

**CALL OFF CONTRACT UNDER F15008 FRAMEWORK FOR NHS BACK OFFICE  
SYSTEMS, SERVICES AND SUPPORT  
NHS TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES (CONTRACT  
VERSION)**

<b>The Authority</b>	<b>New Hospital Programme (NHP) - Department Of Health and Social Care (DHSC)</b> <b>Contracting authority: Secretary of State for Health &amp; Social Care acting as part of the Crown</b>
<b>The Supplier</b>	<b>NHS Shared Business Services</b> <span style="color: red;">Redacted in line with FOIA Sec 41</span>
<b>Date</b>	<b>[Insert date when signed by both parties]</b> <span style="color: red;">Redacted in line with FOIA Sec 41</span>
<b>Type of Services</b>	<b>Procurement Managed Consultancy Service</b>

Where an Order Form is issued by the Authority that refers to the Framework Agreement, the Contract is made between the Authority and the Supplier on the date of that Order Form. The Contract is subject to the terms set out in the schedules of these Call-off Terms and Conditions listed below ("**Schedules**").

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Contract.

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of an Order Form covering the relevant Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Order Form.

### Schedules

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Terms and Conditions
<b>Schedule 3</b>	Information and Data Provisions
<b>Schedule 4</b>	Definitions and Interpretations
<b>Schedule 5</b>	Specification and Tender Response Document
<b>Schedule 6</b>	Commercial Schedule
<b>Schedule 7</b>	Staff Transfer
<b>Schedule 8</b>	Expert Determination
<b>Schedule 9</b>	Order Form

<b>Schedule 10</b>	Change Control Procedure
<b>Schedule 11</b>	Exit Management
<b>Schedule 12</b>	Off Payroll IR35 Legislation

**Redacted in line with FOIA Sec 41**

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## Schedule 1

### **Key Provisions**

*Guidance: These Key Provisions enable the Authority to complete project specific details and to add any optional and/or extra provisions applicable to the relevant project.*

#### **Standard Key Provisions**

##### **1 Application of the Key Provisions**

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 8 to 24 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

##### **2 Term**

- 2.1 This Contract shall commence on the Commencement Date and the Term of this Contract shall expire one year from the Actual Services Commencement Date. The Term may be extended in accordance with Clause 15.2 of Schedule 2 provided that the duration of this Contract shall be no longer than four years in total or the expiry of the Framework Agreement (if later).

*Guidance: Insert the initial term in the second line and the maximum term including all extensions in the fourth line. Do remember that the initial term and maximum term must be consistent with the OJEU contract notice.*

*Note that the term runs from the date when the Services are actually provided. If there is an implementation plan over, for example, three months, the term runs from the date the Services are provided. In these circumstances, it will be important to include a process in the implementation plan for acknowledging this date to ensure the term is clear.*

*The above approach has been adopted as it will mean that any delay in implementation does not have the effect of shortening the contract term. However, it may be that for some projects you want the services to start and/or end on a particular date or event. Where this is the case, this Key Provision can be amended accordingly.*

##### **3 Contract Managers**

- 3.1 The Contract Managers at the commencement of this Contract are:

- 3.1.1 for the Authority:

- Head of Commercial (Cost Management) – New Hospital Programme**

- 3.1.2 for the Supplier:

## Head of Commercial Assurance

*Guidance: This Clause sets out the name of the contract manager for each party. Insert the name and role of the Authority's contract manager. At the tender stage you will not know who the Supplier is so Clause 3.1.2 cannot be completed until preparation of the final contract for signature.*

### 4 Names and addresses for notices

4.1 Notices served under this Contract are to be delivered to:

4.1.1 for the Authority:

**Redacted in line with FOIA Sec 41**

4.1.2 for the Supplier:

**Redacted in line with FOIA Sec 41**

*Guidance: This Clause sets out the name of each party's recipient of notices from the other party and is relevant to the issuing of formal communications under the Contract. Insert the name and address of the Authority's recipient of notices. At the tender stage you will not know who the Supplier is so Clause 4.1.2 cannot be completed until preparation of the final contract for signature. You may prefer to insert the role of the recipient (e.g. Finance Director) rather than an actual name.*

### 5 Management levels for escalation and dispute resolution

5.1 The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

Level	Authority representative	Supplier representative
1	Head of Commercial (Cost Management) – New Hospital Programme	Head of Commercial Assurance
2	Commercial Director – New Hospital Programme	Head of Healthcare Improvement Solutions
3	Chief Programme Officer – New Hospital Programme	Director Of Procurement

*Guidance: The Dispute Resolution Procedure sets out an internal process for dealing with Disputes. In Clause 5.1 above you must insert the number of internal levels and the name*

*and/or role of the person who will deal with a Dispute at each level. You may include as many levels as appropriate to the project. The purpose of having a number of levels is to ensure all internal avenues of resolution have been exhausted before a Dispute is dealt with by an external third party.*

*Under Authority representative insert the appropriate details. Also consider how many levels are appropriate to your individual project. At the tender stage you will not know who the Supplier is so the Supplier Representatives cannot be completed until preparation of the final contract for signature.*

## **6 Order of precedence**

- 6.1 Subject always to Clause 1.10 of Schedule 4, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
- 6.1.1 Schedule 9: Order Form
  - 6.1.2 The provisions on the front page of this NHS Contract for the Provision of Services (Contract Version);
  - 6.1.3 Schedule 1: Key Provisions;
  - 6.1.4 Schedule 5: Specification and Tender Response Document (but only in respect of the Authority's requirements);
  - 6.1.5 Schedule 2: General Terms and Conditions;
  - 6.1.6 Schedule 6: Commercial Schedule;
  - 6.1.7 Schedule 3: Information Governance Provisions;
  - 6.1.8 Schedule 7: Staff Transfer;
  - 6.1.9 Schedule 4: Definitions and Interpretations;
  - 6.1.10 the order in which all subsequent schedules, if any, appear; and
  - 6.1.11 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.
- 6.2 For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 5. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

*Guidance: Key Provision 6 addresses the order of precedence of various parts of the Contract for construction purposes. This should be carefully checked to confirm that it is appropriate for the particular Contract with any changes made accordingly.*

## **7 Application of TUPE at the commencement of the provision of Services**

7.1 The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier and the provisions of Schedule 7 shall apply.

*Guidance: Key Provision 7 addresses whether any staff will transfer to the Supplier. There are alternative clauses and one of these needs to be adopted. If no staff will transfer on the commencement of the Services delete the second sentence in square brackets and remove the square brackets from the first sentence. If staff will transfer on the commencement of the Services delete the first sentence in square brackets and remove the square brackets from the second sentence. The notes at Schedule 7 then detail how to prepare that schedule accordingly.*

### **Optional Key Provisions**

*Guidance: These optional Key Provisions enable the Authority to:*

*(a) vary some of the default provisions in Schedule 2 as appropriate to the particular project (e.g. Key Provision 12 allows for the insurance levels and/or types to be varied from the default position set out in Clause 14 of Schedule 2); and*

*(b) add provisions relevant to a particular project that are not part of the default provisions in Schedule 2 (e.g. there is an option to add further Authority obligations).*

*If any of the optional Key Provisions apply, this must be indicated in the draft contract issued at the tender stage by checking the boxes, completing the text in square brackets as appropriate and adding any required schedules. If a clause does not apply, leave the relevant box blank.*

## **8 Implementation phase (only applicable to the Contract if this box is checked and the Schedule inserted)**

8.1 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Schedule 2 to the Implementation Plan shall apply and the Implementation Plan is set out in Schedule **[insert schedule number]**.

*Guidance: For some projects there will be an implementation phase before delivery of the Services commences. If your project has an implementation phase check the box above and insert a Schedule number in this Clause and a corresponding numbered Schedule at the back of the Contract called "Implementation Plan". The actual plan will be inserted at contract signature although you may want to issue a provisional timetable with the tender documentation.*

*You must then refer to this Schedule in the Table of Schedules on the front page of this Contract.*

**9 Services Commencement Date (where the Services are to start at a date after the Commencement Date)  (only applicable to the Contract if this box is checked and the dates are inserted in Clause 9.1 of this Schedule 1)**

9.1 The Services Commencement Date shall be 1 April 2022.

*Guidance: If provision of the Services is to start at a date after the date the Contract is signed, this must be stated in this Clause. This will apply, for example, if there is an implementation phase. If this applies, then check the box above and insert the date provision of the Services will commence.*

*Where provision of the Services commences after the date of the Contract, it is advisable to include a Long Stop Date. If the Supplier has not started to provide the Services by the Long Stop Date (which will be some weeks after the Services Commencement Date) it then entitles you to terminate the Services Contract (see Clause 15.5.1 of Schedule 2).*

**10 Induction training  (only applicable to the Contract if this box is checked)**

10.1 The Supplier shall ensure that all Staff complete the Authority's induction training. All Staff shall complete the training prior to the Actual Services Commencement Date (or immediately following the Services Commencement Date where this date is the date of this Contract) and all new Staff appointed throughout the Term shall also complete the training. The Supplier shall further ensure that all Staff complete any extra training that the Authority makes available to its own staff and notifies the Supplier in writing that it is appropriate for the Staff.

*Guidance: If you require staff of the Supplier to undertake training provided by the NHS, check the box above. This may apply when the Services are provided on site and staff of the Supplier may require training in any site specific policies or procedures.*

**11 Quality assurance standards  (only applicable to the Contract if this box is checked and the standards are listed)**

11.1 The following quality assurance standards shall apply, as appropriate, to the provision of the Services: **[insert standards]**.

*Guidance: If you have any project specific quality assurance requirements, such as compliance with and maintenance of ISO 9001, check the box above and insert the requirements in the second line.*

**12 Different levels and/or types of insurance  (only applicable to the Contract if this box is checked and the table sets out the requirements)**

12.1 The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

Type of insurance required	Minimum cover
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[Employer's Liability]	[ ]
[Public Liability]	[ ]
[Professional Indemnity]	[ ]
[Insert other types of insurance as appropriate]	[ ]

*Guidance: This Clause relates to Clause 14 of Schedule 2. Clause 14.1 of Schedule 2 requires the Supplier to have in place a minimum level of cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by law in respect of employer's liability, public liability, and professional indemnity insurance. If this default position is not appropriate in relation to the nature and risks of the particular project, you need to check the box above and insert in the table what different types and/or levels of insurance the Supplier must have in place.*

**13 Further Authority obligations  (only applicable to the Contract if this box is checked and the Schedule inserted)**

13.1 The Authority's Obligations are set out in Schedule **[insert schedule number]**.

*Guidance: For some procurements, for example large outsourcing projects, there will be specific responsibilities on and requirements of your own staff. These could include individuals working alongside the Supplier's staff to develop processes or to ensure the Supplier's staff have an understanding of current systems and processes. If there are specific responsibilities on your own staff it is important to include these in a Schedule. This will help to avoid arguments, if implementation is late, as to who is responsible for any delay.*

*If there will be specific responsibilities on your staff check the box above and insert a Schedule number in this Clause and a numbered Schedule at the back of the Contract called "Authority's Obligations". The detailed obligations may need to be inserted at contract signature although you may want to outline these at the time of issue of the tender documentation.*

*You must then refer to this Schedule in the Table of Schedules on the front page of this Contract.*

**14 Assignment of Intellectual Property Rights in deliverables, materials and outputs  (only applicable to the Contract if this box is checked)**

14.1 The Supplier confirms and agrees that all Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier as part of the Services in accordance with the Specification and Tender Response Document, shall be owned by the Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such deliverables, material and other outputs. The Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such deliverables, material and other outputs to the Supplier to give effect to Clause 14 of this Schedule 1 and that such Staff absolutely and irrevocably waive their moral rights in relation to such deliverables, material and other outputs. Clause 14 of this Schedule 1 shall continue notwithstanding the expiry or earlier termination of this Contract.

*Guidance: Schedule 2 is structured so that the Supplier owns any intellectual property rights in the output of the Services and the Authority is granted a licence of the necessary usage rights. For most projects this will be the approach that attracts the most suppliers to bid and provides best value for money.*

*In exceptional circumstances, it may be appropriate for your contracting authority to own the intellectual property rights in the outputs of the Services. For example, if the Supplier is developing a bespoke approach to service delivery based on your specification, you may wish to have the rights to commercially exploit the outputs of this work, and the price for the Services will reflect this position. If there will be intellectual property created as part of the Services and it is appropriate for you to own such rights, check the box above.*

**15 Inclusion of a Change Control Process  (only applicable to the Contract if this box is checked and the Schedule inserted)**

15.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in **Schedule 10**

*Guidance: Clause 21 of Schedule 2 states that any changes to the Services or other parts of the Contract can only be implemented if agreed between the Authority and the Supplier. In large projects where complex changes may be required then a more detailed change control process might be appropriate. Where you require a detailed change control process, check the box above and insert a Schedule number in this Clause and a corresponding numbered Schedule at the back of the Services Contract called "Change Control Process".*

*You must then refer to this Schedule in the Table of Schedules on the front page of this Contract.*

**16 Authority step-in rights  (only applicable to the Contract if this box is checked and the Schedule inserted)**

16.1 If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights set out in Schedule **[insert schedule number]**.

*Guidance: Exceptionally, for certain types of business critical services, if the Supplier cannot provide the Services or fails to provide them to an acceptable standard, you may want the right to step into the position of the Supplier to provide the Services yourself or to appoint a third party to do so.*

*Before including this right in the Contract you need to consider if in practice it is possible to step into the shoes of the Supplier and provide the Services yourself or through a third party. If not, the inclusion of this right may attract a pricing premium from suppliers to account for the risk of step in being triggered, but with no corresponding benefit as the right is unlikely to be used.*

*Where step in rights are considered proportionate to the risks of critical service failure and are thought to be a realistic, practical and a value for money solution to mitigating these risks, check the box above and insert a Schedule number in this Clause and a numbered Schedule at the back of the Services Contract called "Step in Rights". This Schedule must include the rights required and set out how the step-in process will operate.*

You must then refer to this Schedule in the Table of Schedules on the front page of this Contract.

**17 Grant of lease or licence  (only applicable to the Contract if this box is checked)**

17.1 Promptly following execution of this Contract, the Supplier shall enter into the **[lease/licence]**. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.

*Guidance: Clause 2 of Schedule 2 allows for the Supplier to have general access to the Authority's premises and locations within such premises to provide the Services.*

*Depending on the type of services being provided, the Supplier may need to be granted rights to occupy certain premises and/or locations. If this is the case you will need to decide if this is by way of a lease or a licence (see Clause 2.4 of Schedule 2), check the box above and insert a Schedule number in this Clause and a numbered Schedule at the back of the Services Contract called "Form of [Lease/Licence]".*

You must then refer to this Schedule in the Table of Schedules on the front page of this Contract.

*The lease or licence should be issued with the tender documentation.*

**18 Guarantee  (only applicable to the Contract if this box is checked)**

18.1 Promptly following the execution of this Contract, the Supplier shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the procurement process followed by the Authority. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.

*Guidance: If you require that a third party guarantees the Supplier's performance, this must be in the tender documentation and you should check the box above. This Clause then protects your NHS body should signature of the guarantee be delayed.*

**19 Supplier as Data Processor  (only applicable to the Contract if this box is checked)**

19.1 The Parties acknowledge that the Authority is the Controller and the Supplier is the Processor in respect of Personal Data Processed under this Contract and that paragraph 2.2 of Schedule 3 and the provisions of the Data Protection Protocol must be complied with by the Parties as a term of this Contract.

*Guidance: If the Supplier is processing personal data as part of the Services and doing so on your behalf as a data processor you should check the above box and prepare a Data Protection Protocol based on the template that can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/681450/Data\\_Protection\\_Protocol.docx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/681450/Data_Protection_Protocol.docx) []. The Data Protection Protocol should then be included as part of the Contract as an annex to Schedule 3.*

**20 Purchase Orders  (only applicable to the Contract if this box is checked)**

20.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Services to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Purchase Order.

*Guidance: If your financial systems and/or governance arrangements require you to issue a purchase order to the Supplier prior to the commencement of delivery of the Services as is good practice, then this Clause is needed to set out the timing and status of these purchase orders and the box above should be checked accordingly.*

**21 Monthly payment profile  (only applicable to the Contract if this box is checked)**

21.1 The payment profile for this Contract shall be monthly in arrears.

*Guidance: If the payment profile for invoicing purposes is to be monthly in arrears, this Clause should be included for the purposes of Clause 9.3 of Schedule 2 and the box above checked accordingly. Otherwise, the Supplier may invoice either at any point following the supply of the Services in compliance with the Contract or as set out in the Commercial Schedule at Schedule 6.*

**22 Termination for convenience  (only applicable to the Contract if this box is checked and Clause 22.1 of this Schedule 1 is completed)**

22.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on [**one (1)/three (3)/six (6) months**] written notice. [Such notice shall not be served within one (1) year of the Actual Services Commencement Date].

22.2 [Should the Authority terminate this Contract in accordance with Clause 22.1 of this Schedule 1, then the Authority shall pay to the Supplier the termination sum calculated in accordance with Schedule] [**insert schedule number**].

*Guidance: This Clause entitles you, as the Authority, to terminate the Contract for no reason on a given period of notice (e.g. 1 month, 3 months or 6 months), as proportionate to the particular Services. Where it is important for NHS bodies to have this flexibility in contracts, for example when you are anticipating potential business change, this Clause can be used and the box above checked accordingly. The Clause should not be used as a matter of course, but exceptionally where the contracting authority considers that such flexibility is reasonable and proportionate in the given circumstances.*

*You can provide that this right commences after the Services have been supplied for twelve months or a longer period where this is considered reasonable to give the Supplier at least some certainty at the start of the Contract. The relevant part of the highlighted text can be retained or deleted accordingly.*

*For some services, particularly where there is an initial investment from the Supplier which will be recovered in monthly charges over the contract term, Suppliers will expect to be able to recover some costs should you terminate without cause. This is reasonable and if this is not included you may find that the price of the Services is higher than anticipated to offset this risk.*

*Where it is appropriate for the contracting authority to pay certain costs should you terminate without cause, you will need to include the highlighted text at Clause 22.2 above (and remove the brackets) referring to this and set out in Schedule 6 what these costs will cover and how these costs will be calculated. If for your project it would not be appropriate to pay such costs, delete Clause 22.2 from the Key Provisions, but retain Clause 22.1.*

**23 Right to terminate following a specified number of material breaches  (only applicable to the Contract if this box is checked and Clause 23.1 of this Schedule 1 is completed)**

23.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the third Breach Notice.

*Guidance: This Clause is aimed at providing a termination right where one of the Parties has committed a number of material breaches whether or not they have been remedied. The aim of this Clause is to avoid a situation where one Party can keep breaching the Contract so long as it rectifies each material breach, as this can lead to nagging poor performance and additional time and resources being incurred by the non-breaching Party to manage such breaches. The numbers in square brackets can be changed to suit the requirements of the particular contract. The square brackets should then be removed prior to issue.*

**24 Expert Determination  (only applicable to the Contract if this box is checked)**

24.1 Any Dispute between the Authority and the Supplier shall be dealt in accordance with the expert determination process as specified at Schedule 8.

24.2 For the avoidance of doubt, where this Clause 24 of this Schedule 1 is checked, all Disputes shall be dealt in accordance with Clause 24.1 of this Schedule 1 above and the entirety of Clause 22 of Schedule 2 shall be deemed not to apply and deleted in its entirety from this Contract.

*Guidance: This clause should be checked when the expert determination process at Schedule 8 is to be adopted in place of the dispute process set out at clause 22 of Schedule 2. Further guidance on the use of expert determination can be found at [\[INSERT LINK TO GUIDANCE NOTE\]](#).*

**Extra Key Provisions**

**25 Off Payroll IR35 Legislation  (only applicable to the Contract if this box is**

**checked and the Schedule inserted)**

- 25.1 The provisions set out in **Schedule 12** (Off Payroll IR35 Legislation) shall apply to the extent relevant to any request by the Authority for the individuals named in the Statement of Work set out in Schedule 5 (Specification) to be engaged by the Supplier or any Sub-contractor in the performance of the Services.
- 25.2 Unless clause 25.1 applies, from the Service Commencement Date, the Supplier shall be wholly liable for any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim of individuals engaged by the Supplier in the performance of the Services.

*Guidance: Insert extra project specific Key Provisions (if any) as required. For example, you may have a project where the supplier is responsible for undertaking detailed pre-contract due diligence to verify any information provided by the Authority and/or any aspects of the Premises and Locations relevant to the provision of the Services. This will almost certainly require a project specific extra Key Provision to make clear the scope of the Supplier's due diligence responsibilities, any associated Supplier warranties and any consequent limitations / exclusions of the Authority's liability for information that it may have or may not have provided to the Supplier.*

*Where the detail of the issue will be dealt with in a Schedule, remember to cross reference the Schedule in the Key Provisions and refer to it in the Table of Schedules on the front page of this Contract. Also remember to draft and add to Schedule 4 any new definitions as required for any extra Key Provisions added.*

## **Schedule 2**

### **General Terms and Conditions**

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## **1 Provision of Services**

1.1 The Authority appoints the Supplier and the Supplier agrees to provide the Services:

- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
- 1.1.2 in accordance with all other provisions of this Contract;
- 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions and/or the Specification and Tender Response Document;
- 1.1.4 in accordance with the Law and with Guidance;
- 1.1.5 in accordance with Good Industry Practice;
- 1.1.6 in accordance with the Policies; and
- 1.1.7 in a professional and courteous manner.

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

- 1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document., Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2, the Supplier shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1.3 The Supplier shall commence delivery of the Services on the Services Commencement Date.
- 1.4 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.
- 1.5 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.
- 1.6 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 1.7 The Supplier shall notify the Authority forthwith in writing:

- 1.7.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
- 1.7.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
- 1.8 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 1.9 Upon receipt of notice pursuant to Clause 1.7 of this Schedule 2 or any report or communication pursuant to Clause 1.8 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.10 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 1.11 Should the Authority be of the view, acting reasonably, that the Supplier can no longer provide the Services, then without prejudice to the Authority's rights and remedies under this Contract, the Authority shall be entitled to exercise its Step In Rights if the Key Provisions refer to the Authority having such rights under this Contract.
- 1.12 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority in writing within five (5) Business Days of becoming aware of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations

## **2 Premises, locations and access**

- 2.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing ("**Premises and Locations**").

- 2.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 2.3 Subject to Clause 2.4 of this Schedule 2, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 2.
- 2.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 2, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.
- 2.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 2.4 of this Schedule 2. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

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

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

### **4 Use of Authority equipment**

- 4.1 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:
  - 4.1.1 shall be provided at the Authority's sole discretion;
  - 4.1.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
  - 4.1.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and
  - 4.1.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

**5 Staff and Lifescience Industry Accredited Credentialing Register**

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
  - 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
  - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
  - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
  - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
  - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
  - 5.7.1 are questioned concerning their Convictions; and

- 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
  - 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2;
  - 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2; or
  - 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
  - 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
  - 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
  - 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 have been met.

- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
- 5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Polices.

## **6 Business continuity**

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the provision of the Services. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.
- 6.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 6.2.1 the criticality of this Contract to the Authority; and
  - 6.2.2 the size and scope of the Supplier's business operations,
- regarding continuity of the provision of the Services during and following a Business Continuity Event.
- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

- 6.4 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.
- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

## **7 The Authority's obligations**

- 7.1 Subject to the Supplier providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2.
- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
- 7.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.
- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

## **8 Contract management**

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

Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.

- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
  - 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
  - 8.3.2 details of any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
  - 8.3.3 the information specified in the Specification and Tender Response Document;
  - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
  - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 8.5 The Supplier confirms and agrees that the Authority may provide a Third Party Body with management information relating to the Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
  - 8.6.1 storing and analysing the management information and producing statistics; and
  - 8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting

Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

**9 Price and payment**

- 9.1 The Contract Price shall be calculated as set out in the Commercial Schedule.

- 9.2 Unless otherwise stated in the Commercial Schedule the Contract Price:

9.2.1 shall be payable from the Actual Services Commencement Date;

9.2.2 shall remain fixed during the Term; and

9.2.3 is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.

- 9.3 Unless stated otherwise in the Commercial Schedule:

9.3.1 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or

9.3.2 where Clause 9.3.1 of this Schedule 2 does not apply, the Supplier shall invoice the Authority for Services at any time following completion of the provision of the Services in compliance with this Contract.

Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.

- 9.4 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

- 9.5 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.5 after a reasonable time has passed.

- 9.6 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query

being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.6 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.

- 9.7 The Supplier shall pay to the Authority any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document. For the avoidance of doubt, the Authority may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Authority in accordance with the provisions of the Specification and Tender Response Document. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.8 The Authority reserves the right to set-off:
- 9.8.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and
- 9.8.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.
- 9.9 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.10 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

## **10 Warranties**

- 10.1 The Supplier warrants and undertakes that:
- 10.1.1 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.2 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.3 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;

- 10.1.4 it shall not make any significant changes to its system of quality controls and processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.5 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.6 receipt of the Services by or on behalf of the Authority and use of the deliverables or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.7 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the provision of the Services;
- 10.1.8 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.9 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.10 without limitation to the generality of Clause 10.1.7 of this Schedule 2, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;
- 10.1.11 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.12 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.13 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note

- Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant products being purchased;
- 10.1.14 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.15 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.16 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.16 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;
- 10.1.17 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.18 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document and Commercial Schedule) and all accompanying materials is accurate;
- 10.1.19 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
- 10.1.20 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.21 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 10.1.22 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.23 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
- 10.1.24 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and

- 10.1.25 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 Without prejudice to the generality of Clause 10.2 of this Schedule 2, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Authority.
- 10.4 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.5 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.5.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.5.2 promptly provide to the Authority:
- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.6 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.7 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

## **11 Intellectual property**

- 11.1 The Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.
- 11.2 Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Authority's normal business operations. For the avoidance of doubt, unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

## **12 Indemnity**

- 12.1 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

- 12.1.1 any injury or allegation of injury to any person, including injury resulting in death;
- 12.1.2 any loss of or damage to property (whether real or personal);
- 12.1.3 any breach of Clause 10.1.6 and/or Clause 11 of this Schedule 2; and/or
- 12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

- 12.2 Liability under Clauses 12.1.1, 12.1.3 and 17.13 of this Schedule 2 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.
- 12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
- 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or

- 12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).

### **13 Limitation of liability**

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

- 13.1.1 for death or personal injury resulting from its negligence;
- 13.1.2 for fraud or fraudulent misrepresentation; or
- 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

- 13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2:

- 13.2.1 the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited to one hundred percent (100%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services in the year in which the breach occurred.
- 13.2.2 the total liability of the Supplier in respect of the indemnity provided at Clause 2.6 of Schedule 3 shall be limited in aggregate to five million pounds (£5,000,000).
- 13.2.3 The total liability of the Authority in respect of the indemnity provided at paragraph 2.4 of Schedule 12 shall be unlimited.

- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

- 13.3.1 extra costs incurred purchasing replacement or alternative services;
- 13.3.2 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
- 13.3.3 not used; and/or
- 13.3.4 loss of income due to an inability to provide health care services,

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

- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
- 13.5 Not used
- 13.6 Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

#### **14 Insurance**

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and

the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

## **15 Term and termination**

- 15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.

- 15.2 The Parties shall be entitled to extend the Term on one or more occasions by the Authority giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions. Such extensions to be agreed by the Parties using the Change Control Process.

- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.6 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
- 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
- 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

- 15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:
- (i) not capable of remedy; or
  - (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 15.5 The Authority may terminate this Contract forthwith by issuing a Termination Notice to the Supplier if:
- 15.5.1 the Supplier does not commence delivery of the Services by the Services Commencement Date;
  - 15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
  - 15.5.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;
  - 15.5.4 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2;
  - 15.5.5 the NHS Business Services Authority has notified the Authority that the Supplier or any Sub-contractor of the Supplier has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter) as assumed pursuant to the provisions of Part D of Schedule 7;
  - 15.5.6 pursuant to and in accordance with the Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or
  - 15.5.7 the warranty given by the Supplier pursuant to Clause 10.5 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation

to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.5 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.5 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.

- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
  - 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
  - 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

- 15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
- 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
  - 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
  - 15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
  - 15.7.4 there has been a failure by the Supplier and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of

environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4.

- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.
- 15.9 Within six (6) months of the Commencement Date the Supplier shall develop and agree an Exit Plan, which for the avoidance of doubt shall include any exit or Transitional Assistance Services and the related charges, with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an Exit Plan within four (4) months of the Commencement Date. The Parties shall review and, as appropriate, update the Exit Plan on each anniversary of the Commencement Date of this Contract. If the Parties cannot agree an Exit Plan in accordance with the timescales set out in this Clause 15.9 of this Schedule 2 (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

## **16 Consequences of expiry or early termination of this Contract**

- 16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 Immediately following expiry or earlier termination of this Contract or in accordance with the timescales set out in the Exit Plan where one has been agreed pursuant to clause 15.9 of this Schedule 2::
- 16.2.1 the Parties shall comply with their respective obligations under Schedule 11 (Exit Management) and any agreed Exit Plan;
- 16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and
- 16.2.3 any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.

- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 for the period set out in Clause 24.1 of this Schedule 2.
- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
- 16.6 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.7 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

**17 Staff information and the application of TUPE at the end of the Contract**

- 17.1 Upon the day which is no greater than three (3) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by law, shall provide anonymised summary information relating to Supplier Personnel. Upon the day which is no greater than six (6) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by Law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
- 17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-contractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 17.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2, the Authority may withhold payment under Clause 9 of this Schedule 2.
- 17.4 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from

any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2.

- 17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2, during the period of three (3) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-contractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:
- 17.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
  - 17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
  - 17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
  - 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
  - 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
  - 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
  - 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 are subject to the Data Protection Legislation, the Supplier will, and shall procure that any Sub-contractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 17.8 Having as appropriate gained permission from any Sub-contractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.
- 17.9 The Parties agree that where a Successor or the Authority provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the

Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 17.11 to Clause 17.14 of this Schedule 2 and (where relevant) the provisions of Clause 1.15 of Part D of Schedule 7 shall apply.

- 17.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-contractor as appropriate. The Supplier will, and shall procure that any Sub-contractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 17.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 17.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:
- 17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
  - 17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
  - 17.12.3 pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
  - 17.12.4 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
  - 17.12.5 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any Sub-contractor warrant that such records are accurate and up to date.
- 17.13 The Supplier will and shall procure that any Sub-contractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 17.13.1 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.12 of this Schedule 2;

- 17.13.2 any act or omission by the Supplier or Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
  - 17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;
  - 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or Sub-contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
  - 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
  - 17.13.6 any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Authority's failure to comply with regulation 13(4) of TUPE.
- 17.14 The Supplier will, or shall procure that any Sub-contractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 17.15 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 17.16.1 the Authority will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
  - 17.16.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by the Authority or Successor;

- 17.16.3 if such offer of employment is accepted, the Authority will, or shall procure that the Successor will, immediately release the person from their employment; and
- 17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

**18 Complaints**

- 18.1 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 18.2 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.

**19 Sustainable development**

- 19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
  - 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Services and the Supplier's supply chain;
  - 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and
  - 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.
- 19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.

## **20 Electronic services information**

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 20.2 The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.
- 20.3 If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.
- 20.5 The Authority may reproduce for its sole use the Services Information provided by the Supplier in the Authority's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 20.6 Before any publication of the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Contract.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

## **21 Change management**

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject

to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

## **22 Dispute resolution**

22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).

22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.

22.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next levels until all level have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.

22.4 If the procedure set out in Clause 22.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties, shall acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.

22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

22.6 Nothing in this Contract shall prevent:

22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or

22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.

22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

## **23 Force majeure**

23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.

23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:

23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;

23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and

23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.

23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.

23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.

23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.

23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.

- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.

#### **24 Records retention and right of audit**

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 Where the Authority suspects fraudulent activity or where the Authority has reasonable grounds for believing that the supplier has not complied with its obligations under this Contract, the Supplier shall comply with all reasonable written requests made by the Authority's representative for entry to the Supplier's premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. Further the Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any agreed audit.
- 24.4 Not used.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or
- 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a

requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

24.7 Not used.

24.8 The Supplier shall issue an assurance statement of its internal controls annually within 30 days of 1st April each year during the Contract, containing such assurances as the Authority shall reasonably require to enable it to complete its own annual accounts and statement of internal control.

## **25 Conflicts of interest and the prevention of fraud**

25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

## **26 Equality and human rights**

26.1 The Supplier shall:

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

26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled

people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.

26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

## **27 Notice**

27.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

27.2 A notice shall be treated as having been received:

27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or

27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or

27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

## **28 Assignment, novation and Sub-contracting**

28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.

28.2 Notwithstanding Clause 28.1 of this Schedule 2, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 shall be subject to:

28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.8 of this Schedule 2;

- 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
  - 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
  - 28.2.4 the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
  - 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.
- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:
- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such Sub-contracting;
  - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
  - 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
  - 28.4.4 contain a right for the Authority to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
  - 28.4.5 requires the Supplier or other party receiving services under the contract to consider and verify invoices under that contract in a timely fashion;
  - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;
  - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

- 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;
  - 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and
  - 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.
- 28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
  - 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

## **29 Prohibited Acts**

- 29.1 The Supplier warrants and represents that:

29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following (“**Prohibited Acts**”):

- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:

29.2.1 the Authority shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.2.2 any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

29.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:

- (i) the interpretation of Clause 29 of this Schedule 2; or
- (ii) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

### **30 General**

30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby

- engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.

- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.
- 30.13 The parties agree that to the extent they sign electronically, their electronic signature is the legally binding equivalent to their handwritten signature.
- 30.14 This agreement may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.

### **Schedule 3**

#### **Information and Data Provisions**

#### **1 Confidentiality**

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

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

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

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

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

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

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

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

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

1.3 The Authority may disclose the Supplier’s Confidential Information:

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

- 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 3 shall remain in force:
  - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
  - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

## **2 Data protection**

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

each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.

- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:
- 2.4.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;
  - 2.4.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
  - 2.4.3 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
  - 2.4.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
  - 2.4.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
  - 2.4.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
  - 2.4.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;

- 2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;
  - 2.4.9 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and
  - 2.4.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 2.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

### 3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
  - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
  - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
  - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations,

it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;

- 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
- 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

#### **4 Information Security**

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
  - 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
  - 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.

- 4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.
- 4.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

## **ANNEX 1 – DATA PROTECTION PROTOCOL**



Department  
of Health &  
Social Care



## COVER NOTES

As part of the January 2018 update, the standard NHS Terms and Conditions for the supply of goods and the provision of services have been updated to reflect the coming into force of the General Data Protection Regulation (**GDPR**). Please see the relevant Crown Commercial Service Procurement Policy Notice (**PPN**) and related model clauses (Changes to Data Protection Legislation & General Data Protection Regulation) here: <https://www.gov.uk/government/publications/procurement-policy-note-0317>).

As part of this update, the Department of Health and Social Care's policy approach has been to:

1. Adopt the Crown Commercial Service PPN model clauses with only minor changes to ensure consistent use of terminology with the NHS terms and conditions. This has been achieved by developing the Data Protection Protocol below containing such model clauses for completion in connection with relevant Contracts where the Supplier will be processing personal data on behalf of the Authority. Schedule 3 (Information and Data Provisions) of the NHS terms and conditions has been amended to refer to this Protocol accordingly;
2. Make any necessary changes to relevant definitions in the NHS Terms and Conditions to refer to the GDPR and to ensure consistency with the Protocol; and
3. Make some very limited changes to other Clauses as necessary to ensure consistency with the Protocol and to ensure that the Protocol is referred to as appropriate. For example, depending on the version being used, as well as changes to Schedule 3, there are changes to the Supplier as data processor provisions in Schedule 1 (Key Provisions), the consequences of expiry or earlier termination provisions in Schedule 2 (General Terms and Conditions) and the change management provisions in Schedule 2.

This Protocol can also be used when varying existing Contracts to comply with the GDPR in circumstances where the Supplier is processing personal data on behalf of the Authority. In these circumstances, a change note will need to be agreed in compliance with the Contract change provisions to replace the existing data protection provisions (e.g. paragraph 2.2 of Schedule 3 in the standard NHS Terms and Conditions) with a completed version of the Protocol (which can be annexed to the change note accordingly). The consequential changes, as referred to at points 2 and 3 above, will also be relevant to any such change notes and can be viewed as part of the comparison documents published as part of the January 2018 update.

Whether a new or existing Contract, the Protocol should be completed and/or tailored to reflect the actual data processing activities taking place. In the context of more complex data sharing arrangements, for example, the Protocol will need more substantial changes and tailoring to reflect any data controlled by the Supplier and processed by the Authority and/or any data shared with third parties as part of such arrangements.

*Developed in partnership with* **MILLS & REEVE**

**January 2018**

## DATA PROTECTION PROTOCOL

*Guidance: This Data Protection Protocol is for use alongside the NHS terms and conditions where the Supplier will be processing personal data on behalf of the Authority. In these circumstances, the table below should be completed by the Authority setting out the nature of the processing that will be taking place under the Contract. This Protocol is based on the model provisions set out in the Procurement Policy Note – Changes to Data Protection Legislation and General Data Protection Regulation (PPN 03/17) issued by the Crown Commercial Service (December 2017).*

**Table A – Processing, Personal Data and Data Subjects**

Description	Details
Subject matter of the Processing	<i>For the purpose of providing Managed Services Procurement</i>
Duration of the Processing	<i>Duration of your contract with NHS Shared Business Services</i>
Nature and purposes of the Processing	<p><i>NHS SBS may undertake processing of personal data as part of the provision of following Procurement services:</i></p> <ul style="list-style-type: none"> <li>• <i>Procurement Managed Services</i></li> <li>• <i>Procurement Analysis Solutions</i></li> </ul> <p><i>Procurement Commercial Project Support</i></p>
Type of Personal Data	<i>Name, address, telephone number of your staff and that of your suppliers</i>
Categories of Data Subject	<i>NHS SBS Staff, NHP Staff, Suppliers to NHP</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p><i>The data will be retained in line with the NHS Records Management Code of Practice</i></p> <p><i>Authority to cover the costs for any onward retention or destruction of data as required post the retention period for the lifecycle of the data.</i></p>

## Definitions

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Contract shall also apply to this Protocol. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

<b>“Data Loss Event”</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>“Data Protection Officer”</b> and <b>“Data Subject”</b>	shall have the same meanings as set out in the GDPR;
<b>“Data Subject Access Request”</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>“Personal Data Breach”</b>	shall have the same meaning as set out in the GDPR;
<b>“Protective Measures”</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
<b>“Protocol”</b> or <b>“Data Protection Protocol”</b>	means this Data Protection Protocol;
<b>“Sub-processor”</b>	means any third party appointed to Process Personal Data on behalf of the Supplier related to this Contract.

## **1 DATA PROTECTION**

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only Processing that the Supplier is authorised to do is listed in Table A of this Protocol by the Authority and may not be determined by the Supplier.
- 1.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 1.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:
  - 1.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 1.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
  - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
  - 1.4.1 process that Personal Data only in accordance with Table A of this Protocol, unless the Supplier is required to do otherwise by **Law**. **If it is so required the Supplier** shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
  - 1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - 1.4.3 ensure that :
    - (i) the Supplier Personnel do not Process Personal Data except in accordance with this Contract (and in particular Table A of this Protocol);

- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Supplier's duties under this Protocol;
  - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

1.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by the Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
- (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data;

1.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination or expiry of the Contract unless the Supplier is required by Law to retain the Personal Data.

1.5 Subject to Clause 1.6 of this Protocol, the Supplier shall notify the Authority immediately if it:

- 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 1.5.2 receives a request to rectify, block or erase any Personal Data;
- 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
  - 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 The Supplier's obligation to notify under Clause 1.5 of this Protocol shall include the provision of further information to the Authority in phases, as details become available.
- 1.7 Taking into account the nature of the Processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 of this Protocol (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 1.7.1 the Authority with full details and copies of the complaint, communication or request;
  - 1.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 1.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 1.7.4 assistance as requested by the Authority following any Data Loss Event;
  - 1.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 1.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Protocol. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 1.8.1 the Authority determines that the Processing is not occasional;
  - 1.8.2 the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 1.8.3 the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.
- 1.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

- 1.11 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:
  - 1.11.1 notify the Authority in writing of the intended Sub-processor and Processing;
  - 1.11.2 obtain the written consent of the Authority;
  - 1.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Protocol such that they apply to the Sub-processor; and
  - 1.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 1.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Authority may, at any time on not less than 30 Business Days' notice, revise this Protocol by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Business Days' notice to the Supplier amend this Protocol to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 The Supplier shall comply with any further instructions with respect to Processing issued by the Authority by written notice. Any such further written instructions shall be deemed to be incorporated into Table A above from the date at which such notice is treated as having been received by the Supplier in accordance with Clause 27.2 of Schedule 2 of the Contract.
- 1.16 Subject to Clauses 1.13, 1.14, and 1.15 of this Protocol, any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

## Schedule 4

### Definitions and Interpretations

#### 1 Definitions

1.1 In this Contract the following words shall have the following meanings unless the context requires otherwise:

<b>“Actual Services Commencement Date”</b>	means the date the Supplier actually commences delivery of the Services;
<b>“Actuary”</b>	means a Fellow of the Institute and Faculty of Actuaries;
<b>“Authority”</b>	means the authority named on the form of Contract on the first page;
<b>“Authority’s Actuary”</b>	means the Government Actuaries Department;
<b>“Authority’s Obligations”</b>	means the Authority’s further obligations, if any, referred to in the Key Provisions;
<b>“Breach Notice”</b>	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
<b>“Broadly Comparable”</b>	means certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of Fair Deal for Staff Pensions;
<b>“Business Continuity Event”</b>	means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event;
<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Cabinet Office Statement”</b>	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
<b>“Change Control Process”</b>	means the change control process, if any, referred to in the Key Provisions;

<b>“Codes of Practice”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Commencement Date”</b>	means the date of this Contract;
<b>“Commercial Schedule”</b>	means the document set out at Schedule 6;
<b>“Confidential Information”</b>	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <ul style="list-style-type: none"> <li>(a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;</li> <li>(b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</li> <li>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;</li> </ul>
<b>“Contract”</b>	means the form of contract at the front of this document including without limitation the Order Form, and all schedules attached to the form of contract;
<b>“Contracting Authority”</b>	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
<b>“Contract Manager”</b>	means for the Authority and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
<b>“Contract Price”</b>	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
<b>“Controller”</b>	shall have the same meaning as set out in the GDPR;
<b>“Convictions”</b>	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
<b>“Cost Increase”</b>	shall have the meaning given to the term in Clause 1.3.2 of Part D of Schedule 7;

<b>“Cost Saving”</b>	shall have the meaning given to the term in Clause 1.3.4 of Part D of Schedule 7;
<b>“Data Protection Legislation”</b>	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Protection Protocol”</b>	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;
<b>“Direction Letter”</b>	means an NHS Pensions Direction letter issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHS Pension Scheme in respect of the Eligible Employees;
<b>“Dispute(s)”</b>	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>“Dispute Notice”</b>	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
<b>“Dispute Resolution Procedure”</b>	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 or, where Clause 24 of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in Schedule 8. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of Schedule 2;
<b>“DOTAS”</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance

	Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>“Eligible Employees”</b>	<p>means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the Authority (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services.</p> <p>For the avoidance of doubt a member of Staff who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an “open” Direction Letter or other NHS Pension Scheme “access” facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection under Part D of Schedule 7;</p>
<b>“Employee Transfer Date”</b>	means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor);
<b>“Employment Liabilities”</b>	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“eProcurement Guidance”</b>	<p>means the NHS eProcurement Strategy available via:</p> <p><a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a></p> <p>together with any further Guidance issued by the Department of Health in connection with it;</p>
<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term

	Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
<b>“Exit Requirements”</b>	means the Authority’s exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
<b>“Fair Deal for Staff Pensions”</b>	means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced);
<b>“FOIA”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Force Majeure Event”</b>	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> <li>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract;</li> <li>(b) acts of terrorism;</li> <li>(c) flood, storm or other natural disasters;</li> <li>(d) fire;</li> <li>(e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</li> <li>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</li> <li>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</li> <li>(h) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</li> <li>(i) a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also</li> </ul>

	<p>qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
<b>“Former Supplier”</b>	a supplier supplying the Services to the Authority before the Transfer Date that are the same as or substantially similar to the Services (or any part of the Services);
<b>“Fraud”</b>	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>“General Anti-Abuse Rule”</b>	means <ul style="list-style-type: none"> <li>(a) the legislation in Part 5 of the Finance Act 2013; and</li> <li>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</li> </ul>
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
<b>“Guidance”</b>	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>“HM Government Cyber Essentials Scheme”</b>	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ;

<b>“Implementation Plan”</b>	means the implementation plan, if any, referred to in the Key Provisions;
<b>“Implementation Requirements”</b>	means the Authority’s implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
<b>“Intellectual Property Rights”</b>	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
<b>“Interested Party”</b>	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
<b>“Key Provisions”</b>	means the key provisions set out in Schedule 1;
<b>“KPI”</b>	means the key performance indicators as set out in Schedule 5;
<b>“Law”</b>	<p>means any applicable legal requirements including, without limitation,:</p> <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</li> <li>(b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</li> <li>(e) requirements set by any regulatory body as applicable in England and Wales;</li> <li>(f) any relevant code of practice as applicable in England and Wales; and</li> <li>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</li> </ul>

<b>“Long Stop Date”</b>	means the date, if any, specified in the Key Provisions;
<b>“Losses”</b>	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law;
<b>“Measures”</b>	means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE;
<b>“NHS”</b>	means the National Health Service;
<b>“NHS Body”</b>	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
<b>“NHS Pensions”</b>	means NHS Pensions (being a division of the NHS Business Services Authority) acting on behalf of the Secretary of State as the administrators of the NHS Pension Scheme or such other body as may from time to time be responsible for relevant administrative functions of the NHS Pension Scheme, including the Pensions Division of the NHS Business Services Authority;
<b>“NHS Pension Scheme”</b>	means the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
<b>“NHS Pension Scheme Arrears”</b>	means any failure on the part of the Supplier or any Sub-contractor to pay employer’s contributions or deduct and pay across employee’s contributions to the NHS Pension Scheme or meet any other financial obligations under the NHS Pension Scheme or any Direction Letter in respect of the Eligible Employees;
<b>“NHS Pension Scheme Regulations”</b>	means, as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) and any subsequent regulations made in respect of the NHS Pension Scheme, each as amended from time to time;
<b>“Occasion of Tax Non-Compliance”</b>	means: <ul style="list-style-type: none"> <li>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> </ul> </li> </ul>

	<p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
<b>“Party”</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>“Payment Date”</b>	means twenty (20) Business Days after the last of the conditions in Clause 1.7 of Part D of Schedule 7 has been satisfied;
<b>“Pension Benefits”</b>	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme;
<b>“Personal Data”</b>	shall have the same meaning as set out in the GDPR;
<b>“Policies”</b>	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
<b>“Premature Retirement Rights”</b>	rights to which any Transferred Staff (had they remained in the employment of an NHS Body or other employer which participates automatically in the NHS Pension Scheme) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
<b>“Premises and Locations”</b>	has the meaning given under Clause 2.1 of Schedule 2;
<b>“Process”</b>	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
<b>“Processor”</b>	shall have the same meaning as set out in the GDPR;
<b>“Purchase Order”</b>	means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions;
<b>“Relevant Tax Authority”</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;

<b>“Remedial Proposal”</b>	has the meaning given under Clause 15.3 of Schedule 2;
<b>“Services”</b>	means the services set out in this Contract (including, without limitation, Schedule 5 which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
<b>“Services Commencement Date”</b>	means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date;
<b>“Services Information”</b>	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's services catalogue from time to time;
<b>“Specification and Tender Response Document”</b>	means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract;
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
<b>“Step In Rights”</b>	means the step in rights, if any, referred to in the Key Provisions;
<b>“Sub-contract”</b>	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
<b>Sub-contractor</b>	means a party to a Sub-contract other than the Supplier;
<b>“Subsequent Transfer Date”</b>	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
<b>“Subsequent Transferring Employees”</b>	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
<b>“Successor”</b>	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;

<b>“Supplier”</b>	means the supplier named on the form of Contract on the first page;
<b>“Supplier Code of Conduct”</b>	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
<b>“Supplier Personnel”</b>	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
<b>“Term”</b>	means the term as set out in the Key Provisions;
<b>“Termination Notice”</b>	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>“Third Party”</b>	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
<b>“Third Party Body”</b>	Means another Contracting Authority, whose role it is to: (a) analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities); or (b) manage the Framework Agreement with the Supplier;
<b>“Third Party Employees”</b>	means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
<b>“Transfer Amount”</b>	an amount paid in accordance with Clause 1.7 of Part D of Schedule 7 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause 1.6 of Part D of Schedule 7 in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or a Third Party’s Broadly Comparable scheme and elected to transfer them to the Supplier’s Broadly Comparable scheme or the NHS Pension Scheme under the Transfer Option;
<b>“Transfer Date”</b>	means the Actual Services Commencement Date;
<b>“Transfer Option”</b>	an option given to each Eligible Employee with either: (a) accrued rights in the NHS Pension Scheme; or (b) accrued rights in a Broadly Comparable scheme, as at the Employee Transfer Date, to transfer those rights to the Supplier’s (or its Sub-contractor’s) Broadly Comparable scheme or back into the NHS Pension Scheme (as

	appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes);
<b>“Transfer Option Deadline”</b>	the first Business Day to fall at least three (3) months after the notice detailing the Transfer Option has been sent to each Eligible Employee;
<b>“Transferred Staff”</b>	means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a Sub-contractor by operation of TUPE, the Cabinet Office Statement or for any other reasons, as a result of the award of this Contract;
<b>“Transferring Employees”</b>	means any employee who immediately prior to the Services Commencement Date, is wholly or mainly assigned to the Services to be provided to the Authority under this Contract or part thereof or services the same as or substantially equivalent to such Services or part thereof whose contract of employment will transfer to the Supplier on the Services Commencement Date (other than any such employee who opts not to transfer under regulation 4(7) of TUPE);
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
<b>“VAT”</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.

- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 1.13 Any guidance notes in grey text do not form part of this Contract.
- 1.14 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.15 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

**Schedule 5**

**Specification and Tender Response Document**

As set out in Appendix 1 of the Order Form

**Schedule 6**

**Commercial Schedule**

As set out in Appendix 2 of the Order Form

## **Schedule 7**

### **Staff transfer**

The optional parts of this Schedule 7 below shall only apply to this Contract where such parts have been checked.

*Guidance: Four different scenarios could apply regarding staff transfer at the start of service delivery:*

1. *No staff transfer;*
2. *Staff transfer from the Authority;*
3. *Staff transfer from a third party supplier providing services which are fundamentally the same as the Services immediately before start of service delivery under this Contract; or*
4. *Staff transfer both from the Authority and from a third party supplier.*

*This Schedule contains wording depending on which circumstances apply and the notes below explain which wording to use for which scenarios.*

*If no staff transfer to the Supplier under TUPE check the box at Part A only.*

*If staff transfer from the Authority under TUPE check the boxes at Parts B and D.*

*If staff transfer from a current provider under TUPE (i.e. this is a second or third generation TUPE transfer) check the boxes at Parts C and D.*

*If staff transfer both from the Authority under TUPE and from a current provider under TUPE: check the boxes at Parts B, C and D.*

**Part A  No staff transfer to the Supplier under TUPE (only applicable to the Contract if this box is checked)**

- 1.1 The Parties agree that at the commencement of the provision of Services by the Supplier TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.
- 1.2 If any person who is an employee of the Authority or a Third Party claims, or it is determined, that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
  - 1.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;
  - 1.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;
  - 1.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment;

- 1.2.4 if after that period specified in Clause 1.2.2 of Part A of this Schedule 7 has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the provisions of Part D of this Schedule 7;
- 1.3 Subject to the Supplier's compliance with paragraphs 1.2.1 to 1.2.4:
  - 1.3.1 the Authority will indemnify the Supplier and/or the relevant Sub-contractor against all Employment Liabilities arising out of the termination of the employment of any of the Authority's employees referred to in Paragraph 1.2; and
  - 1.3.2 the Authority will procure that the Former Supplier indemnifies the Supplier and/or any Sub-contractor against all Employment Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.
- 1.4 The indemnities in Paragraph 1.3 shall not apply to any claim:
  - 1.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-contractor; or
  - 1.4.2 any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure.
- 1.5 The indemnities in Paragraph 1.3 shall not apply to any termination of employment occurring later than 6 months from the Commencement Date.
- 1.6 If the Supplier and/or the Sub-contractor does not comply with Paragraph 1.2, all Employment Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Authority and any Former Supplier against any Employment Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor, provided that the Supplier shall not be required by this paragraph 1.6 to indemnify a Sub-Contractor where it is also a Former Supplier.
- 1.7 Where in this Part A the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

**Part B  Staff transfer from the Authority under TUPE (only applicable to the Contract if this box is checked)**

- 1.1 The Parties agree that at the commencement of the provision of Services under this Contract there is an organised grouping of employee(s) with the principal purpose and the activities are fundamentally the same resulting in a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Transferring Employees will transfer on the Transfer Date to the Supplier or any Sub-contractor pursuant to TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions.
- 1.2 The Supplier agrees, or shall ensure by written agreement that any Sub-contractor shall agree, to accept the Transferring Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (including the right to continued access to the NHS Pension Scheme or access to a Broadly Comparable pension scheme which shall be dealt with in accordance with Part D of this Schedule 7) and with full continuity of employment.
- 1.3 The Supplier's agreement in Clause 1.2 of Part B of this Schedule 7 (and any subsequent agreement by any Sub-contractor), is subject to the right of any employee identified as a Transferring Employee to object to being transferred to the Supplier or any Sub-contractor.
- 1.4 The Supplier will, or shall ensure by written agreement that any Sub-contractor will:
- 1.4.1 not later than twenty eight (28) days after issue of a written notice in writing to it from the Authority, provide the Authority with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
  - 1.4.2 provide such assistance and information to the Authority as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Supplier or any Sub-contractor (including attendance at any meetings with Transferring Employees, trade unions and employee representatives);
  - 1.4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and
  - 1.4.4 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Transferring Employees about any Measures in accordance with regulation 13(6) of TUPE.
- 1.5 The Authority will on or before the Transfer Date:
- 1.5.1 pay all wages, salaries and other benefits of the Transferring Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing

- to the Transferring Employees in respect of the period before the Transfer Date;
- 1.5.2 procure that any loans or advances made to the Transferring Employees before the Transfer Date are repaid to it;
- 1.5.3 account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Transferring Employees in the period before the Transfer Date; and
- 1.5.4 pay the Supplier the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date.
- 1.6 The Authority will:
  - 1.6.1 provide such assistance and information to the Supplier as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Supplier or any Sub-contractor, including the provision of all employee liability information identified in regulation 11 of TUPE in relation to the Transferring Employees; and
  - 1.6.2 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE.
- 1.7 The Authority shall indemnify and keep indemnified the Supplier in relation to any Employment Liabilities arising out of or in connection with any claim which arises as a result of any act or omission of the Authority in relation to the Transferring Employees prior to the Transfer Date save for where such act or omission results from complying with the instructions of the Supplier or Sub-contractor, including the Supplier or Sub-contractor failing to comply with its obligations under regulation 13 of TUPE, but only to the extent that such claim is brought by:
  - 1.7.1 any of the Transferring Employees (whether on their own behalf or in their capacity as employee representatives); or
  - 1.7.2 any trade union, staff association or staff body recognised by the Authority in respect of any of the Transferring Employees or any employee representatives acting on behalf of any of the Transferring Employees.
- 1.8 The Supplier shall be responsible for or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and other Staff.
- 1.9 The Supplier shall indemnify and will keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with:
  - 1.9.1 any act or omission of the Supplier or Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Transferring Employee or Staff (including but not limited to any liability

- which arises because a Transferring Employee's employment with the Supplier or Sub-contractor is deemed to include their previous continuous employment with the Authority);
- 1.9.2 any act or omission of the Supplier or Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Authority's failure to comply with regulation 13 of TUPE;
- 1.9.3 any allegation or claim by a Transferring Employee or any other employee of the Authority that in consequence of the transfer of Services to the Supplier or Sub-contractor there has or will be a substantial change in such Transferring Employee's working conditions to their detriment within regulation 4(9) of TUPE; and
- 1.9.4 any allegation or claim that the termination of employment of any of the Transferring Employees or any other employee of the Authority whether on or before the Transfer Date which arises as a result of any act or omission by the Supplier or Sub-contractor save for where such act or omission results from complying with the instructions of the Authority.
- 1.10 If any person who is an employee of the Authority who is not a Transferring Employee claims or it is determined that their contract of employment has been transferred from the Authority to the Supplier or any Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned:
- 1.10.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;
- 1.10.2 the Authority may offer employment to such person within twenty eight (28) days of the notification by the Supplier;
- 1.10.3 if such offer of employment is accepted, the Supplier or Sub-contractor shall immediately release the person from their employment; and
- 1.10.4 if after the period specified in Clause 1.10.2 of Part B of this Schedule 7 has elapsed, no offer of employment has been made by the Authority or such offer has been made by the Authority but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person from the Transfer Date.

**Part C  Staff transfer from a current provider under TUPE(only applicable to the Contract if this box is checked)**

- 1.1 The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Third Party Employees will transfer on the Transfer Date to the Supplier or a Sub-contractor pursuant to TUPE, the Cabinet Office Statement and (where relevant) Fair Deal for Staff Pensions.

- 1.2 The Supplier agrees, or shall ensure by written agreement that any Sub-contractor shall agree, to accept the Third Party Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (and including (where relevant) the right to secure access or continued access to the NHS Pension Scheme or access or continued access to a Broadly Comparable pension scheme in accordance with Fair Deal for Staff Pensions (which shall be dealt with in accordance with Part D of this Schedule 7) and with full continuity of employment.
- 1.3 The Supplier's agreement in Clause 1.2 of Part C of this Schedule 7 (and any subsequent agreement by any Sub-contractor), is subject to the right of any Third Party Employee to object to being transferred to the Supplier or any Sub-contractor.
- 1.4 The Supplier will, or shall ensure by written agreement that any Sub-contractor will:
  - 1.4.1 not later than twenty eight (28) days after issue of a written notice in writing to it from the Authority, provide the Third Party with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority and any Third Party indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
  - 1.4.2 provide such assistance and information to the Third Party as it may reasonably request to facilitate a smooth and efficient handover of the Third Party Employees to the Supplier or any Sub-contractor (including attendance at any meetings with Third Party Employees, trade unions and employee representatives);
  - 1.4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and
  - 1.4.4 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Third Party Employees about any Measures in accordance with regulation 13(6) of TUPE.
- 1.5 The Supplier shall be responsible for, or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements and outgoings in respect of the Third Party Employees and other Staff.
- 1.6 The Supplier shall indemnify and will keep indemnified the Authority and any Third Party in relation to any Employment Liabilities arising out of or in connection with:
  - 1.6.1 any act or omission of the Supplier or a Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Third Party Employee or Staff (including but not limited to any liability which arises because a Third Party Employee's employment with the Supplier or a Sub-contractor is deemed to include their previous continuous employment with the Third Party);
  - 1.6.2 any act or omission of the Supplier or a Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the

liability arises from the Third Party's failure to comply with regulation 13 of TUPE;

- 1.6.3 any claim or allegation by a Third Party Employee or any other employee of the Authority or Third Party that in consequence of the transfer of Services to the Supplier or a Sub-contractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and
- 1.6.4 any claim or allegation that the termination of employment of any of the Third Party Employees or any other employee of the Third Party whether on or before the Transfer Date or not which arise as a result of any act or omission by the Supplier or a Sub-contractor save for where such act or omission results from complying with the instructions of the Authority.
- 1.7 The Authority shall use reasonable endeavours to transfer to the Supplier or any Sub-contractor the benefit of any indemnity it has from the Third Party.

**Part D  Provisions regarding pensions (only applicable to the Contract if this box is checked or Clause 1.2.4 of Part A of this Schedule 7 applies)**

*This Part D is designed to protect any Transferred Staff who before the transfer were either (a) employed by an NHS Body or other employer which participates automatically in the NHS Pension Scheme or (b) who transferred from the public sector under the old Fair Deal policy and who remain employed in connection with outsourced public services for more than 50% of their employed time with their new employer. These staff may have been through several changes of employer but they have been and remain continuously employed for more than 50% of their employed time in connection with the Services. These protected staff (who are often referred to as having 'Fair Deal' rights) are referred to in Part D as "Eligible Employees".*

*If the staff being transferred is thought not include any "Eligible Employees", Part D may not be relevant but should be included in case any such persons actually transfer. Note that staff recruited to work on the Services but who did not originate from an NHS Body or other employer which participates automatically in the NHS Pension Scheme, may be offered "access" to the NHS Pension Scheme by way of separate negotiation between the Authority, the Supplier and NHS Pensions. However, those staff do not enjoy the protection conferred by Fair Deal for Staff Pensions which Part D of this Schedule is intended to implement.*

*Further explanation of the provisions of Part D can be found in the Department of Health's Guidance on New Fair Deal, which can be accessed [here](#).*

**Broadly comparable pension benefits  (Clause 1.4 of this Part D of Schedule 7 only applies to the Contract if this box is checked or Clause 1.2.4 of Part A of this Schedule 7 applies. For the avoidance of doubt, where this box is not checked, but the Part D box above is checked all of the provisions of this Part D of Schedule 7 shall apply to this Contract except Clause 1.4 of this Part D of Schedule 7)**

*Guidance: Clause 1.4 (Broadly Comparable Pension Benefits) will not be relevant to most contracts. In the vast majority of cases the Supplier and/or any relevant Sub-contractor(s) will either participate in the NHS Pension Scheme in respect of all Eligible Employees by securing a Direction Letter or be eligible to participate automatically in the scheme where they are an NHS Body by the time the Contract is entered into. Clause 1.4 will apply in the exceptional circumstances where the Authority permits the*

*Supplier to enable relevant staff to have access or continued access to a Broadly Comparable pension scheme.*

## **1 Pension protection for Eligible Employees**

### **1.1 General**

1.1.1 The Supplier shall procure that, if relevant, each of its Sub-contractors shall comply with the provisions in this Schedule 7 as if references to the Supplier were to the Sub-contractor.

### **1.2 Membership of the NHS Pension Scheme**

1.2.1 In accordance with Fair Deal for Staff Pensions, the Supplier to which the employment of any Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHS Pension Scheme, shall on or before the Employee Transfer Date, each secure a Direction Letter to enable the Eligible Employees to retain either continuous active membership of or eligibility for, the NHS Pension Scheme, or as appropriate rejoin or secure eligibility for the NHS Pension Scheme for so long as they remain employed in connection with the delivery of the Services under this Contract.

1.2.2 The Supplier must supply to the Authority a complete copy of the Direction Letter as soon as reasonably practicable after the Employee Transfer Date.

1.2.3 The Supplier shall comply with the terms of the Direction Letter (including any terms which change as a result of changes in Law) for so long as it remains bound by the terms of the Direction Letter.

1.2.4 Where any Staff (including any Transferred Staff) omitted from the Direction Letter supplied in accordance with Part D of this Schedule 7 is subsequently found to be an Eligible Employee, the Supplier (or its Sub-contractor if relevant) will ensure that that person is treated as an Eligible Employee from the Employee Transfer Date so that their Pension Benefits and Premature Retirement Rights are not adversely affected.

1.2.5 The Supplier shall ensure that all data relating to the Eligible Employees and the NHS Pension Scheme is up to date and is provided to the Authority as requested from time to time.

### **1.3 Contributions payable**

1.3.1 The Supplier shall pay to the NHS Pension Scheme all such amounts as are due under the Direction Letter and shall deduct and pay to the NHS Pension Scheme such employee contributions as are required by the NHS Pension Scheme.

1.3.2 Where during the Term the standard employer contribution rate which the Supplier is required to pay into the NHS Pension Scheme pursuant to the terms of its Direction Letter is increased to a rate which is over and above the rate which was applicable to the Supplier as at the date of this Contract

and such rate increase results in an increased cost to the Supplier overall in relation to the provision of the Services (“Cost Increase”), the Supplier shall (subject to Clause 1.3.3 of Part D of this Schedule 7 and the provision of supporting information) be entitled to recharge a sum equal to the Cost Increase to the Authority. The Supplier shall only be entitled to recharge any Cost Increase to the Authority pursuant to this Clause 1.3.2 of Part D of this Schedule 7 in circumstances where the Cost Increase arises solely as a direct result of a general increase in the employer contribution rate applicable to all employers participating in the NHS Pension Scheme and not in circumstances where the employer contribution rate applicable to the Supplier is increased for any other reason, including as a result of any acts or omissions of the Supplier which give rise to any costs or additional charges (including interest) being charged to the Supplier which are over and above the minimum employer contributions payable by an employer in the NHS Pension Scheme (including as a result of a failure by the Supplier to comply with the terms of its Direction Letter or to meet its obligations to the NHS Pension Scheme).

1.3.3 The Supplier must supply all such information as the Authority may reasonably request from time to time in order to support any claim made by the Supplier pursuant to Clause 1.3.2 of Part D of this Schedule 7 in relation to a Cost Increase.

1.3.4 Where during the Term the standard employer contribution rate which the Supplier is required to pay in relation to the NHS Pension Scheme pursuant to the terms of its Direction Letter is decreased as part of a general reduction in the standard employer contribution rate applicable to all employers participating in the NHS Pension Scheme to a rate which is lower than that which was applicable as at the date of this Contract and such decrease results in a cost saving for the Supplier (a “Cost Saving”), the Authority shall be entitled to reduce the amounts payable to the Supplier under this Contract by an amount equal to the Cost Saving. The Authority shall be entitled to deduct any Cost Saving from sums otherwise payable by the Authority to the Supplier under this Contract.

#### 1.4 Broadly Comparable Pension Benefits

1.4.1 If the Authority in its sole discretion agrees that the Supplier or Sub-contractor need not provide the Eligible Employees with access to the NHS Pension Scheme, the Supplier must ensure that, with effect from the Employee Transfer Date until the day before the Subsequent Transfer Date, the Eligible Employees are offered access to a scheme under which the Pension Benefits are Broadly Comparable to those provided under the NHS Pension Scheme.

1.4.2 The Supplier must supply to the Authority details of its Broadly Comparable scheme and provide a full copy of the valid certificate of Broad Comparability covering all Eligible Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Employee Transfer Date.

#### 1.5 Transfer Option where Broadly Comparable Pension Benefits are provided

1.5.1 As soon as reasonably practicable and in any event no later than twenty (20) Business Days after the Employee Transfer Date, the Supplier must provide

the Eligible Employees with the Transfer Option, where a Third Party offered, or the Supplier offers, a Broadly Comparable scheme.

## 1.6 Calculation of Transfer Amount

1.6.1 The Authority shall use reasonable endeavours to procure that twenty (20) Business Days after the Transfer Option Deadline, the Transfer Amount is calculated by the Third Party's Actuary or the Authority's Actuary (as appropriate) on the following basis and notified to the Supplier along with any appropriate underlying methodology.

1.6.2 If the Third Party offers a Broadly Comparable scheme to Eligible Employees:

(i) the part of the Transfer Amount which relates to benefits accrued in that Broadly Comparable scheme other than those in Clause 1.6.2(ii) of Part D of this Schedule 7 below must be aligned to the funding requirements of that scheme; and

(ii) the part of the Transfer Amount which relates to benefits accrued in the NHS Pension Scheme (having been previously bulk transferred into the Third Party's Broadly Comparable scheme), must be aligned to whichever of:

(A) the funding requirements of the Third Party's Broadly Comparable scheme; or

(B) the principles under which the Third Party's Broadly Comparable scheme received a bulk transfer payment from the NHS Pension Scheme (together with any shortfall payment), gives the higher figure, provided that where the principles require the assumptions to be determined as at a particular date, that date shall be the Employee Transfer Date.

1.6.3 In the case of Transferring Employees or any Third Party Employees who have access to the NHS Pension Scheme (and who are classed as Eligible Employees), the Transfer Amount shall be calculated by the NHS Pension Scheme's Actuary on the basis applicable for bulk transfer terms from the NHS Pension Scheme set by the Department of Health from time to time.

1.6.4 Each Party shall promptly provide to the Actuary calculating or verifying the Transfer Amount any documentation and information which that Actuary may reasonably require.

## 1.7 Payment of Transfer Amount

Subject to:

1.7.1 the period for acceptance of the Transfer Option having expired; and

1.7.2 the Supplier having provided the trustees or managers of the Third Party's pension scheme (or NHS Pensions, as appropriate) with completed and signed forms of consent in a form acceptable to the Third Party's pension

scheme (or NHS Pensions) from each Eligible Employee in respect of the Transfer Option; and

- 1.7.3 the calculation of the Transfer Amount in accordance with Clause 1.6 of Part D of this Schedule 7; and
- 1.7.4 the trustees or managers of the Supplier's (or any Sub-contractor's) Broadly Comparable scheme (or NHS Pensions, as appropriate) having confirmed in writing to the trustees or managers of the Third Party's pension scheme (or NHS Pensions, as appropriate) that they are ready, willing and able to receive the Transfer Amount and the bank details of where the Transfer Amount should be sent, and not having revoked that confirmation,

the Authority will use reasonable endeavours to procure that the Third Party's pension scheme (or the NHS Pension Scheme, as appropriate) shall, on or before the Payment Date, transfer to the Supplier's Broadly Comparable scheme (or NHS Pension Scheme) the Transfer Amount in cash, together with any cash or other assets which are referable to additional voluntary contributions (if any) paid by the Eligible Employees which do not give rise to salary-related benefits.

#### 1.8 Credit for Transfer Amount

- 1.8.1 Subject to prior receipt of the Transfer Amount, by the trustees or managers of the Supplier's Broadly Comparable scheme (or NHS Pensions, as appropriate), the Supplier must procure that year-for-year day-for-day service credits are granted in the Supplier's (Broadly Comparable scheme (or NHS Pension Scheme), or an actuarial equivalent agreed by the Authority's Actuary (and NHS Pension Scheme Actuary) in accordance with Fair Deal for Staff Pensions as a suitable reflection of the differences in benefit structure between the NHS Pension Scheme and the Supplier's pension scheme.
- 1.8.2 To the extent that the Transfer Amount is or shall be insufficient to provide benefits in the receiving scheme on the basis set out in Clause 1.8.1 above, the Supplier shall be liable to make a top-up payment into the receiving scheme such that benefits shall be provided by the receiving scheme on the basis set out in Clause 1.8.1. above.

#### 1.9 Premature Retirement Rights

- 1.9.1 From the Employee Transfer Date until the day before the Subsequent Transfer Date, the Supplier must provide Premature Retirement Rights in respect of the Eligible Employees that are identical to the benefits they would have received had they remained employees of an NHS Body or other employer which participates automatically in the NHS Pension Scheme.

#### 1.10 Breach and Cancellation of any Direction Letter(s) and Right of Set-Off

- 1.10.1 The Supplier agrees that it shall notify the Authority if it breaches the terms of the Direction Letter. The Supplier also agrees that the Authority is entitled

to make arrangements with NHS Pensions for the Authority to be notified if the Supplier breaches the terms of this Direction Letter.

- 1.10.2 If the Authority is entitled to terminate this Contract pursuant to Clause 15.5.5 of Schedule 2, the Authority may in its sole discretion instead of exercising its right under Clause 15.5.5 of Schedule 2 permit the Supplier to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority.
- 1.10.3 If the Authority is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Authority shall be entitled to deduct all or part of those arrears from any amount due to be paid by the Authority to the Supplier having given the Supplier five (5) Business Days' notice of its intention to do so, and to pay any sum deducted to NHS Pensions in full or partial settlement of the NHS Pension Scheme Arrears. This set-off right is in addition to and not instead of the Authority's right to terminate the Contract under Clause 15.5.5 of Schedule 2.

#### 1.11 Compensation

1.11.1 If the Supplier is unable to provide the Eligible Employees with either:

- (i) membership of the NHS Pension Scheme (having used its best endeavours to secure a Direction Letter); or
- (ii) a Broadly Comparable scheme,

the Authority may in its sole discretion permit the Supplier to compensate the Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier having consulted with a view to reaching agreement any recognised trade union or, in the absence of such body, the Eligible Employees. The Supplier must meet the costs of the Authority in determining whether the level of compensation offered is reasonable in the circumstances.

1.11.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract under Clause 15.5.5 of Schedule 2.

#### 1.12 Supplier Indemnities Regarding Pension Benefits and Premature Retirement Rights

- 1.12.1 The Supplier must indemnify and keep indemnified the Authority and any Successor against all Losses arising out of any claim by any Eligible Employee that the provision of (or failure to provide) Pension Benefits and Premature Retirement Rights from the Employee Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
- 1.12.2 The Supplier must indemnify and keep indemnified the Authority, NHS Pensions and any Successor against all Losses arising out of the Supplier (or its Sub-contractor) allowing anyone who is not an Eligible Employee to join or claim membership of the NHS Pension Scheme at any time during the Term.

1.12.3 The Supplier must indemnify the Authority, NHS Pensions and any Successor against all Losses arising out of its breach of this Part D of this Schedule 7 or the terms of the Direction Letter.

1.13 Sub-contractors

1.13.1 If the Supplier enters or has at the Commencement Date entered into a Sub-contract for delivery of all or part of the Services it shall impose obligations on its Sub-contractor in the same terms as those imposed on the Supplier in relation to Pension Benefits and Premature Retirement Benefits by this Part D of this Schedule 7, including requiring that:

- (i) if the Supplier has secured a Direction Letter, the Sub-contractor also secures a Direction Letter in respect of the Eligible Employees for their future service with the Sub-contractor as a condition of being awarded the Sub-contract; or
- (ii) if the Supplier has offered the Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHS Pension Scheme, the Sub-contractor either secures a Direction Letter in respect of the Eligible Employees or provides Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHS Pension Scheme and in either case the option for Eligible Employees to transfer their accrued rights in the Supplier's pension scheme into the Sub-contractor's Broadly Comparable scheme (or where a Direction Letter is secured by the Sub-contractor, the NHS Pension Scheme) on the basis set out in Clause 1.8 of Part D of this Schedule 7, except that the Supplier or the Sub-contractor as agreed between them, must make up any shortfall in the transfer amount received from the Supplier's pension scheme.

1.14 Direct Enforceability by the Eligible Employees

1.14.1 Notwithstanding Clause 30.8 of Schedule 2, the provisions of this Part D of this Schedule 7 may be directly enforced by an Eligible Employee against the Supplier and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to him or her by the Supplier under this Part D of this Schedule 7 in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

1.14.2 Further, the Supplier must ensure that the Contracts (Rights of Third Parties) Act 1999 shall apply to any Sub-contract to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

1.15 Pensions on Transfer of Employment on Exit

- 1.15.1 In the event of any termination or expiry or partial termination or expiry of this Contract which results in a transfer of the Eligible Employees, the Supplier must (and if offering a Broadly Comparable scheme, must use all reasonable efforts to procure that the trustees or managers of that pension scheme must):
- (i) not adversely affect pension rights accrued by the Eligible Employees in the period ending on the Subsequent Transfer Date;
  - (ii) within thirty (30) Business Days of being requested to do so by the Authority or Successor, (or if the Successor is offering Eligible Employees access to the NHS Pension Scheme, by NHS Pensions), provide a transfer amount calculated in accordance with Clause 1.6 of this Part D of this Schedule 7; and
  - (iii) do all acts and things, and provide all information and access to the Eligible Employees, as may in the reasonable opinion of the Authority be necessary or desirable and to enable the Authority and/or the Successor to achieve the objectives of Fair Deal for Staff Pensions.

## Schedule 8

### Expert Determination

#### **1 Dispute Process**

- 1.1 During any Dispute, including a Dispute as to the validity of the Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 1.2 In the case of a Dispute the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and shall follow the procedure set out in this Schedule 8.
- 1.3 In the event of a Dispute either Party may serve a Dispute Notice on the other Party to commence formal resolution of the Dispute. The Dispute Notice shall set out:
  - 1.3.1 the material particulars of the Dispute; and
  - 1.3.2 the reasons why the Party serving the Dispute Notice believes the Dispute has arisen.
- 1.4 Following the service of a Dispute Notice the Parties shall first seek to resolve the Dispute by convening a meeting between the Authority's Contract Manager and the Supplier's Contract Manager (together the "**Contract Managers**").
  - 1.4.1 The meeting of the Contract Managers must take place within five (5) Business Days of the date of the Dispute Notice (the "**Dispute Meeting**").
  - 1.4.2 The Contract Managers shall be given ten (10) Business Days following the date of the Dispute Meeting to resolve the Dispute.
  - 1.4.3 The Contract Managers can agree to further meetings at levels 2 and/or 3, as referred to at clause 5.1 of the Key Provisions in Schedule 1, in addition to the Dispute Meeting, but such meetings must be held within the ten (10) Business Day timetable set out in paragraph 1.4.2 of this Schedule 8.
  - 1.4.4 If at any point it becomes clear that the timetable set out cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the timetable. Any agreed extension to the timetable shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
- 1.5 If the procedure set out in paragraph 1.4 of this Schedule 8 has been exhausted and fails to resolve the Dispute either Party may request the Dispute be resolved by way of a binding expert determination (pursuant to paragraph 1.6 of this Schedule 8). For the avoidance of doubt, the Expert shall determine all matters (including, without limitation, matters of contractual construction and interpretation) in connection with any Dispute referred to binding expert determination pursuant to paragraph 1.6 of this Schedule 8.
- 1.6 Where the Dispute is referred to binding expert determination the following process will apply:

- 1.6.1 The Party wishing to refer the Dispute to expert determination shall give notice in writing to the other Party informing it of its wish to refer the Dispute to expert determination and giving brief details of its position in the Dispute.
- 1.6.2 The Parties shall attempt to agree upon a single expert (who must have no connection with the Dispute unless both Parties have consented in writing) (an “**Expert**”). For the avoidance of doubt, where the Dispute relates to contractual interpretation and construction, the Expert may be Queen’s Counsel. In the event that the Parties fail to agree upon an Expert within five (5) Business Days following the date of the notice referred to in paragraph 1.6.1 of this Schedule 8 (or if the person agreed upon is unable or unwilling to act), the Parties agree that the Expert will be nominated and confirmed to be appointed by the Centre for Effective Dispute Resolution.
- 1.6.3 The Expert must be willing and able to complete the expert determination process within thirty (30) Business Days of the Date of Final Representations (as defined in paragraph 1.6.5 of this Schedule 8).
- 1.6.4 The Expert shall act as an expert not as an arbitrator or legal advisor. There will be no formal hearing and the Expert shall regulate the procedure as he sees fit.
- 1.6.5 The Parties shall each have the right to make written representations to the Expert and will, with reasonable promptness, provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision. Such representations must be made within twenty eight (28) Business Days of the Expert being appointed, or fourteen (14) Business Days after the last documents requested by the Expert have been provided to the Expert, whichever is the later (“**Date of Final Representations**”). Any documents provided to the Expert and any correspondence to or from the Expert, including email exchanges, shall be copied to the other Party simultaneously.
- 1.6.6 The Expert shall have the power to open up, review and revise any certificate, opinion, requisition or notice and to determine all matters in Dispute (including his jurisdiction to determine matters that have been referred to him).
- 1.6.7 The Expert may take such advice and assistance from professional advisers or other third parties as he reasonably considers appropriate to enable him to reach a determination of the Dispute and may issue orders that one or both of the Parties are to pay such third party costs, stating the proportion. For the avoidance of doubt, where the Expert is not Queen’s Counsel, and the Expert requires advice or assistance on matters of contractual interpretation and construction, the expert may take such advice and assistance from a third party Queen’s Counsel of their choosing under this paragraph 1.6.7 of this Schedule 8. The Parties will pay any such third party costs incurred pursuant to this paragraph 1.6.7 of this Schedule 8 in such proportions as the Expert shall order. In the absence of such order such third party costs will be paid equally.
- 1.6.8 The Expert shall provide the Parties with a written determination of the Dispute (the “**Expert’s Decision**”) within thirty (30) Business Days of the

Date of Final Representations, which shall, in the absence of fraud or manifest error, be final and binding on the Parties.

- 1.6.9 The Expert's Decision shall include reasons.
  - 1.6.10 The Parties agree to implement the Expert's Decision within five (5) Business Days of the Expert's Decision being provided to them or as otherwise specified as part of the Expert's Decision.
  - 1.6.11 The Parties agree that the Expert shall be entitled to proceed to give his binding determination should one or both Parties fail to act in accordance with the procedural timetable set out above.
  - 1.6.12 The Parties will pay the Expert's costs in such proportions as the Expert shall determine. In the absence of such determination such costs will be shared equally.
  - 1.6.13 The Parties agree to keep confidential all information arising out of or in connection with the expert determination, including details of the underlying Dispute, except where disclosure is required by Law.
- 1.7 Nothing in this Contract shall prevent:
- 1.7.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
  - 1.7.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party (including Intellectual Property Rights) or which relates to the safety of patients and other service users or the security of Confidential Information, pending the resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 1.8 Subject to paragraph 1.7 of this Schedule 8 neither Party may commence legal proceedings in relation to a Dispute until the dispute resolution procedures set out in this Schedule 8 have been exhausted. For the avoidance of doubt, either Party may commence legal proceedings to enforce the Expert's Decision.
- 1.9 This Schedule 8 shall survive the expiry of or earlier termination of this Contract for any reason.

**Schedule 9**

**F15008 Order Form**

## Order Form

# National Framework for NHS Back Office Systems, Services and Support Contract Ref: F15008

To be completed and returned to NHS South of England Procurement Services **Redacted in line with FOIA Sec 41** once the preferred supplier has been identified; NHS South of England Procurement Service holds the Framework Agreement (on behalf of Portsmouth Hospitals University NHS Trust).

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

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

**From:**

<b>Customer:</b>	<b>New Hospital Programme (NHP) - Department of Health and Social Care (DHSC) Contracting authority: Secretary of State for Health &amp; Social Care acting as part of the Crown</b>
<b>Service Address:</b>	Department of Health & Social Care, <b>Redacted in line with FOIA Sec 41</b>
<b>Invoice Address:</b>	<b>Redacted in line with FOIA Sec 41</b>
<b>Phone:</b>	<b>Redacted in line with FOIA Sec 41</b>
<b>Contract Value:</b>	<b>Redacted in line with FOIA Sec 41</b>
<b>Order Number:</b>	<b>Redacted in line with FOIA Sec 41</b>
<b>Order Date:</b>	<b>Redacted in line with FOIA Sec 41</b>

To:

<b>Provider</b>	
<b>For the attention of</b>	<b>Redacted in line with FOIA Sec 41</b>
<b>Phone</b>	
<b>Address</b>	
<b>Service Requirements</b>	
<b>Services &amp; Deliverables Required</b> <b>LOT3:- Procurement Services</b>	
<b>Project Title</b>	New Hospital Programme Procurement Managed Consultancy Service
<b>Framework Lot</b>	LOT3:- Procurement Services
<b>Commencement Date</b>	1 <sup>st</sup> April 2022
<b>Term</b>	<p>The initial term of the Contract is 12 months.</p> <p>The parties may extend the initial Term by agreement in writing, in accordance with Clause 15.2 of Schedule 2 (General Terms and Conditions) and subject to the Customer obtaining required approvals.</p> <p>The initial term shall not be extended beyond the period specified in Clause 2.1 of Schedule 1 (Key Provisions).</p>
<b>Price payable by Customer</b>	<b>Redacted in line with FOIA Sec 41</b> <p>The charges shall be calculated in accordance with the Commercial Schedule set out Schedule 6.</p>
<b>Completion date for Implementation</b>	Not applicable.
<b>Extension Period</b>	The Term may be extended by agreement between the parties in writing.

<b>Amendments to the Call Off Contract NHS Terms &amp; Conditions for the Provision of Services</b>	Amendments to the Call Off Contract NHS Terms & Conditions for the Provision of Services, agreed between the parties are as set out in the comparison document attached at Appendix 3 to the Order Form.
<b>Supplementary Terms &amp; Conditions relevant to this Order</b>	Where the Term is extended beyond 12 (twelve) calendar months, the Supplier shall be entitled to increase the charges specified in the Commercial Schedule (Schedule 6) by an amount equal to the rate of increase of the Consumer Prices Index over the preceding 12 months. The first such increase shall take place on the 1 <sup>st</sup> April following the Commencement Date (or, where applicable, the Services Commencement Date) and subsequent adjustments shall be applied on each 1 <sup>st</sup> April thereafter (each such date an “ <b>adjustment date</b> ”).

APPENDIX 1

**Schedule 5**  
**Specification**



Specification

Statements Of Work One to Eleven



SOW Final  
310322.xlsx

Appendix 2

**Schedule 6**  
**Commercial Schedule**

**1. Definitions**

1.1. For the purposes of this Schedule 6:

**Core Team:** means the team put in place by the Supplier to deliver the core requirements of future work orders;

**Existing Subcontractor:**

Redacted in line with FOIA Sec 41

1.1.1 **Existing Team:** means the resources supplied to the Supplier by the Existing Subcontractor.

**2. Charging Mechanism**

2.1. The Contract Price consists of three elements:

- 2.1.1. Existing Subcontractor Charges which are charged in accordance with paragraph 3 of this Schedule 6;
- 2.1.2. Core Service Charges which are charged in accordance with paragraph 4 of this Schedule 6; and
- 2.1.3. A variable charge that will be charged on a project basis ("Variable Charge"). The charges for each project will be agreed via the Minor Works Order Process.

2.2. Save for the Existing Subcontractor Charges, set out in paragraph 3 of this Schedule 6, all charges will be calculated with reference to the Rate Card detailed in paragraph 5.

**3. Existing Subcontractor Charges**

- 3.1. The Authority has requested that the Supplier retains the service of the Existing Team provided by the Existing Subcontractor.
- 3.2. The Authority has specified the number of resources to be supplied in statements of work numbers one to eleven as attached in Schedule 5 (the "Initial Work Order").
- 3.3. The Existing Team will be charged to the Authority on a time and materials basis. The charge for time will be calculated as follows:

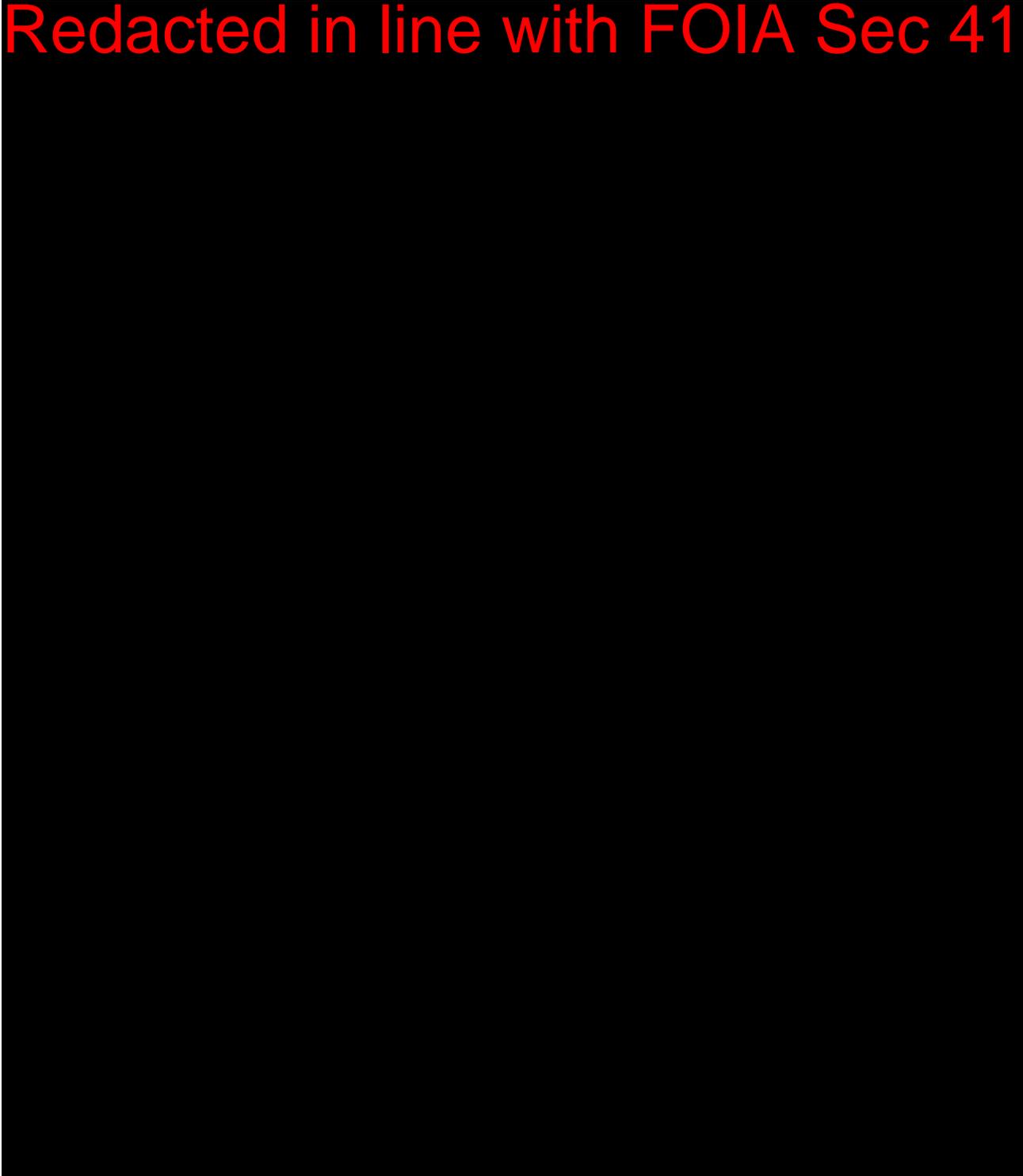
Charge:  $\text{Cost} / (1 - \text{GM}\%)$  where

Cost = the cost charged by the existing subcontractor to the Supplier

GM% = 40%

The Existing Team and charges required for the delivery of the Initial Work Order are listed overleaf:

Redacted in line with FOIA Sec 41



3.5. Should either party require an amendment to the Existing Team resource list then this will be agreed via the Change Control Procedure.

3.6. In accordance with Schedule 12 (Off-Payroll IR35 Legislation), the Authority has performed a Status Determination Statement for each member of the Existing Team. Should the determination be changed for any reason then the parties will, in accordance with the Change Control Process (set out in Schedule 10), agree any changes to the scope of the

Services and/or the daily rates applicable to the affected member(s) of the Existing Team as calculated in accordance with the principles laid out in paragraph 2.3.

**4. Core Service Charges**

- 4.1. During the first year of the contract the Supplier will create a Core Team that will deliver Services to the Authority in conjunction with the Existing Team. The Supplier will ensure that there is no duplication of work undertaken by the Core Team and the Existing Team.
- 4.2. The Core Service Charges will be charged on a time and materials basis in accordance with the rate card set out at paragraph 5.
- 4.3. A forecast, showing the roles and expected below for reference:

ROLE
Senior Cat Specialist
Senior Cat Specialist
Senior Cat Specialist
Head Of Commercial Assurance
Senior Business Manager
Business Manager
Admin Support Consultant
Head Of Procurement And Governance
Head Of Commercial
Head Of Strategic Stakeholder Management
Head Of Sustainability
Stakeholder Senior Consultant
Stakeholder Senior Consultant
Stakeholder Consultant
Total

Redacted in line with FOIA Sec 41

**5. Rate Card**

<b>Role</b>
Director
Principal Solutions Architect
Senior Solutions Architect
Solutions Architect

Redacted in line with FOIA Sec 41

Redacted in line with FOIA Sec 41

Senior Technical Architect
Technical Architect
Principal Consultant
Senior Consultant
Consultant
Junior Consultant
Senior Project Manager
Project Manager
Junior Project Manager
Business Services Controller
Business Services Manager
Senior Business Services Manager
Lead Software Engineer
Team Leader
Deputy Team Leader
Process Officer
Process Assistant
Admin
Senior Procurement Manager
Junior Procurement Manager
Senior Category Manager
Junior Category Manager
Senior Commercial Specialist
Junior Commercial Specialist
Senior Data analyst
Junior Data analyst
PMO support
Change Management Specialist
Head of e-commerce
Head of contract management
Contract Manager
LOT1 Training - Senior Trainer
LOT1 Training - Trainer
LOT2 Training - Senior Trainer
LOT2 Training - Trainer
LOT3 Training - Senior Trainer
LOT3 Training - Trainer



- 1) The daily rates (Framework and Call Offs) are to be uplifted. xation
- 2) Any expenses incurred in accordance with the A +10%. ed at cost

**6. Introduction Fees**

6.1. If, within a period of 6 months from the termination or expiry of this Contract, the Authority directly employs or engages under contract, a member of the Existing Team or the Core Team outside of this Contract then:

6.1.1. The Authority will pay to the Supplier a sum equal to thirty times the daily rate previously charged in respect of the Existing Team or Core Team member.

## **7. Charging Process**

7.1. The Supplier shall invoice the Authority in accordance with Clause 9.3.1 of Schedule 2 providing supporting detail to support the Contract Price for the previous month.

APPENDIX 3

**Schedule 3**  
**Amendments to the Call Off Contract NHS Terms & Conditions for the Provision of**  
**Services**



(compared) SOEPS  
Call-Off Contract (F15)

## Schedule 10 -- Change Control Process

1. **Change Control Process**
  - 1.1 Subject to the provisions of this Clause 1 either Party may request a change to this Contract, including a change to the Services.
  - 1.2 The Authority may request a change or shall respond to the Supplier's request for a change by giving the Supplier sufficient information for the Supplier to assess the extent of the change, any additional cost that may be incurred or savings that may be made and the time frame by which the change is to be implemented.
  - 1.3 The Supplier shall respond with a Change Control Notice ("Change Control Notice"). The Change Control Notice shall set out, as a minimum:
    - 1.3.1 The title of the change;
    - 1.3.2 The originator and date of request by the Authority;
    - 1.3.3 Any resulting proposed change to the Contract Price;
    - 1.3.4 The Supplier's opinion of any amendments required to this Contract (including to the Services, the Specifications and/or the KPIs) as a result of the change;
    - 1.3.5 Where relevant, details of the likely timetable for implementation of the change;
    - 1.3.6 Where relevant, any alternative methods for implementing the change.
  - 1.4 The parties shall, acting in good faith, discuss the contents of the Change Control Notice with a view to trying to reach agreement on the consequences of the change. The Supplier shall provide such further information as is reasonably required by the Authority to consider the contents of the Change Control Notice.
  - 1.5 In the event that the Supplier is unable to provide the change to the Services or where the Parties are unable to agree either the change to the Contract Price, or the amendments to the Contract and/or the Specifications and/or the KPIs as a result of the change:
    - 1.5.1 The Authority may agree to withdraw the change, in which case both parties shall continue to perform their obligations under the Contract without the change; or
    - 1.5.2 If the Authority so elects, the Parties shall refer the matter to mediation under Clause 22 of Schedule 2;
  - 1.6 If the Parties agree the change and any relevant changes to the Contract Price, or amendments to the Contract and/or the Specifications and/or the KPIs as a result of the change, the agreed position shall be recorded in writing, and the Supplier shall carry out such change and be bound by the same provisions so far as is applicable, as though such change was stated in this service contract.

## 2. **Minor Works Order Process**

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

## SCHEDULE 11

### Exit Management

#### 1. Definitions

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

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

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

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

**Exit Plan:** the plan for the provision of the Transitional Assistance Services in the event of the expiry or termination of this agreement for any reason, which is to be developed by the parties pursuant to clause 15.9 of Schedule 2

**Net Book Value:** the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier.

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

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

**Termination Period:** the period of up to three months as specified in the Termination Notice pursuant to clause 15 (Termination) during which period the Authority may require the Supplier to continue to provide the Services after a Termination Notice has been given provided always that such period may not extend the Term (as defined by clause 2.1 of Schedule 1 and as extended by clause 15.2 of Schedule 2) by more than six months

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

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

**Transferable Contracts:** the Subcontracts, licences for Supplier's software, licences for third party software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services.

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

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

## **2. Purpose of Schedule**

- 2.1 The Supplier is required to ensure the orderly transition of the Services from the Supplier to the Authority or any Replacement Supplier in the event of any termination (including partial termination) or expiry of this Contract. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.
- 2.2 For the avoidance of doubt, the Supplier is responsible for the overall management of the exit and Service transfer arrangements.

## **3. Exit Plan**

The Exit Plan shall:

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

## **4. Obligations during the Term**

- 4.1 The Supplier and the Authority shall each appoint an exit manager and provide written notification of such appointment to each other within six months after the Commencement Date. The Supplier's exit manager shall be responsible for ensuring that the Supplier and its employees, agents and Subcontractors comply with this Schedule. The Supplier shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to

enable the Supplier to comply with this Schedule 11. The exit managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 11 and each party's compliance with it.

4.2 During the Term, the Supplier shall:

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

4.3 The parties shall agree the format of the Registers as part of the process of agreeing the first Exit Plan.

4.4 At the same time as the Supplier submits a revised Exit Plan, it shall also submit to the Authority up-to-date Registers.

4.5 The Supplier shall ensure all Exclusive Assets are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.

4.6 The Supplier shall procure that all licences for third party software entered into with effect from or after the Commencement Date and all Subcontracts shall be assignable or capable of novation at the request of the Authority to the Authority and/or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority. If the Supplier cannot procure such rights then the Supplier shall consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority or whether the Supplier should seek an alternative provider of the goods or services to which the relevant agreement relates.

4.7 On reasonable notice, the Supplier shall provide to the Authority and/or to its Replacement Supplier (subject to the Replacement Supplier entering into reasonable written confidentiality undertakings with the Supplier), such material and information as the Authority shall reasonably require to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Supplier

undertaking due diligence (including in relation to the Services, Assets, Authority's Data, Registers and Transferring Employees).

## **5. Transitional Assistance Services**

- 5.1 The Authority shall be entitled to require the provision of Transitional Assistance Services by sending the Supplier a notice to that effect (**Transitional Assistance Notice**) at any time before termination or expiry. The Transitional Assistance Notice shall specify:
- (a) the date from which Transitional Assistance Services are required;
  - (b) the nature and extent of the Transitional Assistance Services required; and
  - (c) the period during which it is anticipated that Transitional Assistance Services will be required (**Transitional Period**) (which shall continue no longer than three months after the date that the Supplier ceases to provide the Services or, in the event that a Termination Period is specified by the Authority, no longer than the end of the Termination Period).
- 5.2 The Authority shall have an option to extend the Transitional Period beyond the period specified in the Transitional Assistance Notice by written notice to the Supplier provided that such extension shall not extend beyond three months after the expiry of the period referred to in paragraph 5.1(c) of this Schedule 11.
- 5.3 The Authority shall have the right to terminate its requirement for Transitional Assistance Services by serving not less than 20 days' notice on the Supplier to such effect.
- 5.4 The price of delivering the Transitional Assistance Services shall be agreed and documented using the Change Control Process prior to the commencement of Transitional Period. Notwithstanding the foregoing, the Transitional Assistance Services shall be provided in good faith and in accordance with Best Industry Practice.
- 5.5 The Supplier shall continue to provide the Services (or the relevant part of them) during the Transitional Period in accordance with the Service Levels unless the parties agree otherwise pursuant to paragraph 5.6 of this Schedule 11.
- 5.6 Where the Supplier demonstrates to the Authority's reasonable satisfaction that transfer of the Services during the Transitional Period will have a material adverse effect on the Supplier's ability to meet a particular Service Level and such adverse effect is not due to a failure by the Supplier to perform this agreement, the parties shall vary the relevant Service Level and/or the applicable service credits to take account of such adverse effect.
- 5.7 During the Transitional Period, the Supplier shall, in addition to providing the Services and the Transitional Assistance Services, provide to the Authority any reasonable

assistance requested by the Authority to allow the Services to continue without interruption and to facilitate the orderly transfer of the Services. The Supplier shall use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible, any additional reasonable costs incurred by the Supplier in this regard which are not already in the scope of the Transitional Assistance Services or the Exit Plan shall be provided on a time-and-materials basis in accordance with the applicable rates set out in Schedule 11 and subject to agreement under the Change Control Process.

- 5.8 The Authority and the Supplier acknowledge that the transition of the Services to the Replacement Supplier may be phased over a period of time so that certain identified Services are transferred to the Replacement Supplier before others.
- 5.9 The Authority shall, at the Supplier's reasonable request, require the Replacement Supplier and any agent or personnel of the Replacement Supplier, to enter into an appropriate confidentiality undertaking with the Supplier.
- 5.10 The Supplier and the Authority shall comply with all of their respective obligations contained in the Exit Plan.
- 5.11 From the date three months before expiry or from the service by either party of any Termination Notice (whichever is the earlier) and during any Termination Period, the Supplier shall not terminate or vary in any material respect any Transferable Contract without the Authority's prior written consent, such consent not to be unreasonably withheld or delayed.
- 5.12 The Supplier shall comply with all of its obligations regarding its personnel in accordance with Schedule 7 (Staff Transfer).
- 5.13 On termination or expiry (as the case may be) or on expiration of the Termination Period or, provided that it does not have an adverse impact on the ability of the Supplier to provide the Services or the Transitional Assistance Services at any time during the Termination Period (as the Authority shall require):
- (a) the Supplier shall erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Period any software containing the IPRs owned by the Authority;
  - (b) the Supplier shall return to the Authority such of the following as are in the Supplier's possession or control:
    - (i) all Authority's Assets;
    - (ii) all materials created by the Supplier under this agreement, the IPRs in which are owned by the Authority;
    - (iii) any other equipment which belongs to the Authority; and

- (iv) any items that have been on-charged to the Authority, such as consumables;
- (c) the Supplier shall vacate any Authority's Premises; and
- (d) each party shall return to the other party all Confidential Information of the other party and shall certify that it does not retain the other party's Confidential Information.

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

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

## **6. Transfer of assets and contracts**

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

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

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

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

- 6.2 The Supplier shall sell the Transferring Assets to the Authority or the Replacement Supplier (as determined by the Authority) with effect from the end of the Termination Period and the sale shall take place at such place as the Authority shall specify. The Authority or the Replacement Supplier shall acquire the Transferring Assets at Net Book Value. Risk in such Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Period and title to such Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 6.3 Where the Supplier is notified in accordance with paragraph 6.1(b) that the Authority and/or the Replacement Supplier requires continued use of any of the Exclusive or Non-Exclusive Assets, the Supplier shall:
  - (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 6.4 The Supplier shall at the Authority's request and with the co-operation of the Authority procure the novation or assignment to the Authority and/or Replacement Supplier of the Transferring Contracts.
- 6.5 The Authority shall:
  - (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

- (b) once a Transferring Contract is novated or re-assigned to the Authority or the Replacement Supplier, the Authority shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract or, as applicable, procure that the Replacement Supplier does the same.

6.6 The Supplier shall indemnify the Authority (or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a party to a Transferring Contract which is assigned or novated to the Authority (or Replacement Supplier) pursuant to paragraph 6.4 of this Schedule 11 in relation to any matters arising prior to the date of such assignment or novation only.

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

**7. Not Used**

**8. Payment on termination or expiry**

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

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

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

**9. Apportionments**

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

9.2 This apportionment shall be carried out as follows:

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

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

## Schedule 12

### Off-Payroll IR35 Legislation

#### 1. **Definitions**

- 1.1 The definitions in this paragraph apply in this Schedule 12 (Off-Payroll IR35 Legislation):

**Assignment:** the period during which the Temporary Worker is supplied by the Supplier to the Authority to provide services to the Authority under the Contract;

**Conduct Regulations:** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended);

**Employment Business:** shall have the same meaning as set out in the Conduct Regulations. An Employment Business engages Temporary Workers (whether under Contracts for services or Contracts of service) and supplies those Temporary Workers to the Authority for hire on Assignments where they will be under the Authority's direct supervision or control;

**Inside IR35:** the circumstances under which a Temporary Worker will provide the Services under the Contract are such that Section 50 Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") or Section 61N ITEPA (as relevant) applies (i.e. worker is treated as receiving earnings from employment);

**Off-Payroll IR35 Legislation:** means ITEPA Part 2, Chapter 8 and Chapter 10;

**Outside IR35:** the circumstances under which the Temporary Worker will provide the Services are such that neither section 50 ITEPA or section 61N ITEPA (as relevant) applies (i.e. worker is not treated as receiving earnings from employment);

**Personal Services Company or PSC:** means a personal services company incorporated as a limited company in the United Kingdom, which has been set up to provide the services of a single Temporary Worker, who is usually the sole shareholder and company director of the business;

**Status Determination Statement (SDS):** means the written conclusion of the Authority's assessment of the Temporary Worker undertaken pursuant to the Off-Payroll Legislation;

**Temporary Worker:** a worker who is engaged by the Authority on either a temporary Assignment or fixed term Assignment; and

**Temporary Work Seeker:** means:

- a) the person supplied to the Authority under this Contract on a temporary basis by the Supplier acting as an Employment Business; and/or
- b) Any worker supplied to the Authority under this Contract on a temporary basis, by a Supplier acting as an Employment Business, being a person who carries on business of their own account, through a limited company or otherwise and who works under supervision and direction of whoever has hired his services;

**2. Off-Payroll IR35 Legislation**

- 2.1 The Authority acknowledges that it is solely responsible for determining if the roles specified in the Statement of Works included in Schedule 5 (Specification) are Inside IR35 or Outside IR35 pursuant to the Off-Payroll IR35 Legislation and shall be responsible for promptly providing the Supplier and the Temporary-Work Seeker within the statutory time limits with an up-to-date Status Determination Statement for any Temporary Work-Seeker engaged via a Personal Services Company (irrespective of whether the Contracting Authority determines that they are Inside or Outside IR35).
- 2.2 The Authority will provide such information as the Supplier may reasonably require in a timely manner to enable the Supplier to comply with its obligations under the Off-Payroll IR35 Legislation. For the avoidance of doubt, the Authority shall be responsible for dealing with any appeals under IR35 Legislation.
- 2.3 The Authority will notify the Supplier immediately if it has reason to believe that the Assignment is Inside IR35 and/or the nature of the Services or the Assignment and/or its IR35 status has changed or will change and shall promptly provide a new Status Determination Statement if requested or if otherwise necessary.
- 2.4 The Authority shall be liable for all Losses incurred, suffered or paid by the Supplier (including reasonable legal expenses) arising out of or in connection with any of the following:
  - 2.4.1 Any breach of its obligations under paragraphs 2.2 and 2.3 of this Schedule 12; and/or
  - 2.4.2 any incorrect Status Determination Statement by the Authority; and/or
  - 2.4.3 any treatment by the Authority of an individual who has been categorised under this Contract following a Status Determination Statement as Outside IR35, which treatment causes or contributes to HMRC treating the Contractor as being Inside IR35.

- 2.5 The Supplier shall be liable for all Losses incurred, suffered or paid by the Authority (including reasonable legal expenses) arising out of or in connection with:
  - 2.5.1 the failure by the Supplier to deduct any tax, national insurance or other statutory deductions, or make any required employer contributions for national insurance or the apprentice levy, where the Supplier had been given an Inside IR35 Status Determination Statement by the Authority which confirmed that such sums should have been deducted/paid; or
  - 2.5.2 the Authority's non-provision of a Status Determination Statement to a Temporary Worker where both:
    - 2.5.2.1 the Contracting Authority had expressly informed Supplier in writing that it did not want the Supplier to supply a Personal Services Company to it; and
    - 2.5.2.2 subsequent to such notification, the Supplier supplies a Personal Services Company to the Contracting Authority without their knowledge.
- 2.6 The Authority acknowledges that save for Clause 2.5 of this Schedule 12, the Supplier shall have no liability with respect to the Off-Payroll IR35 Legislation including but not limited to any awards, fees, penalties which may arise from the Off Payroll IR35 Legislation.
- 2.7 The Parties agree that it shall not be necessary for the Supplier to comply with the Dispute Resolution Procedure in respect of any acts or omissions of the Authority in connection with the Authority's treatment of Temporary Workers which may cause an IR35 liability, or any IR35 status determinations made by the Contracting Authority (or decided by the Contracting Authority to be unnecessary) in respect of Temporary Workers.