned to the CCIAF and PTOM requirements and the FFF Maturity assessment
- Include the following finance and procurement systems, processes, people and ways of working:
 - o Strategic Procurement (Including SRM, Category Management, Sustainability and Social Value)
 - o Transactional Procurement
 - o Accounts Payable
 - o Accounts Receivable
 - o Cash Management
 - o General Ledger
 - o Reporting

List of Associated Authorities

The Walton Centre Foundation Trust
 Liverpool Heart and Chest Hospital FT
 Alder Hey Children's Foundation Trust
 Liverpool University Hospitals
 Countess Of Chester Hospital NHS FT
 St Helens and Knowsley Teaching Hospitals NHS Trust
 Bridgewater Community Healthcare NHS FT
 Wirral University Teaching Hospital NHS FT
 Mersey Care NHS Foundation Trust
 East Cheshire NHS Trust
 Cheshire and Wirral Partnership NHS FT
 Wirral Community NHS Foundation Trust
 Liverpool Women's Foundation Trust
 Warrington And Halton Hospitals NHS FT
 Mid Cheshire Hospitals NHS Foundation Trust
 North West Ambulance Service NHS Trust
 The Clatterbridge Cancer Centre Foundation Trust
 Southport And Ormskirk Hospital NHS Trust

1.3. Services required and specifications
 In accordance with Appendix 1 – Service Specification.

1.4. Sub-contractors approved by the Parties for the provision of the Services

 Steria (India) Limited, Sopra Steria Limited

1.5. Services Provided

In accordance with Appendix 1 – Service Specification.

1.6. Rate Cards

Where the Authority requires the Supplier to carry out work in addition to the Specification the Supplier will use the rate card shown below in Table 1.6.1, unless otherwise stated, to calculate the price of any such works. The day rates do not include expenses which will be charged in accordance with Supplier's expenses policy.

Table 1.6.1: Rate Card

Role	Daily Rate 2022/23
Director	£1,812
Principal Solutions Architect	£1,586
Principal Consultant	£1,291
Senior Business Services Manager	£1,087
Business Services Controller	£1,033
Head of e-commerce	£1,033
Head of contract management	£1,030
Senior Consultant	£992
LOT1 Training - Senior Trainer	£990
LOT2 Training - Senior Trainer	£990
LOT3 Training - Senior Trainer	£990
Senior Project Manager	£985
Senior Solutions Architect	£978
Senior Technical Architect	£870
Senior Commercial Specialist	£860
Contract Manager	£759
Lead Software Engineer	£731
Senior Procurement Manager	£724
Project Manager	£698
Business Services Manager	£691
Senior Category Manager	£657
Senior Data analyst	£657
Solutions Architect	£625
LOT1 Training - Trainer	£594
LOT2 Training - Trainer	£594
LOT3 Training - Trainer	£594
Technical Architect	£584
Consultant	£578
Change Management Specialist	£578
Junior Data analyst	£492
Team Leader	£462
Junior Procurement Manager	£453
Junior Category Manager	£453
Junior Commercial Specialist	£430
Junior Consultant	£385
Junior Project Manager	£373
PMO support	£373
Deputy Team Leader	£306
Process Officer	£238
Process Assistant	£190
Admin	£158

1.7. Price and Payment and charging mechanism

Contract Price for this Contract comprises the following:

A fixed charge of £256,934 (ex VAT) to be invoiced as per below;

(i) 50% on execution of this Agreement

(ii) 50% on completion of the Services

1.6.2 Should the Supplier be delayed in carrying out the Services due to the Authority not meeting its obligations under this Agreement or cause delays to the provision of Services, then the Supplier shall provide to the Authority notification of this including the financial impact and additional charges may apply, subject to approval by the Authority via the change control process. The Supplier shall notify the Authority as soon as it becomes aware of the potential for additional charges or delay.

1.8. Contract Price Variation**1.8.1. Volume Variation Charge - Not Applicable****1.8.2. Business Event - Not Applicable****1.8.3. Indexation**

The Supplier may increase the Contract Price in 1.7.1, the price per unit in Table 1.5.1 and the Rate Card in Table 1.6.1 contained within this Contract on the 1st April each year by an amount equal to the rate of increase of the Consumer Prices Index over the preceding 12 months.

1.8.4. Treatment of First Year

In the first financial year, if the duration of the period between the Services Commencement Date and the following 31 March is less than twelve months, the Volume Variation Charge described in 1.8.1 shall be applied on a pro-rata basis.

1.8.5. Charging For Additional Works

1.8.5.1. Where the Authority requires the Supplier to carry out work in addition to the Specification the Supplier will use the rate card in Table 1.6.1 to calculate the price of any such works. The day rates do not include expenses which will be charged in accordance with Supplier's expenses policy.

1.8.6. Exclusions

None

1.9.**1.9.1. Recovery of damages**

Section 1.9.1 shall not prejudice any rights the Supplier may have to recover damages for the Authority's breach of its obligations including on termination of this Contract.

2. Not Used**3. Performance of the services and deliverables****3.1. Key Personnel involved in the Services**

Guidance: list of Key Personnel or if no Key Personnel state "none"

3.2 to 3.7 Not Applicable

4. Location(s) at which the Services are to be provided:

Through On-site Workshops on premises of any of the participating organisations or virtually, as agreed with the Customer."

5. Quality Standards relevant to the Services

Not Applicable

**Amendments to the Call Off Contract
NHS Terms & Conditions for the
Provision of Services**

**1. Variations to Call-Off Terms and Conditions
Schedule 1 Key Provisions:**

1.1 Change Control Process

1.1.1 The document attached at Appendix 5 (Schedule 10 – Change Control Process) shall be appended to the Call Off Terms & Conditions as the Change Control Process referred to at Provision 15 of the Key Provisions.

**2 Variations to Call-Off Terms and Conditions
Schedule 2 General Terms & Conditions**

2.1 Clause 1.12 shall be amended to:

"1.12 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority in writing within five (5) Business Days of becoming aware of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations"

2.2 The following shall replace clause 8.3.5

"8.3.5 Should the Authority require the Supplier to provide any additional information relating to the performance of the Services beyond that which is already provided for under this Contract, then the

	<p>Minor Works Order Process as detailed in paragraph 1.2 of this Order Form shall apply."</p> <p>2.3 The following shall replace clause 8.5 "8.5 Not used"</p> <p>2.4The following shall replace clause 13.2 "13.2 Subject to Clauses 12.2 and 13.1 of this Schedule 2 of these Call-off Terms and Conditions, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not, in any year of the Contract, exceed 100% of the Contract Price specific for that year of Contract Term. This shall also apply to Schedule 3 clause 2.6."</p> <p>2.5 The following shall replace clause 13.3.3 "13.3.3 not used"</p> <p>2.6 The following shall replace clause 13.5 "13.5 Not used"</p> <p>2.7 The following shall replace clause 15.2: "The Parties shall be entitled to extend the Term on one or more occasions by the Authority giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions. Such extension shall be agreed by the Parties using the Change Control Process."</p> <p>2.8 The following will replace clause 15.9: "Within six (6) months of the Commencement Date the Supplier shall develop and agree an exit plan, which for the avoidance of doubt shall include any exit or Transitional Assistance Services and the charges related to such exit services and Transitional Assistance Services, with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within four (4) months of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract."</p>
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	<p>2.9 Clause 16.2 up to the colon will be updated to read:</p> <p>“Immediately following expiry or earlier termination of this Contract or in accordance with the timescales set out in the exit plan where one has been agreed pursuant to clause 15.9 of this Schedule 2:</p> <p>2.10 Clause 16.2.1 shall be replaced by:</p> <p>“16.2.1 the Parties shall comply with their respective obligations under Schedule 11 (Exit Management) and any agreed exit plan”</p> <p>2.11 Clause 17.1 shall be replaced by:</p> <p>“17.1 Upon the day which is no greater than three (3) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by law, shall provide anonymised summary information relating to Supplier Personnel.”</p> <p>2.12 Clause 17.5.3 shall be replaced by</p> <p>“17.5.3 Not Used”</p> <p>2.13 Clause 17.5.4 shall be replaced by</p> <p>“17.5.4 Not Used”</p> <p>2.14 Clause 17.5.5 shall be replaced by</p> <p>“17.5.5 Not Used”</p> <p>2.15 Clause 24.3 shall be replaced by</p> <p>“24.3 Where the Authority suspects fraudulent activity, the Supplier shall comply with all reasonable written requests made by the Authority’s representative for entry to the premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. Further the Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any agreed audit.”</p> <p>2.16 Clause 24.4 shall be replaced by</p>
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	<p>"24.4 Not used"</p> <p>2.17 Clause 24.5 shall be replaced by "24.5 Not used"</p> <p>2.18 Clause 24.7 shall be replaced by "24.7 Not used"</p> <p>2.19 Clause 24.8 shall be replaced by " 24.8 The Supplier shall issue an assurance statement of its internal controls annually within 30 days of 1st April each year during the Contract, containing such assurances as the Authority shall reasonably require to enable it to complete its own annual accounts and statement of internal control."</p> <p>3 Variations to Call off Terms and Conditions Schedule 3 Information and Data Provisions:</p> <p>3.1 The document attached at Appendix 6 (Schedule 3 Annex 1-- Data Protection Protocol) of this Order Form shall be appended to the Call Off Terms & Conditions as the Data Protection Protocol referred to in Schedule 3 and throughout the Contract.</p> <p>4 Variations to Call off Terms and Conditions Schedule 4 Definitions:</p> <p>4.1 The following shall be added to 1.1 Definitions "Relevant Transfer Date" means the date of any relevant transfer under TUPE";</p> <p>4.2 The following shall replace the definition of "Third Party Body" in 1.1 Definitions "Third Party Body" another Contracting Authority, whose role it is to: (a) analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities); or (b) manage the Framework Agreement with the Supplier"</p> <p>5 Variations to Call Off Terms & Conditions Schedule 5 Specification & Tender Response Document:</p>
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5.1 The Specification & Tender Response document referred to at Schedule 5 shall be deemed to be the relevant contents of this Order Form, specifically the "Services" and "Services & Deliverables Required" sections.

6. Variations to Call Off Terms & Conditions
Schedule 6 Commercial Schedule:

6.1 The Commercial Schedule referred to at Schedule 6 shall be deemed to be the relevant contents of this Order Form.

7 Variations to Call Off Terms and Conditions
Schedule 7 Staff Transfer:

7.1 If the Parties choose the drafting at provision 7.1 of Schedule 1 (Key Provisions) that TUPE will not apply at the commencement of the provision of Services, and the check box at Part A of Schedule 7 of the Call Off Contract is checked, then the following shall be added to Schedule 7 Part A (No staff transfer to the Supplier under TUPE) Clause 1:

"1.3 In the event that Part A clause 1.2 of this Schedule 7 applies, notwithstanding anything provided in such clause in particular in clause 1.2.4, the Authority shall indemnify and keep indemnified the Supplier (and shall pay to the Supplier such sum as would, if paid to any Sub-contractor, indemnify and keep indemnified any such Sub-contractor) against any and all liabilities set out in clause 1.2.4 including but not limited to;

all additional costs above those allowed for by the Supplier or Sub-contractor in its bid or proposal, and or any and all costs relating to their termination incurred by the Supplier or the relevant Sub-contractor, of which such costs may include but shall not be limited to: payments in lieu of notice, outplacement support, legal, HR, redundancy, contractual enhancements and pensions; including (but not limited to) any liability arising out of or in connection with the termination by the Supplier or relevant Sub-contractor (as applicable) of the person's employment and any failure to inform and consult pursuant to regulation 13 of TUPE. Clause 1.2.4 of the Framework Agreement shall be amended accordingly."

7.2 If the Parties choose the drafting at provision 7.1 of Schedule 1 (Key Provisions) that TUPE will apply at the commencement of the provision of Services, and the check box at Part B of Schedule 7 of the Call off Contract is checked, then the following changes shall be made to Part B (Staff transfer from the Authority under TUPE) Clause 1

7.2.1 clause 1.1 shall be replaced with:

"1.1 The Parties agree that at the commencement of the provision of Services under this Contract there is an organised grouping of employee(s) with the principal purpose and the activities are fundamentally the same resulting in a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Transferring Employees will transfer on the Transfer Date to the Supplier or any Sub-contractor pursuant to TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions."

7.2.2 clause 1.10 shall be replaced in its entirety with:

"1.10 The Authority shall indemnify and keep indemnified the Supplier in relation to any Employment Liabilities arising out of or in connection with any allegation or claim made at any time by any person employed or engaged by the Authority other than the Transferring Employees who claim to have become an employee of or have rights against the Supplier by virtue of TUPE

7.3 If the Parties choose the drafting at provision 7.1 of Schedule 1 (Key Provisions) that TUPE will apply at the commencement of the provision of Services, and the check box at Part C (Staff transfer from a current provider under TUPE) of Schedule 7 of the Call off Contract is checked, then:

7.3.1 Clause 1.1 of Part C shall be replaced with:

"1.1 The Parties agree that at the commencement of the provision of Services under this Contract there is an organised grouping of employee(s) with the principal purpose and the activities are fundamentally the same resulting in shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Third Party Employees will transfer on the Transfer Date to the Supplier or a Sub-contractor pursuant to TUPE, the Cabinet Office Statement and (where relevant) Fair Deal for Staff Pensions."

7.3.2 Clause 1.7 of Part C shall be replaced with:

"1.7 The Authority shall use all reasonable endeavours to transfer to the Supplier or any Sub-contractor the benefit of any indemnity it has from the Third Party."


8 Variations to the Call Off Terms & Conditions Schedule 9 Order Form

8.1 The blank template document at Schedule 9 of the Call Off Terms & Conditions shall be deleted and

	<p>replaced with this completed Order Form in its entirety.</p> <p>9 Variations to the Call Off Terms & Conditions Schedule 11 Exit Management</p> <p>9.1 The document attached at Appendix 7 (Schedule 11 – Exit Management) shall be appended to the Call Off Terms & Conditions as Schedule 11 Exit Management as referred to in clause 16.2.1 of Schedule 2 General Terms and Conditions</p>
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By signing and returning this Order Form the Authority agrees to enter a legally binding contract with the Supplier to provide the Services as specified in this Order Form incorporating the rights and obligations in the Call-Off Terms and Conditions as set out in the Framework Agreement entered into by the Supplier and Portsmouth Hospitals University NHS Trust

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

For and on behalf of the Authority:	
Name and Title	ANN MARR , CHIEF EXECUTIVE
Signature	
Date	16/8/22

Order Form Appendix

Appendix 1 - Services Specifications

The activities and outputs NHS SBS will undertake are:

1. Document & Information Review

- A concise review of your current systems, policies and procedures across source to settle
- Virtual workshops and interviews with your executive and operational teams
- Provision of a list of key inputs (data, documents, other information) required from each in-scope ICS member

2. Provide a list of recommended stakeholders/subject matter experts to help input to the insight

- The Authority shall provide named contacts and resources within each of the 18 Provider Organisations to assist with data collection, workshop planning and support as required by NHS SBS during the project
- The Authority shall provide appropriately skilled resource for all workshops as required by NHS SBS as set out in the workshop time commitment table below

3. Conduct Virtual Workshops and Interviews

- Record organisational drivers for change
- Understand ICS and organisation objectives through a Virtual interview with Directors of Finance and Directors of Procurement
- Measure adherence to and efficacy of policies and procedures
- Status against PTOM recommendations
- Analyse use of systems and processes
- Measure capacity and capability across organisations
- Measure operating cost baseline across organisations

4. Undertake Maturity Assessments and Analysis

- Analyse data from Stage 3
- Produce an individual maturity assessment for each organisation
- Apply an ICS-wide lens to suggest options for integration across the source to settle processes in Cheshire and Merseyside
- Identify the benefits of moving to a standardised ICS solution

5. Share Full Insights Analysis

First draft findings shared with the CFO and Directors of Procurement within each Provider Organisation. The report will cover:

- Individual organisation and ICS baseline analysis (baselines measured against FFF)
- Measurement against PTOM readiness and the CCIAF key themes
- Recommendations to level up performance across the ICS to Best in Class standards

- Provider Organisations shall review and provide comments on the content of the draft report and agree an action plan within one week of issue by NHS SBS
- final report to be updated following yfeedback and include action plan and recommendation

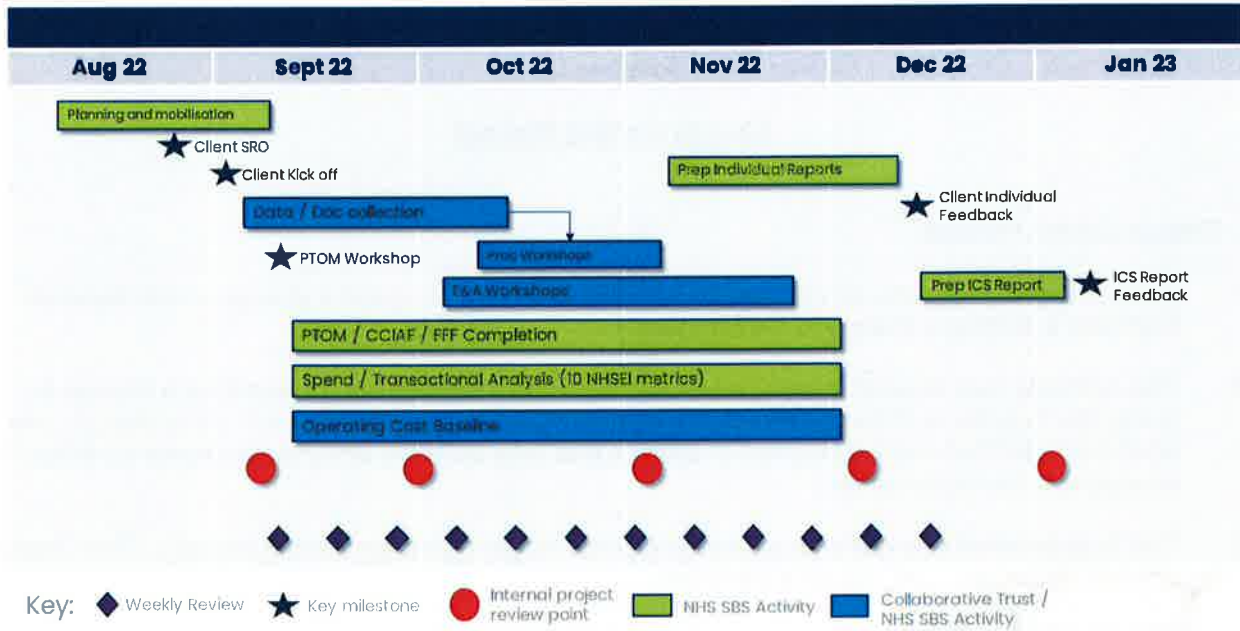
NB – All workshops, interviews and customer interaction will take place virtually using MS Teams

Workshop time commitment from each organisation (to be repeated across each of the 18 ICS members)

Workshop duration	Subject
Approx. 3.5 hours	Procurement Workshop 1
Approx. 3 hours	Procurement Workshop 2
Approx. 3 hours	Procurement Workshop 3
Approx. 2.5 hours	Accounts Payable (Purchase ledger) Workshop 1
Approx. 2 hours	Accounts Payable (Purchase ledger) Workshop 2
Approx. 2.5 hours	General Ledger and Reporting Workshop 1
Approx. 2.5 hours	General Ledger and Reporting Workshop 2
Approx. 2.5 hours	Accounts Receivable (Sales Ledger)
Approx. 2.5 hours	Cash Management and Receipting
30mins	Organisation Change

TIMELINES

INSIGHT DIAGNOSTIC PROJECT PLAN ON A PAGE


 Shared Business Services


Order Form Appendix

Appendix 2 to Appendix 4 – Not Used

Appendix 5

Schedule 10

Change Control Process

1. Change Control Process

- 1.1. Subject to the provisions of this Clause 2.5, either Party may request a change to this Services Contract, including a change to the Services.
- 1.2. The Authority may request a change or shall respond to the Supplier's request for a change by giving the Supplier sufficient information for the Supplier to assess the extent of the change, any additional cost that may be incurred or savings that may be made and the time frame by which the change is to be implemented.
- 1.3. The Supplier shall respond with a Change Control Notice ("Change Control Notice") . The Change Control Notice shall set out, as a minimum:
 - i. The title of the change;
 - ii. The originator and date of request by the Authority;
 - iii. Any resulting proposed change to the Contract Price;
 - iv. The Supplier's opinion of any amendments required to this Contract (including to the Services, the Specifications and/or the KPIs) as a result of the change;
 - v. Where relevant, details of the likely timetable for implementation of the change;
 - vi. Where relevant, any alternative methods for implementing the change.
- 1.4. The parties shall, acting in good faith, discuss the contents of the Change Control Notice with a view to trying to reach agreement on the consequences of the change. The Supplier shall provide such further information as is reasonably required by the Authority to consider the contents of the Change Control Notice.
- 1.5. In the event that the Supplier is unable to provide the change to the Services or where the Parties are unable to agree either the change to the Contract Price, or the amendments to the Contract and/or the Specifications and/or the KPIs as a result of the change:
 - 1.5.1. The Authority may agree to withdraw the change, in which case both parties shall continue to perform their obligations under the Contract without the change; or
 - 1.5.2. If the Authority so elects, the Parties shall refer the matter to mediation under Clause 22 of Schedule 2 of the Call-off Terms and Conditions;
- 1.6. If the Parties agree the change and any relevant changes to the Contract Price, or amendments to the Contract and/or the Specifications and/or the KPIs as a result of the change, the agreed position shall be recorded in writing, and the Supplier shall carry out such change and be bound by the same provisions so far as is applicable, as though such change was stated in this service contract.

2. Minor Works Order Process

- 2.1 The Supplier shall establish simple procedures for ordering minor and ad-hoc work, which procedure shall involve the exchange of simple Minor Works Order ("MWO") forms (or similar) between nominated authorities of both Parties.
- 2.2 MWO forms shall contain specifications of the work requested together with the user's identity and the relevant timescales.
- 2.3 MWO forms shall contain resource and elapsed time estimates and, as appropriate, methods, dependencies, conditions and any other pertinent information.
- 2.4 A MWO will include the following details:
 - i. Section 1: MWO Title, date raised, management summary (a short, concise description of the requirement and the work required to satisfy it);
 - ii. Section 2: Contact details (both the Authority and Supplier details);
 - iii. Section 3: Billing details (including start, end date, total effort, total charge, billing type, billing schedule);
 - iv. Section 4: Full explanation of works required (including requirements summary, scope & exclusions, roles & responsibilities, Supplier deliverables, service level variations, dependencies, dates & milestones, acceptance criteria, key assumptions, hardware, software and 3rd party requirements, risks & issues, specific terms & conditions, cancellation terms & charges, commercial arrangements – estimated effort & charges by role, commercial arrangements – overtime, commercial arrangements – standby & call-out (If the project necessitates standby and/or call-out cover for which a premium will be added then state the trigger for such cover, the estimated effort and the premium that will be applied);
 - v. Section 5: Works Order Acceptance and Approval.

Order Form Appendix

Appendix 6

Schedule 3 ANNEX 1

Data Protection Protocol



GOV UK TEMPLATE
Data_Protection_Pro

[This is Gov.UK template document that can be found [here](#).

To be completed in partnership with Authority ahead of Contract signature, and the completed DPP attached in full.]

Order Form Appendix

Appendix 7

SCHEDULE 11

Exit Management

1. Definitions

The definitions in this paragraph apply in this Schedule 11 (Exit Management).

Assets: all assets and rights required to provide any of the Services in accordance with this agreement including without limitation the Supplier's equipment but excluding the Authority's Assets.

Business Process Manual: the manual which is prepared by the Supplier and which details the business procedures which it follows in the provision of the Services.

Exclusive Assets: those Assets which are used by the Supplier or a Material Subcontractor exclusively in connection with the provision of the Services.

Fair Market Value: the fair market value of the relevant Asset(s) calculated in accordance with [CROSS-REFERENCE].

Net Book Value: the net book value of the relevant Asset(s) calculated in accordance with [the depreciation policy in [CROSS-REFERENCE]].

Non-Exclusive Assets: those Assets used by the Supplier or a Material Subcontractor in connection with the provision of the Services but which are also employed by the Supplier or Material Subcontractor for other purposes.

Registers: the registers and database referred to in paragraph 4.2(a) and paragraph 4.2(b) of this Schedule 11.

Transitional Assistance Notice: has the meaning set out in paragraph 5.1 of this Schedule 11.

Transferable Assets: those of the Exclusive Assets which are capable of legal transfer to the Authority.

Transferable Contracts: the Subcontracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services.

Transferring Assets: has the meaning set out in paragraph 6.1(a) of this Schedule 11.

Transferring Contracts: has the meaning set out in paragraph 6.1(c) of this Schedule 11.

2. Purpose of Schedule

2.1 The Supplier is required to ensure the orderly transition of the Services from the Supplier to the Authority or any Replacement Supplier in the event of any termination (including partial termination) or expiry of this agreement. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.

2.2 For the avoidance of doubt, the Supplier is responsible for the overall management of the exit and Service transfer arrangements.

3. Exit Plan

The Exit Plan shall:

- (a) address each of the issues set out in this Schedule 11 to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
- (b) detail how the Services will transfer to the Replacement Supplier and/or the Authority including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components run by the Supplier or any of its Subcontractors (where applicable);
- (c) specify the scope of the Transitional Assistance Services that may be required by the Authority (subject to paragraph 8 of this Schedule 11), any charges that would be payable for the provision of Transitional Assistance Services and detail how such services would be provided (if required) during the Termination Period;
- (d) provide a timetable and identify critical issues for carrying out the Transitional Assistance Services; and
- (e) set out the management structure to be put in place and employed during the Termination Period.

4. Obligations during the Term

4.1 The Supplier and the Authority shall each appoint an exit manager and provide written notification of such appointment to each other within [six months] after the Effective Date. The Supplier's exit manager shall be responsible for ensuring that the Supplier and its employees, agents and Subcontractors comply with this Schedule. The Supplier shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with this Schedule 11. The exit managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 11 and each party's compliance with it.

4.2 During the Term, the Supplier shall:

- (a) create and maintain a register of:
 - (i) all assets, detailing their ownership status as either Exclusive Assets (separately identifying Transferable Assets) or Non-Exclusive Assets and their [Net Book Value **OR** Fair Market Value]; and
 - (ii) all Subcontracts and other agreements (separately identifying Transferable Contracts) required to perform the Services;
- (b) create and maintain a database setting out the Supplier's technical infrastructure through which the Services are delivered. Such database shall be capable of allowing staff of the Replacement Supplier and/or the Authority to acquire sufficient technical understanding of how the Supplier provides the Services to ensure the smooth transition of the Services with the minimum of disruption; and
- (c) at all times keep the Registers up to date and shall maintain copies of any agreements referred to in any Register.

- 4.3 The parties shall agree the format of the Registers as part of the process of agreeing the first Exit Plan.
- 4.4 At the same time as the Supplier submits a revised Exit Plan, it shall also submit to the Authority up-to-date Registers.
- 4.5 The Supplier shall ensure all Exclusive Assets are clearly marked to identify that they are exclusively used for the provision of the Services under this agreement.
- 4.6 The Supplier shall procure that all licences for Third Party Software entered into with effect from or after the Effective Date and all Subcontracts shall be assignable or capable of novation at the request of the Authority to the Authority and/or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority. If the Supplier cannot procure such rights then the Supplier shall consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority or whether the Supplier should seek an alternative provider of the goods or services to which the relevant agreement relates.
- 4.7 On reasonable notice, the Supplier shall provide to the Authority and/or to its Replacement Supplier (subject to the Replacement Supplier entering into reasonable written confidentiality undertakings with the Supplier), such material and information as the Authority shall reasonably require to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Supplier undertaking due diligence (including in relation to the Services, Assets, Authority's Data, Registers and Transferring Employees).

5. Transitional Assistance Services

- 5.1 The Authority shall be entitled to require the provision of Transitional Assistance Services by sending the Supplier a notice to that effect (**Transitional Assistance Notice**) at any time before termination or expiry. The Transitional Assistance Notice shall specify:
 - (a) the date from which Transitional Assistance Services are required;
 - (b) the nature and extent of the Transitional Assistance Services required; and
 - (c) the period during which it is anticipated that Transitional Assistance Services will be required (**Transitional Period**) (which shall continue no longer than [PERIOD] after the date that the Supplier ceases to provide the Services or, in the event that a Termination Period is specified by the Authority, no longer than the end of the Termination Period).
- 5.2 The Authority shall have an option to extend the Transitional Period beyond the period specified in the Transitional Assistance Notice by written notice to the Supplier provided that such extension shall not extend beyond [PERIOD] after the expiry of the period referred to in paragraph 5.1(c) of this Schedule 11.
- 5.3 The Authority shall have the right to terminate its requirement for Transitional Assistance Services by serving not less than [20 days'] notice on the Supplier to such effect.
- 5.4 The price of delivering the Transitional Assistance Services shall be agreed and documented using the Change Control Process prior to the commencement of Transitional Period. Notwithstanding the foregoing, the Transitional Assistance Services shall be provided in good faith and in accordance with Best Industry Practice.

- 5.5 The Supplier shall continue to provide the Services (or the relevant part of them) during the Transitional Period in accordance with the Service Levels unless the parties agree otherwise pursuant to paragraph 5.6 of this Schedule 11.
- 5.6 Where the Supplier demonstrates to the Authority's reasonable satisfaction that transfer of the Services during the Transitional Period will have a material adverse effect on the Supplier's ability to meet a particular Service Level and such adverse effect is not due to a failure by the Supplier to perform this agreement, the parties shall vary the relevant Service Level and/or the applicable Service Credits to take account of such adverse effect.
- 5.7 During the Transitional Period, the Supplier shall, in addition to providing the Services and the Transitional Assistance Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption and to facilitate the orderly transfer of the Services. The Supplier shall use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible, any additional reasonable costs incurred by the Supplier in this regard which are not already in the scope of the Transitional Assistance Services or the Exit Plan shall be provided on a time-and-materials basis in accordance with the applicable rates set out in Schedule 11 and subject to agreement under the Change Control Process.
- 5.8 The Authority and the Supplier acknowledge that the transition of the Services to the Replacement Supplier may be phased over a period of time so that certain identified Services are transferred to the Replacement Supplier before others.
- 5.9 The Authority shall, at the Supplier's reasonable request, require the Replacement Supplier and any agent or personnel of the Replacement Supplier, to enter into an appropriate confidentiality undertaking with the Supplier.
- 5.10 The Supplier and the Authority shall comply with all of their respective obligations contained in the Exit Plan.
- 5.11 From the date [six months] before expiry or from the service by either party of any Termination Notice (whichever is the earlier) and during any Termination Period, the Supplier shall not terminate or vary in any material respect any Transferable Contract without the Authority's prior written consent, such consent not to be unreasonably withheld or delayed.
- 5.12 The Supplier shall comply with all of its obligations regarding its personnel in accordance with Schedule 7 (Staff Transfer).
- 5.13 On termination or expiry (as the case may be) or on expiration of the Termination Period or, provided that it does not have an adverse impact on the ability of the Supplier to provide the Services or the Transitional Assistance Services at any time during the Termination Period (as the Authority shall require):
- (a) Not used:
 - (b) the Supplier shall erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Period any software containing the IPRs owned by the Authority;

- (c) the Supplier shall return to the Authority such of the following as are in the Supplier's possession or control:
 - (i) all Authority's Assets;
 - (ii) all materials created by the Supplier under this agreement, the IPRs in which are owned by the Authority;
 - (iii) any other equipment which belongs to the Authority; and
 - (iv) any items that have been on-charged to the Authority, such as consumables;
- (d) the Supplier shall vacate any Authority's Premises; and
- (e) each party shall return to the other party all Confidential Information of the other party and shall certify that it does not retain the other party's Confidential Information.

5.14 The Transitional Assistance Services to be provided by the Supplier shall include (without limitation) such of the following services as the Authority may specify:

- (a) stopping all non-critical Software changes (by agreement with the Authority);
- (b) providing to the Authority an up-to-date Business Process Manual;
- (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority or Replacement Supplier after the end of the Termination Period;
- (d) providing details of work volumes and staffing requirements over the preceding 12 months;
- (e) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth;
- (f) not used;
- (g) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
- (h) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
- (i) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services.

6. Transfer of assets and contracts

6.1 Not less than [six months] before expiry or, in the case of termination, as soon as practicable (but in any event not later than [one month] following delivery of the up-to-date Registers) or in the event of a Termination Period, not later than one month before to the date of expiration of the Termination Period, the Authority shall notify the Supplier:

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to it and/or any Replacement Supplier (**Transferring Assets**);

- (b) which, if any, of the Exclusive Assets which are not Transferable Assets and which of the Non-Exclusive Assets the Authority and/or the Replacement Supplier requires the continued use of; and
- (c) which Transferable Contracts the Authority requires to be transferred to it and/or to the Replacement Supplier or any other licences of the Supplier's Software or Third Party Software required by the Authority and/or the Replacement Supplier (**Transferring Contracts**),

in order for the Authority or the Replacement Supplier to provide the Replacement Services from the end of the Termination Period. At the request of the Authority the Supplier shall provide such assistance as may be necessary to help the Authority and/or the Replacement Supplier to identify which Assets and which Transferable Contracts are required for the continued provision of the Services and the provision of the Replacement Services.

- 6.2 The Supplier shall sell the Transferring Assets to the Authority or the Replacement Supplier (as determined by the Authority) with effect from the end of the Termination Period and the sale shall take place at such place as the Authority shall specify. The Authority or the Replacement Supplier shall acquire the Transferring Assets at [Net Book Value **OR** Fair Market Value] in accordance with [INSERT]. Risk in such Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Period and title to such Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 6.3 Where the Supplier is notified in accordance with paragraph 6.1(b) that the Authority and/or the Replacement Supplier requires continued use of any of the Exclusive or Non-Exclusive Assets, the Supplier shall:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 6.4 The Supplier shall at the Authority's request and with the co-operation of the Authority procure the novation or assignment to the Authority and/or Replacement Supplier of the Transferring Contracts.
- 6.5 The Authority shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or re-assigned to the Authority or the Replacement Supplier, the Authority shall carry out, perform and 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.
- 6.6 The Supplier shall indemnify the Authority (or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a party to a Transferring Contract which is assigned or novated to the Authority (or Replacement Supplier) pursuant to paragraph 6.4 of this Schedule 11 in relation to any matters arising prior to the date of such assignment or novation only.

- 6.7 The Authority shall notify the Supplier of any obligation under any Transferring Contract which has been or will be novated or assigned under this paragraph which it is unable to carry out or perform without the assistance of the Supplier. The Supplier shall provide all reasonable assistance to the Authority to enable it to comply with that obligation.

7. [Post-termination support]

The Supplier shall at the Authority's request provide ongoing support of the Supplier's Software and the Third Party Software on the Supplier's normal commercial terms and at the Supplier's current standard rate in respect of such support services for as long as it is required.

8. Payment on termination or expiry

- 8.1 Subject to paragraph 8.2 of this **Error! Reference source not found.**11, the Authority shall, or shall procure that the Replacement Supplier shall, pay to the Supplier the price determined in accordance with paragraph 6 of this Schedule 11:

- (a) for the Transferring Assets; and/or
- (b) for the continued use of the Exclusive Assets and Non-Exclusive Assets as referred to in paragraph 6.1(b) of this **Error! Reference source not found.** 11.

- 8.2 Any Charges to be paid by the Authority in respect of the Supplier performing its obligations in this **Error! Reference source not found.**1 (if any) shall be determined in accordance with **Error! Reference source not found.**.. The continued provision of the Services shall be paid for in accordance with the Charges relating thereto.

9. Apportionments

- 9.1 There shall be apportioned between the Authority and the Supplier or the Replacement Supplier and the Supplier all outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts.

- 9.2 This apportionment shall be carried out as follows:

- (a) the payments shall be annualised and divided by 365 to reach a daily rate;
- (b) the Authority shall be responsible for or shall procure that its nominee or the Replacement Supplier shall be responsible for or entitled to (as the case may be) an amount equal to the number of complete days during the period of the invoice after the transfer multiplied by that daily rate; and
- (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

- 9.3 Each party shall pay and the Authority shall procure that its nominee or the Replacement Supplier shall pay any monies due under this paragraph 9 as soon as practicable.

