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Tech Innovation Framework Agreement

THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

and

The Flame Lily Healthcare Ltd (t/a CheckUp Health)

Tech Innovation Framework Agreement

Framework Terms

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THIS FRAMEWORK AGREEMENT is made on [2022]

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE** acting as part of the Crown and with the Health and Social Care Information Centre (known as NHS Digital) acting as his agent ("**Framework Authority**"); and
 - (2) The Flame Lily Healthcare Ltd a company registered in England and Wales under company number 07073551 whose registered office is at 144 Penn Road, West Midlands, Wolverhampton WV3 0EE (the "**Supplier**"),
- each a "**Party**" and together the "**Parties**".

INTRODUCTION

- (A) On 7th June 2022 the Secretary of State for Health and Social Care advertised the Contract Notice in the Official Journal of the European Union setting out its intention to establish a multi supplier framework for the provision of technology and innovation services to Potential Call Off Ordering Parties and invited expressions of interest from the private sector in becoming a Supplier.
- (B) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Framework Authority selected the Supplier as a supplier of Services.
- (C) The Parties have agreed to enter into this Framework Agreement on the terms and conditions set out below.
- (D) This Framework Agreement establishes the basis on which certain customers within the scope of the Contract Notice may, during the Framework Agreement Term, enter into Call Off Agreements with the Supplier for the provision of the Services and the terms and conditions that shall govern the provision of such Services.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. Definitions and Interpretation

- 1.1 In this Framework Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in schedule 1 (*Definitions*) or the relevant schedule in which that capitalised expression appears.
- 1.2 In this Framework Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 a reference to a gender includes the other gender and the neutral;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government or NHS Body;

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- 1.2.4 any references to a named body or organisation shall include references to successors of that body or organisation and/or any equivalent bodies or organisations that perform the same or substantially similar functions;
 - 1.2.5 a reference to a Law includes a reference to that Law as modified, amended, extended, consolidated or re-enacted from time to time before or after the date of this Framework Agreement and any prior or subsequent legislation under it;
 - 1.2.6 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - 1.2.7 references to "writing" include typing, printing, lithography, photography, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
 - 1.2.9 unless otherwise provided and save for references in schedule 4.4 (*Template Guarantee*) (where applicable), references to clauses and schedules are references to the clauses and schedules of this Framework Agreement, and references in any schedule to paragraphs, parts and annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the schedule or the part of the schedule in which the references appear;
 - 1.2.10 references to this Framework Agreement are references to this Framework Agreement as amended from time to time; and
 - 1.2.11 any monetary sums set out in this Framework Agreement shall (unless expressly stated otherwise) be in pounds sterling.
- 1.3 Where a standard, policy or document is referred to in this Framework Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Framework Authority and the Parties shall update this Framework Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Catalogue Agreement, Standards, the Framework Agreement, the Call Off Agreement(s), the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Commercial Standard;
 - 1.4.2 the remaining Standards excluding the Commercial Standard;
 - 1.4.3 the Catalogue Agreement (other than the schedules);
 - 1.4.4 the schedules of the Catalogue Agreement;
 - 1.4.5 the Call Off Order Form;
 - 1.4.6 the terms of the Framework Agreement;
 - 1.4.7 the schedules of the Framework Agreement;

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- 1.4.8 the Call Off Terms; and
- 1.4.9 the schedules of the Call Off Agreement(s).
- 1.5 In respect of rights, obligations and liability in relation to personal data, if there is any conflict between the Data Processing Deed and any of the Catalogue Agreement, Standards, the Framework Agreement and/or the Call Off Agreement(s), then the Data Processing Deed shall prevail to resolve such conflict.
- 1.6 Unless otherwise stated, rights granted to a Call Off Ordering Party are also granted to any Service Recipients as applicable.
- 1.7 The schedules and their annexes and appendices form part of this Framework Agreement.
- 1.8 In entering into this Framework Agreement the Framework Authority is acting as part of the Crown.

SECTION B – FRAMEWORK ARRANGEMENTS

2. Term of Framework Agreement

- 2.1 This Framework Agreement will begin on the 7th November 2022 the Framework Commencement Date and unless terminated at an earlier date by operation of Law or in accordance with clause 40 (*Termination by the Framework Authority*), shall continue:
 - 2.1.1 for a period of 18 months from the Framework Commencement Date (the "**Initial Term**"); and
 - 2.1.2 after the Initial Term, for a further period of 30 months.

Condition Precedent

- 2.2 Save for clauses 1 (*Definitions and Interpretation*), 2 (*Term of Framework Agreement*), 6.1 to 6.10 (*Warranties and Obligations*), 28 (*Confidentiality*), 29 (*Transparency and Freedom of Information*), 31 (*Publicity and Branding*), 32 (*Financial Distress*) 36 (*Limitations on Liability*), 37 (*Insurance*) 47 (*Waiver and Cumulative Remedies*), 48 (*Relationship of the Parties*), 50 (*Severance*), 52 (*Entire Agreement*), 53 (*Third Party Rights*), 54 (*Notices*), 55 (*Disputes*) and 57 (*Governing Law and Jurisdiction*), this Framework Agreement is conditional upon and shall not become effective prior to:
 - 2.2.1 where reasonably required by the Framework Authority, the valid execution and delivery to the Framework Authority by the Supplier of the Guarantee;
 - 2.2.2 the Supplier having one or more Catalogue Solutions that has achieved Compliant Status; and
 - 2.2.3 the Supplier having executed a Catalogue Agreement (including agreeing and populating with the Catalogue Authority the Supplier specific sections of the Catalogue Agreement) which remains valid and in force,(together the "**Condition Precedent**").
- 2.3 The Framework Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent set out at clause 2.2.1 above.

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2.4 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. If the Condition Precedent is not satisfied within either:

2.4.1 for clause 2.2.1, prior to the Supplier having any of its Catalogue Solutions that have achieved Compliant Status; and/or

2.4.2 for clause 2.2.3, 1 Month; and/or

2.4.3 for clause 2.2.2, 18 Months,

then, for clause 2.2.1, unless the Condition Precedent is waived by the Framework Authority in accordance with clause 2.3, this Framework Agreement shall not come into effect, neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation and the Catalogue Solution may be removed from the Catalogue.

2.5 The Condition Precedent relates to the Framework Agreement as a whole becoming effective, rather than relating to individual Catalogue Solutions. If a Catalogue Solution is within the scope of schedule 2.4 (*Services and Catalogue Solutions*), it does not matter how long it takes for the Catalogue Solution to achieve a Compliant Status (so long as at least one of the Supplier's Catalogue Solution(s) have achieved Compliant Status within 18 Months in accordance with clause 2.2.2 and 2.4.3 above). Notwithstanding this clause 2.5, a Catalogue Solution can only be sold via the Catalogue utilising this Framework Agreement when the Catalogue Solution in question has a Compliant Status.

2.6 The Supplier shall consult with the Framework Authority in relation to the steps it takes to satisfy the Condition Precedent and shall keep the Framework Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in clause 2.4.

3. Scope of Framework Agreement

3.1 By executing this Framework Agreement, the Supplier becomes a potential provider of the Catalogue Solutions and Associated Services to be ordered via Call Off Agreements. The Framework Agreement shall cover the provision of Catalogue Solutions that fall within the scope of services set out at schedule 2.4 (*Services and Catalogue Solutions*).

3.2 The Supplier shall provide the Catalogue Solutions and/or Associated Services to the Call Off Ordering Party(s) under the terms of any Call Off Agreement entered into with the relevant Call Off Ordering Party and such agreement shall be entered into in accordance with the procedure set out in schedule 2.1 (*Call Off Procedure*).

3.3 The Supplier acknowledges that there is no requirement for any Call Off Ordering Party or Potential Call Off Ordering Party to procure a Catalogue Solution or Associated Services from the Supplier.

3.4 This Framework Agreement governs the overall relationship of the Parties in relation to the procurement of the Services by the Call Off Ordering Parties. This Framework Agreement operates in conjunction with the Catalogue Agreement.

3.5 In particular, the Catalogue Agreement (including the Standards Roadmap and Catalogue Ancillary Documents incorporated by reference) set out:

3.5.1 the Standards;

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- 3.5.2 the Catalogue On-boarding Process for Catalogue Solutions of the Supplier to achieve a Compliant Status and thus be available for purchase by Potential Call Off Ordering Parties on the Catalogue;
- 3.5.3 the continuing compliance requirements that the Supplier and its Catalogue Solutions must comply with in order to comply with the Catalogue Agreement and maintain a Compliant Status for each of its Catalogue Solution;
- 3.5.4 the way in which the content of the Standards Roadmap obligates Suppliers to develop Catalogue Solutions; and
- 3.5.5 the circumstances which will lead to a removal of a Catalogue Solution, or all of the Supplier's Catalogue Solutions, from the Catalogue.

4. Due Diligence

4.1 The Supplier acknowledges that it:

- 4.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Framework Authority;
- 4.1.2 has raised all relevant due diligence questions with the Framework Authority before the Framework Commencement Date; and
- 4.1.3 has entered into this Framework Agreement and shall enter into any applicable Call Off Agreement in reliance on its own due diligence alone.

5. Call Off Procedure

If a Potential Call Off Ordering Party wishes to purchase Catalogue Solutions and/or Associated Services (which are available for purchase on the Catalogue), it shall run a Selection Process in accordance with schedule 2.1 (*Call Off Procedure*). The Supplier may only enter into Call Off Agreements during the Framework Term.

6. Services

Supplier obligations

- 6.1 Each time a Call Off Agreement is entered into the warranties, representations and obligations in this Framework Agreement shall be deemed repeated by the Supplier to the Framework Authority and the relevant Call Off Ordering Party with reference to the circumstances existing at the time that they are deemed to be repeated and any reference to the Framework Commencement Date (whether express or implied) shall be construed as a reference to the relevant Call Off Commencement Date.
- 6.2 The Supplier shall perform its obligations under this Framework Agreement, including in relation to the supply of the Services, in accordance with:
 - 6.2.1 the Catalogue Agreement;
 - 6.2.2 the Standards and Capabilities relevant to its Catalogue Solution(s);
 - 6.2.3 all applicable Law;

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- 6.2.4 Good Industry Practice; and
- 6.2.5 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of clauses 6.2.1 to 6.2.4.
- 6.3 The Supplier shall draw any conflict of which it is aware, or should reasonably be aware, between any of the requirements of clause 6.2 to the attention of the Framework Authority, and shall comply with the Framework Authority's reasonable instructions as to how that conflict shall be resolved.
- 6.4 The Supplier warrants and represents that:
- 6.4.1 it has full capacity and authority to enter into and to perform this Framework Agreement;
- 6.4.2 it shall be validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 6.4.3 there are no actions, suits or proceedings or regulatory investigations before any court, regulator or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Framework Agreement;
- 6.4.4 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 6.4.5 it has all necessary consents and regulatory approvals to enter into this Framework Agreement; and
- 6.4.6 this Framework Agreement is executed by its duly authorised representative.
- 6.5 The Supplier warrants and represents that it has all consents, registrations, approvals, licences and permissions relating to Medical Devices as recommended or stipulated by any materials published by the Medicines and Healthcare Products Regulatory Agency.
- 6.6 The Supplier shall:
- 6.6.1 ensure that it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
- 6.6.2 at all times provide sufficient and suitably qualified staff to fulfil the Supplier's roles and duties under this Framework Agreement;
- 6.6.3 obtain, and maintain throughout the duration of this Framework Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 6.6.4 continue to have all necessary rights in and to the Catalogue Solution(s) and Associated Services, the Third Party IPRs, the Third Party Software and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Framework Authority which are necessary for the performance of the Supplier's

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obligations under this Framework Agreement and/or the receipt of the Services by any Call Off Ordering Party;

- 6.6.5 minimise any disruption to the Services and/or the Framework Authority's operations when carrying out its obligations under this Framework Agreement;
- 6.6.6 ensure any Documentation and training provided by the Supplier to the Framework Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 6.6.7 gather, collate and provide such information and co-operation as the Framework Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Framework Agreement;
- 6.6.8 notify the Framework Authority in writing as soon as reasonably possible and in any event within one month of any Change of Control taking place;
- 6.6.9 notify the Framework Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court, regulator or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Framework Agreement;
- 6.6.10 ensure that neither it, nor any of its Affiliates, embarrasses the Framework Authority or otherwise brings the Framework Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Framework Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Framework Agreement;
- 6.6.11 ensure its execution, delivery and performance of its obligations under this Framework Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 6.6.12 ensure its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 6.6.13 ensure all written statements and representations in any written submissions made by the Supplier as part of the final tender for the Framework Agreement and any Tender Responses for Call Off Agreements remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement or to the extent that the Supplier has otherwise disclosed to the Framework Authority in writing prior to the date of this Framework Agreement; and
- 6.6.14 ensure it does not perform the Services in any manner that endangers the safety or unlawfully interferes with the convenience of the public and shall procure that its employees, agents and sub-contractors shall conform to such regulations, procedures and precautions provided in writing by the Framework Authority and / or Call Off Ordering Party as may be appropriate.

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- 6.7 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 6.8 Each of the representations and warranties set out in this clause 6 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Framework Agreement.
- 6.9 If at any time the Supplier becomes aware that a warranty or representation given by it under this clause 6 has been breached, is untrue or is misleading, it shall immediately notify the Framework Authority of the relevant occurrence in sufficient detail to enable the Framework Authority to make an accurate assessment of the situation.

Performance Levels

- 6.10 The Supplier shall:
- 6.10.1 for Type 1 Catalogue Solutions, comply with the provisions of schedule 2.5 (*Performance Levels*) of this Framework Agreement in relation to the monitoring and reporting on its performance against the Performance Indicators; and
- 6.10.2 for Type 2 Catalogue Solutions, comply with the provisions of schedule 2.1 (*Performance Levels*) of the Call Off Agreement in relation to the monitoring and reporting on its performance against the Performance Indicators.

Framework Authority Cause and Call Off Ordering Party Cause

- 6.11 A "**Relief Event**" means where:
- 6.11.1 the Framework Authority does not comply with an express obligation or responsibility set out in the Framework Agreement; or
- 6.11.2 the Catalogue Authority does not comply with an express obligation or responsibility placed upon it, as set out in the Catalogue Agreement, or where the Supplier's compliance with the Standards directly causes the Supplier to be in breach of this Framework Agreement, in accordance with clause 8 of the Catalogue Agreement; or
- 6.11.3 the Supplier is unable to perform its obligations as a direct result of a failure or delay by a third party (not including any Sub-Contractors or agents of the Supplier and not including a third party with whom the Supplier has a relevant contract such as an interface licence referred to in the Commercial Standard) to comply with an express obligation on which the Supplier is dependent to perform its obligations.
- 6.12 If the Supplier is in breach of this Framework Agreement because of the occurrence of a Relief Event, the Supplier shall be entitled to relief from liability and/or breach of this Framework Agreement if and to the extent:
- 6.12.1 the Supplier's non-performance results directly from or in connection with such Relief Event;
- 6.12.2 the Supplier uses reasonable endeavours to mitigate the Relief Event and to perform the Services notwithstanding the Relief Event; and

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6.12.3 the Supplier notifies the Framework Authority's Account Manager in writing (providing full details) as soon as the Supplier becomes aware that a Relief Event has occurred and that it is likely to give rise to the need for relief on the part of the Supplier (and where relevant via a notice in such format as may have been agreed between the Parties for that purpose) ("**Relief Notice**").

6.13 The Relief Notice shall specify the following information:

6.13.1 the affected Services or obligations under this Framework Agreement (including any impacted Call Off Agreements);

6.13.2 the cause(s) of the delay or interruption; and

6.13.3 details of the extent of the likely delay or interruption, showing impact on all Services and obligations under this Framework Agreement affected directly or indirectly by the failure.

6.14 Following the receipt of a Relief Notice, the Framework Authority shall as soon as reasonably practicable consider:

6.14.1 the nature of the Supplier's breach and the alleged Relief Event; and

6.14.2 if it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Relief Event and the Supplier's claim to receive the benefit of the Relief Notice.

6.15 The Framework Authority shall consult with the Supplier where appropriate and shall confirm, as soon as reasonably practicable, its decision on the validity of content of the Relief Notice. The Framework Authority shall have discretion to reject a Relief Notice, acting reasonably.

Continuing obligation to provide the Services

6.16 The Supplier shall continue to perform all of its obligations under this Framework Agreement and shall not suspend the supply of the Services under a Call Off Agreement, notwithstanding the existence of an unresolved Dispute.

7. Obligation to Notify

Without prejudice to the Framework Authority's other rights or remedies or to the Supplier's other reporting obligations set out in this Framework Agreement, the Supplier shall notify the Framework Authority in writing, as soon as reasonably practicable (and in any event within no less than 10 Working Days, or in accordance with any applicable Performance Levels, whichever is earlier) after it comes to the Supplier's attention, or after the Supplier should reasonably have become aware (whichever is earlier) of any event or circumstance which may adversely affect the performance of any of the Supplier's obligations under this Framework Agreement or which is reasonably likely to result in a Default by the Supplier or trigger a right of termination in favour of the Framework Authority.

8. Framework Authority Responsibilities

8.1 The Framework Authority warrants and represents that:

8.1.1 it has full capacity and authority to enter into this Framework Agreement; and

8.1.2 this Framework Agreement is executed by its duly authorised representative.

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- 8.2 The Framework Authority shall:
- 8.2.1 perform all of its obligations which are set out in the clauses of this Framework Agreement and the paragraphs of the schedules;
 - 8.2.2 provide sufficient and suitably qualified staff to fulfil the Framework Authority's roles and duties under this Framework Agreement;
 - 8.2.3 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Framework Agreement provided that such documentation, data and/or information is available to the Framework Authority and is authorised for release by the Framework Authority; and
 - 8.2.4 for Type 1 Catalogue Solutions, update the Catalogue without undue delay with all relevant details of any Service Credits or permitted non-payments permitted in accordance with schedule 2.5 (*Performance Levels*).

9. Charges and Invoicing

- 9.1 The Charges applicable to the Services provided under any Call Off Agreement and any other amounts which may be applicable to the Catalogue Solution(s), shall be calculated, invoiced and paid for in accordance with provisions of schedule 4.1 (*Charges and Invoicing*) of this Framework Agreement and schedule 4.1 (*Charges and Invoicing*) of the Call Off Agreement.

VAT

- 9.2 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and specified in a valid VAT invoice.

Set off and Withholding

- 9.3 The Framework Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Framework Authority) against any amount due to the Supplier under this Framework Agreement or under any other agreement between the Supplier and the Framework Authority.
- 9.4 If the Framework Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Framework Authority) against any amount due to the Supplier, it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Framework Authority's reasons for withholding or retaining the relevant Charges.

SECTION C – CONTRACT GOVERNANCE

10. Governance

The Parties shall comply with the provisions of schedule 5.1 (*Governance*) in relation to the management and governance of this Framework Agreement.

11. Reports and Records and Rights of Audits

- 11.1 The Supplier shall comply with the audit provisions and record related obligations, as set out in schedule 4.3 (*Audit Rights*) and schedule 5.4 (*Reports and Records Provisions*).

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- 11.2 If there is a breach of this Framework Agreement as referenced in paragraph 1.4 of schedule 4.3 (*Audit Rights*), the trigger based audit rights as set out in schedule 4.3 (*Audit Rights*) shall apply.
- 11.3 If the Framework Authority assigns, novates or otherwise transfers this Framework Agreement, the Supplier shall, at no charge to the Framework Authority, submit to the Framework Authority complete and accurate Records in accordance with the provisions of schedule 5.4 (*Reports and Records Provisions*).

SECTION D – CHANGE

12. General

- 12.1 Depending on the nature of a Change, it will be dealt with according to the relevant provisions of this Section D. Only changes to the Framework Terms and documents referenced therein will be dealt with by the Common Contract Change Control Procedure, except where changes to such documents are subject to change control provisions set out or referred to elsewhere in this Section D.
- 12.2 All changes to Standards and Capabilities shall be dealt with under the relevant change procedures as set out or referred to in the Catalogue Agreement.
- 12.3 In considering and agreeing Changes to this Framework Agreement, the Framework Authority shall at all times have regard to the requirements and restrictions set out in Regulation 72 of the Public Contract Regulations 2015.
- 12.4 Where there are any Changes to this Framework Agreement, the terms of the updated Framework Agreement shall apply to all existing Call Off Agreements and the Framework Authority shall notify all existing Call Off Ordering Parties of any such Changes accordingly.

13. Framework Agreement Common Contract Changes

- 13.1 Subject to clause 13.3 below, a requirement for a Change to the Framework Terms shall be subject to the Common Contract Change Control Procedure as set out in schedule 5.2 (*Common Contract Change Control Procedure*).
- 13.2 Where the Common Contract Change relates to schedule 2.2 (*Call Off Terms*) the Framework Authority shall notify all Call Off Ordering Parties of any Changes made without undue delay.
- 13.3 Where the Parties reasonably agree that the nature of a Change means it is not appropriate to follow the process set out in schedule 5.2 (*Common Contract Change Control Procedure*), (for example, where the information subject to the Change is Supplier specific, such as its Commercially Sensitive Information and approved Key Sub-Contractors), the Parties may effect such change by agreement only and shall update the Framework Agreement accordingly.

14. Change in Law

- 14.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Framework Agreement nor be entitled to an increase in the Charges as the result of:
- 14.1.1 a General Change in Law; or
- 14.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Framework Commencement Date.

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- 14.2 If a Specific Change in Law occurs or will occur during the Framework Term or the term of any Call-Off Agreement (other than as referred to in clause 14.1.2), the Supplier shall:
- 14.2.1 notify the Framework Authority as soon as reasonably practicable of the likely effects of that change, including:
 - 14.2.1.1 whether any Common Contract Changes are required to this Framework Agreement; and
 - 14.2.1.2 whether any relief from compliance with the Supplier's obligations under this Framework Agreement is required;
 - 14.2.2 provide the Framework Authority with evidence:
 - 14.2.2.1 that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - 14.2.2.2 as to how the Specific Change in Law has affected the cost of providing the Services; and
 - 14.2.2.3 demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges; and
 - 14.2.3 be entitled to relief from its obligations under this Framework Agreement and/or variation in the Charges under this Framework Agreement to the extent impacted by the relevant Specific Change in Law.
- 14.3 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law as set out at clause 14.2.3 shall be implemented in accordance with the relevant Change provisions of this Section D, depending on the nature of the required Change.

15. Changes to Services and Catalogue Solutions

If the Supplier removes a Catalogue Solution from the Catalogue in accordance with clause 45 of the Catalogue Agreement, the parties shall update schedule 2.4 (*Services and Catalogue Solutions*) to reflect such removal.

16. Change in Catalogue Solution List Price

- 16.1 If the Supplier wishes to change the Catalogue Solution List Price of any of its Catalogue Solutions or the Associated Services, the Parties shall comply with provisions set out at paragraph 2 to Part B-1 of schedule 4.1 (*Charges and Invoicing*).
- 16.2 If the Framework Authority approves a Change to the Catalogue Solution List Price, clause 19 of the Catalogue Agreement shall then apply.

17. Urgent Change

- 17.1 The Catalogue Authority and/or the Supplier shall determine when an Urgent Change is required, in accordance with clause 23 of the Catalogue Agreement. The Catalogue Authority shall notify the Framework Authority when an Urgent Change is required.

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- 17.2 In any event and notwithstanding any on-going negotiations regarding funding in accordance with clauses 17.3 to 17.7 below, the Supplier shall implement the Urgent Change without undue delay as required by either the Catalogue Authority or Framework Authority (as applicable).
- 17.3 The Framework Authority shall consider whether to allocate any funding to the Supplier in respect of its implementation of an Urgent Change. In considering whether to allocate any funding, the Framework Authority shall take into account the relevant processes as set out in the Change Management Process and Roadmap Content document and in any event, where the Urgent Change required is to a Standard, funding shall be allocated.
- 17.4 The Catalogue Authority shall notify the Supplier of its decision, including, if it decides to allocate funding, a reasonable affordability cap applicable to such funding. Any such affordability caps shall be calculated by the Framework Authority in good faith and in a manner appropriate for the relevant Urgent Change.
- 17.5 If the Framework Authority notifies the Supplier that it agrees to allocate funding in accordance with clause 17.4 above, the Supplier shall calculate and notify the Framework Authority in good faith of the time and materials it will have to invest to implement the Urgent Change. The requested funding must be reflective of such calculation and in any event, must be within the affordability cap referred to in clause 17.4. The Supplier shall provide evidence of such calculations to the Framework Authority. The Framework Authority shall have the right to request any further evidence of such calculations as it may reasonably require until it is satisfied that the Supplier's calculation under this clause 17.5 is accurate and has been calculated in good faith.
- 17.6 The Framework Authority shall consult with any other framework authorities that are approved by the Catalogue Authority, to avoid double payment to a Supplier for any implementations required as the result of an Urgent Change and the Supplier shall provide full transparency and disclosure to the Framework Authority and other framework authorities of all such funding or payments made in this respect.
- 17.7 Subject to the continued availability of funding, unless it is unreasonable to do so and (and in any event only to the extent a Supplier's request for funding is in accordance with the requirements of clause 17.5), the Framework Authority shall accept the Supplier's request for funding. On acceptance, the Framework Authority shall notify both the Catalogue Authority and the Supplier of the amount of funding that will be allocated in respect of the Urgent Change.
- 17.8 If funding is allocated, the Supplier will submit an Invoice to the Framework Authority in accordance with schedule 4.1 (*Charges and Invoicing*).

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

18. Key Roles

- 18.1 The Supplier shall ensure that Key Roles are fulfilled at all times during the Framework Term to assist with the fulfilment of the Supplier's Framework Agreement obligations. Schedule 6.1 (*Key Roles*) lists the Key Roles that must be fulfilled as at the Framework Commencement Date.
- 18.2 The Supplier shall keep the list of Supplier Personnel fulfilling the Key Roles up-to-date and shall promptly notify the Framework Authority in writing of any changes to the Supplier Personnel fulfilling any one of the Key Roles.
- 18.3 The Supplier shall:

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- 18.3.1 notify the Framework Authority promptly of any unfulfilled Key Roles (other than for short-term sickness or holidays of two weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- 18.3.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;
- 18.3.3 ensure that all arrangements for planned changes to the Supplier Personnel fulfilling a Key Role provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the obligations under this Framework Agreement or the Services; and
- 18.3.4 ensure that any Supplier Personnel fulfilling a Key Role:
 - 18.3.4.1 have a level of qualifications and experience appropriate to the relevant role; and
 - 18.3.4.2 are fully competent to carry out the tasks assigned to the Key Role.

19. Income Tax and National Insurance Contributions

- 19.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Framework Agreement and/or under any Call Off Agreement, the Supplier shall:
 - 19.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - 19.1.2 indemnify the Framework Authority and any Call Off Ordering Parties against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

20. Employment Indemnity

The Supplier shall indemnify the Framework Authority, Call Off Ordering Parties and Service Recipients against all Employee Liabilities that may arise as a result of any claims brought against the Framework Authority by any of the Framework Authority's employees or former employees and/or any of the Supplier Personnel where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

21. Staff transfer

Schedule 6.2 (*Staff Transfer*) shall govern how the Employment Regulations apply and are dealt with relating to the commencement and expiry and/or termination of this Framework Agreement and any related Call Off Agreements.

22. Supply Chain Rights

- 22.1 Subject to the provisions of this clause 22, the Supplier shall be entitled to sub-contract its obligations under this Framework Agreement and in relation to the Services.

22.2 The Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and Sub-Contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

Sub-contracting

22.3 Clauses 22.4 to 22.7 below shall only apply:

22.3.1 to Catalogue Solutions that are subject to the Market Responsibility Provisions; and

22.3.2 to the extent that such Suppliers are entering a sub-contract with a party that would be classed as a Key Sub-contractor.

22.4 The Supplier shall not sub-contract any of its obligations under this Framework Agreement or any Call Off Agreement without the Framework Authority's prior written consent, which shall not be unreasonably withheld or delayed. If the Framework Authority will not provide its consent, then subject to 22.5 below, it shall provide the Supplier with reasons for its refusal within 10 Working Days of the Supplier's request. Notwithstanding the above, subject to clause 22.8 below, and unless agreed otherwise by the Framework Authority, all Key Sub-Contracts must comply with the requirements set out in clauses 22.9 to 22.10 below.

22.5 To the extent applicable, the Framework Authority may withhold its consent to the use of any Key Sub-Contractor until the agreed Credit Rating Threshold for that Key Sub-Contractor is achieved.

22.6 The Supplier shall exercise due skill and care in the selection and appointment of any Key Sub-Contractor to ensure that it is able to:

22.6.1 manage any Key Sub-Contractors in accordance with Good Industry Practice; and

22.6.2 comply with its obligations under this Framework Agreement and any Call Off Agreement.

22.7 As at the date of this Framework Agreement, the Framework Authority has consented to the Key Sub-Contractors identified in schedule 3.2 (*Approved Key Sub-contractors*). The Supplier shall comply with the requirements as set out in schedule 3.2 (*Approved Key Sub-contractors*) in relation to its Key Sub-Contractors.

Key Sub-Contractors

22.8 The provisions set out in clause 22.9 below shall only apply to the extent the Supplier is the provider of a Type 1 Catalogue Solution.

22.9 Except where the Framework Authority has given its prior written consent, the Supplier shall use its reasonable endeavours to ensure that each Key Sub-Contract shall include:

22.9.1 provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;

22.9.2 a right under the Contract (Rights of Third Parties) Act ("**CRTPA**") for the Framework Authority to enforce any provisions under the Key Sub-Contract which are capable of conferring a benefit upon the Framework Authority;

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- 22.9.3 a provision enabling the Framework Authority to enforce the Key Sub-Contract as if it were the Supplier;
- 22.9.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Framework Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Framework Authority;
- 22.9.5 obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Framework Agreement, including in respect of:
- 22.9.5.1 FOIA requirements set out in clause 29 (of this Framework Agreement and in clause 20 of the Call Off Agreement (*Transparency and Freedom of Information*));
 - 22.9.5.2 the obligation not to embarrass the Framework Authority or otherwise bring the Framework Authority into disrepute set out in clause 6.6.10 (*Services*);
 - 22.9.5.3 the keeping of records in respect of the services being provided under the Key Sub-Contract; and
 - 22.9.5.4 the conduct of Audits set out in schedule 4.3 (*Audit Rights*) of this Framework Agreement and schedule 4.2 (*Audit Rights*) to the Call Off Agreement;
- 22.9.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Framework Authority under clause 40 (*Termination by the Framework Authority*) of this Framework Agreement and clause 30 (*Termination by the Call Off Ordering Party*) of the Call Off Agreement;
- 22.9.7 a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Framework Authority; and
- 22.9.8 a provision requiring the Key Sub-Contractor to:
- 22.9.8.1 promptly notify the Supplier and the Framework Authority in writing of any of the following of which it is, or ought to be, aware:
 - (a) the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor; or
 - (b) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor,and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-Contractor first becomes aware or ought to become aware of the Financial Distress Event, or the fact, circumstance or matter which could cause a Financial Distress Event); and

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22.9.8.2 co-operate with the Supplier and the Framework Authority in order to give full effect to the provisions of schedule 4.2 (*Financial Distress*) to this Framework Agreement, including meeting with the Supplier and the Framework Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the services, and contributing to and complying with the Financial Distress Service Continuity Plan.

22.10 Where a Key Sub-Contract does not contain obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Framework Agreement, the Supplier shall notify the Framework Authority without undue delay. In this event, if the Framework Authority deems necessary, the Supplier shall use its best endeavours to work together in good faith with the relevant Key Sub-Contractor to agree a variation to the obligations set out in the Key Sub-Contract (such variation to be as directed by the Framework Authority). If the Supplier is unable to vary the Key Sub-Contract to comply with the Framework Authority's request, the Supplier shall cease using such Key Sub-Contractor for the provision of the Services, unless agreed otherwise between the Parties.

Supply chain protection

22.11 The Supplier shall ensure that all Sub-Contracts entered into after the Framework Commencement Date shall contain a provision:

22.11.1 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and

22.11.2 a right for the Framework Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

22.12 The Supplier shall pay any undisputed sums which are due from it to a Sub-Contractor within 30 days from the receipt of a valid invoice.

22.13 Notwithstanding any provision of clauses 28 (*Confidentiality*) and 31 (*Publicity and Branding*), if the Supplier or Sub-Contractor notifies the Framework Authority that:

22.13.1 for a Sub-Contract entered into in accordance with clause 22.11, the Supplier has failed to pay a Sub-Contractor's undisputed invoice within 30 days of receipt; or

22.13.2 for any other Sub-Contracts, that the Supplier has failed to pay a Sub-Contractor's undisputed invoice in accordance with the payment terms agreed between the Supplier and that Sub-Contractor,

or the Framework Authority otherwise discovers the same, the Framework Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

23. Non-Solicitation

The Parties shall not (except with the prior written consent of the other Party) directly solicit or entice away (or attempt to solicit or entice away) from the employment of the that other Party any person employed or engaged by that Party in relation to this Framework Agreement (including any contractors) at any time during the Framework Term. For the avoidance of doubt, this restriction shall not prevent either Party from employing or engaging any of the other Party's

employees following a bona fide recruitment process where a public advertisement has been placed to seek to recruit new employees or staff.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

24. Ownership of Intellectual Property Rights

24.1 Except as expressly set out in this Framework Agreement:

- (a) the Framework Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier's Catalogue Solutions;
 - (ii) the Supplier Background IPRs;
 - (iii) the Third Party Software;
 - (iv) the Third Party IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Framework Authority or its licensors;
- (c) the Supplier shall not acquire any right, title or interest in or to the Framework Authority Data;
- (d) the Supplier shall not acquire any right, title or interest in or to Personal Data (including where material Supplier enhancements have created derived information or data which contains Personal Data); and/or
- (e) the Supplier shall not acquire any right, title or interest in or to clinical data, care provision data and other Service Recipient related operational data, which is generated and recorded through health and care delivery (including where material Supplier enhancements have created derived information or data which contains the source clinical data, care provision data and other Service Recipient related operational data).

24.2 The presence in the Catalogue Solution, or in any data structures, algorithms and/or tools that are created by the Supplier to optimise the performance of the Catalogue Solutions, of Personal Data (as described in clause 24.1(d) and/or data referred to in clause 24.1(e) shall not prevent the Supplier from owning the Intellectual Property Rights in the Catalogue Solution and such data structures, algorithms and/or tools, subject to:

- 24.2.1 the exclusion of the Personal Data, as described in clause 24.1(d) and/or data referred to in clause 24.1(e) from ownership by the Supplier; and
- 24.2.2 the Supplier's overriding obligation to comply with the terms of the Data Processing Deed, the Standards and the terms of this Framework Agreement in relation to all such data including in relation to its return, destruction and/or migration to replacement systems.

24.3 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 24.1, in consideration of the mutual rights and obligations under this Framework Agreement, each Party hereby assigns to the other Party, by way of present and future assignment, such Intellectual Property Rights as it has acquired.

24.4 Subject to clause 31 below, neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

25. Licences Granted by the Supplier

The licences to govern use by Call Off Ordering Parties and Service Recipients of the Catalogue Solutions and Associated Services and receipt of the Services more generally shall be as set out in each Call Off Agreement.

26. Service Continuity - Escrow and Assignment and Novation

26.1 For each Supplier Catalogue Solution which has been classified by the Catalogue Authority as being required to be held in escrow in accordance with clause 31 of the Catalogue Agreement, the Supplier shall comply with the following additional provisions in this Framework Agreement in relation to escrow and the ability to assign or novate the licences to the Catalogue Authority in accordance with clause 26.6 below.

Source Code Escrow

26.2 Where the Supplier is required to store any of its Source Code in escrow in accordance with clause 26.1 above, then the Supplier shall within the later of 30 days after the Framework Commencement Date or on achievement of Compliant Status for the relevant Catalogue Solution(s), place all Source Code for the relevant Software along with all related design documentation, tools, methodologies and information which is understandable to a reasonably skilled programmer ("**Materials**"), in escrow at the Supplier's cost (with full verification services applied if the Framework Authority requires it) with NCC Escrow International Limited, its successor or such other comparable organisation on terms and conditions which are not materially adversely different from the standard NCC tripartite escrow agreement terms and conditions at all times. The Supplier shall ensure that the deposited version of the Source Code is the current version of the Software and that the deposited version is kept up-to-date as and when the Software is materially modified or upgraded. The Supplier shall ensure that the deposited version of the Materials is kept up-to-date and relates to the current version of the Software Source Code and that if release events are triggered, the Framework Authority and/or the Catalogue Authority (as applicable) shall be permitted recipients of the Source Code.

26.3 Where the Supplier is unable to procure compliance with the provisions of clause 26.2 in respect of any Third Party Software, it shall provide the Framework Authority with written evidence of its inability to comply with the provisions and shall agree with the Framework Authority a suitable alternative to escrow that provides the nearest equivalent protection. The Supplier shall be excused from its obligations under clause 26.2 only to the extent that the parties have agreed on a suitable alternative. The Supplier may also propose (for the Framework Authority's approval, not to be unreasonably withheld) an alternative arrangement for all of the Source Code which provides equivalent protections ordinarily sought by placing the Source Code into escrow.

26.4 The Supplier shall procure an independent Source Code verification service if required by the Framework Authority. As at the Framework Commencement Date, the Framework Authority anticipates this will be requested annually. The fees of the third party verification service provider shall be agreed in advance by the parties, but payable by the Framework Authority, and the time and effort incurred by the Supplier in the verification process shall be chargeable only in accordance with the principles of schedule 4.1 (*Charges and Invoicing*) and of the Commercial Standard relating to Associated Services.

26.5 In circumstances where the Framework Authority or the Catalogue Authority obtains the release of the Source Code from escrow, the Supplier hereby grants to the Framework Authority and the Catalogue Authority an assignable, royalty-free and non-exclusive licence to use and support the Source Code version of the Deposited Software to the extent necessary for the receipt by Call Off Ordering Parties and/or Service Recipients of the Services or any Replacement Services for a transitional period as set out in the Framework Exit Plan (and in the absence of any defined period, then a minimum period of 12 Months) following the expiry or termination of the Framework Agreement or any Call Off Agreement, whichever is the later.

Assignment or Novation of Licences

26.6 For the purposes of paragraph 3.7 of schedule 5.5 (*Exit Management*) the Supplier shall procure that Third Party Software and Third Party IPR used which forms part of, or is used in or with, the Catalogue Solution and Associated Services (where applicable) is capable of assignment or novation to the Framework Authority and Catalogue Authority or alternatively shall ensure that direct licences will be granted by the relevant Third Parties at no extra cost to the Framework Authority or Catalogue Authority.

26.7 Where the Supplier is unable to obtain a licence for the Framework Authority and/or Catalogue Authority in relation to any Third Party Software and Third Party IPR which forms part of the Catalogue Solution and/or Associated Services, the Supplier shall notify the Framework Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use.

27. IPRs Indemnity

27.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Framework Authority and each other Indemnified Person, and keep the Framework Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim but only to the extent that the IPR Claim is not a direct result of a breach by the relevant Indemnified Person of licence terms (as referred to in this Framework Agreement and/or Call Off Agreement(s)) for the relevant IPRs.

27.2 The Supplier shall not settle or compromise any IPRs Claim without the Framework Authority's or Call Off Ordering Party's or Service Recipient(s)' (as applicable) prior written consent (not to be unreasonably withheld or delayed).

27.3 Where an IPRs Claim is made against the Framework Authority, a Call Off Ordering Party or a Service Recipient (as applicable) then the Framework Authority, a Call Off Ordering Party or a Service Recipient (as applicable) shall:

27.3.1 upon becoming aware of any infringement or allegations of infringement notify the Supplier of the same as soon as reasonably practicable;

27.3.2 not make any admissions without the Supplier's consent (such consent not to be unreasonably withheld or delayed); and

27.3.3 provide reasonable assistance at the Supplier's cost and expense in connection with any negotiations and litigation arising from such claims and the Supplier shall, act in good faith and reasonably consult with and pay due regard to the interest and views of the Framework Authority, a Call Off Ordering Party or a Service Recipient (as applicable) in the conduct of any defence to any claim or demand hereunder.

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- 27.4 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Framework Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Framework Authority or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Framework Agreement shall apply to the replaced or modified Services.
- 27.5 If the Supplier elects to procure a licence in accordance with clause 27.4(a) or to modify or replace an item pursuant to clause 27.4(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Framework Authority may terminate this Framework Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in clause 27.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

SECTION G – CONFIDENTIALITY

28. Confidentiality

- 28.1 For the purposes of this clause 28, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 28.2 Except to the extent set out in this clause 28, or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:
- 28.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 28.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the owner's prior written consent;
 - 28.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and

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- 28.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 28.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party if and to the extent that:
- 28.3.1 the Recipient is required to disclose the Confidential Information by Law;
- 28.3.2 the need for such disclosure arises out of or in connection with:
- 28.3.2.1 any legal challenge or potential legal challenge against the Framework Authority arising out of or in connection with this Framework Agreement;
- 28.3.2.2 the examination and certification of the Framework Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Framework Authority is making use of any Services provided under this Framework Agreement; or
- 28.3.2.3 the conduct of a Central Government or NHS Body review and/or a major projects review and/or any such similar assurance review carried out by or on behalf of HMG in respect of this Framework Agreement;
- 28.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is or any of the Disclosing Party's directors, officers, employees, agents, consultants or contractors are involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office as defined in the act.
- 28.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 28.5 The Supplier may disclose the Confidential Information of the Framework Authority on a confidential basis only to:
- 28.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Framework Agreement;
- 28.5.2 its auditors; and
- 28.5.3 its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.
- 28.6 Where the Supplier discloses Confidential Information of the Framework Authority pursuant to clause 28.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been

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made, including by making Sub-Contractors, auditors or other third party advisers aware of the obligations set out in this clause 28.

- 28.7 The Framework Authority may disclose the Confidential Information of the Supplier:
- 28.7.1 on a confidential basis to any Call Off Ordering Party or reasonably to any Potential Call Off Ordering Party where the Confidential Information relates to the services under the scope of the Framework Agreement required by the Potential Call Off Ordering Party and/or Call Off Ordering Party;
 - 28.7.2 on a confidential basis to any Central Government or NHS Body for any proper purpose of the Framework Authority or of the relevant Central Government or NHS Body;
 - 28.7.3 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 28.7.4 to the extent that the Framework Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 28.7.5 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clauses 28.7.1 or 28.7.2 for any purpose relating to or connected with this Framework Agreement and/or any Call Off Agreement;
 - 28.7.6 excluding any Commercially Sensitive Information, which the Framework Authority determines in its absolute discretion is exempt from disclosure in accordance with the provisions of FOIA, as part of the Framework Authority's re-procurement process for the Services, on a confidential basis and subject to an appropriate confidentiality agreement to bidders for the purposes of undertaking due diligence and/or to a Replacement Supplier for the purposes of providing Replacement Services;
 - 28.7.7 on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement including the Audit Rights, and Exit Management rights; or
 - 28.7.8 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Framework Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Framework Authority under this clause 28.

- 28.8 Nothing in this clause 28 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

29. Transparency and Freedom of Information

- 29.1 The Parties acknowledge that the content of this Framework Agreement, including any changes to this Agreement agreed from time to time, except for:

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29.1.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

29.1.2 Commercially Sensitive Information;

shall be the “**Transparency Information**” and shall not be treated as Confidential Information.

29.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Framework Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Framework Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

29.3 The Supplier shall assist and co-operate with the Framework Authority to enable the Framework Authority to publish the Transparency Information.

29.4 If the Framework Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Framework Authority shall be entitled to exclude such information from publication. The Framework Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Framework Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

29.5 The Framework Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Framework Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

29.6 The Supplier agrees that any Information it holds that is not included in the Transparency Information but is reasonably relevant to or that arises from the provision of the Supplier's obligations under this Framework Agreement or the Services shall be provided to the Framework Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Framework Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information (subject always to the Framework Authority's overriding rights of disclosure of Supplier's Confidential Information as set out at clause 28.7.4) also publish such Information. The Supplier shall provide to the Framework Authority within 5 Working Days (or such other period as the Framework Authority may reasonably specify) any such Information requested by the Framework Authority.

29.7 The Supplier acknowledges that the Framework Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

29.7.1 provide all necessary assistance and cooperation as reasonably requested by the Framework Authority to enable the Framework Authority to comply with its obligations under the FOIA and EIRs;

29.7.2 transfer to the Framework Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

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29.7.3 provide the Framework Authority with a copy of all Information held on behalf of the Framework Authority which is requested in a Request for Information and which is in its possession or control in the form that the Framework Authority requires within 5 Working Days (or such other period as the Framework Authority may reasonably specify) of the Framework Authority's request for such Information; and

29.7.4 not respond directly to a Request for Information addressed to the Framework Authority unless authorised in writing to do so by the Framework Authority.

29.8 The Supplier acknowledges that the Framework Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Framework Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) the Framework Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

30. Protection of Personal Data

30.1 It is a condition of this Framework Agreement that the Supplier executes and complies with the Data Processing Deed and that the Data Processing Deed remains valid.

30.2 The Supplier shall ensure that each Sub-processor is subject to terms no less onerous than those set out in the Data Processing Deed.

30.3 The Supplier shall identify its Sub-processors in the Catalogue Listing.

30.4 If the Supplier intends to appoint or use a new Sub-processor in addition to or to replace those identified in the Catalogue Listing (a "**New Sub-processor**") it shall first notify the Authority and, for the then current Call Off Agreements, all Service Recipients and the Call Off Ordering Parties. Each relevant Call Off Ordering Party shall communicate queries and objections to the Supplier on behalf of the affected Service Recipients. The Supplier shall respond promptly to each such query received.

30.5 If a Service Recipient(s) objects to any proposed New Sub-processor, each such Service Recipient may instruct each relevant Call Off Ordering Party to terminate the relevant Service Instance(s), following which the Call Off Ordering Party shall issue a Termination Notice to the Supplier pursuant to the relevant Call Off Agreement(s).

30.6 The Data Processing Deed governs the Supplier's role as a Processor. If the Supplier also assumes the role of a Controller, for example because of the way its Catalogue Solution operates or is supported, then the Supplier shall:

30.6.1 comply with its responsibilities as a Controller in accordance with the Data Protection Legislation;

30.6.2 provide all reasonable information to the Framework Authority and/or the Catalogue Authority required to verify the Supplier's status as Controller in relation to the applicable Catalogue Solution(s);

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30.6.3 ensure that its Catalogue Listing clearly identifies the circumstances in which the Supplier is a Controller, and describes the relevant data and the Processing taking place in such circumstances; and

30.6.4 publish any documents and/or enter into agreements required to ensure compliance with the Data Protection Legislation and the terms of the Catalogue Agreement and this Framework Agreement.

30.7 The following provisions shall continue to apply regardless of whether the Supplier is a Controller or Processor:

30.7.1 restrictions in clause 22 of the Commercial Standard (in relation to NHS Data as defined in the Commercial Standard);

30.7.2 the allocation of ownership rights in relation to Personal Data and clinical data; and

30.7.3 the restrictions set out in clause 16.1.2, 16.1.3 and 16.1.4 of the Call Off Terms (in relation to Call Off Ordering Party Data, Personal Data and/or clinical data, care provision data and other Service Recipient related operational data),

and accordingly, the Supplier shall not use such data for any commercial purpose or gain other than direct provision of the Services defined in the relevant Call Off Agreement(s).

31. Publicity and Branding

31.1 Without prejudice to the Supplier's right to disclose Confidential Information pursuant to clause 28.3.1, the Supplier shall not:

31.1.1 make any press announcements or publicise this Framework Agreement or its contents in any way; or

31.1.2 use the Framework Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Framework Authority (such consent not to be unreasonably withheld or delayed) and in any case only in compliance with the NHS branding guidelines published by NHS England from time to time.

31.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION H – SUPPLIER AND FRAMEWORK AUTHORITY PROTECTIONS

32. Financial Distress

32.1 This clause 32 shall only apply if the Supplier has one or more Type 1 Catalogue Solutions listed at schedule 2.4 (*Services and Catalogue Solutions*).

32.2 Subject to clause 32.1 above, the Parties shall comply with the provisions of schedule 4.2 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier, the Guarantor (where applicable) and any Key Sub-Contractors and the consequences of a change to that financial standing.

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32.3 The Supplier shall have, and shall ensure that its Guarantor (where applicable) and Key Sub-contractors have, long term credit ratings in place that comply with the principles and thresholds set out in schedule 4.2 (*Financial Distress*).

33. Guarantee

33.1 Where required by the Framework Authority in advance of the Framework Commencement Date, the Supplier shall obtain a Guarantee.

33.2 Where applicable as a result of clause 33.1 above, the Supplier shall procure that the Guarantor shall:

33.2.1 validly execute and unconditionally deliver to the Framework Authority the Guarantee in the form set out in schedule 4.4 (*Template Guarantee*) of this Framework Agreement (unless a different format is agreed between the Parties) by the Framework Commencement Date; and

33.2.2 deliver to the Framework Authority such evidence as it may reasonably require to satisfy itself that the Guarantee is properly executed and unconditionally delivered.

34. Force Majeure

34.1 Subject to the remaining provisions of this clause 34, either Party may claim relief under this clause 34 from liability for failure to meet its obligations under this Framework Agreement for as long as and only to the extent the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Framework Agreement which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

34.2 The Affected Party shall as soon as reasonably practicable following the occurrence of a Force Majeure Event issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.

34.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 34 to the extent that consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Framework Agreement and/or any Call Off Agreement.

34.4 Subject to clause 34.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

34.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

34.6 Where, as a result of a Force Majeure Event:

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- 34.6.1 an Affected Party fails to perform its obligations in accordance with this Framework Agreement, then during the continuance of the Force Majeure Event:
- 34.6.1.1 the other Party shall not be entitled to exercise any rights to terminate this Framework Agreement as a result of such failure other than pursuant to clause 40 (*Termination by the Framework Authority*); and
 - 34.6.1.2 neither Party shall be liable for any Default arising as a result of such failure;
- 34.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement.
- 34.8 Relief from liability for the Affected Party under this clause 34 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement and shall not be dependent on the serving of notice under clause 34.7.

SECTION I – INDEMNITIES, LIABILITY AND INSURANCE

35. Conduct of indemnity claims

Where under this Framework Agreement and/or any Call Off Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of schedule 5.6 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

36. Limitations on Liability

Unlimited liability

- 36.1 Neither Party limits its liability under this Framework Agreement or the Call Off Agreements for:
- 36.1.1 death or personal injury caused by its negligence;
 - 36.1.2 fraud or fraudulent misrepresentation by it or made on its behalf; or
 - 36.1.3 any liability to the extent it cannot be limited or excluded by Law.
- 36.2 The Supplier's liability under this Framework Agreement and the Call Off Agreements shall be unlimited in respect of:
- 36.2.1 the indemnities in clause 20 (*Employment Indemnity*);
 - 36.2.2 the indemnities in schedule 6.2 (*Staff Transfer*);
 - 36.2.3 any Losses relating to disclosure of Confidential Information which is not permitted by the terms of this Framework Agreement and/or Call Off Agreements;
 - 36.2.4 any Losses relating to a Wilful Default of the Supplier;
 - 36.2.5 an Abandonment by the Supplier,
- and liability in respect of Personal Data shall be governed by the Data Processing Deed (and

as described in clauses 36.4 and 36.6 below).

Financial and other limits

- 36.3 Subject to clauses 36.1, 36.2, 36.4 and 36.8, the Supplier's aggregate liability in each Contract Year in respect of Losses incurred under or in connection with this Framework Agreement, and the Call Off Agreements executed pursuant to it, shall in no event exceed the "**General Liability Cap**" which shall be defined as:
- 36.3.1 £500,000 (subject to indexation); or if greater
- 36.3.2 an amount equal to the Standards Payments paid, accrued and (subject to clause 36.14) estimated to accrue in the whole of the relevant Contract Year plus 150% of the Periodic Service Charges paid, accrued and (subject to clause 36.14) estimated to accrue for the whole of the relevant Contract Year, in aggregate in respect of Call Off Agreements which are effective in the relevant Contract Year, which covers any and all Defaults in each relevant Contract Year.
- 36.4 The General Liability Cap shall also apply to payments by the Supplier to the beneficiaries of the Data Processing Deed pursuant to its indemnity provisions in respect of the costs, expenses, professional costs and/or charges incurred by such beneficiaries as a result of the Supplier's breaches of the Data Protection Legislation and/or the data processing conditions set out in [clause 4.1 of] the Data Processing Deed ("**Beneficiaries' Capped Costs**"), save that the reference to £500,000 (subject to indexation) in clause 36.3.1 shall be replaced by £10 million (subject to indexation).
- 36.5 The General Liability Cap, whether it is deemed to be:
- 36.5.1 £500,000 (subject to indexation) in accordance with clause 36.3.1; or
- 36.5.2 £10 million (subject to indexation) in accordance with clause 36.4; or
- 36.5.3 a higher amount calculated in accordance with clause 36.3.2,
- shall in each case reduce in the relevant Contract Year(s) by an aggregate of the sums paid by the Supplier under the scope of the Beneficiaries' Capped Costs plus any sums for such Contract Year(s) paid by the Supplier in respect of other liabilities arising pursuant to this Framework Agreement which fall within the scope of the General Liability Cap.
- 36.6 As set out in the Data Processing Deed, if there is an assertion of rights by Data Subjects, the indemnity in [clause 4.1 of] the Data Processing Deed shall not be limited by a monetary cap in respect of sums paid out to Data Subjects in the form of damages, compensation, costs, claims, demands, expenses, professional costs and/or charges.
- 36.7 To the extent that the Framework Authority brings a claim(s) to recover Losses on behalf of Call Off Ordering Parties and/or the Service Recipients by exercising the rights described in clause 53 of this Framework Agreement and clause 41.4 of the Call Off Agreement, the Call Off Agreements for the purposes of the calculation in clause 36.3.2 shall be the Call Off Agreements relevant only to the Call Off Ordering Parties and/or the Service Recipients on whose behalf the Framework Authority is conducting a claim(s).
- 36.8 Subject always to clauses 36.1 and 36.2, in the case of Defaults arising from or related to clinical safety and/or Medical Devices, the Supplier's liability shall be £2 million per such Default subject to indexation ("**Per Default Cap**") and subject to a cumulative liability cap for all such Defaults of £10 million in each Contract Year subject to indexation ("**Aggregate Defaults**").

Cap"). To the extent any claim(s) and/or liability incurred relating to any such individual Default arising from or related to clinical safety and/or Medical Devices is greater than the Per Default Cap, then the Supplier shall be liable for the excess sum(s), subject to the General Liability Cap for the relevant Contract Year. To the extent any claim(s) and/or liability incurred relating to aggregate Defaults arising from or related to clinical safety and/or Medical Devices is greater, in the relevant Contract Year, than the Aggregate Defaults Cap, then the Supplier shall be liable for the excess sum(s), subject to the General Liability Cap for the relevant Contract Year.

- 36.9 To the extent Losses are recovered from the Supplier by the Call Off Ordering Parties and/or the Service Recipients pursuant to claims brought under this Framework Agreement (either directly or by the Framework Authority bringing the claim(s) on their behalf in accordance with the rights described in clause 53 of this Framework Agreement and clause 41.4 of the Call Off Agreement), then the Supplier's liability cap in the relevant Call Off Agreement(s) for the relevant contract year (as defined in the Call Off Agreement) shall reduce in proportion to amounts recovered by or on behalf of the relevant Call Off Ordering Party and/or the Service Recipients under this Framework Agreement.
- 36.10 In respect of claims brought against the Supplier by a Call Off Ordering Party directly, the Supplier's liability shall be limited in accordance with relevant provisions of the Call Off Agreement. The Call Off Ordering Party may rely on any provision of this Framework Agreement to the extent required to support such claim(s), other than the aggregated Supplier liability caps set out in clause 36.3.
- 36.11 If the Framework Authority acts on behalf of Call Off Ordering Parties and Service Recipients to enforce the terms of a Call Off Agreement as described in clause 53 of this Framework Agreement and clause 41.4 of the Call Off Agreement, then:
- 36.11.1 any amounts recovered by the Framework Authority in such circumstances shall only reduce the Supplier's liability cap in the Call Off Agreements of the Call Off Parties and Service Recipients on whose behalf the Framework Authority is conducting a claim and shall not reduce the Supplier's liability cap in any other Call Off Agreements; and
- 36.11.2 each Call Off Ordering Party and Service Recipient shall not be permitted to recover (nor shall the Framework Authority be permitted to recover on their behalf) the same Losses under both the Framework Agreement and the relevant Call Off Agreements.
- 36.12 To the extent Losses are recovered by a Call Off Ordering Party and/or the Service Recipients directly pursuant to the provisions of the relevant Call Off Agreement(s), then the Supplier's liability cap set out in clause 36.3 and 36.8, shall be reduced in respect of the relevant Call Off Ordering Party and/or the Service Recipients only, for the relevant Contract Year by the amount recovered by the relevant Call Off Ordering Party and/or the Service Recipients pursuant to any relevant Call Off Agreement(s).
- 36.13 The sums set out as liability caps in this clause 36 shall not include restitution of sums previously overpaid or Service Credits due and/or received pursuant to Schedule 2.5 (*Performance Levels*) and each Call Off Agreement shall set out the maximum Service Credits payable.
- 36.14 For each claim brought pursuant to this Framework Agreement, Call Off Agreement and/or the Data Processing Deed against the Supplier directly by a Call Off Ordering Party, Service Recipient and/or beneficiary of the Data Processing Deed, if the Supplier wishes to apply the financial caps specified in clauses 36.3, 36.4 or 36.8, then the Supplier shall by email in accordance with clause 54 (Notices):

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- 36.14.1 within 3 Working Days of receiving the relevant claim notify the Framework Authority and NHS Digital of the claim, identifying the claimant(s);
- 36.14.2 within a further 2 Working Days using a template to be provided by NHS Digital, shall confirm to the Framework Authority and NHS Digital the identity of the claimant(s), the sums claimed and the reference number used by the Supplier, and shall provide a summary of the basis of the claim; and
- 36.14.3 promptly provide an update to the Framework Authority and NHS Digital if there is a material change to the information provided including information about proposed and actual settlements and/or court awards.
- 36.15 The Supplier agrees that for the purposes of assessing rights and liabilities and for claims and contract management, the Call Off Ordering Parties, Service Recipients and beneficiaries of the Data Processing Deed shall be permitted to disclose all information (including Confidential Information) relevant to any actual or potential claims against the Supplier referred to in clause 36.14, to each relevant NHS Body, and each of their professional advisors.
- 36.16 Where a claim(s) against the Supplier is started during a Contract Year, the value of the claim(s) for the purposes of clause 36.3.2 shall be calculated as an aggregate of actual Standards Payments and the Periodic Service Charges paid and accrued up to that interim point plus an amount to reflect the Standards Payments and the Periodic Service Charges estimated to accrue for the remaining months for the relevant Contract Year. For each remaining month in the relevant Contract Year after the claim is started, if no further Standards Payments and the Periodic Service Charges accrue, then there will be no adjustment to the value of the claim(s) for the relevant month(s). If further Standards Payments and the Periodic Service Charges do accrue in the remaining months of the relevant Contract Year then the value of the claim(s) will be adjusted for each such month to reflect the actual Standards Payments and the Periodic Service Charges paid or accrued in each such month.
- 36.17 Subject to clauses 36.1, the total aggregate liability of the Framework Authority and the Health and Social Care Information Centre in respect of all Losses incurred by the Supplier under or in connection with this Framework Agreement and all Call Off Agreements shall in no event exceed in each Contract Year £100,000 (subject to indexation).
- 36.18 The Supplier may, pursuant to one or more Other Digital Care Service Contracts, supply services which are the same or similar to the Services under this Framework Agreement and the Call Off Agreements. No party shall seek to recover damages more than once in respect of the same Losses under: a) this Framework Agreement, Call Off Agreements and/or the Data Processing Deed; and/or b) the Other Digital Care Service Contracts.

Consequential losses

- 36.19 Subject to clauses 36.1, the parties to the Framework Agreement and/or Call Off Agreements shall not be liable for:
- 36.19.1 any indirect, special or consequential Loss; or
- 36.19.2 any loss of profits, turnover, sales, revenue, anticipated savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 36.20 The Supplier acknowledges that the Framework Authority, each Call Off Ordering Party, each Service Recipient and the Health and Social Care Information Centre (known as NHS Digital) and any of such parties' successors and any party to whom the Framework Authority has assigned, novated or otherwise disposed of any or all of its rights, obligations and liabilities

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under this Framework Agreement and/or any associated licences pursuant to clause 46.2 ("**Claiming Party/Parties**") may, amongst other things, recover from the Supplier the following Losses incurred by the Claiming Parties to the extent that they arise as a result of a Default relating to this Framework Agreement and/or Call Off Agreements:

- 36.20.1 any additional operational and/or administrative costs and expenses incurred and evidenced by the Claiming Parties as a result of the Supplier's Default, including costs relating to time spent by or on behalf of the Claiming Parties in dealing with the consequences of the Default (other than costs incurred in the normal exercise by the Claiming Parties of the service management rights and processes described in Schedule 2.5 (*Performance Levels*) of the Framework Agreement, Schedule 2.1 (*Performance Levels*) of the Call Off Agreement and the Service Management Standard);
- 36.20.2 any wasted expenditure or charges incurred and evidenced by the Claiming Parties;
- 36.20.3 the additional cost of procuring a replacement framework contract for the provision of Replacement Services should the Framework Authority terminate this Framework Agreement pursuant to clause 40 (Termination by the Framework Authority);
- 36.20.4 any compensation or interest paid to a third party by the Claiming Parties; and/or
- 36.20.5 any fine or penalty incurred by the Claiming Parties pursuant to Law and any costs incurred by the Claiming Parties in defending any proceedings which result in such fine or penalty.

Mitigation

- 36.21 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Framework Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Framework Agreement.

37. Insurance

The Supplier shall comply with the provisions of schedule 2.6 (*Insurance*) in relation to obtaining and maintaining insurance.

SECTION J – REMEDIATION AND TERMINATION

38. Framework Remediation Process

- 38.1 If there is a breach of the Supplier's obligations under this Framework Agreement and such breach triggers a termination right as listed in 40.2.2 to 40.2.14, the Framework Authority may decide to first initiate the Framework Remediation Process. For any other breaches of the Framework Agreement by the Supplier, including if the Framework Authority reasonably believes that the Supplier is in breach, the Framework Authority shall not be entitled to terminate the Framework Agreement without having first initiated the Framework Remediation Process.
- 38.2 If the Parties disagree as to whether a breach relating to the same subject matter should be dealt with via the Catalogue Agreement, this Framework Agreement or under a Call Off Agreement, the Catalogue Authority shall have the ultimate decision (acting reasonably) as to where the breach is dealt with. No breach shall be dealt with via more than one of the Catalogue

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Remediation Process, the Framework Remediation Process or a Call Off Remediation Process at the same time. Breaches relating to non-compliance with Standards and/or Capabilities should generally be dealt with via the Catalogue Remediation Process, whereas breaches relating to Implementation Plans should be dealt with via a Call Off Remediation Process. This shall not affect or prejudice the rights and remedies under each of these agreements.

38.3 For the avoidance of doubt, the Framework Remediation Process set out in this clause 38 shall not restrict or limit any rights and remedies available under the Catalogue Agreement, this Framework Agreement or a Call Off Agreement as a result of a breach that relates to the same subject matter.

38.4 The timeframes and process set out in this clause 38 are subject to the exceptions set out at clause 39. In addition, if at any point in this process the Framework Authority reasonably believes that:

38.4.1 the breach subject to a Framework Remedial Plan is not possible of being remedied; or

38.4.2 it is not possible for the Supplier to comply with the provisions of the Framework Remedial Plan,

then the Framework Authority may immediately move to termination in accordance with clause 40.

Framework Remedial Plan

38.5 If the Framework Authority initiates the Framework Remediation Process in accordance with clause 38.1, then the Supplier shall co-operate with the Framework Authority to develop and agree a Framework Remedial Plan in accordance with clauses 38.6 and 38.7 below.

38.6 The Framework Remedial Plan process is as follows:

38.6.1 the Framework Authority notifies the Supplier that it considers that the Supplier is in breach of the Framework Agreement (as described at clause 38.5) and that it requires a Framework Remedial Plan. The notice may specify the matters complained of in outline, but must contain sufficient detail so that it is reasonably clear what the Supplier has to remedy;

38.6.2 the Supplier shall serve a draft Framework Remedial Plan in accordance with clause 38.7 within five Working Days (or any other period agreed by the parties), even if the Supplier disputes that it is responsible for the matters complained of;

38.6.3 if the Framework Authority considers that the draft Framework Remedial Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the matters complained of, then it may agree a further time period for the development and agreement of the Framework Remedial Plan; and

38.6.4 the Framework Authority must approve the Framework Remedial Plan before it can be finalised.

38.7 The Framework Remedial Plan must contain the following:

38.7.1 a full description of the Supplier's breach of the Framework Agreement, including the impact of such breach on the Supplier's provision of the Services;

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38.7.2 a full description of the Supplier's steps to remedy such breach, including the timetable associated with such steps; and

38.7.3 the method and format by which the Supplier will provide evidence to the Framework Authority that the breach has been remedied.

38.8 If on the day falling six weeks after the date (or any day thereafter) that the Framework Authority notified the Supplier of the breach in accordance with clause 38.5:

38.8.1 the Supplier has not responded to the notification;

38.8.2 the Framework Authority has not approved a Framework Remedial Plan; or

38.8.3 at any point during that six week period the Supplier has failed to co-operate with the Framework Authority in relation to the Framework Remedial Plan,

then the Framework Authority shall have the right to develop and impose a Framework Remedial Plan, which the Supplier must comply with.

Call Off Ordering Party Notification

38.9 If on the day falling six weeks after the date (or any day thereafter) that the Framework Remedial Plan is agreed in accordance with clauses 38.5, or imposed in accordance with clause 38.8 (as appropriate) the Framework Authority is of the reasonable opinion that:

38.9.1 the breach subject to the Framework Remedial Plan is not possible of being remedied;

38.9.2 it is not possible for the Supplier to comply with the provisions of the Framework Remedial Plan; or

38.9.3 the Supplier is not complying with the Framework Remedial Plan,

then the Framework Authority may contact any relevant Call Off Ordering Parties to notify them of the breach incurred by the Supplier, along with any other information that the Framework Authority deems necessary.

Termination

38.10 Subject to clause 38.11, if on the day falling six weeks after the date (or any day thereafter) that the Framework Authority notifies one or more Call Off Ordering Parties of the breach incurred by the Supplier in accordance with clause 38.9 the Framework Authority are of the reasonable opinion that:

38.10.1 the breach subject to the Framework Remedial Plan is not possible of being remedied;

38.10.2 it is not possible for the Supplier to comply with the provisions of the Framework Remedial Plan; or

38.10.3 the Supplier is not complying with the Framework Remedial Plan,

then the Framework Authority may terminate this Framework Agreement.

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38.11 Without prejudice to the termination rights set out at clause 40 below, the termination right set out at clause 38.10 shall only be permitted where the relevant breach is material.

38.12 Following notice of termination in accordance with clause 38.10, the Supplier shall comply with the exit provisions as set out in schedule 5.5 (*Exit Management*).

39. Escalated Timeframes

39.1 Subject to clause 39.2, the Framework Authority shall have the ability to deviate from the process set out in clause 38, whether by missing out a stage or escalating timeframes in the event that:

39.1.1 it is required to do so by any regulatory body applicable to the breach in question;

39.1.2 the Framework Authority has reasonable grounds to believe that the breach is a result of the Supplier acting in bad faith;

39.1.3 the breach is material and/or not capable of remedy;

39.1.4 the breach has a potential or actual clinical safety or security impact;

39.1.5 the Framework Authority is of the reasonable opinion that the Supplier is not, or does not intend to, co-operate and use its best endeavours to remedy the breach; and/or

39.1.6 there is a repetition of substantially the same breach within a period of three months following the conclusion of the Framework Remedial Plan.

39.2 Where the Framework Authority has opted to use the Framework Remediation Process, the Framework Authority must follow at least one of the stages in the Framework Remediation Process at clause 38 before proceeding to termination in accordance with clause 38.10.

40. Termination by the Framework Authority

40.1 This Framework Agreement shall automatically terminate if the Catalogue Agreement is terminated, or if the Supplier is removed from the Catalogue in its entirety.

40.2 The Framework Authority may terminate this Framework Agreement by notice in writing having immediate effect if any of the following events or circumstances take place:

40.2.1 the Framework Remediation Process was initiated (as described at clause 38 above), but which due to the acts and/or omissions of the Supplier the matter has escalated to a right for the Framework Authority to trigger termination, as set out in clause 38.10;

40.2.2 the occurrence of an Insolvency Event in respect of the Supplier or a Guarantor;

40.2.3 the Supplier is subject to one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), of the Public Contracts Regulations 2015;

40.2.4 the Supplier is subject to a situation which would have entitled the Framework Authority to exclude it from the initial procurement of this Framework Agreement pursuant to any of the mandatory or discretionary exclusion grounds set out in the SQ;

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- 40.2.5 the Supplier has committed a serious infringement of the obligations under either the Treaty of the European Union or the Treaty of the Functioning of the European Union or the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 of TFEU;
- 40.2.6 the Supplier commits a material breach (and for these purposes a material breach may be a single material breach of a number of breaches or repeated breaches (whether of the same or different obligations) which taken together constitute a material breach) of this Framework Agreement which is not capable of remedy or which, where capable of remedy is not remedied within 30 days after notice of the breach from the Framework Authority requiring remedy or which is remedied within that period, but which subsequently recurs;
- 40.2.7 the Supplier is in material breach and for these purposes a material breach may be a single material breach of a number of breaches or repeated breaches which taken together constitute a material breach) of:
- 40.2.7.1 clause 28 (*Confidentiality*);
 - 40.2.7.2 clause 29 (*Transparency and Freedom of Information*);
 - 40.2.7.3 clause 46 (*Assignment and Novation*); and
 - 40.2.7.4 clause 49 (*Prevention of Fraud and Bribery*),
- and such material breach shall be treated as material breach not capable of remedy;
- 40.2.8 where applicable, any rights of the Framework Authority to terminate arise in accordance with schedule 4.2 (*Financial Distress*);
- 40.2.9 the Supplier is in breach of paragraph 2.5 of schedule 2.1 (*Call Off Procedure*) to the Framework Agreement;
- 40.2.10 where there are five or more Call Off Agreements in existence, the Supplier has materially breached at least 25% of Call Off Agreements executed during the Term;
- 40.2.11 there is a Change of Control in respect of the Supplier or a Guarantor (or any company which Controls the Supplier or a Guarantor as the case may be) which the Supplier notifies the Framework Authority of in accordance with clause 6.6.8, or which the Framework Authority otherwise becomes aware of, unless:
- 40.2.11.1 the Framework Authority has given its prior written consent (such consent not to be unreasonably withheld) to the particular Change of Control, which subsequently takes place as proposed; or
 - 40.2.11.2 the Framework Authority has not served a notice of objection within six months of the later of the date on which the Change of Control took place or the date on which the Framework Authority was given notice of the Change of Control;
- 40.2.12 if the Supplier is required to procure a Guarantee from a Guarantor pursuant to clause 33:
- 40.2.12.1 where the Guarantor withdraws the Guarantee; or

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40.2.12.2 where an Insolvency Event occurs in respect of the Guarantor; or

40.2.12.3 where the Guarantee becomes invalid or unenforceable,

in each case where the Guarantee is not replaced by an alternative arrangement acceptable to the Framework Authority;

40.2.13 where a right of termination is expressly reserved in this Framework Agreement; or

40.2.14 the representations and warranty given by the Supplier and referred to in this Framework Agreement being materially untrue or misleading.

40.3 The Framework Authority may terminate this Framework Agreement for any reason (including, but not limited to where the Framework Agreement has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations 2015) and/or for convenience and/or public policy at any time on giving no less than 30 calendar days written notice to the Supplier.

41. Termination by the Supplier

The Supplier has no right to terminate this Framework Agreement.

42. Consequences of Expiry or Termination

42.1 The expiry or termination of this Framework Agreement in accordance with clause 40 (*Termination by the Framework Authority*) shall not affect the accrued rights of any Party.

42.2 Notwithstanding the expiry or termination of this Framework Agreement, any Call Off Agreement in force at the time of such expiry or termination shall continue in full force and effect for the remainder of its term, unless such Call Off Agreement is terminated in accordance with its terms.

42.3 In the event of a termination of this Framework Agreement, the Parties shall comply with the provisions of schedule 5.5 (*Exit Management*).

43. Exit Management

43.1 The Parties shall comply with the provisions of schedule 5.5 (*Exit Management*) in relation to orderly transition of the Services to the relevant Call Off Ordering Parties and/or a Replacement Supplier.

43.2 The provisions of clauses 1 (*Definitions and Interpretation*), 6 (*Services*), 9 (*Charges and Invoicing*), 10 (*Governance*), 14 (*Change in Law*), 19 (*Income Tax and National Insurance Contributions*), 20 (*Employment Indemnity*), 21 (*Staff transfer*), 22 (*Supply Chain Rights*), 24 (*Ownership of Intellectual Property Rights*), 25 (*Licences Granted by the Supplier*), 27 (*IPRs Indemnity*), 28 (*Confidentiality*), 37 (*Insurance*), 32 (*Financial Distress*), 33 (*Guarantee*), 35 (*Conduct of indemnity claims*), 36 (*Limitations on Liability*), 37 (*Insurance*), 42 (*Consequences of Expiry or Termination*), 47 (*Waiver and Cumulative Remedies*), 50 (*Severance*), 51 (*Further Assurances*), 52 (*Entire Agreement*), 53 (*Third Party Rights*), 54 (*Notices*), 55 (*Disputes*), and 57 (*Governing Law and Jurisdiction*), and the provisions of schedules 1 (*Definitions*), 2.6 (*Insurance*), 3.1 (*Commercially Sensitive Information*), 4.1 (*Charges and Invoicing*), 5.1 (*Governance*), 5.3 (*Dispute Resolution Procedure*), 5.4 (*Reports and Records Provisions*), 5.5 (*Exit Management*), 5.6 (*Conduct of Claims*) and 6.2 (*Staff Transfer*) and such other provisions which are expressly or by implication required to survive termination or expiry, including any

provisions required in connection with any subsisting Call Off Agreements, shall survive expiry or the termination of this Framework Agreement.

SECTION K – MISCELLANEOUS AND GOVERNING LAW

44. Modern Slavery

44.1 The Supplier represents and warrants that as at the Framework Commencement Date, neither the Supplier, nor any of its officers, employees:

44.1.1 has been convicted of any offence involving slavery or human trafficking; and

44.1.2 having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

44.2 The Supplier shall implement due diligence procedures for its Sub-Contractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains.

44.3 Throughout the Framework Term and the term of any Call Off Agreements, the Supplier shall prepare and deliver to the Framework Authority each year, an annual slavery and human trafficking report (unless a general statement or publication has been made that is acceptable to the Framework Authority, at its sole discretion) setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

45. Corporate Social Responsibility

45.1 The Framework Authority applies corporate and social responsibility values to its business operations and activities which are consistent with the Government's corporate social responsibility policies, including, without limitation, those policies relating to anti-bribery and corruption, health and safety, the environment and sustainable development, equality and diversity.

45.2 The Supplier represents and warrants that it:

45.2.1 complies with all Laws relating to corporate and social responsibility;

45.2.2 shall use its best endeavours to ensure that its Sub-contractors and any person under its control, comply with all CSR Laws; and

45.2.3 has adopted a written corporate and social responsibility policy that sets out its values for relevant activity and behaviour (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment by the Supplier's business activities).

45.3 The Supplier shall notify the Framework Authority if its corporate and social responsibility policy is in conflict with any CSR Policies notified to the Supplier or which it should reasonably be aware of.

46. Assignment and Novation

- 46.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Framework Agreement without the prior written consent of the Framework Authority (such consent not to be unreasonably withheld or delayed).
- 46.2 The Framework Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Framework Agreement and/or any associated licences to:
- 46.2.1 any Central Government or NHS Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Framework Authority; or
- 46.2.2 any private sector body which substantially performs the functions of the Framework Authority,
- and the Supplier shall, at the Framework Authority's request, enter into a novation agreement in such form as the Framework Authority shall reasonably specify in order to enable the Framework Authority to exercise its rights pursuant to this clause 46.2.
- 46.3 A change in the legal status of the Framework Authority such that it ceases to be a Central Government or NHS Body shall not affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Framework Authority.
- 46.4 If the Framework Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Central Government or NHS Body or if a body which is not a Central Government or NHS Body succeeds the Framework Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate this Framework Agreement in respect of any Insolvency Event affecting the Successor Body on terms the same as if it were an Insolvency Event affecting the Supplier.

47. Waiver and Cumulative Remedies

- 47.1 The rights and remedies under this Framework Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 47.2 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

48. Relationship of the Parties

Except as expressly provided otherwise in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Parties pursuant to this Framework Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

49. Prevention of Fraud and Bribery

- 49.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Framework Commencement Date:
- 49.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 49.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 49.2 The Supplier shall not during the term of this Framework Agreement or any Call Off Agreement:
- 49.2.1 commit a Prohibited Act; and/or
 - 49.2.2 do or suffer anything to be done which would cause the Framework Authority, any Call Off Ordering Party or any employees, consultants, contractors, Sub-Contractors or agents of the same to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 49.3 The Supplier shall during the term of this Framework Agreement and any Call Off Agreement:
- 49.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 49.3.2 keep appropriate records of its compliance with its obligations under clause 49.3.1 and make such records available to the Framework Authority and Call Off Ordering Parties on request.
- 49.4 The Supplier shall immediately notify the Framework Authority and any relevant Call Off Ordering Party (together the "**Notified Parties**") in writing if it becomes aware of any breach of clause 49.1 and/or 49.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 49.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 49.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 49.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or any Call Off Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement or any Call Off Agreement has committed or attempted to commit a Prohibited Act.
- 49.5 If the Supplier makes a notification to the Notified Parties pursuant to clause 49.4, the Supplier shall respond promptly to the Notified Parties' enquiries, co-operate with any investigation, and

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allow the Notified Parties to Audit any books, Records and/or any other relevant documentation in accordance with schedule 5.4 (*Reports and Records Provisions*).

- 49.6 If the Supplier is in Default under clauses 49.1 and/or 49.2 the Framework Authority may by notice:
- 49.6.1 suspend the Call Off Procedure pursuant to clause 38; and
 - 49.6.2 require the Supplier to remove from performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Default.
- 49.7 Any notice served by the Framework Authority or Call Off Ordering Party under clause 49.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Framework Authority or Call Off Ordering Party (as applicable) believes has committed the Prohibited Act and the action that the Framework Authority or Call Off Ordering Party has elected to take (including, where relevant, the date on which the Call Off Procedure shall be suspended or the relevant Call Off Agreement shall terminate).

50. Severance

- 50.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.
- 50.2 In the event that any deemed deletion under clause 50.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 50.3 If the Parties are unable to agree on the revisions to this Framework Agreement within five Working Days of the date of the notice given pursuant to clause 50.2, the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

51. Further Assurances

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Framework Agreement.

52. Entire Agreement

- 52.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understandings, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 52.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.

52.3 Nothing in this clause 52 shall exclude any liability in respect of misrepresentations made fraudulently.

53. Third Party Rights

53.1 The Framework Authority may act as agent and trustee for each Call Off Ordering Party and each Service Recipient to enforce on behalf of the relevant Call Off Ordering Parties and/or Service Recipient(s) any provisions that confer a benefit on such Call Off Ordering Parties and/or Service Recipients and/or recover any Losses suffered by the Call Off Ordering Parties and/or Service Recipient(s) in connection with the breach of such provisions.

53.2 NHS Digital (or its successors and any party to whom it has assigned, novated or otherwise disposed of any or all of its rights, obligations and liabilities under this Framework Agreement and/or any associated licences pursuant to clause 46.2) shall within the scope of clause 36.20 be able to recover Losses incurred in relation to this Framework Agreement in its capacity as agent of the Framework Authority and/or when it acts in its own right.

53.3 To the extent that Call Off Ordering Parties and/or Service Recipients require to enforce a term of this Framework Agreement which is intended to benefit the Call Off Ordering Parties and/or Service Recipients or reasonably required in order to support enforcement of their rights and/or recover Losses in connection with a relevant Call Off Agreement(s), then the relevant Call Off Ordering Parties and/or Service Recipients may enforce the terms of this Framework Agreement directly against the Supplier but only as a claim brought pursuant to the Call Off Agreement. In addition, to the extent that schedule 6.2 (*Staff Transfer*) confers benefits on other persons, then such provisions are intended to be enforceable by those persons as third party beneficiaries by virtue of the CRTPA.

53.4 Other than described in this clause 53, a person who is not a Party to this Framework Agreement has no right under the CRTPA to enforce any term of this Framework Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

53.5 In order to enable the exercise of the rights conferred by this clause 53, the Framework Authority may share Confidential Information of the Supplier with the relevant Call Off Ordering Parties and/or Service Recipients in accordance with clause 28.

53.6 Any claims by or on behalf of Call Off Ordering Parties and/or Service Recipients as referred to in this clause 53 shall be subject to the exclusions and limitations of liability set out in clause 36.

53.7 The Framework Authority shall not require the consent of the Call Off Ordering Party and/or Service Recipients to agree with the Supplier any amendments or modifications to this Framework Agreement.

54. Notices

54.1 Any notices sent under this Framework Agreement must be in writing.

54.2 The following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of Delivery
Email	9.00am on the first Working Day after sending.	Dispatched as a legible document attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

54.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party in writing for the purpose of service of notices under this Framework Agreement:

Commented [CW1]: Needs completing

	Supplier	Framework Authority & Authorised Signatory	NHS Digital
Contact	Fungai Ndemera Research and Development Lead	FAO Kit Woodward Category Team Lead – Digital	FAO Supplier Manager
Address	The Flame Lily HQ, House of The Flame Lily, 144 Penn Road, Wolverhampton, WV3 0EE	Department of Health & Social Care 2nd Floor, Quarry House, Quarry Hill, Leeds, LS2 7PD	7 and 8 Wellington Place Leeds West Yorkshire LS1 4AP
Email	fungai@theflameily.co.uk	kit.woodward@dhs.c.gov.uk	GPITF.commercial@nhs.net

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- 54.4 All notices to the Framework Authority shall be copied to NHS Digital.
- 54.5 This clause 54 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under schedule 5.3 (*Dispute Resolution Procedure*)).
- 55. Disputes**
- 55.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with the Dispute Resolution Procedure detailed in schedule 5.3 (*Dispute Resolution Procedure*).
- 55.2 The Supplier shall continue to provide the Services in accordance with the terms of this Framework Agreement and/or any Call Off Agreement until a Dispute has been resolved.
- 56. Indexation**
- 56.1 Any amounts expressed as being subject to indexation in this Framework Agreement, may have adjustments made on 1 April in each Contract Year (except for the first Contract Year) by the lower of:
- 56.1.1 the changes in the Consumer Prices Index (CPI) over the previous 12 months minus 0.5; or
- 56.1.2 2%.
- 57. Governing Law and Jurisdiction**
- 57.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 57.2 Subject to clause 55 (*Disputes*) and schedule 5.3 (*Dispute Resolution Procedure*) (including the Framework Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.
- 58. Counterparts**
- 58.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.
- 58.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

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IN WITNESS of which this Framework Agreement has been duly executed by the Parties on the date which appears at the head of its front page.

SIGNED for and on behalf of **THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE**

Name: Kit Woodward

Position: Category Team Lead

Email: kit.woodward@dhsc.gov.uk

SIGNED for and on behalf of **The Flame Lily Healthcare Ltd (t/a CheckUp Health)**

Name: Fungai Ndemera

Position: Research and Development Lead

Email: fungai@theflamelily.co.uk