

## Annex to Schedule 7 of the Framework Agreement

### Order Form

This Order Form is issued subject to the provisions of the **Insourced Services to Support the Provision of Healthcare Services Framework Agreement ("Framework Agreement")** ref. **RM6276** entered into between North of England Commercial Procurement Collaborative, as the lead Authority acting on behalf of the NHS Workforce Alliance, and the Supplier named herein.

The Supplier agrees to supply the Services specified below on, and subject to, the terms of this Contract and for the avoidance of doubt the Contract consists of the terms set out in this Order Form and the Contract terms, including the call off terms and conditions at Appendix A, together with the Schedules thereto.

<b>Date of Order</b>	16/09/2022	<b>Order no.</b>	Order no. [ ] [Guidance Note: To be quoted on all correspondence relating to this Order]
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### Participating Authority:

<b>Authority name</b>	Norfolk & Norwich University Hospital s NHSW Foundation Trust "Authority"
<b>Authority's address</b>	Colney Lane, Norwich, NR4 7UY
<b>Invoice Address</b>	Colney Lane, Norwich, NR4 7UY
<b>Address for Notices to be given under the Contract</b>	Colney Lane, Norwich, NR4 7UY
<b>Level 1 Authority Representative Contact Manager</b>	Name: Laura Schaffer Phone: 01603 286329 E-mail: Laura.schaffer@nnuh.nhs.uk

### Supplier:





<b>Supplier</b>	Medinet Clinical Services "Supplier"
<b>Supplier's Address</b>	Arthur House, 21 Mere Green Road, Four Oaks, Sutton Coldfield, B75 5BL
<b>Address for Notices to be given under the Contract</b>	Arthur House, 21 Mere Green Road, Four Oaks, Sutton Coldfield, B75 5BL
<b>Level 1 Supplier Representative Contact Manager</b>	Name: Ross Huntley Phone: 07712 404528 E-mail: ross.huntley@ukmedinet.com

## 1. Service Requirements:

<b>Short Description of Services</b>	<p>The contract is for provision of Outpatient clinics and Patient Pathway Services to be carried out at the Norfolk &amp; Norwich University Hospital to address the waiting list and RTT backlog.</p> <p>Patients will be booked by the Trust.</p> <p>Clinics will be scheduled for New or/and Follow-up patients with up to 3 rooms being operated by Medinet.</p>
<b>Commencement Date of Services</b>	17/09/2022
<b>Long-stop Date</b>	N/A
<b>End Date</b>	31/03/2023
<b>Days / hours of operation</b>	<p>Days of operation are:</p> <p>Saturdays and/or Sundays</p> <p>Between 0800 - 1800</p>
<b>Implementation Plan</b>	Not used. Medinet engaged with the Trust prior to Contract start date, no implementation plan required.
<b>Service Levels Required</b>	<p><b>Rooms</b></p> <p>Saturday and/or Sunday – up to 3 rooms</p> <p><b>Staffing</b></p> <p>NNUH to supply Reception team</p> <p>Medinet to supply up to 3 consultant teams, Registered nurse, HCA and/or Audiologists.</p> <p><b>Admin Support</b></p> <p>Admin support will be provided by NNUH ENT Admin team</p> <p><b>Patient Communication</b></p> <p>Medinet will be responsible for dictation, typing up the letters and validation</p>
<b>KPIs required</b>	<p><b>Reports</b></p> <p>Medinet will provide the hospital with a monthly report detailing any activity and any complaint/incidents. If there are any additional reports the Hospital would like Medinet to produce, please provide details here:</p> <p><b>Risks</b></p> <p>Please identify the key risks operationally and clinically for this contract.</p> <ul style="list-style-type: none"> <li>Covid 19 currently – as detailed in the SOP</li> </ul>

	<p><b>Complaints Process</b></p> <p>Pleased describe the process for complaints handling.</p> <ul style="list-style-type: none"> <li>DATIX</li> </ul> <p><b>Incident Reporting</b></p> <p>Pleased describe the process for complaints handling.</p> <ul style="list-style-type: none"> <li>DATIX</li> </ul> <p><b>Clinical Audit</b></p> <p>Please describe the agreements around clinical audit.</p> <ul style="list-style-type: none"> <li>None at the present time</li> </ul>
<b>Management Information</b>	<p>As per requirement in the Framework Agreement RM6276 Provision of Insourced Services to support the Provision of Healthcare Services.</p> <p>Medinet are to ensure that:</p> <ol style="list-style-type: none"> <li>If they plan to approach any of the agency workers already working for the NNUH through other agencies, they will speak directly to the agency concerned and not to the individual</li> <li>Invoicing is limited to the agreement within this contract and shall not include costs for services provided anywhere else</li> <li>The invoices cannot be allocated through 247 or the temporary staffing manager.</li> <li>Medinet remain on the framework</li> </ol>
<b>Contract Review Meetings</b>	<p>Monthly Contract Review meeting. The Authority reserve the right to request ad hoc Contract Review Meetings at short notice to address operational, contractual, or other issues</p>
<b>Lease or Licence Granted</b>	<p>NOT USED</p>
<b>Premises and Locations</b>	<p>ENT Outpatient Department</p> <p>West Block – Level 2</p> <p>Norfolk &amp; Norwich University Hospital</p>
<b>Key Staff</b>	<ul style="list-style-type: none"> <li>ENT Service Director - Mr Junaaid Hanif</li> <li>Divisional Ops Manager – Mrs Sandra Lilley</li> <li>Head of Audiology – My John Fitzgerald</li> <li>ENT Outpatients Sister – Miss Charlotte Boyle</li> </ul>

## 2. Charges and Payment

<b>Contract Price and Payment</b>	<p>Minimum charge per consultant team, per day of:</p> <p>Consultant – £2,340 per day</p> <p>Consultant, RN &amp; HCA - £3,455 per day</p> <p>Consultant &amp; 2x RN - £3,550 per day</p> <p>Audiologist - £900 per day</p> <p>Based on 25 New patients or 30 Review patients, per consultant team, per day</p> <p>Additional RNs can be provided at a cost of £640 per RN, per day</p> <p>Additional HCAs can be provided at a cost of £425 per HCA, per day</p> <p>All prices are VAT exempt</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  <p>Norfolk%20&amp;%20Norwich%20University</p> </div> <div style="text-align: center;">  <p>Norfolk%20&amp;%20Norwich%20University</p> </div> <div style="text-align: center;">  <p>Norfolk%20&amp;%20Norwich%20University</p> </div> </div> <div style="text-align: center; margin-top: 20px;">  <p>Norfolk%20&amp;%20Norwich%20University</p> </div>
<b>Invoicing</b>	<p>Electronic.</p> <p>Invoice to be sent to <a href="mailto:invoices.nnuh@cloud-trade.com">invoices.nnuh@cloud-trade.com</a></p>

### 3. Data Protection

<b>Processing of Personal Data</b>	Medinet are not a Data Controller in this Service Contract
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### 4. TUPE

<b>TUPE at Commencement</b>	TUPE does not apply to this Service contract.
<b>TUPE at Exit and/or Termination</b>	TUPE does not apply to this Service contract.

## 5. Extra Key Provisions

### Part 1. Premises and Equipment

#### 1. Premises, locations, and access

- 1.1 Subject to the Supplier and its Staff complying with all relevant Policies applicable to the Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to enable the Supplier to provide the Services.
- 1.2 Subject to paragraph 1.3 of this Part 1, any access granted to the Supplier and its Staff under paragraph 1.1 of this Part 1 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 paragraph 1.2 of this Part 1.
- 1.3 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 paragraphs 1.1 and 1.2 of this Part 1, 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 as referred to in any Order Form.
- 1.4 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 paragraph 1.3 of this Part 1. 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 22 of Schedule 2 of the Call-off Terms and Conditions for the Provision of Services. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of Schedule 1 and Clause 24.3 of Schedule 2 of the Call-off Terms and Conditions for the Provision of Services.

#### 2. Use of Authority equipment

- 2.1 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:
  - 2.1.1 shall be provided at the Authority's sole discretion.
  - 2.1.2 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.
  - 2.1.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and

2.1.4 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).

## 1. Premises, locations, and access

1.1 The Supplier shall ensure that the Premises and Locations are suitable for the delivery of the Services and are sufficient to meet the reasonable needs of Service Users, including ensuring that all necessary and appropriate steps have been taken to facilitate full access for disabled Service Users.

1.2 The Supplier shall provide, in relation to all of the Services, such other facilities and equipment as are necessary to enable the Supplier to properly perform the Services.

## 2. Use of Supplier equipment

2.1 The Supplier shall:

2.1.1 ensure that all equipment operates in accordance with their technical specification or manufacturer's instructions (as appropriate).

2.1.2 store all consumables safely, appropriately and in accordance with all applicable laws, good practice guidelines and any supplier instructions.

2.1.3 establish and manage a planned preventative maintenance programme and make adequate contingency arrangements for emergency remedial maintenance or substitute equipment.

2.1.4 adequately insure with a reputable insurer all equipment; and

2.1.5 repair and replace obsolete equipment and test and calibrate all equipment.

## Appendix to Order Form

### DATA PROTECTION PROTOCOL

Table A – Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the Processing	N/A
Duration of the Processing	N/A
Nature and purposes of the Processing	N/A
Type of Personal Data	N/A
Categories of Data Subject	N/A
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.	N/A

## Definitions

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Call-off Terms and Conditions for the Provision of Services shall also apply to this Data Protection Protocol. Additionally, in this Data Protection 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 exposure, disclosure, Processing, use, communication, deletion, revision, encryption, reproduction or transmission of Personal Data held by the Supplier under this the Call-off Terms and Conditions, and/or actual or potential loss and/or destruction of Personal Data in breach of this the Call-off Terms and Conditions for the Provision of Services, 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” and “Data Subject”</b>	shall have the same meanings as set out in the Data Protection Legislation;
<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 Data Protection Legislation;
<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” or “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 the Call-off Terms and Conditions for the Provision of Services:
  - 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 scope, context and purposes of processing of the data to be protected;
    - (ii) likelihood and level of harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;and ensure such Protective Measures are regularly tested to assess the effectiveness of the measures in ensuring the security, confidentiality, integrity, availability and resilience of the Personal Data and maintain records of the testing.
  - 1.4.3 ensure that:
    - (i) the Supplier Personnel do not Process Personal Data except in accordance with the Call-off Terms and Conditions for the Provision of Services (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 the Call-off Terms and Conditions for the Provision of Services; 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 UK 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 UK GDPR 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 Call-off Terms and Conditions for the Provision of Services and certify to the Authority that it has done so within five days of any such instructions being issued, unless the Supplier is required by Law to retain the Personal Data; and
- 1.4.6 if the Supplier is required by any Law or Regulatory or Supervisory Body to retain any Personal Data that it would otherwise be required to destroy under this Clause 1.4 of this Protocol notify the Authority in writing of that retention giving details of the Personal Data that it must retain and the reasons for its retention.
- 1.5 Subject to Clause 1.6 of this Protocol, the Supplier shall notify the Authority immediately (and in any event no later than 24 hours of discovery) 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 the Call-off Terms and Conditions for the Provision of Services;
  - 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;
  - 1.5.6 becomes aware of a Data Loss Event; or

- 1.5.7 becomes aware of or reasonably suspects that it has in any way caused the Authority to breach the Data Protection Legislation.
- 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 The Supplier must provide whatever co-operation the Authority reasonably requires to remedy any issue notified to the Authority under Clauses 1.5 and 1.6 of this Protocol as soon as reasonably practicable.
- 1.8 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:
  - 1.8.1 the Authority with full details and copies of the complaint, communication, or request;
  - 1.8.2 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;
  - 1.8.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 1.8.4 assistance as requested by the Authority following any Data Loss Event;
  - 1.8.5 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.
- 1.9 The Supplier must allow for audits of its delivery of the Processing under the Call-off Terms and Conditions for the Provision of Services by the Authority or the Authority's designated auditor, including allowing the Authority and its advisors to inspect and make copies of the records required under this Clause 1 of this Protocol; and allowing access to Supplier premises on reasonable notice.
- 1.10 Before allowing any Sub-processor to process any Personal Data related to this Protocol, the Supplier must:
  - 1.10.1 notify the Authority in writing of the intended Sub-processor and processing;
  - 1.10.2 obtain the written consent of the Authority;
  - 1.10.3 carry out appropriate due diligence of the Sub-processor and ensure this is documented;
  - 1.10.4 enter into a binding written agreement with the Sub-processor which as far as practicable includes equivalent terms to those set out in this Protocol; and
  - 1.10.5 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 1.11 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.12 The Supplier shall maintain complete and accurate records of the Processing it undertakes in connection with this Protocol to demonstrate its compliance with this Protocol, which shall contain at a minimum:
  - 1.12.1 its details, the Authority's details, the details of its Data Protection Officer;

- 1.12.2 the categories of Processing carried out on behalf of the Authority;
  - 1.12.3 the details of any transfers to any third countries, where applicable, and the safeguards in place for that transfer; and
  - 1.12.4 an accurate record of the Protective Measures it has in place
- 1.13 This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 1.13.1 the Authority determines that the Processing is not occasional;
  - 1.13.2 the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
  - 1.13.3 the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.14 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 1.15 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 the Call-off Terms and Conditions for the Provision of Services).
- 1.16 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.
- 1.17 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 29.2 of Schedule 2 of the Call-off Terms and Conditions for the Provision of Services.
- 1.18 Subject to Clauses 1.16, 1.17 and 1.18 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.

## TUPE Schedule

### Definitions

Unless otherwise set out below, the definitions and interpretations set out in Schedule 4 of the Contract between the Supplier and the Authority referring to this TUPE Schedule shall also apply to this TUPE Schedule, which forms part of that Contract.

For the avoidance of doubt, the Contract referred to in the above paragraph of this TUPE Schedule shall be the Contract forming part of the Call-Off Documents that included this TUPE Schedule.

In this TUPE Schedule the following words shall have the following meanings unless the context requires otherwise:

<b>"Actuary"</b>	means a Fellow of the Institute and Faculty of Actuaries;
<b>"Authority's Actuary"</b>	means the Government Actuaries Department;
<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>"Cost Increase"</b>	shall have the meaning given to the term in Clause 1.1.5 of Part D of this TUPE Schedule
<b>"Cost Saving"</b>	shall have the meaning given to the term in Clause 1.1.7 of Part D of this TUPE Schedule;
<b>"Direction Letter"</b>	means an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or subcontractor in the NHS Pension Scheme in respect of the Eligible Employees;
<b>"Eligible Employees"</b>	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

	<p>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 this TUPE Schedule;</p>
<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>“Employee Transfer Date”</b>	means the Transferred Staff’s first day of employment with the Supplier (or its subcontractor);
<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 subcontractor within the meaning of regulation 13(2)(d) of TUPE;
<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 subcontractor 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), the National Health Service Pension Scheme Regulations 2015 (SI 2015/94) and any transitional and/or subsequent regulations made

	in respect of the NHS Pension Scheme, each as amended from time to time;
<b>"Payment Date"</b>	means twenty (20) Business Days after the last of the conditions in Clause 3.5 of Part D of this TUPE Schedule 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>"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>"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 1.5 of Part D of this TUPE Schedule and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause 1.4 of Part D of this TUPE Schedule 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 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 subcontractor'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 subcontractor 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 all those employees, if any, assigned by the Authority to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;

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

**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 subcontractor 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 subcontractor 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 TUPE Schedule 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 subcontractor 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 TUPE Schedule.
  - 1.2.5 if in accordance with clause 1.2.4 of Part A of this TUPE Schedule, the Supplier is required to employ a former employee of the Authority then clause 1.7 of Part B of this TUPE Schedule shall apply as if the former employee of the Authority was a Transferring Employee.
  - 1.2.6 If in accordance with clause 1.2.4 of Part A of this TUPE Schedule, the Supplier is required to employ a former employee of a Third Party then clause 1.7 of Part C of this TUPE Schedule shall apply as if the former employee of the Third Party was a Transferring Employee.

**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 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 Transferring Employees will transfer on the Transfer Date to the Supplier or any subcontractor 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 subcontractor 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 TUPE Schedule) and with full continuity of employment.
- 1.3 The Supplier's agreement in Clause 1.2 of Part B of this TUPE Schedule (and any subsequent agreement by any subcontractor), is subject to the right of any employee identified as a Transferring Employee to object to being transferred to the Supplier or any subcontractor.
- 1.4 The Supplier will, or shall ensure by written agreement that any subcontractor 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 subcontractor (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 subcontractor, 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 subcontractor, including the Supplier or subcontractor 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 subcontractor 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 subcontractor 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 subcontractor is deemed to include their previous continuous employment with the Authority);
  - 1.9.2 any act or omission of the Supplier or subcontractor 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 subcontractor 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 subcontractor 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 subcontractor 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 subcontractor 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 TUPE Schedule 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 subcontractor 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.
- 1.10.5 if in accordance with clause 1.10.4 of Part B of this TUPE Schedule, the Supplier is required to employ a former employee of the Authority then clause 1.7 of this Part B shall apply as if the former employee of the Authority was a Transferring Employee 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 TUPE Schedule.

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

- 1.3 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 subcontractor pursuant to TUPE, the Cabinet Office Statement and (where relevant) Fair Deal for Staff Pensions.
- 1.4 The Supplier agrees, or shall ensure by written agreement that any subcontractor 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 TUPE Schedule)) and with full continuity of employment.
- 1.5 The Supplier's agreement in Clause 1.2 of Part C of this TUPE Schedule (and any subsequent agreement by any subcontractor), is subject to the right of any Third Party Employee to object to being transferred to the Supplier or any subcontractor.
- 1.6 The Supplier will, or shall ensure by written agreement that any subcontractor will:
  - 1.6.1 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;
  - 1.6.2 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 subcontractor (including attendance at any meetings with Third Party Employees, trade unions and employee representatives);
  - 1.6.3 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

- 1.6.4 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.
- 1.7 The Supplier shall be responsible for or shall procure that any relevant subcontractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements, and outgoings in respect of the Third Party Employees and other Staff.
- 1.8 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:
- 1.8.1 any act or omission of the Supplier or a subcontractor 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 subcontractor is deemed to include their previous continuous employment with the Third Party);
- 1.8.2 any act or omission of the Supplier or a subcontractor 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;
- 1.8.3 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 subcontractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and
- 1.8.4 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 subcontractor save for where such act or omission results from complying with the instructions of the Authority.
- 1.9 The Authority shall use reasonable endeavours to transfer to the Supplier or any subcontractor 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 TUPE Schedule applies)**

**Broadly comparable pension benefits ☐ (Clause 1.2 of this Part D of this TUPE Schedule only applies to the Contract if this box is checked or Clause 1.2.4 of Part A of this TUPE Schedule 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 this TUPE Schedule shall apply to this Contract except Clause 1.2 of this Part D of this TUPE Schedule)**

## Pension protection for Eligible Employees

### 1.1 Membership of the NHS Pension Scheme

- 1.1.1 In accordance with Fair Deal for Staff Pensions, the Supplier and/or any subcontractor 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, must on or before the Employee Transfer Date (and as a pre-condition to commencement of delivery of the Services), 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.
- 1.1.2 The Supplier must supply to the Authority at least twenty eight (28) days before the Employee Transfer Date a complete copy of each Direction Letter.
- 1.1.3 The Supplier (or its subcontractor, if relevant) will comply with the terms of the Direction Letter (including any terms which change as a result of changes in Law) in respect of the Eligible Employees until the day before the Subsequent Transfer Date for so long as they are employed on the delivery of the Services.
- 1.1.4 Where any Staff (including any Transferred Staff) omitted from the Direction Letter supplied in accordance with Clause 1.1.2 of this Part D of this TUPE Schedule is subsequently found to be an Eligible Employee, the Supplier (or its subcontractor 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.
- 1.1.5 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 will (subject to Clause 1.1.6 of Part D of this TUPE Schedule and the provision of supporting information) be entitled to recharge a sum equal to the Cost Increase to the Authority. For the avoidance of doubt, the Supplier will only be entitled to recharge any Cost Increase to the Authority pursuant to this Clause 1.1.5 of Part D of this TUPE Schedule 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). Any such costs or additional charges or surcharges will, for the avoidance of doubt, be payable by the Supplier and will not be recharged to the Authority.

1.1.6 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 1.1.5 of Part D of this TUPE Schedule in relation to a Cost Increase.

1.1.7 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 will be entitled to reduce the amounts payable to the Supplier under this Contract by an amount equal to the Cost Saving. The Authority will be entitled to deduct any Cost Saving from sums otherwise payable by the Authority to the Supplier under this Contract.

## 1.2 Broadly Comparable Pension Benefits

1.2.1 If the Authority in its sole discretion (having considered the exceptional cases provided for in Fair Deal for Staff Pensions) agrees that the Supplier (or any subcontractor) need not provide the Eligible Employees with access to the NHS Pension Scheme, the Supplier (or any subcontractor) 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.

1.2.2 The Supplier must supply to the Authority details of its (or its subcontractor’s) 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.

## 1.3 Transfer Option

1.3.1 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.

## 1.4 Calculation of Transfer Amount

1.4.1 The Authority will 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.

1.4.2 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 1.4.2(ii) of Part D of this TUPE Schedule 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 will be the Employee Transfer Date.

1.4.3 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 will 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.

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

## 1.5 Payment of Transfer Amount

Subject to:

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

1.5.2 the Supplier having (and/or having procured that any relevant subcontractor has) 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

1.5.3 if relevant, the issue of a contracting-out certificate in respect of the Supplier's (or any subcontractor's) Broadly Comparable scheme which covers the employment of the Eligible Employees; and

1.5.4 the calculation of the Transfer Amount in accordance with Clause 1.4 of Part D of this TUPE Schedule; and

1.5.5 the trustees or managers of the Supplier's (or any subcontractor'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) will, on or before the Payment Date, transfer to the Supplier's (or subcontractor'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.

## 1.6 Credit for Transfer Amount

1.6.1 Subject to prior receipt of the Transfer Amount (and any shortfall payable), by the trustees or managers of the Supplier's (or subcontractor'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 (or subcontractor'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 (or subcontractor's) pension scheme.



## 1.7 Premature Retirement Rights

- 1.7.1 From the Employee Transfer Date until the day before the Subsequent Transfer Date, the Supplier must provide (and/or must ensure that any relevant subcontractor must provide) Premature Retirement Rights in respect of the Eligible Employees that are the same as 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.

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

- 1.8.1 The Authority may terminate the Contract forthwith by notice in writing to the Supplier if the NHS Business Services Authority has notified the Authority that the Supplier or any subcontractor 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 this Part D of this TUPE Schedule. If the Authority is entitled to terminate this Contract pursuant to this Clause 1.8.1 of this Part D of this TUPE Schedule, the Authority may in its sole discretion, instead of exercising its termination right under this Clause 1.8.1 of this TUPE Schedule, permit the Supplier (or the relevant subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority.
- 1.8.2 If the Authority is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Authority will 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 1.8.1 of Part D of this TUPE Schedule.

## 1.9 Compensation

- 1.9.1 If the Supplier (or any subcontractor) 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 (or procure that the relevant subcontractor) compensate the Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or subcontractor as relevant) having consulted with a view to reaching agreement any recognised trade union or, in the absence of such body, the Eligible Employees. The Supplier must meet (or must procure that the relevant subcontractor meets) the costs of the Authority in determining whether the level of compensation offered is reasonable in the circumstances.
- 1.9.2 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 1.8.1 of Part D of this TUPE Schedule.

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

- 1.10.1 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.

- 1.10.2 The Supplier must indemnify and keep indemnified the Authority, NHS Pensions and any Successor against all Losses arising out of the Supplier (or its subcontractor) allowing anyone who is not an Eligible Employee to join or claim membership of the NHS Pension Scheme at any time during the Term.
- 1.10.3 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 TUPE Schedule and/or the terms of the Direction Letter.

## 1.11 Subcontractors

- 1.11.1 If the Supplier enters or has at the Commencement Date entered into a subcontract for delivery of all or part of the Services, it will impose obligations on its subcontractor 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 TUPE Schedule including requiring that:
  - (i) if the Supplier has secured a Direction Letter, the subcontractor also secures a Direction Letter in respect of the Eligible Employees for their future service with the subcontractor as a condition of being awarded the subcontract; 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 subcontractor 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 subcontractor's Broadly Comparable scheme (or where a Direction Letter is secured by the subcontractor, the NHS Pension Scheme) on the basis set out in Clause 1.6 of Part D of this TUPE Schedule except that the Supplier or the subcontractor as agreed between them, must make up any shortfall in the transfer amount received from the Supplier's pension scheme.

## 1.12 Direct Enforceability by the Eligible Employees

- 1.12.1 Notwithstanding Clause 30.8 of Schedule 2 of the Contract, the provisions of this Part D of this TUPE Schedule may be directly enforced by an Eligible Employee against the Supplier and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 will apply to the extent necessary to ensure that any Eligible Employee will have the right to enforce any obligation owed to him or her by the Supplier under this Part D of this TUPE Schedule in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 1.12.2 Further, the Supplier must ensure that the Contracts (Rights of Third Parties) Act 1999 will apply to any subcontract to the extent necessary to ensure that any Eligible Employee will have the right to enforce any obligation owed to them by the subcontractor in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

## 1.13 Pensions on Transfer of Employment on Exit

- 1.13.1 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 1.4 of this Part D of this TUPE Schedule; 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.


## Formation of Contract

*The Supplier shall enter into the Contract by returning a signed copy of this Order form and the Contract shall be formed when the Authority acknowledges receipt of the signed copy of this Order Form.*

### For and on behalf of the Authority:

<b>Signature of authorised signatory</b>	
<b>Name and Title</b>	
<b>Date</b>	[dd/mm/yyyy]

### For and on behalf of the Supplier:

<b>Signature of authorised signatory</b>	
<b>Name and Title</b>	Tim Flanagan – Chief Executive Officer
<b>Date</b>	29.9.2022