

## NHS TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES (CONTRACT VERSION)

<b>The Authority</b>	<b><i>NHS England Wellington House, 133-155 Waterloo Road, London SE1 8UG</i></b>
<b>The Supplier</b>	<b><i>Royal Voluntary Service, Beck Court, Cardiff Gate Business Park, Cardiff, CF23 8RP</i></b>
<b>Date</b>	<b>19<sup>th</sup> November 2022</b>
<b>Type of Services</b>	<b>NHS Volunteer Responder Programme Management</b>

This Contract is made on the date set out above subject to the terms set out in the schedules listed below ("**Schedules**"). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

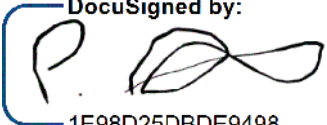
The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

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

### **Schedules**

<b>Schedule 1</b>	Key Provisions
<b>0</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>0</b>	Expert Determination
<b>Schedule 10</b>	Data Processing Agreement

Signed by the authorised representative of THE AUTHORITY

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Full Name: Peter Ridley

Job Title/Role: Deputy Chief Finance Officer

Date Signed: 21/11/22

Catherine Johnstone		.....	Signature	.....
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Full Name: Catherine Johnstone

Job Title/Role: Chief Executive Officer

Date Signed: 21 November 2022

## **Schedule 1**

### **Key Provisions**

#### **Standard Key Provisions**

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

- 1.1 The standard Key Provisions at Clauses 1 to 8 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 9 to 25 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 Commissioner**

This contract is awarded by NHS England with the potential for Department of Health and Social Care to become joint commissioner should it be determined that the scheme will expand to include adult social care throughout the contract period

##### **3 Term**

- 3.1 This Contract shall commence on the Commencement Date and the Term of this Contract shall expire **3** years from the Actual Services Commencement Date. The Term may be extended in accordance with Clause 15.2 of 0 provided that the duration of this Contract shall be no longer than **5** years in total.

##### **4 Contract Managers**

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

- 4.1.1 for the Authority:

[REDACTED]

- 4.1.2 for the Supplier:

[REDACTED]

##### **5 Names and addresses for notices**

- 5.1 Notices served under this Contract are to be delivered to:

- 5.1.1 for the Authority:

5.1.2 for the Supplier:

## 6 Management levels for escalation and dispute resolution

6.1 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	Contract Manager	Contract Manager
2	Voluntary Partnerships: Senior Manager	Director of Finance
3	Deputy Director of Voluntary Partnerships	Deputy CEO
4	Director of Experience, Participation and Equalities	Chief Executive Officer

## 7 Order of precedence

7.1 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:

- 7.1.1 the provisions on the front page of this NHS Contract for the Provision of Services (Contract Version);
- 7.1.2 Schedule 1: Key Provisions;
- 7.1.3 Schedule 5: Specification and Tender Response Document (but only in respect of the Authority's requirements);
- 7.1.4 0: General Terms and Conditions;
- 7.1.5 Schedule 6: Commercial Schedule;
- 7.1.6 Schedule 3: Information Governance Provisions;
- 7.1.7 Schedule 7: Staff Transfer;
- 7.1.8 Schedule 4: Definitions and Interpretations;

- 7.1.9 the order in which all subsequent schedules, if any, appear; and
- 7.1.10 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.
- 7.2 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.
- 8 Application of TUPE at the commencement of the provision of Services**
- 8.1 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.

### **Optional Key Provisions**

- 9 Implementation phase ☒ (only applicable to the Contract if this box is checked and the Schedule inserted)**
- 9.1 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in 0 to the Implementation Plan shall apply and the Implementation Plan is to be provided by the supplier within 10 days of contract signature
- 10 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 10.1 of this Schedule 1)**
- 10.1 The Services Commencement Date shall be 1<sup>st</sup> October 2022 and the Long Stop Date referred to in Clause 15.5.1 of 0 shall be 24<sup>th</sup> November 2022.
- 11 Induction training ☐ (only applicable to the Contract if this box is checked)**
- 11.1 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.

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

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

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

13.1 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
<b>[Employer's Liability]</b>	<b>[ ]</b>
<b>[Public Liability]</b>	<b>[ ]</b>
<b>[Professional Indemnity]</b>	<b>[ ]</b>
<b>[Insert other types of insurance as appropriate]</b>	<b>[ ]</b>

*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.*

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

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

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

15.1 The Supplier confirms and agrees that all Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier, including the Services Platforms, 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 15 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 15 of this Schedule 1 shall continue notwithstanding the expiry or earlier termination of this Contract.

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

16.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in Schedule 11

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

17.1 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]**.

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

18.1 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.

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

19.1 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.

d.

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

20.1 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.

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

21.1 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.

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

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

22.2 The Supplier shall note the monthly payment profile is subject to Payment by Result (PbR), as fully detailed in the Extra Key Provision 25 below.

**23 Termination for convenience ☒ (only applicable to the Contract if this box is checked and Clause 23.1 of this Schedule 1 is completed)**

23.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on **three (3) months** written notice.

**24 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)**

24.1 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.

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

25.1 Any Dispute between the Authority and the Supplier shall be dealt in accordance with the expert determination process as specified at 0.

25.2 For the avoidance of doubt, where this Clause 25 of this Schedule 1 is checked, all Disputes shall be dealt in accordance with Clause 25.1 of this Schedule 1 above and the entirety of Clause 22 of 0 shall be deemed not to apply and deleted in its entirety from this Contract.

### **Extra Key Provisions**

**26 Payment by Result (PbR)**

26.1 The Supplier agrees that ten percent (10%) of the Contract Sum due to the Supplier each month shall only be payable to the Supplier on a sliding scale subject to the Supplier achieving the specified Key Performance Indicators ("KPIs") detailed in paragraph 3.7.2 and Section 3.4 (Payment by Results) of the Specification of Requirements.



- 26.2 At the end of each month the Authority will review the Supplier's performance against the specified KPIs and shall calculate the Payment by Results monies due to the Supplier for that month.
- 26.3 The Payment by Results monies shall not be payable to the Supplier monthly. Instead the Authority shall pay the Supplier all Payment by Results monies accrued each 6-months throughout each year of the Contract in the March and September of the year of the Contract to which the Payment by Results monies relate.
- 26.4 The Supplier shall note PbR will commence on 1<sup>st</sup> June 2023 for Year One and will apply to June, July, August and September 2023 only. Therefore, monies accrued during this period shall be paid in October 2023. Thereafter, Payment by results will then run for subsequent years remaining on the contract.
- 26.5 The Supplier shall note PbR KPIs will not be subject to any Default provisions.
- 26.6 KPI's will be reviewed and agreed by the Commissioner and the provider before the PbR element starts on 1<sup>st</sup> June 2023. It is acknowledged that successful reporting of these KPI's will be subject to suitable digital functionality within the digital platform supplied by the digital platform provider.

## **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 0, 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 0 or any report or communication pursuant to Clause 1.8 of this 0, 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 promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations.
- 1.13 The Supplier shall not pass off the NHS Volunteer Responders Programme as its own creation for commercial exploitation.

## **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 0, any access granted to the Supplier and its Staff under Clause 2.2 of this 0 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 0.
- 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 0, 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 0. 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 0. 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 where appropriate to the role. 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 0;
  - 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 0; 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 0.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this 0, 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 0 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 Policies.

## **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 0 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 0.
- 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 endeavors 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 shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyze 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) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the 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 0, 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 0 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 0, 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 0, 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 0 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 0; 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 0 and Clause 2.9 of Schedule 3 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this 0 shall be subject to the limitation of liability set out in Clause 13 of this 0.
- 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 0, 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 in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.

- 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 the costs of extra management time; 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 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:
- 13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this 0 shall be replaced with one million pounds (£1,000,000);
  - 13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this 0 shall be replaced with three million pounds (£3,000,000);
  - 13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this 0 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this 0 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
  - 13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this 0 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this 0 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 13.6 Clause 13 of this 0 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 0 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 0 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 0 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 Authority shall be entitled to extend the Term on one or more occasions by 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.
- 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 0. 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 0, 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 any Long Stop 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 0;

- 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 0; or
  - 15.5.7 the warranty given by the Supplier pursuant to Clause 10.5 of this 0 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 0, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.5 of this 0 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 0 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 0.
- In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this 0, 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 0 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 three (3) months of the Commencement Date the Supplier shall develop and agree an exit plan 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 one (1) month 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 0 (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.
- 15.9.1 the Supplier shall ensure as a minimum the exit plan includes as a minimum but not limited to:
- how existing resources will be returned to the Authority
  - How volunteer data will be transferred to an alternative provider or stored in line with the Authority's Records Management and Data Privacy requirements
  - the website
  - social media handles/log ins
  - Back to us in a timely manner at no cost

## **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 and/or in accordance with any timescales as set out in the agreed exit plan:
- 16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;
  - 16.2.2 all data, excluding Personal Data but subject further to clause 16.2.4 of this Schedule 1, 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;
  - 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; and
  - 16.2.4 the Supplier shall provide the Authority with the Volunteer Contact Data and Services Platforms in such form as to enable the Authority to use them on an ongoing basis following receipt
- 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 0 for the period set out in Clause 24.1 of this 0.
- 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 nine (9) 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 0, the Authority may withhold payment under Clause 9 of this 0.
- 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 0.
- 17.5 Subject to Clauses 17.6 and 17.7 of this 0, during the period of nine (9) 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 0 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 0 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 0 and (where relevant) the provisions of Clause **Error! Reference source not found.** 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 0;
  - 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 0 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 0 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 0.
- 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 0.

## **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 0.
- 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 0, 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 0.
- 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 0 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 0, 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 0 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 6 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 0 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 0 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 0 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 0 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 0;

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 0.

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 0 and subject to Clause 23.10 of this 0, 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 0 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 0, 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 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 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 0 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 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Contract.

## **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 0 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 0 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 0, 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 0 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 0;
  - 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 0 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 0 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 0, 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 0, 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.



### 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 is the Controller of Personal Data Processed in order to deliver the Services, including the Volunteer Contact Data, and 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 Legislation.
- 2.3 The Supplier shall ensure that before the termination of this Agreement, it will seek and clearly document consent from Volunteers to enable it to lawfully share Volunteer contact data with the Authority upon termination of this Agreement. Such consent shall be sought in a manner which is deemed compliant with the UK GDPR.
- 2.4 Subject to provision by the Authority to the Supplier of sufficient information regarding the nature and purpose of the intended data processing by the Authority, the Supplier shall ensure it provides sufficient information to Volunteers to ensure compliance with Articles 13 and UK GDPR. The information to be provided by the Supplier shall include a notice to the effect that Volunteer contact data relating to those Volunteers who have consented to the sharing of their data with the Authority will be shared by the Supplier with the Authority upon termination of this Agreement. The Supplier will share relevant Volunteer contact data in accordance with this clause 2.4 after the termination of this Agreement and in a timescale to be agreed between the parties.
- 2.5 Except where a Volunteer has (as part of the sign up process or any other method agreed with the Commissioner) consented that the Supplier (or GoodSam) may contact them separately then following completion of all residual work relating to this Agreement the Supplier will cease to use any data relating to Volunteers and will promptly destroy any data other than that required to comply with the data retention schedule.
- 2.6 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).
- 2.7 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:
  - 2.7.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;
  - 2.7.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
  - 2.7.3 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;
- 2.7.4 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;
  - 2.7.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
  - 2.7.6 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);
  - 2.7.7 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;
  - 2.7.8 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;
  - 2.7.9 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
  - 2.7.10 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.
- 2.8 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, and shall ensure compliance with Article 28 UK GDPR.
- 2.9 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.





## 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 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 0;
<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 <b>Error! Reference source not found.</b> of Part D of Schedule 7;
<b>“Cost Saving”</b>	shall have the meaning given to the term in Clause <b>Error! Reference source not found.</b> 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 0 or, where Clause 25 of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in 0. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of 0;
<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>	means the NHS eProcurement Strategy available via: <a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a>



	together with any further Guidance issued by the Department of Health in connection with it;
<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> </ul>



	<p>(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;</p> <p>(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</p> <p>(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 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>"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>	<p>means</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
<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>	means any applicable legal requirements including, without limitation,: (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (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);



	<p>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</p> <p>(e) requirements set by any regulatory body as applicable in England and Wales;</p> <p>(f) any relevant code of practice as applicable in England and Wales; and</p> <p>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</p>
<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>“NHS Volunteer Responders Programme”</b>	means the NHS volunteering programme to be delivered by the Supplier through provision of the Services;
<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> <li>(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</li> </ul> </li> <li>(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;</li> </ul>
<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 <b>Error! Reference source not found.</b> 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 0;
<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 0;
<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 0 for inclusion in the Authority’s services catalogue from time to time;
<b>“Services Platforms”</b>	means the website and social media channels specifically related to the delivery of the Services;
<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>	has the meaning given under Clause 8.5 of 0;



<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 <b>Error! Reference source not found.</b> of Part D of Schedule 7 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause <b>Error! Reference source not found.</b> 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 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;





<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;
<b>"Unconsented Volunteers"</b>	means Volunteers who have actively refused to consent to the sharing of their Volunteer Contact Data;
<b>"VAT"</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax;
<b>"Volunteers"</b>	means individuals engaged by the Supplier on a voluntary basis in connection with the delivery of the Services; and
<b>"Volunteer Contact Data"</b>	means the name and contact details (to including home address, email address and/or telephone number as available to the Supplier) of Volunteers but excluding Unconsented Volunteers.

- 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 0, 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.
- 1.16 This Contract has been agreed on the basis of a broad and ambitious description of the activity that the Commissioner wishes to procure as set out in the Commissioner's information to tender dated 22 June 2022 and a similarly broad description of the activity that the Provider proposes to deliver as set out in the Provider's tender responses dated 20 July 2022 and 24 August 2022 . It is acknowledged by both parties that, while this Contract captures the overarching principles governing their involvement in the activities outlined in [schedule 5], certain matters remain to be developed and agreed. The parties further acknowledge that whilst the maximum financial envelope for this Contract is as set out in [schedule 6], the activities to be delivered by the Provider and the associated profile of expenditure within (but not exceeding) that financial envelope may need to vary to ensure that the requirements or actions of the Commissioner do not create an unreasonable financial risk for the Provider. The parties also acknowledge that the original assumptions included in the tender specification may change and that therefore there may be a need to modify this Contract in the future to cater for evolving requirements.
- 1.17 The parties each agree to work together in good faith and, so far as they have the capacity to do so, to do whatever is reasonably necessary from time to time to make the arrangements proposed in this Contract work in an effective way to maximise the successful delivery of volunteering opportunities within the Commissioner's programme.



## Schedule 5

### Specification and Tender Response Document Part 1 – Statement of Requirements

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## GLOSSARY OF TERMS

Active Volunteer	A registered volunteer who has accepted at least one task within the last week
Available volunteer	A registered volunteer who has marked themselves as available at least once in the last week
Check in and Chat	A pre-existing NHSVR volunteer role providing telephone support to individuals during self-isolation because talking to someone has been shown to help people stay healthy.
Check in and Chat plus Volunteer	A pre-existing NHSVR volunteer role providing regular telephone support over several weeks providing peer support and companionship to people who are shielding or have been shielding, or for whom a more regular volunteer relationship was more appropriate to their needs.
Co-design	Co-design is a design approach that actively involves users and stakeholders from the beginning of a project, right through to roll-out. It means collaborating with everyone who has an interest to solve real problems with them.
Community Response Plus Volunteer	A pre-existing NHSVR volunteer role which offered shopping collection, including food medication or other essential supplies for individuals with cognitive impairment, such as dementia or a learning disability and thus required more consistency in the volunteer relationship
Community Response Volunteer	A pre-existing NHSVR volunteer role which offered shopping collection, including food medication or other essential supplies for someone close to their home.
Core20PLUS5	Core20PLUS5 is a national NHS England and NHS Improvement approach to support the reduction of health inequalities at both the



	<p>National and System level. The approach defines a target population cohort - the 'Core20PLUS' - and identifies '5' focus clinical areas requiring accelerated improvement:</p> <ol style="list-style-type: none"> <li>1. Maternity</li> <li>2. Severe Mental Illness (SMI)</li> <li>3. Chronic Respiratory Disease</li> <li>4. Early Cancer Diagnosis</li> <li>5. Hypertension Case-Finding</li> </ol>
Data controller	A data controller is a person, company, or other body that determines the purpose and means of personal data processing
Data Processor	A person, company or other body that undertakes record keeping and secure processing at the direction of a data controller. A data processor also must keep a record of all categories of processing activities it has carried out on behalf of a controller
Emergency response role	In the future development of the NHS Volunteer Responders programme we foresee that Volunteers could be recruited into a cohort which offers appropriate volunteering support in the occurrence of a national, regional or local level emergency impacting upon the NHS. This could involve being called upon to staff welfare tents in the event of a hospital evacuation, the transport of NHS personnel to the site of an incident or acting as stewards for vaccination sites in a significant flu year for instance. The roles would not involve direct intervention in such an emergency but would offer ancillary support in line with the micro-volunteering nature of NHSVR. (see also Reservist)
Health and care	Also known as health and social care; encompassing the definition of social care and the breadth of NHS commissioned healthcare provision. All such provision is overseen by the government Department of Health and Social Care
Health Inequalities Improvement Dashboard	The Health Inequalities Dashboard presents data on health inequalities for England, English regions, clinical commissioning groups and local authorities. <a href="https://www.gov.uk/government/collections/health-inequalities-dashboard">Health Inequalities Dashboard: March 2021 data update - GOV.UK (www.gov.uk)</a>
Integrated Care Systems	Also known in the KPIs as Health Systems. Partnerships of organisations that come together to plan and deliver joined up health and care services, and to improve the lives of people who live and work in their area. 42 ICSs will be established across England on a statutory basis on 1 July 2022.
Intellectual Property Rights	<p>For purposes of this specification, Intellectual Property Rights includes:</p> <ol style="list-style-type: none"> <li>1. "Background IPR" which means the Supplier's Intellectual Property Rights that it uses in the course of or in connection with the terms of this Contract (including any Intellectual Property Rights in its technology stack, know how relating to system processes for volunteers and future systems and processes as they are developed)</li> <li>2. "Foreground IPR" means any Intellectual Property Rights that arise or are obtained or developed by the Supplier, or by a third party on the Supplier's behalf, in the course of or</li> </ol>



	in connection with its compliance with the terms of this Contract.
Micro Volunteering	A discrete voluntary task, requiring minimal training, which can be completed within a short time frame (in under a day, and in many instances in under an hour. The participation in one task is not beholden to previous participation or a requirement for future participation.
National Incident Response level	Levels as defined via risk assessment though the NHS England Incident Response Plan (National)
NHS Transport Volunteer (including Urgent Delivery role)	A pre-existing NHSVR volunteer role providing transport for equipment, supplies and medication between NHS/ social care services and sites; assisting pharmacies with medication delivery.
NHS@Home	NHS @home is a nationally-led programme of work providing better connected, more personalised care in people's homes including care homes. It aims to maximise the use of technology to support more people to better self-manage their health and care at home. This provides more convenient, high quality and timely alternatives to face to face care, where this works for the individual, and when clinically appropriate.
Pathway zero	People on 'Pathway 0' have been identified in the <i>Hospital Discharge Service: Policy and Operating Model (August 2020)</i> as those who following discharge from hospital who will have no formal input from health or social care services once at home (approximately 50% of all discharges)
Patient Transport Volunteer	A pre-existing NHSVR volunteer role providing transport to take patients home to and from hospital when considered medically fit to travel via this method of transport
Referral	Each individual request made by an individual or an organisation to draw on the services of a volunteer within the parameters of an already pre-defined volunteer role. One referrer may make multiple referrals over the course of the programme, or concurrently if they need to draw on multiple role types or match multiple clients to the services of volunteers
Referrer	An individual or organisation requesting the services of a volunteer within the parameters of an already pre-defined volunteer role. This may be a one-off request or a regular request
Registered Volunteer	A volunteer who has completed and passed all of the stages of volunteer screening within the recruitment process for NHS Volunteer Responders.
Reservist	In the future development of the NHS Volunteer Responders programme we foresee that Volunteers could be recruited into a cohort which offers appropriate volunteering support in the occurrence of a national, regional or local level emergency impacting upon the NHS. These individuals would sit in a volunteer reservist cohort, only called upon in times of need (see also Emergency response role)
Safeguarding	Protecting all adults and children's right to live in safety, free from abuse and neglect.
Shift fulfilment rates	Percentage of NHS Volunteer Responders who were offered a task in the last week who undertook a task



Social Care	A generic term for a wide range of non-medical services provided by local authorities and independent bodies, including from the voluntary sector, to support the social needs of individuals, especially the elderly, vulnerable or with special needs, to improve their quality of life. The intent of social care is that an individual lives his or her life as fully and, ideally, as independently as possible.
Steward Volunteer	A pre-existing NHSVR volunteer role providing stewardship support at vaccination centres, for instance guiding cars into the car park, supporting people in queues and assisting people in the wait after their vaccination
Task completion rates	Percentage of all added tasks which have been marked as complete by volunteers in the last week
Third party organisations	A third party organisation is an additional and separate organisation to NHSE and the supplier (most likely a charity or a public sector organisation, e.g. a Hospital) who may request to wish to deploy volunteers they manage directly through the NHS Volunteer Responders programme.
Volunteer conversion rate	The percentage of volunteers moving from a newly registered status to active status across a defined period
Volunteer recruitment rate	Number of volunteers completing all requisite screening and progressing to the status of Registered volunteer. To be presented as a total number and also as a growth percentage over a defined period.
Volunteer retention rate	The percentage of registered volunteers who remain registered with the scheme at the end of a defined period, as compared to the start of that period $\% \text{ retention rate} = \left( \frac{\# \text{ of registered volunteers on period end date}}{\# \text{ of registered volunteers on period start date}} \right) \times 100$
Volunteer supplier	A Volunteer supplier is an organisation (most likely a charity or a public sector organisation, e.g. a Hospital) who may request to wish to deploy volunteers they manage directly through the NHS Volunteer Responders programme.





## Specification of Requirements

### 1 Background to the requirements

#### Current Arrangements / Context

The NHS Volunteer Responder Service was created as part of the Emergency Response to Covid and was put in place to support clinically vulnerable people that were affected by shielding guidance and to support the NHS. Very quickly this service was expanded to include all those that were affected by lockdown, and further expanded to support NHS staff and subsequently the Covid Vaccination service. In December 2021, in response to the Omicron variant, additional pilot volunteering roles were also developed to provide additional support in NHS and adult social care settings. The service has continued to be responsive to the emergent situation throughout the pandemic. We have secured a national body of NHS Volunteer Responders that remain available to support the NHS through a suite of micro volunteering roles/tasks and in 'short term/emergency situations. We want to retain this cohort of Volunteers and the ability to deploy them through a digital platform with associated volunteer and scheme management, whilst also evolving the programme further to better integrate with local systems and meet wider needs in the NHS and potentially also adult social care.

1.1.2 The current service is provided through a partnership approach by two national suppliers; one provides the digital platform and technical infrastructure to the service and the other, the subject of this specification requirements, provides the recruitment, management and retention of the NHS Volunteer Responders along with the overarching scheme management functions. As the current service is a Covid response programme, the Commissioner (NHS England) also plays an



active role in shaping the service as it continues to respond to national emergency requirements and frame the required developments towards a legacy service. The supplier of the digital platform and technical infrastructure is also subject to a new open market procurement.

- 1.1.3 The current service offers 9 roles/task types that required either immediate response from NHS Volunteers or that requires future scheduling. In addition, 3 or 4 new roles were developed as a response to the Omicron variant and are now continuing to be developed with interested parties as pilot roles in preparation for recruitment and deployment as part of the preparatory work for the new business as usual (BAU) service. At present, as part of the service transition, only the Vaccination Steward volunteers and the NHS Transport Volunteers are continuing to operate, and these ongoing services must be maintained.
- 1.1.4 The Commissioner (NHS England) intends to maintain some consistency in the current service delivery approach for approximately 1 year, albeit potentially some different volunteer roles. Simultaneously we will be designing, testing and developing the service into a post-Covid business as usual service. This will also include the continued refinement of the existing service as it exits from some specific emergency response elements.
- 1.1.5 The Commissioner (NHS England) intends to continue to provide the service for the NHS as is currently the case but may in the future be joined by a co-commissioner, the Department of Health and Social Care (DHSC) to enable expansion of the service more fully into social care settings. This change would not attract any increased contract funding.



1.1.6 The plans for the future development of the service beyond the first year include a range of options that will require the service management supplier to provide an assurance service for all other volunteer suppliers that wish to deploy volunteers they manage directly through the NHS Volunteer Responders digital platform and additionally, to provide a national single point of contact and safeguarding service for these volunteers.

#### 1.1.7 Volumes and dependencies

1.1.7.1 Registered volunteer numbers are expected to be between 75,000 and 1 million NHS Volunteer Responders over the life of the contract. The service is currently maintaining a centrally managed capacity of available volunteers at around 400,000. However, we expect active volunteer numbers to be between 20,000 and 1 million, completing between 11,500 and 16,500 tasks per week. The expansion of capacity over time will be a combination of centrally and locally managed volunteers and the required number will be managed dependent upon the level of demand for tasks.

1.1.7.2 Referrers currently include health and care professionals, social care providers, other public sector bodies, voluntary sector professionals and members of the public referring themselves for support. Referrals have fluctuated depending on the Covid situation and related guidance to the public, ranging between 200 and 1500 referrals per day. Most professional referrers use an online referral form, although there is an option to do this over the phone. All self-referrals are received via the call centre. A single referral can create multiple tasks. For example, a GP might refer their patient for weekly support from Community Response Volunteers to help with shopping support over a 4-week period plus daily support from Check in



and Chat volunteers. In the new model, we would expect there to be capacity for a similar number of referrals per day but potentially across a range of different roles or via other providers that access the programme.

1.1.7.3 Over 2.2 million tasks have been delivered over the life of the service to date, with up to 2500 tasks taking place each day providing one-off support to clients in the community, NHS and social care services. In addition, there have been over 500,000 vaccination steward shifts completed to date.

1.1.7.4 NHS Volunteer responders to date have fulfilled 9 roles as previously outlined, they have also fulfilled tasks in a wide range of settings. As part of the BAU model the Commissioner (NHS England) would expect the supplier to pro-actively scope and develop new role proposals within new settings responding to emerging opportunities and priorities in partnership with the digital platform provider and the Commissioner (NHS England).

1.1.8 NHS Volunteer Responders emerged in response to the Covid pandemic emergency in March 2020 and was developed at pace working closely with the current suppliers of the service, moving from approval to launch in just seven days. This service was innovative and provided the first national mass volunteer response enabling widespread and varied support through micro-volunteering opportunities that were made available as a back-up to local volunteer service provision.

1.1.9 The nature of the operating model allowed self-referral and through this identified many people directly affected by the pandemic who would not previously have been known to local services. This reduced the burden of new support requests on the, already busy, NHS and local social care and voluntary services whilst ensuring that any



additional needs were identified and referred into relevant agencies as required.

1.1.10 The service attracted a significant number of people who had never volunteered before, as well as previous volunteers keen to support and help the NHS and able to provide this support via micro-volunteering, which was compatible with their existing commitments. The programme continued to be developed to meet the changing needs of the pandemic and the NHS is keen to retain all the beneficial changes introduced. The nature of the micro-volunteering infrastructure and rapid recruitment and training of volunteers, in addition to being accessible to a wide range of potential referrers means that the NHS Volunteer Responders programme has been an innovative, successful and key service that can now be evolved to continue to support the NHS as it responds to the ongoing impact of the pandemic and the current recovery of services. It could provide a positive legacy of an additional 400,000 people potentially willing to help the NHS and provide an essential back-up service to relieve pressure on the NHS and local health and care services.

1.1.11 Volunteering has never been higher on the strategic agenda and this is particularly true in the NHS. The NHS Long Term Plan published in January 2019 ([NHS Long Term Plan](#)) recognised the huge positive potential and impact, that volunteering can have on NHS services and staff, patients and volunteers themselves. It included an ambition to double the number of volunteers. The pandemic both challenged and supported this ambition by enabling new and different cohorts of volunteers to get involved whilst some existing volunteers were, by necessity, stood down. [The NHS People Plan](#) also directly references NHS Volunteer Responders recognising that volunteers have played a vital role in supporting patients during the pandemic. Stating that “between April and July 2020, in an unprecedented response, more



than 360,000 members of the public volunteered through the NHS Volunteer Responders programme, offering their time and energy to support the NHS. We must build on this incredible movement to support a renewed focus on increasing longer-term volunteering opportunities in the NHS.”

1.1.12 As NHS volunteering services are also recovering, NHS Volunteer Responders brings a new and additional cohort to the NHS family and provides an ongoing opportunity for people to continue to support the NHS by retaining the national micro-volunteering and crisis/emergency response service. The NHS England National Incident Response Board has described the NHS Volunteer Responders programme as one of the beneficial changes from the pandemic.

1.1.13 Below are links to other relevant documents relating to NHS Volunteer Responders.

- Surveys undertaken by RVS to better understand experience of the scheme, which include volunteer, referrer and client surveys and can all be found here - <https://www.royalvoluntaryservice.org.uk/about-us/our-impact/measuring-our-impact/nhs-volunteer-responders/>
- LSE Micro-volunteering Discussion Paper - <https://cep.lse.ac.uk/pubs/download/dp1772.pdf> which explores the wellbeing impact of the NHSVR scheme on volunteers using information gathered in the RVS Volunteer Survey responses.
- The Health Innovation Network report on micro-volunteer enabling platforms - <https://healthinnovationnetwork.com/report/digitally-supported-micro-volunteering-a-report-of-an-evaluation/>





## Scope of the Procurement

### 2.1 Aims & Objectives

- 2.1.1 The new NHS Volunteer Responders programme will enable people to sign up to volunteer either to be called upon in an emergency situation, or to undertake micro volunteering tasks as required.
- 2.1.2 Overall, the programme aims to ensure that volunteers are available to help support the NHS (and potentially social care) in the event of emergency situations, whilst also providing a range of volunteering opportunities that reduce pressure on the NHS (and potentially social care from year 2)
- 2.1.3 It will integrate fully with local volunteering services, NHS trusts, Integrated Care Systems and potentially local authorities, and provide an infrastructure to support volunteering in health and care.
- 2.1.4 In moving from a Covid response programme to something that meets the ongoing needs of the NHS (and potentially social care), the delivery model will evolve during year one of the contract from a similar delivery model to the Covid response, to a more agile and integrated model that enables a range of organisations to deploy volunteers to support activities directly related to health and care through the digital platform and provide an overarching infrastructure to manage this.
- 2.1.5 It is not intended to duplicate existing volunteer provision available elsewhere but to help reduce pressure on the health and care system in areas where a micro volunteering model could provide a solution. It will also provide a potential infrastructure to support local volunteering organisations if required.



2.1.6 The management supplier may therefore be responsible for deployment of volunteers into some volunteering roles, agreed nationally, but will also create a quality assurance process to approve other organisations to be able to access and deploy volunteers through the NHS Volunteer Responders brand either locally or nationally, providing a support and advisory function as needed.

2.2 The supplier is not required to commission or manage the digital platform provider. This will be undertaken by NHS England but the two suppliers will be required to work closely together to ensure delivery of the service to a high standard.

2.3 Suppliers need to be aware that NHS England also directly commissions a Seasonal Surge programme from voluntary sector providers through a framework to support NHS Trusts with i) hospital discharge provision pathway zero and ii) community wraparound support in response to seasonal surge pressures. The purpose of that contract is defined and limited to these areas. The NHS Volunteer Responders programme provides a much wider reaching provision of volunteer support across the NHS. The NHS Volunteer Responders programme is not intended to replace or duplicate that service support offer. NHS England is not seeking to combine these services. The successful supplier will be expected to work with current providers of the Seasonal Surge programme to ensure alignment and integration, and prevent direct duplication.

## 2.4 Constraints and Dependencies

2.4.1 The Supplier will need to work with the digital platform provider that is being commissioned separately by NHS England.

2.4.2 The supplier will also need to work proactively with any other suppliers contracted by NHS England in connection with the NHS Volunteer



Responders programme. This will include, but is not limited to, a service redesign organisation that may be engaged by NHS England during year one of this contract. The supplier will be required to develop the service in line with the outcomes and recommendations of the service redesign process.

2.4.3 The supplier will also be required to work with the existing suppliers of the contract to support the transition to the new contract while maintaining service levels.

2.4.4 In the first year we anticipate up to 600,000 NHS Volunteer Responders may be registered with the service but only a proportion of these will be available for delivery of tasks or active at any given time. The service management supplier will be responsible for management of these volunteers and for ongoing volunteer engagement to ensure that as many volunteers as possible remain enthused and available to help. The number of tasks per month will vary depending on the range of volunteering roles developed and level of demand from the NHS (and potentially social care from year 2 as detailed in section 1 above). We anticipate that the task number will continue to fluctuate as the programme evolves and is integrated locally and in response to emergency or crisis situations at a national, regional or local level.

2.4.5 NHS England has a team working on the NHS Volunteer Responder programme headed up by Emma Easton, Deputy Director of Voluntary Partnerships who is setting the strategic direction supported by a team of key staff that supports her with contract and performance management, stakeholder management and engagement, national NHS communications, finance, and data analysis. The programme will also be delivered in partnership with the digital platform provider and, during the first year, with the service redesign organisation. If, and when, DHSC join as joint commissioners DHSC staff will also



support with contract and performance management, stakeholder management and engagement and national communication with the adult social care sector

- 2.4.6 This is a national scheme for England. The scheme requires national coverage by NHS Volunteer Responders who are deployed digitally to service local tasks or roles. It is anticipated that all relationships will be managed and maintained virtually. However, some of the new roles developed may only be available in some locations, depending on the needs of local health and care organisations. The service management supplier will work with appropriate local organisations to determine the level of need and where roles are required.
- 2.4.7 NHS England is seeking to maintain the current delivery model and to transition from the current supplier to the new supplier when the current contract finishes in November 2022. It is important that there is continuity of service provision and therefore detailed planning for the transition will be a priority once the new supplier is awarded. NHS England requires transition of the service to be fully ready to go live by the 11<sup>th</sup> November 2022 at the latest to ensure readiness for the switchover date. NHS England is seeking to put this contract in place for up to 3 years with the potential to extend for a further 2 years. The contract continuing into each financial year is subject to available funding processes, and successful delivery by the supplier. NHS England may be joined in the future by a co-commissioner, the Department of Health and Social Care (DHSC) to enable expansion of the service more fully into social care settings.
- 2.4.8 NHS England will continue to be responsible for setting the strategic direction of the programme, including the identification of new volunteer roles linked to strategic priorities e.g. NHS@Home etc.



- 2.4.9 The service management supplier will be responsible for liaising with local health and care organisations across the system and voluntary sector partners, to determine how the programme will integrate within their locality and for assuring which providers can deploy volunteers through the programme.
- 2.4.10 The national incident response level remains at level 3 or below enabling current providers to prepare for contract end and transition to any new suppliers within the current planned procurement schedule.
- 2.4.11 The current operational model will continue for the foreseeable future, due to current active volunteer roles. Any fundamental service changes or developments will be planned and managed after the Service Management Provider has been appointed, and as part of the service redesign and ongoing evolution of the NHS Volunteer Responders service. Therefore, requiring any associated digital platform and technical infrastructure developments to be covered as part of this contract.
- 2.4.12 That the delivery of this service requires close collaborative working with other service providers and the Commissioners and will be underpinned by appropriate data sharing agreements between relevant parties.
- 2.4.13 The Vaccination programme requires ongoing volunteer support which is budgeted by that team at approximately £2m per annum. For the purposes of this exercise this has been included within the annual cost and contract value. This element is subject to ongoing funding availability and will be reviewed on a regular basis. Should this element be withdrawn at any time there must be no negative impact upon the remainder of the programme either in terms of cost or service levels .



## 2.5 Payment by Results (PbR)

2.5.1 The Commissioner has taken the decision that the Contract shall be subject to Payment by Results (PbR).

2.5.2 This means that ten percent (10%) of the Annual Contract Sum shall be payable to the appointed Supplier only on the successful performance by the appointed Supplier against certain Key Performance Indicators detailed in the Specification of Requirements. The remaining ninety percent (90%) will be payable to the appointed Supplier pursuant to monthly invoices as detailed in the Conditions of Contract and the Specification of Requirements.

### 2.5.3 Year One (1) PbR

2.5.4 Budget for Year One (1) covering the period from 1<sup>st</sup> September 2022 to 31<sup>st</sup> August 2023 will be £7,000,000 and PbR will commence six (6) months after Service Commencement Date of 1<sup>st</sup> December 2022. Subsequently, the Supplier shall note only June, July and August 2023 will be subject to PbR in Year One of the Contract.

2.5.5 Therefore, the monthly invoice amount to be submitted will be £583,333.33 with no PbR being applied to KPIs as shown in the table below.

Annual Contract Sum	£7,000,000
Nine (9) Months pro-rata Amount	£5,250,000
Monthly Invoice Amount	£583,333.33

2.5.6 PbR will commence on 1<sup>st</sup> June 2023 and will apply in June, July and August 2023. Therefore, monthly invoice amount to be submitted will be £525,000 for three (3) month budget of £1,575,00. The remaining monthly monies that would otherwise have been due will only be paid subject to performance against the specified Key Performance Indicators.





2.5.7 The table below demonstrates a working example of PbR based on an pro rata amount of £1,575,000 for three (3) months for June, July and August 2023.

Annual Contract Sum	£7,000,000
90% of Annual Contract Sum	£6,300,000
Three (3) Months pro-rata Amount	£1,575,000
Monthly Invoice Amount	£525,000

## 2.5.8 Year Two (2) and Year Three (3) PbR

2.5.9 The table below demonstrates a working example of PbR based on an Annual Contract Sum of £5,000,000

Annual Contract Sum	£5,000,000
90% of Annual Contract Sum	£4,500,000
Monthly Invoice Amount	£375,000

2.5.10 Therefore in this example, the monthly invoice amount to be submitted will be £375,000. The remaining monthly monies that would otherwise have been due will only be paid subject to performance against the specified Key Performance Indicators.

2.5.11 PbR will be calculated by the Commissioner monthly, based on achievement against the Performance Indicators during that month. If the Commissioner determines that the element of the Contract Sum subject to PbR is due to the appointed Supplier, the Commissioner shall pay the appointed Supplier those monies every 6-months starting from the Commencement Date.



2.5.12 In submitting a Tender all organisations shall be deemed by the Commissioner to have agreed to PbR in the form described in these Tender Documents and in the Specification of Requirements. The appointed Supplier shall therefore be bound by this requirement and the Commissioner will not consider requests to waive the process.

### **3 Requirements**

#### **3.1 Mandatory and Minimum Requirements**

##### **3.1.1 General programme delivery**

- 3.1.1.1 The supplier will ensure that a sufficient cohort of NHS Volunteer Responders is maintained (up to a capacity of 1 million) to meet the requests for support including management of recruitment, risk assessments, training as appropriate, and ongoing management, support, and engagement to carry out the categories of assistance safely, including any further recruitment as and when required.
- 3.1.1.2 Managing such a significant number of volunteers virtually is a challenge and the supplier will need to consider remote and in person approaches to ensure that volunteers have a good experience volunteering with the programme. There should include a detailed volunteer communications, engagement and retention plan, especially for those volunteers who have signed up to an emergency response role only. The supplier will provide a high-quality training programme for all NHS Volunteer Responders it recruits and for all categories of assistance it manages. This will be agreed by the Commissioner (NHS England).



- 3.1.1.3 The supplier will ensure a regular programme of communication and engagement with all NHS Volunteer Responders, referrers and other stakeholders to ensure that they understand relevant developments in the programme, such as new training available. The communications and engagement programme will include overseeing communication from other providers using the digital platform and the NHS Volunteer Responders brand. It should draw on all relevant engagement mechanisms and channels to support volunteer retention and involvement. All communication must be restricted to the NHS Volunteer Responders programme only and is subject to NHSE approvals. The supplier should not be contacting stakeholders for any other reason nor should details be passed to 3<sup>rd</sup> parties for communication/advertising purposes.
- 3.1.1.4 The supplier will communicate with each client who will be receiving any category of direct assistance at the start of their involvement with the programme to inform them of the supplier's safeguarding policies and the types of support being provided. They will also provide them with the practical options available for arranging the reimbursement of the costs of any goods such as prescriptions obtained for the individual by the client to an NHS Volunteer Responder, if required. The supplier will not be expected to handle any payments between these parties and will only provide options and guidance. The supplier may also need to communicate at other times with clients to inform them about updates to the service they are receiving.
- 3.1.1.5 The supplier will work with volunteers and local service providers to support individual clients to become more



independent over time, helping them to identify alternative options to reduce reliance on the programme where appropriate.

- 3.1.1.6 The supplier will ensure that the categories of assistance reflect the needs of the individuals receiving NHS Volunteer Responder support and the needs of referrers as informed by feedback from recipients of those services, engagement with stakeholders, or as indicated by NHS England.
- 3.1.1.7 The supplier will work with NHS England, the appointed digital platform provider, and, in the first year, with the service development organisation to identify appropriate new volunteering roles / tasks and develop the operating mechanism for these roles.
- 3.1.1.8 The supplier will work with local health and care systems to identify which of the available volunteer roles are appropriate for implementation in their local area to ensure that the programme complements local provision and provides a back-up service where necessary. The supplier will also work with the digital platform provider to ensure that local systems can have access to a dashboard to see the number of tasks within their locality and monitor progress.
- 3.1.1.9 The supplier will create a process to quality assure other providers that might be able to deploy volunteers directly through the NHS Volunteer Responders programme including NHS, adult social care and voluntary sector organisations. The supplier will also establish consistent policies for other organisations to comply with when using the service, including (but not limited to) expenses, safeguarding, communication with volunteers, and operating standards.



3.1.1.10 The supplier will maintain a national call centre, safeguarding and problem-solving service that can be called upon to support roles directly managed by the supplier and any other organisations approved to deploy volunteers through the programme.

3.1.2 The supplier will initially work with NHS England to identify which of the current volunteer roles will remain in year one, whether there are any that need to be changed, and any new roles to be developed. This may include working closely with a service design partner and consultation with local systems to identify where roles may only be required in some localities. Below are the most recently active volunteer roles/task types (some of which are currently suspended):

- Community Response Volunteer
- Community Response Plus Volunteer
- Patient Transport Volunteer
- NHS Transport Volunteer (including Urgent Delivery role)
- Check in and Chat
- Check in and Chat plus Volunteer
- Steward Volunteer
- Non-clinical Support

3.1.3 Below are new roles that are being considered and / or piloted:

- Admin support volunteer
- General patient / service user support volunteer



- Emergency transport volunteer
- Welfare support

3.1.4 The supplier will ensure that referrers into the programme are supported to access NHS Volunteer Responders and that appropriate feedback and data is made available to referrers providing assurance that the identified needs have been met.

3.1.5 Furthermore, the supplier is responsible for taking actions, as agreed with the Commissioner (NHS England), in the event of a lack of NHS Volunteer Responder availability at the time that a task needs to be completed. This will, as a minimum, mean informing the referrer of this to ensure the referrer can seek alternative arrangements.

3.1.6 The supplier will monitor task completion rates, shift fulfilment rates and swiftly take steps to address any areas where these fall below the target threshold agreed with the Commissioner (NHS England) see below section 3.7

3.1.7 The supplier will work collaboratively and in partnership with the organisation commissioned by NHS England to provide the digital platform for the purposes of delivering the service. The supplier must use these resources to deliver the service.

3.1.8 The supplier will provide, or procure, a UK based contact centre service to deliver telephone support to NHS Volunteer Responders, referrers and individuals receiving assistance from the NHS Volunteer Responders via a dedicated telephone number and email address(es). This will include telephone support for tasks added by other providers that have been assured and approved to use the NHS Volunteer Responders brand. It will also include appropriate levels of operational problem solving for referrers / organisations requesting volunteer





support and safeguarding support for individuals and volunteers who have had to deal with safeguarding concerns, including signposting or referral of volunteers and individuals to other services, online support and/or agencies where needed.

- 3.1.9 The call centre service must be kept up to date with programme developments and changes to guidance to be able to support referrers, individuals and volunteers appropriately and must also share data and developments in terms of usage with the Commissioner (NHS England) to inform programme developments. The call centre service may also be used to assist with tasks associated with the operation of the programme as required such as checking volunteer identification documents, verifying referrer's eligibility etc. The call centre might also be used to make outgoing calls at times. Any queries relating to the digital platform are the responsibility of the digital platform supplier and should be referred to them.
- 3.1.10 The supplier, and any subcontractors, will meet all statutory safeguarding requirements under this contract and will provide, as a minimum, safeguarding support in line with NHS England's safeguarding policy and must meet the requirements set out in the 'Safeguarding children, young people and vulnerable adults at risk in the NHS: Accountability and Assurance Framework'. [NHS England » Safeguarding children, young people and adults at risk in the NHS: Safeguarding accountability and assurance framework](#). The supplier will ensure that all matters reported to the supplier under 'safeguarding' are appropriately managed by experienced safeguarding professionals, that any onward referrals to other agencies are followed up and any other necessary actions are taken as appropriate.
- 3.1.11 The supplier will report on all safeguarding cases on a fortnightly basis and will ensure that cases are resolved satisfactorily within a reasonable time frame. Any urgent safeguarding issues will also be



reported to the Commissioner (NHS England) within 24 hours where the Commissioner (NHS England) might need to take further action.

- 3.1.12 The supplier will administer the reimbursement of expenses incurred by those NHS Volunteer Responders who choose to claim in relation to costs as agreed with NHS England for any volunteer roles that it directly manages in the programme. Expenses can be claimed to cover public transport costs, mileage at the HMRC approved mileage rates, and any other reasonable out of pocket expenses as may be defined and agreed with NHS England.
- 3.1.13 The Commissioner (NHS England) will be the Data Controller and the supplier will be a data processor for all data relating to individuals and will be party to a data sharing agreement with the organisation commissioned by NHS England to provide the digital platform, the database and the webpages for the purposes of delivering the service and will use these resources to deliver the service. To support this the supplier with either have completed, be working towards or can provide assurance of:
- 3.1.13.1 The NHS Data Security & Protection Toolkit (DSPT)
- [Data Security and Protection Toolkit \(dsptoolkit.nhs.uk\)](https://dsptoolkit.nhs.uk)
- 3.1.13.2 IT Security Standard – ISO15408
- [ISO/IEC 15408-1:2009\(en\), Information technology — Security techniques — Evaluation criteria for IT security — Part 1: Introduction general model](https://www.iso.org/standard/54081.html)
- 3.1.14 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 Commissioner (NHS England). The supplier shall grant a non-exclusive royalty-free license to third parties assured by the supplier for the purposes of delivering the NHS Volunteer Responder programme. Any Intellectual Property owned by either NHS England or the Supplier before the Commencement Date shall remain the property of that party.

- 3.1.15 The supplier will support the Commissioner (NHS England) in all media and communications relating to the NHSVR programme ensuring all key messages are agreed in advance with the Commissioner (NHS England) and will provide guidance to any other providers utilising the platform and NHS Volunteer Responders. The supplier will seek relevant approvals to publish from the Commissioner (NHS England) where necessary or appropriate.
- 3.1.16 The supplier will develop and deliver a communications and engagement plan that supports the continued development of the programme. The plan, which will need the Commissioner's approval, will include a schedule of regular daily, weekly and monthly engagement with key stakeholders: volunteers, users, referrers, local health and care organisations and voluntary sector organisations.
- 3.1.17 Delivery will include producing a monthly plan of forthcoming Communications & Engagement activity, a weekly status report, to be submitted 24 hours in advance of any joint communications meetings, and a monthly evaluation report.
- 3.1.18 All communications relating to NHSVR should be delivered in accordance with NHS branding and style and to the standard expected of NHS communications as set out in the NHS Style Guide



<https://service-manual.nhs.uk/content> and NHS identity guidelines  
<https://www.england.nhs.uk/nhsidentity/>.

- 3.1.19 Communications have been central to developing and maintaining the excellent reputation of NHS Volunteer Responders. All communications delivered under the NHSVR brand must continue to promote the positive reputation of the programme. The supplier should not publish any communications that might bring the programme or the Commissioner (NHS England) into disrepute.
- 3.1.20 The supplier will be required to provide an Exit Strategy within the first year of the contract and will produce an exit plan 3 months in advance of the end date of this contract.
- 3.1.21 The service management supplier will be expected to deliver the following in year 1 of the contract:
- 3.1.21.1 Ongoing direct recruitment, management, training, engagement and support of up to 1 million volunteers across England
  - 3.1.21.2 Ongoing communication and engagement with volunteers, clients, referrers, local health and care organisations, voluntary sector organisations and other stakeholders – including:
    - 3.1.21.2.1 Communication with volunteers at least once a month, including programme updates, other news stories or aspects that they might be interested in etc.
    - 3.1.21.2.2 Development, maintenance and appropriate use of the programme website and social media channels (currently, Facebook, Twitter and Instagram)
    - 3.1.21.2.3 Volunteer webinars at least monthly to provide additional training, opportunities to virtually meet other volunteers, ask questions etc.



- 3.1.21.2.4 Referrer webinars at least monthly to ensure that new referrers understand how to access the programme, provide updates etc. plus email correspondence as required and regular newsletters on programme developments
- 3.1.21.2.5 Communication in the individual's preferred format with all new clients when they are first referred plus additional communications when required.
- 3.1.21.2.6 Joint management with the Commissioner (NHS England) and digital platform provider, of a provider and stakeholder forum.
- 3.1.21.2.7 Dedicated support regionally to local health and care organisations, and voluntary sector organisations to scope and develop use of the NHSVR programme.
- 3.1.21.2.8 Distribution of any relevant communications from other providers approved to use the NHS Volunteer Responders programme.
- 3.1.21.3 Direct delivery of nationally available volunteer roles as requested by NHS England – likely to include at a minimum the ongoing management of Steward Volunteers for the COVID-19 vaccination programme, and NHS Transport Volunteers. The volume of tasks will be subject to demand from referrers within the monthly task parameters set out above.
- 3.1.21.4 Development of training manuals as required for new nationally developed roles.



3.1.21.5 Development of operational specification for the digital platform provider for any new roles developed or other developments required.

3.1.21.6 Development of a quality assurance mechanism to work with other agencies that wish to access the NHS Volunteer Responders infrastructure.

3.1.21.7 Development of necessary policies, guidance and quality assurance mechanisms to enable other organisations to utilise the NHS Volunteer Responders infrastructure including (but not limited to) safeguarding, operational standards, communication.

3.1.21.8 Provision of a national call centre and safeguarding support to provide support as outlined above in section 3.1.8

3.1.22 The supplier will work with NHS England during year one of the programme to develop the new delivery model (to include multiple agencies accessing the programme infrastructure) and detailed delivery outputs for years 2 and 3 within the first 12 months of delivery.

3.1.23 In addition to complying with local Safeguarding Policies, supplier's policies on safeguarding should comply with NHS England's safeguarding policy and must meet the requirements set out in the 'Safeguarding Vulnerable People in the NHS - Accountability and Assurance Framework'. This document together with other NHS England safeguarding policies and documents can be found on the NHS England website via the link:

<https://www.england.nhs.uk/safeguarding/policies-annual-report/>

## 3.2 Desirable Requirements

3.2.1 The following requirements are desirable:

3.2.1.1 Experience of managing volunteers remotely





- 3.2.1.2 Experience of working with micro volunteering platforms
- 3.2.1.3 Experience of working in health and social care
- 3.2.1.4 Hold or be working towards Investing in Volunteers accreditation or a similar quality standard.
- 3.2.1.5 Experience of responding to surges in demand such as a national incident or vaccination campaign.

### 3.3 Timescales & Implementation

- 3.3.1 We are seeking to award the contract in summer 2022 with a view to begin the transition period immediately afterwards. Go live date should follow as soon as practically possible but no later than the 26<sup>th</sup> November 2022. This provides allows a period of time for the provider to plan and prepare for transition as specified in the implementation plan (3.3.3).
- 3.3.2 The supplier must fully prepared implement the service in line with the Plan at (3.3.3) The supplier must include continuity of service for any active volunteer roles and a proactive communication and engagement plan with inactive volunteers in place within 2 weeks of award. The supplier must provide a full transition plan within 4 weeks of award and must be ready for the agreed start date currently 26<sup>th</sup> November. The provider must ensure:
  - Branding and communication channels for this service are in place swiftly and no later than the 11<sup>th</sup> November 2022.
  - A model of supporting, recruiting and onboarding volunteers. Ensuring suitable checks are carried out to ensure volunteer suitability.



- A contact method for volunteers, clients and referrers to access support from trained professionals, that ensures a robust safeguarding function.
- A model of tasking and managing volunteers.
- A model for training and retaining volunteers to ensure quality and consistency.
- Ongoing regular engagement with volunteers to obtain feedback, improve volunteer experience and ensure a positive experience of the service is being had.
- A simple and accessible volunteer expenses system that may need to be incorporated with any technical solution that the platform provider can offer.
- A contact centre with a range of accessible communication options to ensure volunteers, referrers and service users can communicate quickly and easily with flexible capacity to ensure changes in demand can be met.
- A problem solving function to ensure any arising or any unexpected functions are dealt with quickly, professionally and creatively.
- Mechanisms to meet changing demands such as a surge in volunteer numbers or a surge in referrer requests, allowing for changes in NHS priorities, demands and future potential crisis situations.
- Skills and expertise to develop strong partnerships with organisations and individuals from various sectors.

3.3.3 Implementation plan

Deliverable/Objective	Time Frame	Lead
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Weekly highlight report	Within 1 week of award	supplier
Weekly implementation meeting	Within 1 week of award	NHSE/I
Communications plan created	Within 2 weeks of award	supplier
Stakeholder engagement plan created	Within 2 weeks of award	supplier
Communications schedule operational	After 2 weeks of award	supplier
Develop transition plan for existing model	Within 4 weeks of award	supplier
System engagement capacity available	Within 4 weeks of award	supplier
Data management and reporting structures in place	Within 4 weeks of award	supplier
First monthly KPI report due	Within 4 weeks of award	supplier
Monthly assurance meetings	Within 4 weeks of award	NHSE/I
Production of one-off deliverables (see KPI)	Within 6 weeks of award	supplier
Programme board	Within 8 weeks of award	NHSE/I
Branding and communication channels in place	Preferred within 6 weeks of award (No later than 11 <sup>th</sup> November 2022)	supplier
Operational model ready for live volunteer tasking and management (including new and existing volunteers)	Preferred within 6 weeks of award (No later than 11 <sup>th</sup> November 2022)	supplier
Data sharing agreements and mechanisms in place with digital platform	Preferred within 6 weeks of award (No later than 11 <sup>th</sup> November 2022)	supplier
Full transition of volunteers and assets	Preferred within 6 weeks of award (No later than 25 <sup>th</sup> November 2022)	supplier
Go live date	Preferred within 6 weeks of award (No later than 26 <sup>th</sup> November 2022)	supplier
First Stakeholder partnership forum	By 30 <sup>th</sup> December 2022	supplier



Summary report	End of Year 1	supplier
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**3.3.4** The supplier will undergo an initial transition period in which a full project implementation plan will be developed. This will include:

1. An initial transition period in which volunteer contact data and roles are transitioned to the new supplier. The supplier will be expected to work in partnership with the digital platform provider and any current third-party volunteer coordination provider (e.g. Ambulance trusts) to plan how to seamlessly transition both active and inactive volunteer roles. Ensuring continuity of service. Preferred within 6 weeks. Completed no later than the 11<sup>th</sup> November 2022.
2. Provide ongoing continuity of service for any active volunteer roles at the time of transition throughout the lifetime of the contract.
3. Engage and support, with the appointed Service Design partner, a period of rapid co-design and testing of a BAU model that will inform the future delivery model of the programme. This should be complete within the first 12 months of delivery culminating in a new iteration of NHSVR specification for future years.
4. Provide capacity and expertise to develop and test new ways of working with new volunteer roles and new partners.
5. Provide support to pro-actively pursue business leads to provide proof of concept and piloting proposals to the commissioner (NHS England).
6. The development of a support and assurance process to ensure any pilots or new roles are consistent in quality when working with third parties.



7. Develop a framework to enable the addition of new volunteer roles to be added to the NHSVR portfolio, managed centrally by the supplier.
8. A communication and engagement plan for volunteers, referrers, partners and wider stakeholders.
9. Steps to ensure products meet full accessibility of information standards.
10. An action plan to ensure volunteers and service users are representative of the communities they serve.
11. Plans to complement and support local and national plans to reduce health inequalities,

### 3.4 Location

- 3.4.1 This is a national scheme for England. The scheme requires national coverage by NHS Volunteer Responders that are deployed digitally to service local tasks or roles. It is anticipated that all relationships will be managed and maintained virtually. However, some of the new roles developed may only be available in some locations, depending on the needs of local health and care organisations. The service management supplier will work with these local organisations to determine the level of need and where roles are required.

### 3.5 Roles and Responsibilities

- 3.5.1 There are a number of key roles; Strategic Direction Setting, Contract and Performance management, Project management, finance management, stakeholder engagement, communications, data reporting. This list is not exhaustive.
- 3.5.2 There are a number of key roles that the supplier will be required to fulfil: Programme and strategic accountability, Safeguarding



Management, Finance Management, Operational management, Data Analysis and Reporting, Communications. This list is not exhaustive.

### 3.6 Management Information & Governance

3.6.1 The programme governance will drive the programme forward and enable the delivery of benefits and outcomes by ensuring that there is:

- Timely decision making, addressing and controlling change.
- Due process and sufficient evidence of review and challenge of decisions.
- Appropriate evidence and 'audit trail' for key decisions.
- Where appropriate, an organisation-wide view.

3.6.2 The Commissioner (NHS England) will fulfil the following roles and functions to ensure strong programme governance and reporting.

#### **Senior Responsible Owner (SRO):**

- Overall accountability and responsibility for the design, approval of and compliance of the programme and its documentation sits with Neil Churchill Director of Experience, Participation and Equalities as SRO and governance routes will therefore report through the Nursing Directorate governance arrangements as defined by NHSEI.

#### **Programme/Governance Board:**

- The Board exists to provide directions required to the programme. It monitors progress against the project deliverables and delivery plan, supports the resolution of escalated risks and issues and reviews and approves requests for change. It will meet quarterly.





- The programme is overseen by an Advisory Board comprising both NHS England representatives and external representative from across the health and social care system and the voluntary sector.

#### **Programme Management and Leadership:**

- Strategic steer on the future direction and running of the programme
- Problem solving and relationship management
- Assurance meetings and KPI monitoring
- Design and implementation of the programme governance strategies and supporting the SRO in implementation and control
- Reports in consultation with the team for the approval of the SRO in a concise and transferable format.
- Highlights key risks and issues, actions for escalation

3.6.3 Programme Reporting will be completed via a weekly highlight report for at least the first 6 months and via a monthly full KPI report.

Programme assurance meetings with the NHSE team will occur at least monthly but more frequently during the first 6 months. In addition, the supplier will be expected to provide reporting and data on an ad hoc basis. As the programme we will be evolving through an innovation and development phase within year one, we expect KPI's and reporting expectations to change and evolve too. Therefore, all expectations are for the first 6 months after which we expect them to change and develop in line with new service requirements.

3.6.4 Reporting will include KPI's as outlined in the below table plus the following elements:

3.6.4.1 Reporting:



- Communicating planned activities versus actual achievements, critical risks and issues, and statistical summary information on tasks, budget and plan.
- Achievements, successes and benefits.
- Providing control to monitor and measure change and performance.
- Early discussion and communication of problems, issues, or need for help.
- Potential changes to time, cost or scope of deliverables
- Current resource position with recommendations for decision/approval
- Reports should look forwards as well as reporting what has happened.

3.6.5 This programme will be shaped by multiple stakeholders through various advisory and governance groups. Attendance and reporting into these groups by staff with suitable skills and levels of authority will be expected of the Supplier.

### **3.7 Performance and Measurement**

3.7.1 The following table is a list of key performance indicators we expect for the first 6 months of delivery after which we expect them to evolve and develop in line with changes to the programme. Any changes will follow a period of consultation and change approval process with the supplier and NHSE. In addition to the below, the supplier may be asked to provide further specific evidence or data



3.7.2 The Supplier shall achieve the Key Performance Indicators (KPIs) as detailed below:

KPI <sup>1</sup> Ref	Operational Standards/National Quality Requirements	Target	Review period
VR01	<b>Number of tasks assigned completed excluding those withdrawn by the client and third party delivery. Broken down within the weekly highlight report.</b>	80%	Monthly
VR02	Complaints monitoring report, setting out numbers of complaints received and including analysis of key themes in content of complaints	Report	Monthly
VR03	<b>Monthly KPI report to include all monthly reporting elements</b>	<b>100%</b>  <b>To be submitted 10 working days after each preceding month</b>	<b>Monthly</b>
VR04	Weekly highlight report to flag progress, risk, issues and usage data and named weekly reporting elements	Report	Weekly
VR05 (i)	<b>Response to service user feedback: 100% acknowledgement within 24 hours</b>	100%	Monthly
VR05 (ii)	<b>Response to service user feedback: 100% response within 2 weeks</b>	100%	Monthly
VR06	Activity and outcome report from contact centre showing communication response time and resolution category of queries raised	100% of contacts are responded to within agreed time frame (role dependant) and are taken to resolution	Weekly
VR07	Referrer satisfaction questionnaires	TBC	Monthly

(a) \_\_\_\_\_

<sup>1</sup> KPIs in bold are lined to Payment by Results (PbR)



KPI <sup>1</sup> Ref	Operational Standards/National Quality Requirements	Target	Review period
VR08	Number of referrers	Expect good geographical spread. TBC	Monthly
VR09	Task completion and referral rates	TBC	Weekly
VR10	Volunteer satisfaction questionnaire	TBC	Monthly
VR11	Total registered volunteer numbers - national and local	expected between 75,000 - 1,000,000 volunteers	Weekly
VR12	Total number of volunteers available for task (available at least once in the last week)	In line with demand	Weekly
VR13	Actively participating volunteer numbers (accepted at least one task within the last week)	Expected between 20,000 - 1,000,000 with a good geographical spread and in-line with demand	Monthly
VR14	Number of volunteers converted to actively participating volunteers (accepted at least one task within the last week) from the total registered validated volunteer numbers	80% across the period	Monthly
VR15	Number of safeguarding cases responded to appropriately	100%	Monthly
VR16	Safeguarding cases followed appropriately and brought to resolution (clients and volunteers)	100%	Monthly
VR17	Full engagement with all 42 health systems to develop and test the new model	7 per month for 6 months	Monthly
VR18	Proactive engagement with national teams and other third parties to develop and test the new model	Minimum 3 per month	Monthly
VR19	Pilot and test new approaches	3-6 new within first 6 months	
VR20	Development of assurance framework	Finished product	One off



KPI <sup>1</sup> Ref	Operational Standards/National Quality Requirements	Target	Review period
VR21	Number of local partnerships developed	Number of partnership MOUs developed	Monthly
VR22	Delivery of the communications schedule set out in the communications and engagement plan to the standards agreed and within deadline.	Min. 95% compliance	Monthly
VR23	Delivery of monthly evaluation dashboard	Monthly Dashboard	Monthly
VR24	Development and delivery of stakeholder partnership forum in which materials and new iterations are co-designed	1 event every 3 months (4 per year). Number and range of stakeholders engaged	Quarterly
VR25	Evidence of measures taken to ensure volunteers and service users are representative of the communities the programme serves. (Using data at a local and national level such as the Health Inequalities Improvement Dashboard)	Improvement demonstrated	Monthly
VR26	Evidence of measures taken to support the reduction of inequalities at both a national and system level using the Core20PLUS5 methodology	Evidence of actions taken	Monthly
VR27	Compliance with NHS Identity guidelines and the NHSVR style in all communications outputs	100%	Monthly
VR28	Delivery of monthly communications (and engagement) plan in line with agreed approval processes – including scheduled outputs to volunteers and other stakeholders; maintenance of communications channels; reactive media responses; updating of issues log	9	Monthly

### 3.8 Contract Review Meetings



3.8.1 For the duration of the contract, the Supplier shall produce for the formal monthly review meetings as a minimum the following information:

- A Highlight Report that tracks performance against key performance indicators;
- Monthly returns on a template as agreed by the Commissioner;
- Monthly PbR returns<sup>2</sup>;
- A risk register; and
- A finance report.

3.8.2 Monthly returns to be submitted ten (10) working days after each preceding month as detailed below:

Month	Deadline for submission
<b>Year One – 2022/23</b>	
September 2023	5pm, Friday 14 <sup>th</sup> October 2023
October 2023 <sup>3</sup>	5pm, Tuesday 14 <sup>th</sup> November 2023
November 2023	5pm, Thursday 14 <sup>th</sup> December 2023
December 2023	5pm, Monday 16 <sup>th</sup> January 2024
January 2024	5pm, Tuesday 14 <sup>th</sup> February 2024
February 2024	5pm, Thursday 14 <sup>th</sup> March 2024
March 2024	5pm, Tuesday 18 <sup>th</sup> April 2023
April 2024	5pm, Monday 15 <sup>th</sup> May 2023
May 2024	5pm, Wednesday 14 <sup>th</sup> June 2023
June 2024	5pm, Friday 14 <sup>th</sup> July 2023
July 2024	5pm, Monday 14 <sup>th</sup> August 2023
August 2024	5pm, Monday 11 <sup>th</sup> September 2023
<b>Year Two – 2023/24</b>	
September 2023	5pm, Friday 13 <sup>th</sup> October 2023
October 2023	5pm, Tuesday 14 <sup>th</sup> November 2023
November 2023	5pm, Tuesday 12 <sup>th</sup> December 2023
December 2023	5pm, Monday 15 <sup>th</sup> January 2024
January 2024	5pm, Tuesday 13 <sup>th</sup> February 2024
February 2024	5pm, Thursday 14 <sup>th</sup> March 2024

(a) \_\_\_\_\_

<sup>2</sup> Format for PbR returns will be developed by the Commissioner based on Schedule A and Schedule

B.

<sup>3</sup>





March 2024	5pm, Tuesday 16 <sup>th</sup> April 2024
April 2024	5pm, Wednesday 15 <sup>th</sup> May 2024
May 2024	5pm, Friday 14 <sup>th</sup> June 2024
June 2024	5pm, Friday 12 <sup>th</sup> July 2024
July 2024	5pm, Wednesday 14 <sup>th</sup> August 2024
August 2024	5pm, Friday 13 <sup>th</sup> September 2024
<b>Year Three – 2024/25</b>	
September 2024	5pm, Monday 14 <sup>th</sup> October 2024
October 2024	5pm, Monday 11 <sup>th</sup> November 2024
November 2024	5pm, Friday 13 <sup>th</sup> December 2024
December 2024	5pm, Tuesday 14 <sup>th</sup> January 2025
January 2025	5pm, Friday 14 <sup>th</sup> February 2025
February 2025	5pm, Friday 14 <sup>th</sup> March 2025
March 2025	5pm, Monday 14 <sup>th</sup> April 2025
April 2025	5pm, Thursday 15 <sup>th</sup> May 2025
May 2025	5pm, Friday 13 <sup>th</sup> June 2025
June 2025	5pm, Monday 14 <sup>th</sup> July 2025
July 2025	5pm, Monday 14 <sup>th</sup> August 2025
August 2025	5pm, Friday 12 <sup>th</sup> September 2025

3.8.3 The Supplier shall ensure relevant Key Stakeholders from their organisation attend monthly review meetings.

**3.8.4** The Supplier shall note meetings can take via face-to-face, Teams/Zoom, and telephone conferencing. Date and times to be agreed with the Supplier following contract award and 'Contract Kick Off Meeting'. The Supplier shall note subject to satisfactory performance frequency of meetings may change; for example bi-monthly or quarterly. The Supplier will be required to submit reporting on a monthly basis irrespective of the frequency of meetings.

3.8.5 Annual review meetings will also take place every September after 12-month delivery period (between September through to August) in the same format as monthly meetings. Annual report to be provided by the deadline proposed in the table above for August dates.

3.8.6 Reports from Year Two onwards shall include year on year comparisons for each respective month, and include trend information.



3.8.7 Insurance certificates for (i) Employers Liability, (ii) Public Liability, and (iii) Professional Indemnity to be provided to NHSE/I annually as and when the Supplier's insurance are renewed.

### **3.9 Payment by Results**

3.9.1 The Service will be subject to Payment by Results ("PbR").  
Consequently, the Commissioner will only pay ninety percent (90%) of the Annual Contract Sum each month. The remaining ten percent (10%) due for each month shall be subject to PbR.

3.9.2 The Supplier shall submit the monthly invoices detailed in Key Provision 21 (Monthly Payment Profile) contained in Schedule 1 of the Contract.

3.9.3 PbR will be calculated by the Commissioner monthly based on the Supplier's performance against the KPI's specified in paragraph 3.7.2 above. Any monies due to the Supplier in respect of the achievement of the KPI's shall be paid by the Commissioner every six (6) months.

3.9.4 Therefore, Year One (1) covering June, July and August 2023 the Supplier shall be paid in September 2023.

3.9.5 Year Two (2) and Year Three (3) the Supplier shall be paid every six (6) months as follows:

- March 2023
- September 2023
- March 2024
- September 2024
- March 2025
- September 2025

3.9.6 If the Contract continues beyond 31st August 2025, the operation of PbR shall continue during the extended period and any monies due to the Supplier based on the Supplier's performance against the specified



KPI's shall be paid by the Authority in March 2026, September 2026, March 2027 and following termination of the Contract in September 2027.

3.9.7 Schedule A (Year One 2022/23) and Schedule B (Year Two 2023/24 and Year Three 2024/25) is incorporated in to this Specification of Requirement. Schedule A and B details how PbR shall be calculated; i.e. ten percent (10%) of the Annual Contract Sum as accepted by the Commissioner (NHSE) following submission of the Supplier's Tender.

3.9.8 PbR will be linked to the Key Performance Indicators (KPI's) detailed in paragraph 3.7.2 above of this Specification of Requirements and as listed in paragraph 3.8.9 below.

3.9.9 KPIs linked to PbR;

3.9.9.1 VR01 – Number of tasks assigned completed excluding those withdrawn by the client and third party delivery. Broken down within the weekly highlight report;

3.9.9.2 VR03 - Submission of monthly reports in the correct format and by specified dates to include all contract monitoring elements including KPI's and Finance Schedule as detailed in paragraphs 28.8 and 28.13 of this Specification of Requirements

3.9.9.3 VR05 (i) – Response to service user feedback: 100% acknowledgement within 24 hours;

3.9.9.4 VR05 (ii) - Response to service user feedback: 100% response within 2 weeks

3.9.9.5 VR014 - Number of volunteers converted to actively participating volunteers (accepted at least one task within the last week) from the total registered validated volunteer numbers;

3.9.9.6 VR015 - Number of safeguarding cases responded to appropriately; and

3.9.9.7 VR16 - Safeguarding cases followed appropriately and brought to resolution (clients and volunteers).



### 3.9.10 Percentage of PbR Payable:

3.9.10.1 The table below details the percentage of PbR that will be payable dependant on the percentage of target achieved for VR01, VR05(i), VR05(ii), VR14, VR15, and VR16

<b>Percentage of Target achieved – VR01, VR05(i), VR05(ii), VR14, VR15, and VR16</b>	<b>% payable</b>
100% or greater	100%
greater than 90%, less than 100%	66.67%
greater than 80%, less than 90%	33.33%
Less than 80%	Nil

3.9.10.2 The table below details the percentage of PbR that will be payable dependant on the percentage of target achieved for VR03.

<b>Percentage of Target achieved – VR03</b>	<b>% payable</b>
100%	100%
Less than 100%	Nil

3.9.10.3 The Supplier shall note that the above KPI's linked to PbR shall be reviewed at the end of each year of the Contract and may be amended based on Outcomes achieved to date

3.9.10.4 The supplier commits to realignment of KPI's including agreed thresholds, at the commissioner's discretion with an initial cadence of joint evaluation occurring every 3 months.

3.9.10.5 In addition to the above, the supplier may be asked to provide further evidence or data by request.

## 3.10 Contract Term



3.10.1 This contract is across 3 years with an option to extend for 2 additional years. The contract continuing into each financial year is subject to: annual business case approval; available funding processes, and successful delivery by the supplier.

### **3.11 Budget**

3.11.1 Up to £7million including VAT will be available across the full financial year 22-23 – to continue delivering and transitioning of this element of the service. This budget is for a full 12 month period and will be distributed on a pro rata basis dependant on the month of contract award. The annual value for future years will be confirmed each year in line with the annual Spending Review. Suppliers should note the budget is split with up to £2m per annum related to supporting the vaccines programme and the remainder to the national programme

3.11.2 It is expected that standard NHS England and NHS Improvement Payment Terms will apply. The supplier will submit invoices monthly in arrears. NHS England will only reimburse costs incurred by the supplier in connection with the provision of this service, which will be subject to the level of activity.

3.11.3 NHS England acknowledges that there may be some additional chargeable items over and above the value of this contract as described in 3.9.1. For example, if a new role required specific specialist training from a third-party supplier which may incur additional costs and would therefore be managed under the contract change procedure. As these are unknown potential future developments it's is not possible to quantify these at this stage and as such will not form part of the evaluation.

### **3.12 Sustainable Development Requirements**

3.12.1 Not used



Payment By Results (PBR)

Total service costs - annual

Monthly Cost

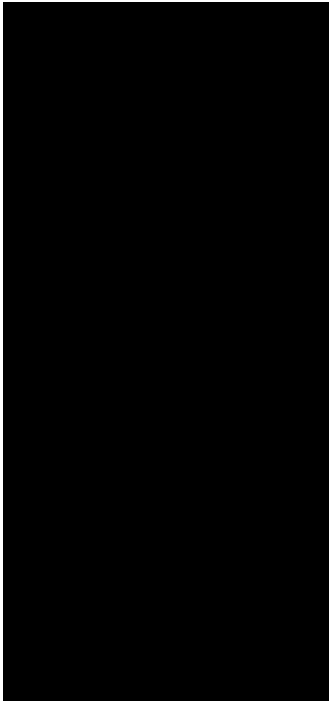
£7,000,000.00	Based on tender submission
£583,333.33	

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## **4 Flexibility and additional services or transformation**

4.1 The current service has been designed in response to the pandemic and therefore it has evolved over the last two years. Initially, it was quickly put in place to support vulnerable people affected by Government shielding advice, but the service quickly evolved to support people isolating at home and the NHS. The nature of the service remains the same but the roles and tasks have changed over time in response to the evolution of the nature and impact of the pandemic and associated restrictions. More recently the service has been expanded to provide national volunteering support to the COVID19 vaccination programme, with steward volunteers supporting on a shift basis. The service will continue to deliver a level of consistency with the current NHSVR programme delivery model (with some ongoing changes to the volunteer roles available and operational model as required) for up to one year. During this time the supplier will work with the Commissioner (NHS England) and an appointed service design organisation to review and redesign the service to meet the post-Covid NHS and local service provider needs. The supplier is required to develop the service in line with the outcomes and recommendations of the service redesign process. The service redesign will involve a range of activities including for example, piloting new roles and operating models and participating in facilitated task/role/service design sessions followed by testing. As we move beyond the pandemic the strategic objectives will be to explore:

- 4.1.1 How the service can enable micro volunteering to support health and social care priorities in a business as usual response which adds value to volunteering infrastructure in the NHS.
- 4.1.2 How the service can operate as an emergency response service providing a cohort of NHS Volunteer Responders in a reservist style mode that are ready and willing to step up if called upon to help in a national, regional or local emergency situation.

4.2 We will also be exploring how this service can evolve further to integrate across health and social care and it is anticipated that at some stage in the next 12 months, the Department of Health and Social Care will wish to join NHS England and NHS Improvement as co-commissioner and become party to this commissioning arrangement to enable services to be provided within social care settings.

4.3 As part of the development work in year 1, the Commissioner (NHS England) will also explore how this service can better integrate with local service needs and we have 3 potential options to explore.

- Option 1: a ready supply of NHS Volunteer Responders available in local communities to respond to local emergency situations that can be deployed directly by NHS or social care organisations e.g. ambulance service etc. Examples include instances such as asking volunteers to help paramedics locate an individual who was in a public location and has then moved away from where they were when the call was made to the ambulance service. Another example could be to carry out a welfare check where an individual has triggered their personal alarm but is not responding to the telephone checking service that was alerted as a result.
- Option 2: Enabling local volunteer provider services to join the NHS Volunteer Responder brand and access the digital and operational infrastructure – e.g. digital platform for deployment and national safeguarding and single point of contact out of hours for the local volunteers. This option would require the service management supplier to put in place assurance mechanisms against an agreed framework to ensure the required policies and procedures and liabilities are in place for the organisations who's volunteers and local role/task/needs would join the NHS Volunteer Responders brand and to put agreements in place with local providers.
- Option 3: retain and develop a bank of roles agreed nationally with NHS England and NHS Improvement that any organisation can access and deploy as required.





organisations wishing to access the safety net of support offered by NHSVR. Additionally, RVS

[REDACTED]

[REDACTED]

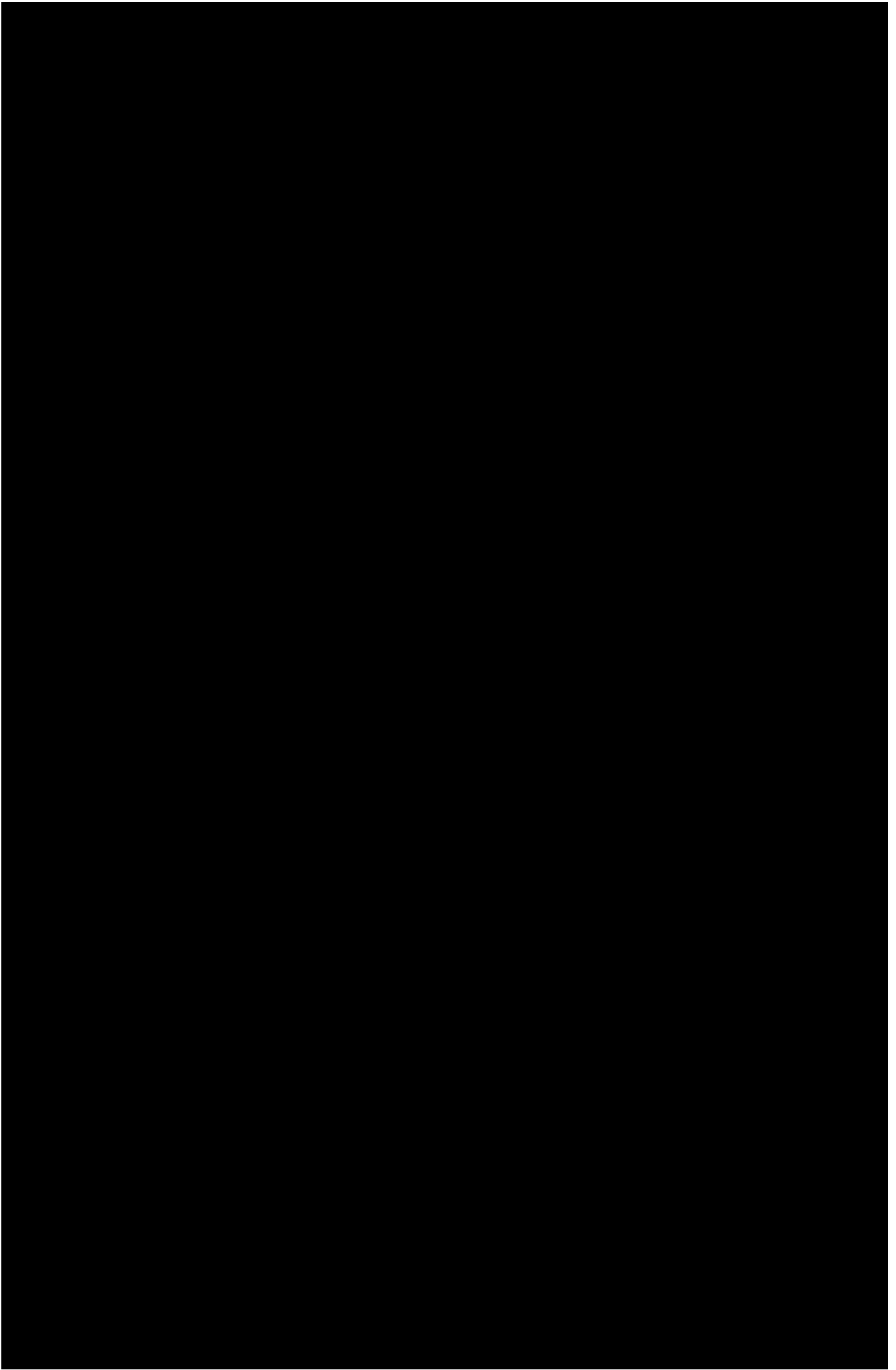
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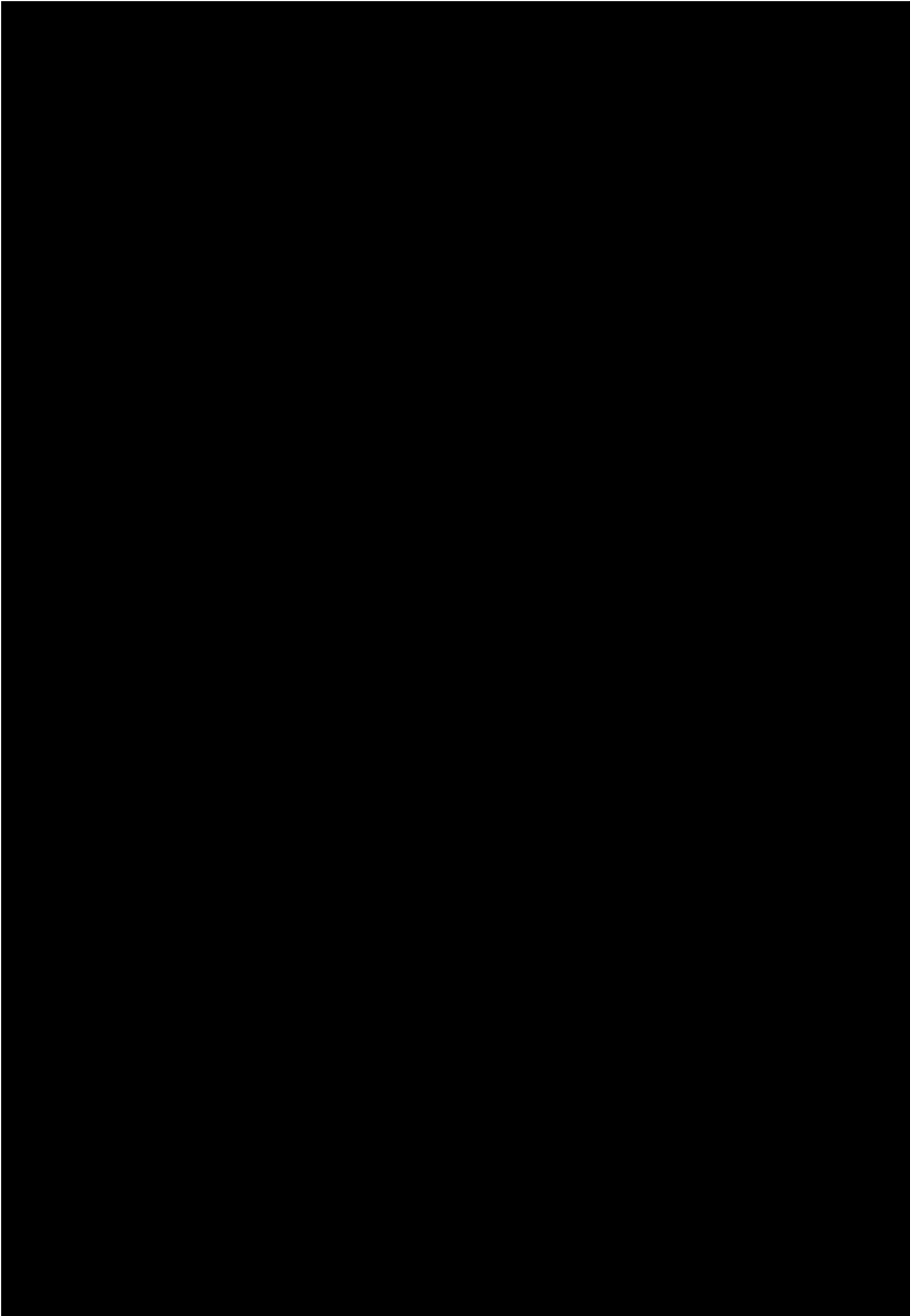
**Demonstrate how you will deliver the requirements for year one of the service 3.1.20 of the specification**

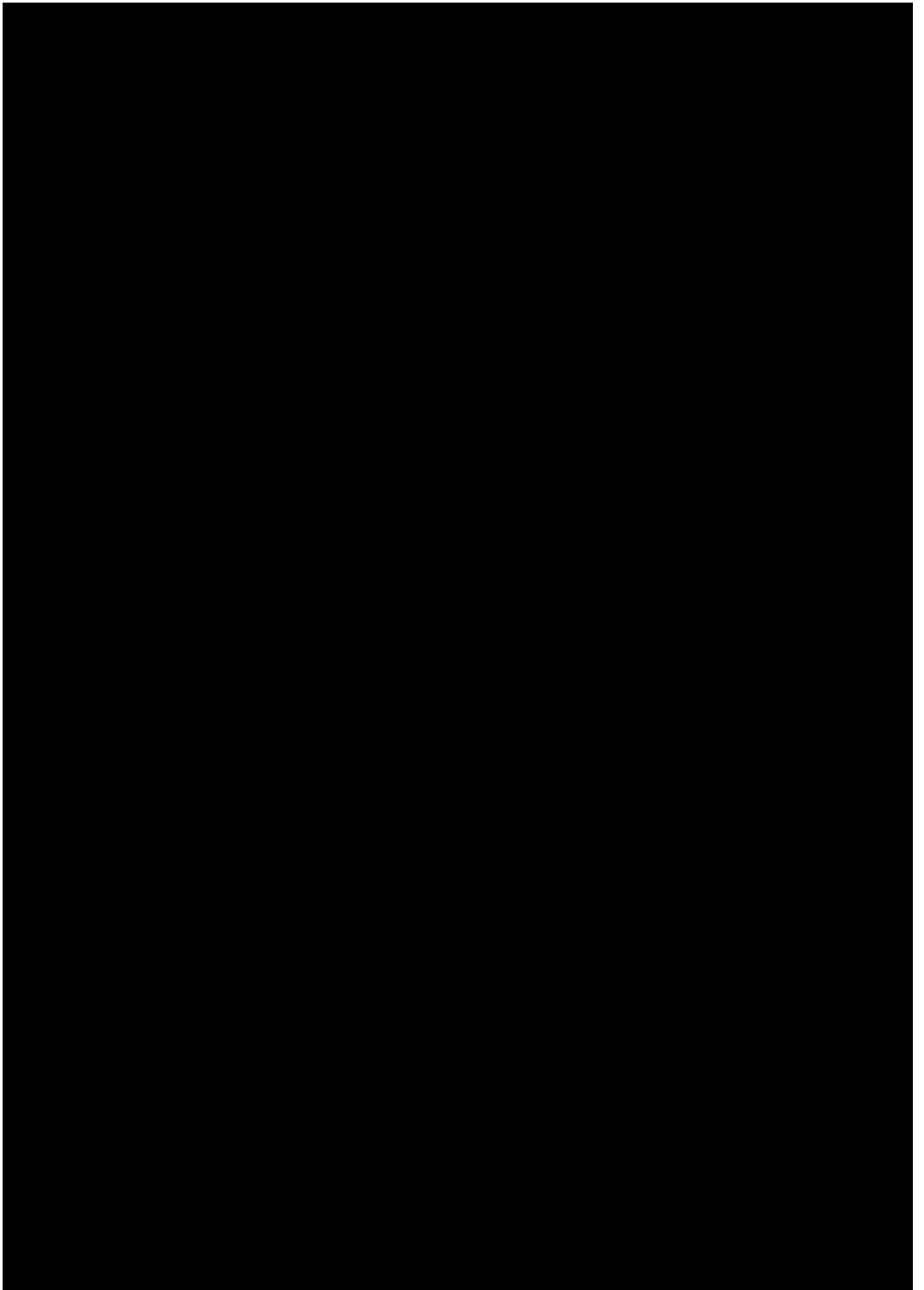
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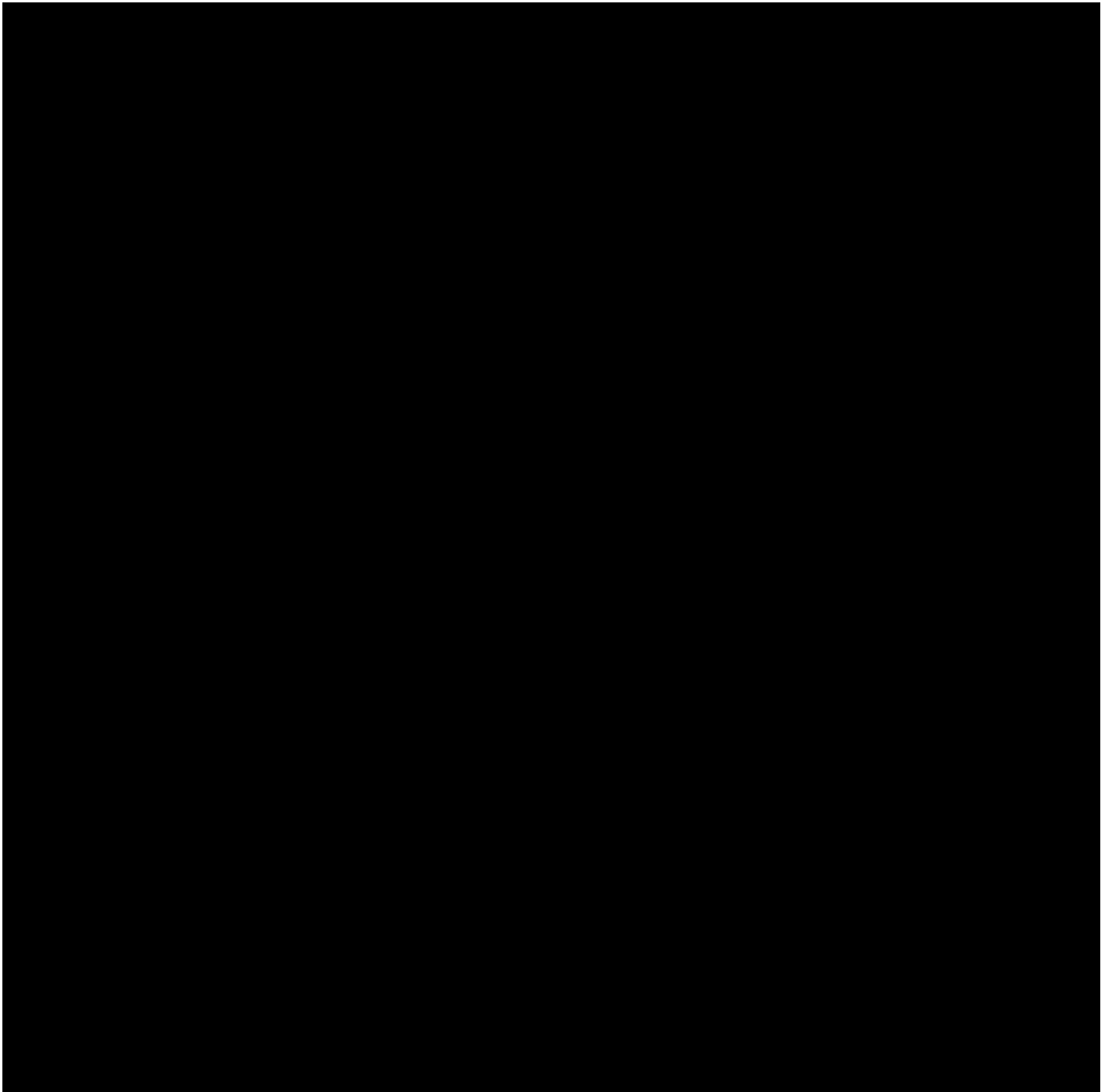
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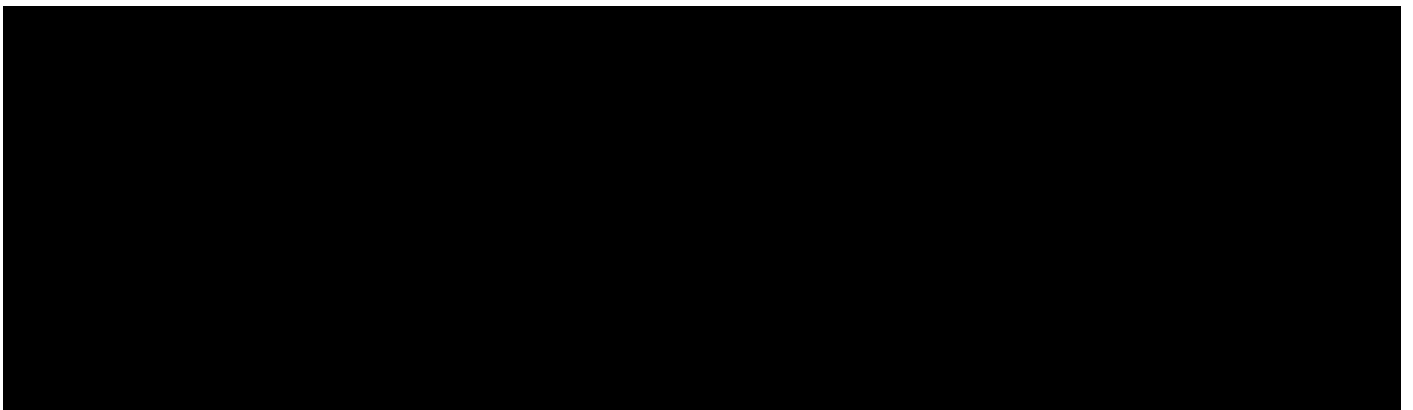


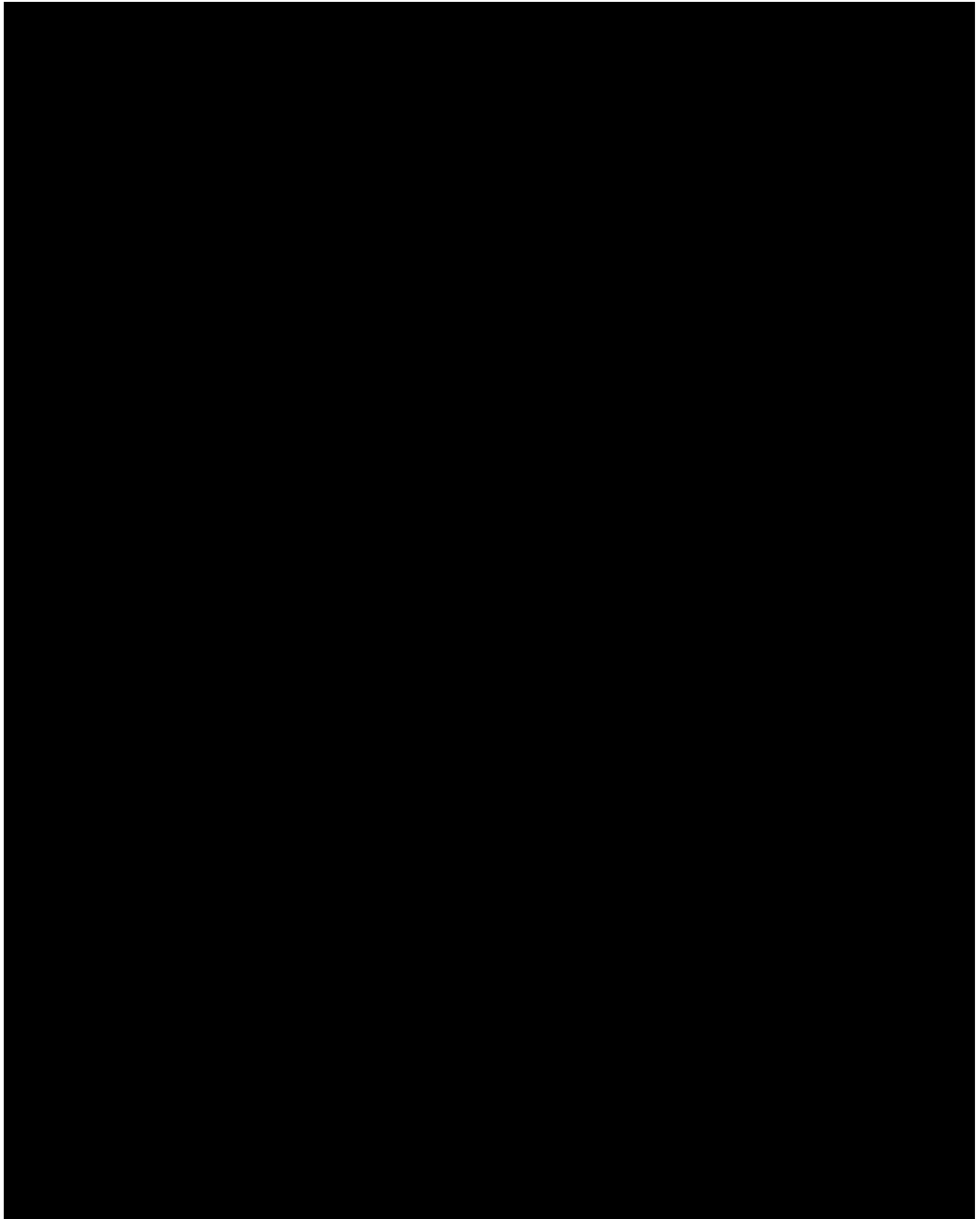


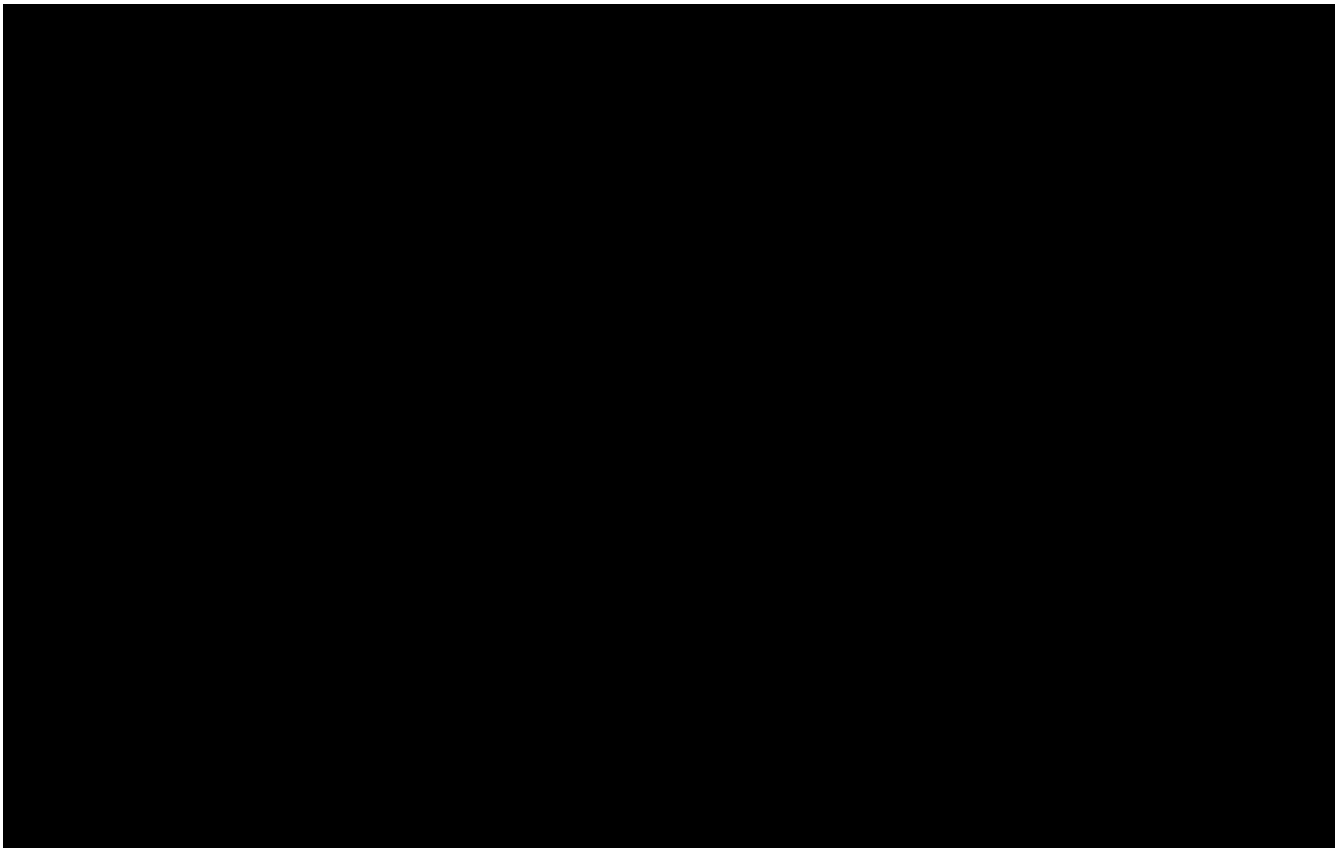




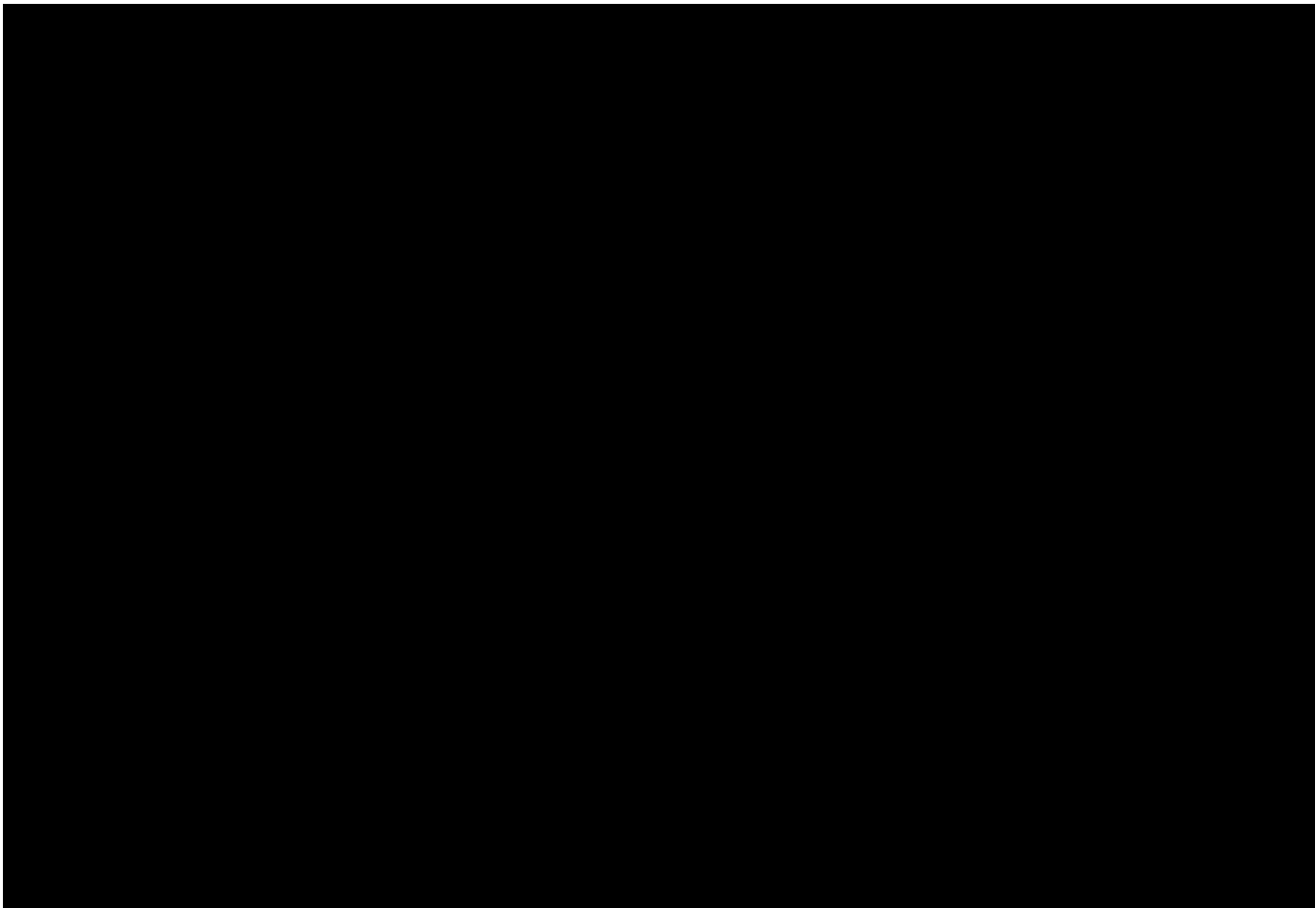
**Detail how your proposed service can be flexible and agile to meet emerging challenges and the changing needs of the NHS and partner organisations in the Volunteer Responder programme**



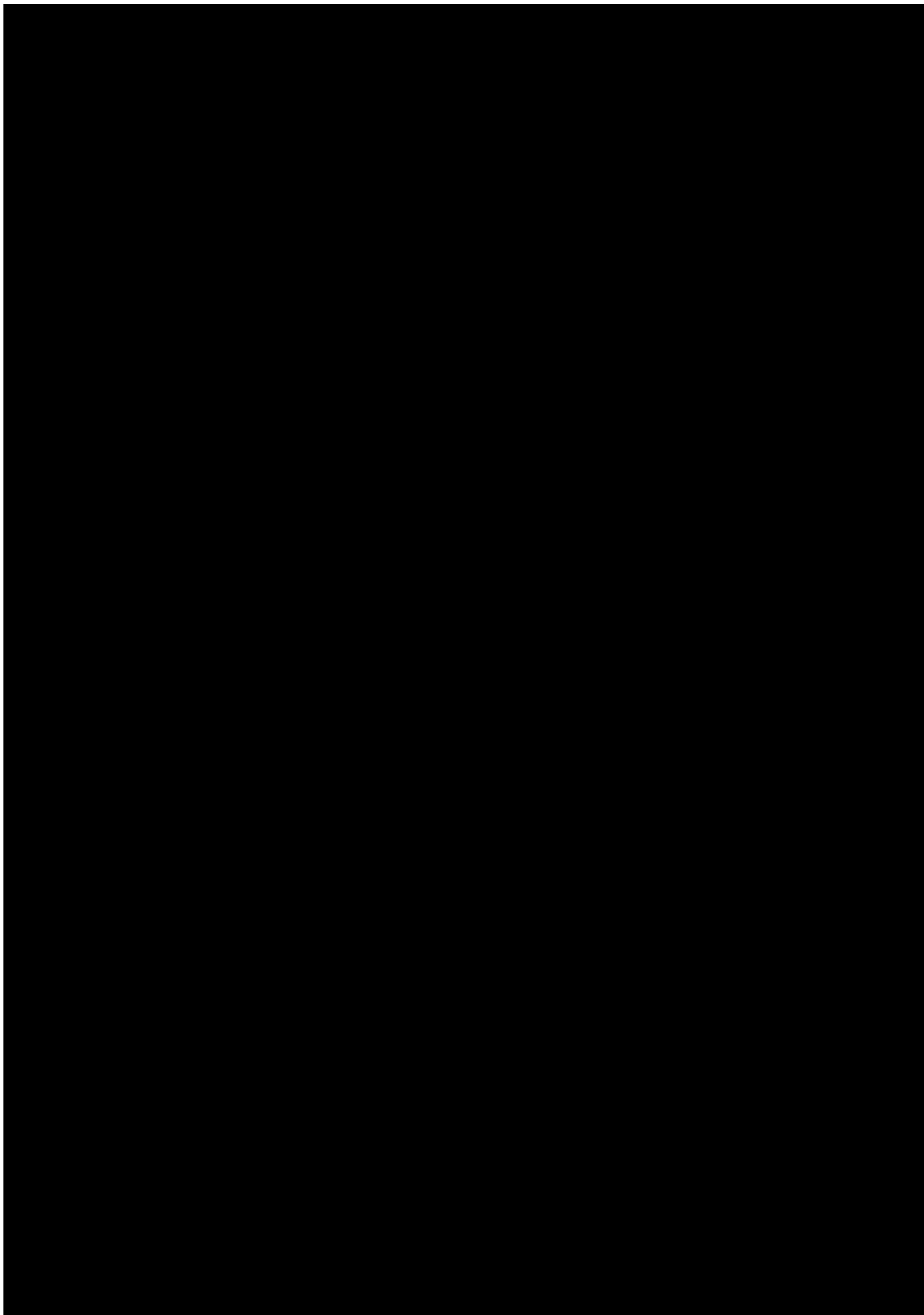


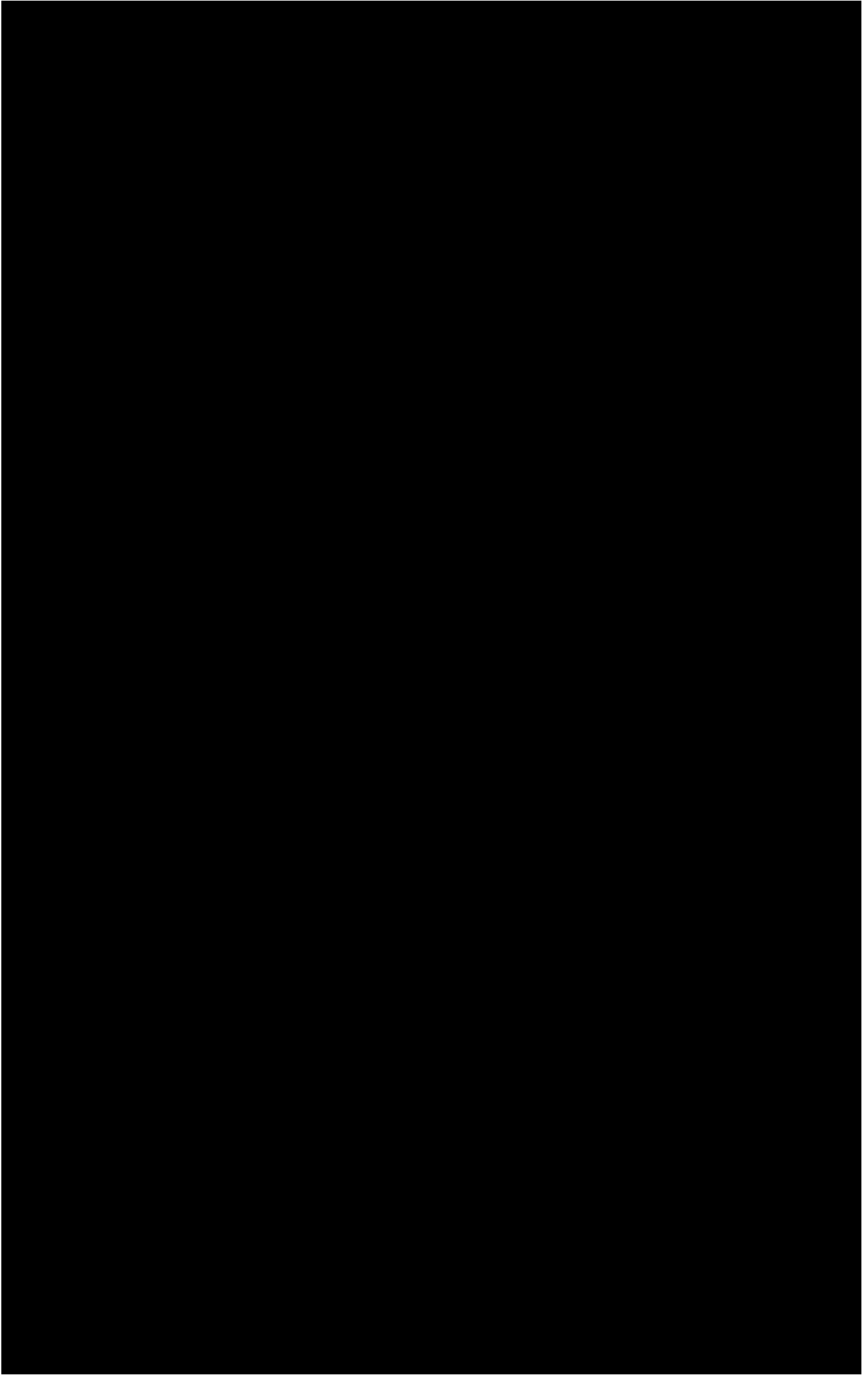


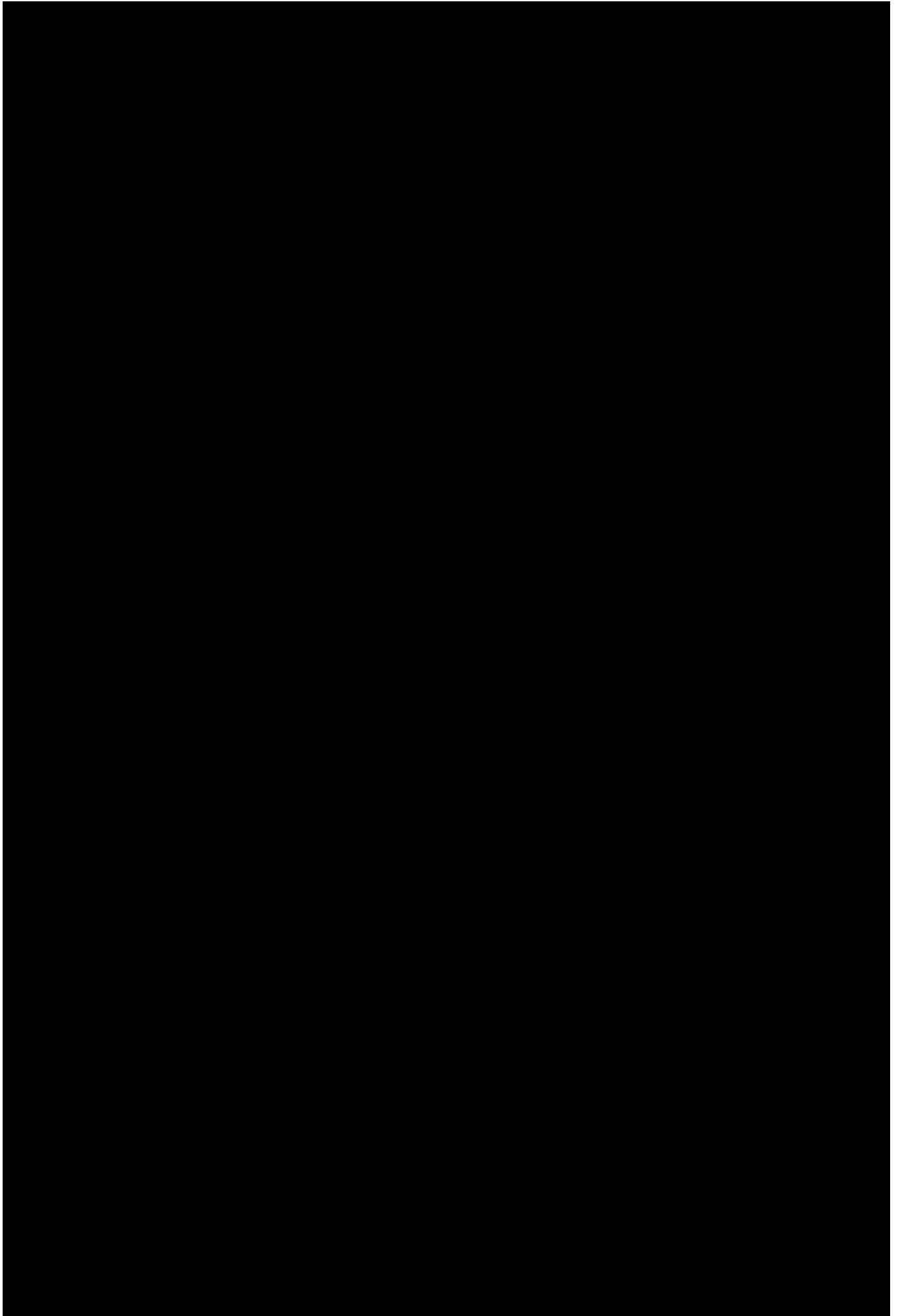
**Detail how you will maintain a sufficient cohort of diverse NHS Volunteer Responders (directly managed or managed by third parties) that responds to changing demand throughout the contract ensuring a good volunteer experience, training and retention for a large cohort of volunteers working nationally and/or through third parties**

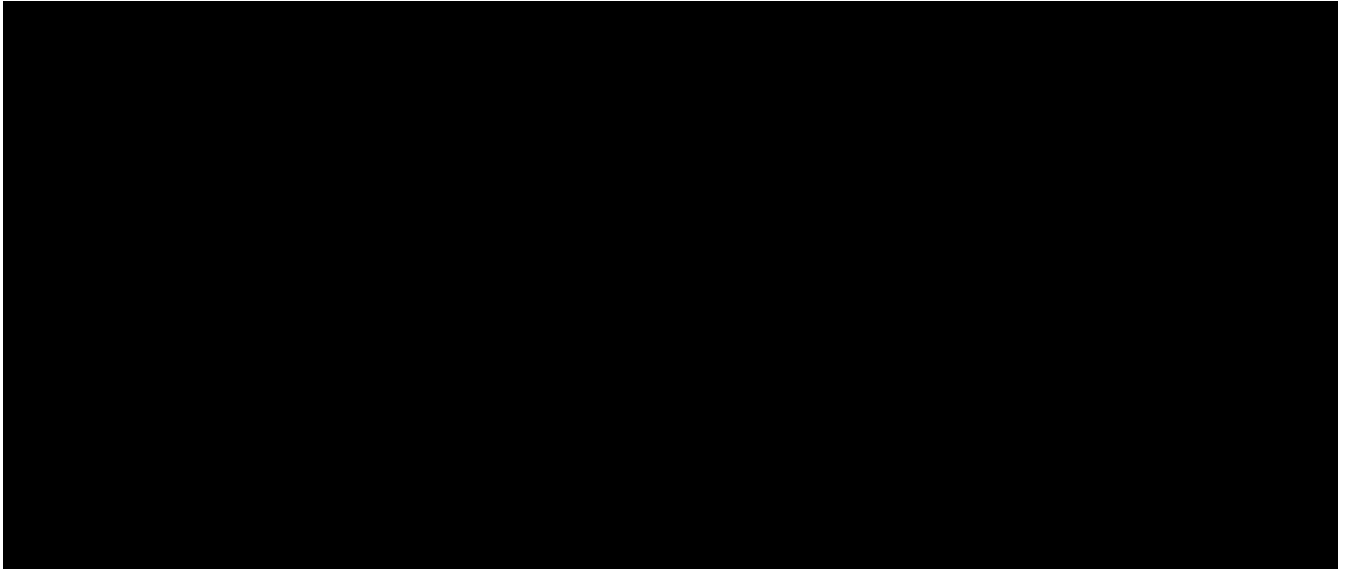




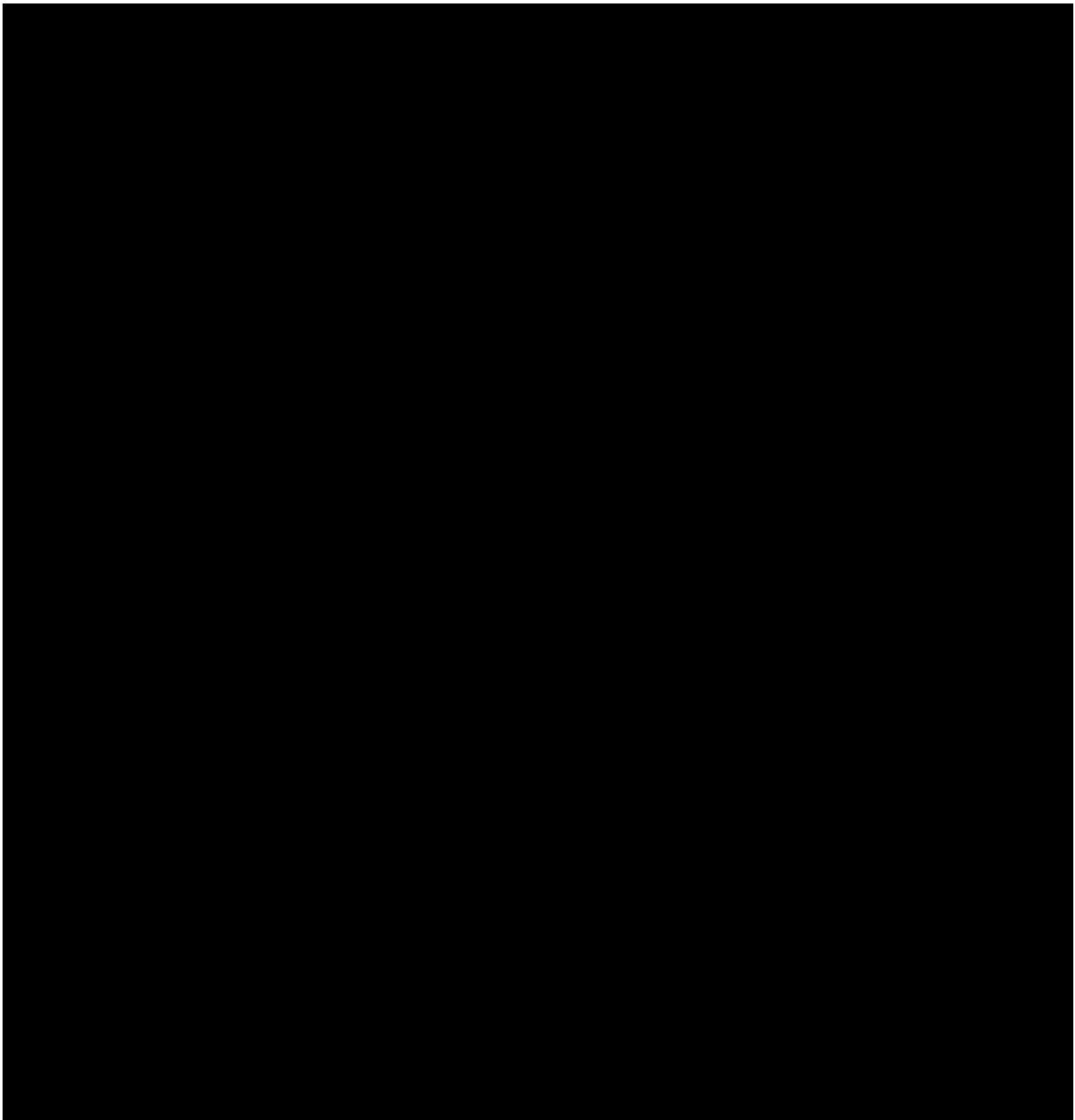


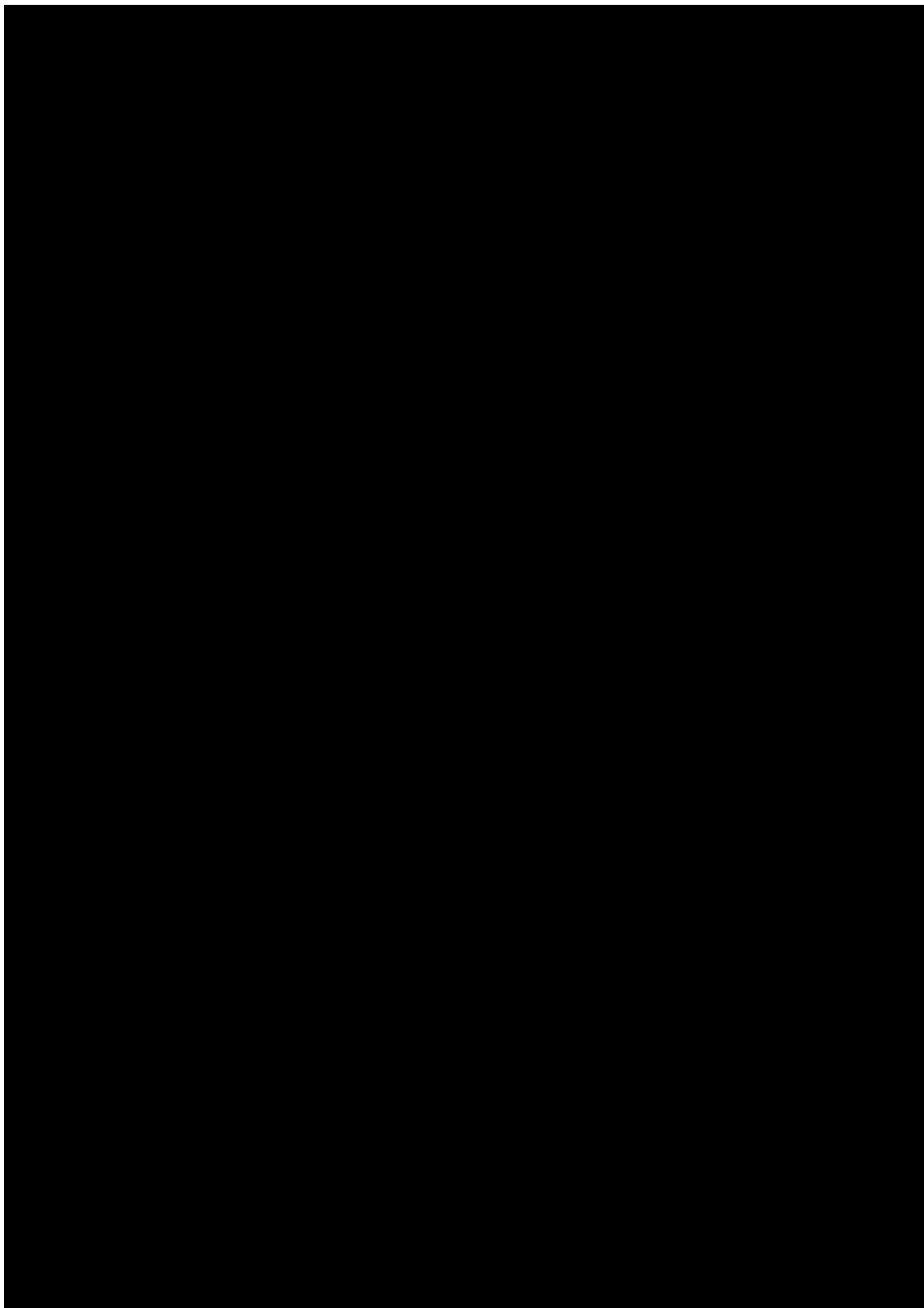






**Detail how you will obtain feedback from service users (third party organisations, volunteers, clients and referrers) and stakeholders and how you use this to maintain and improve service levels**





[Redacted]

Detail how you will deliver a development, support and assurance role to third party organisations deploying volunteers in order to enable access to the NHS VR programme infrastructure and to support the management, flexible tasking and sharing of volunteers

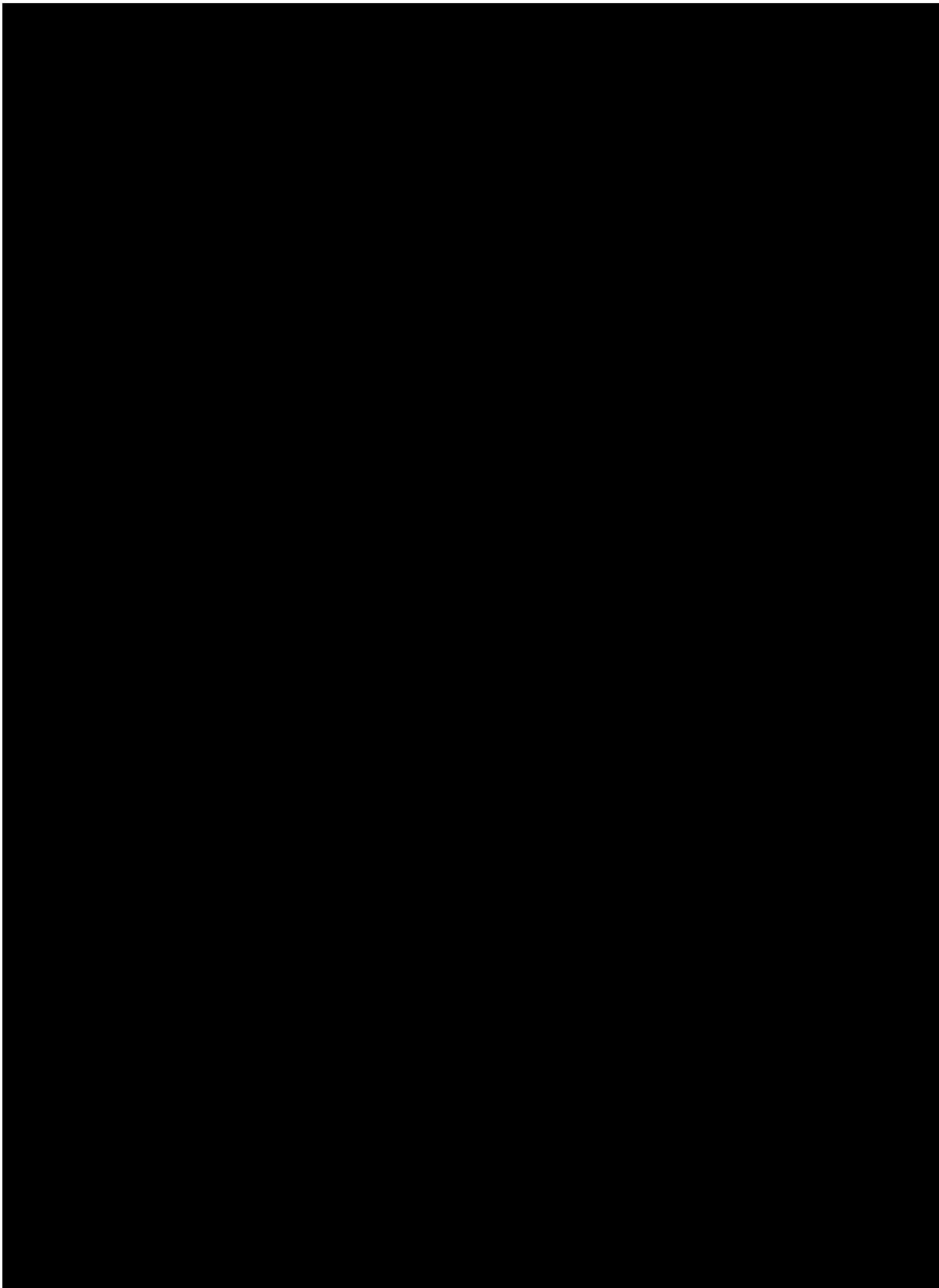
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[Redacted]



**Detail how you will ensure how you will develop and deliver sufficient safeguarding of children and vulnerable adults through policies, processes and training**



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



• [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Confirm that you and/or any relevant subcontractor have completed, are working towards or can provide assurance of The NHS Data Security & Protection Tool Kit (DPST) and IT Security Standard ISO 15408**

DSPToolkitNHS.pdf

Cyber essentials certification.pdf

CyberEssentialsPlus.pdf

#### **Social Value Delivery**

**Detail how you will ensure that volunteering is delivered in the most sustainable way to support Carbon reduction and NHS Net Zero ambitions**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Detail how you will support the physical and mental health and wellbeing of staff and volunteers through the delivery of this contract

[REDACTED]

[REDACTED]

[Redacted text block]

[Redacted text block]

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[REDACTED]

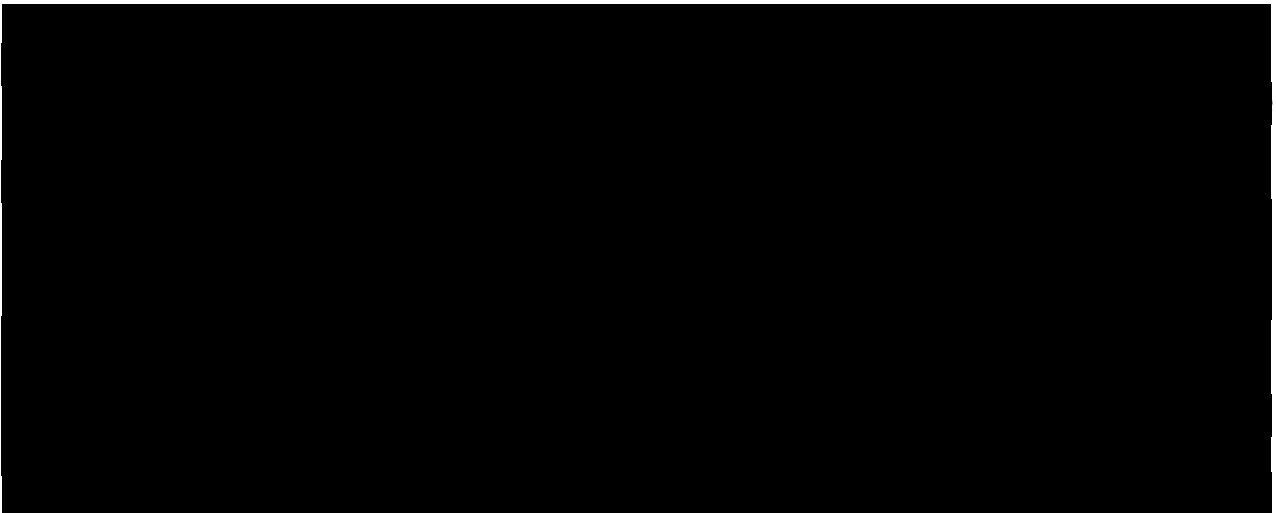
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**[REDACTED] – Clarification Questions**

**1. Please could you clarify your response to - 'Detail how you will obtain feedback from service users (third party organisations, volunteers, clients and referrers) and stakeholders and how you use this to maintain and improve service levels' (tender Q) - in particular how you will convert feedback into operational improvements**

**Summary of Feedback methods**

<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>



[Redacted]

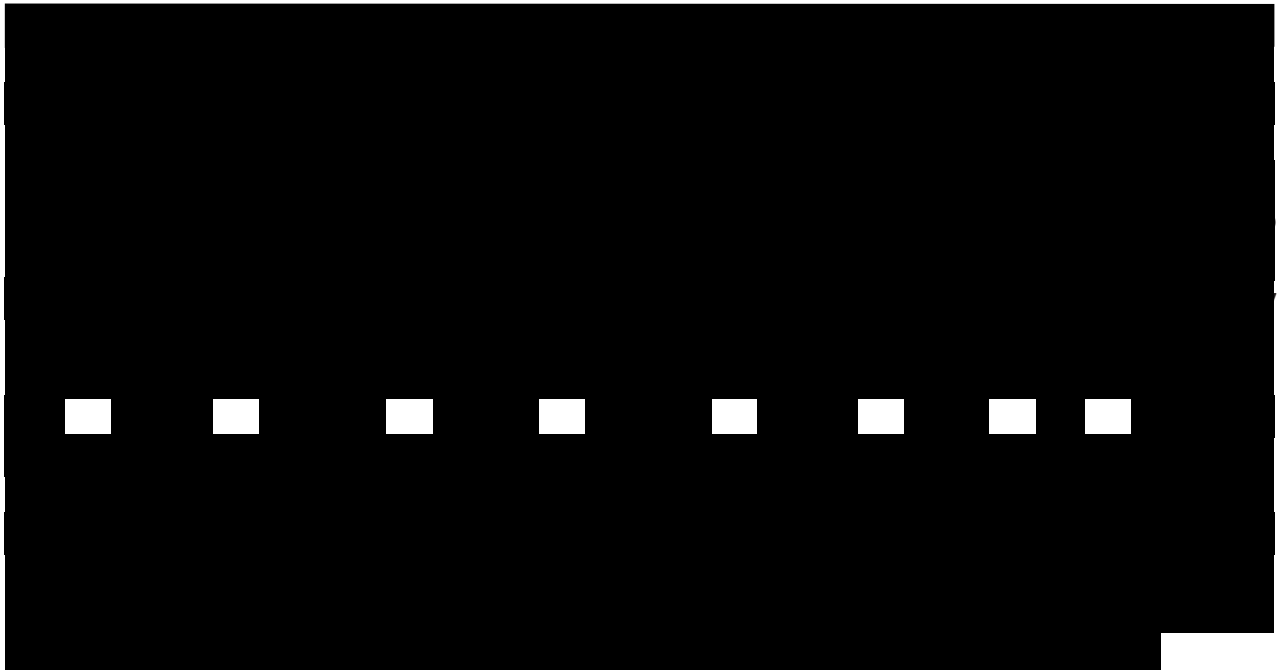
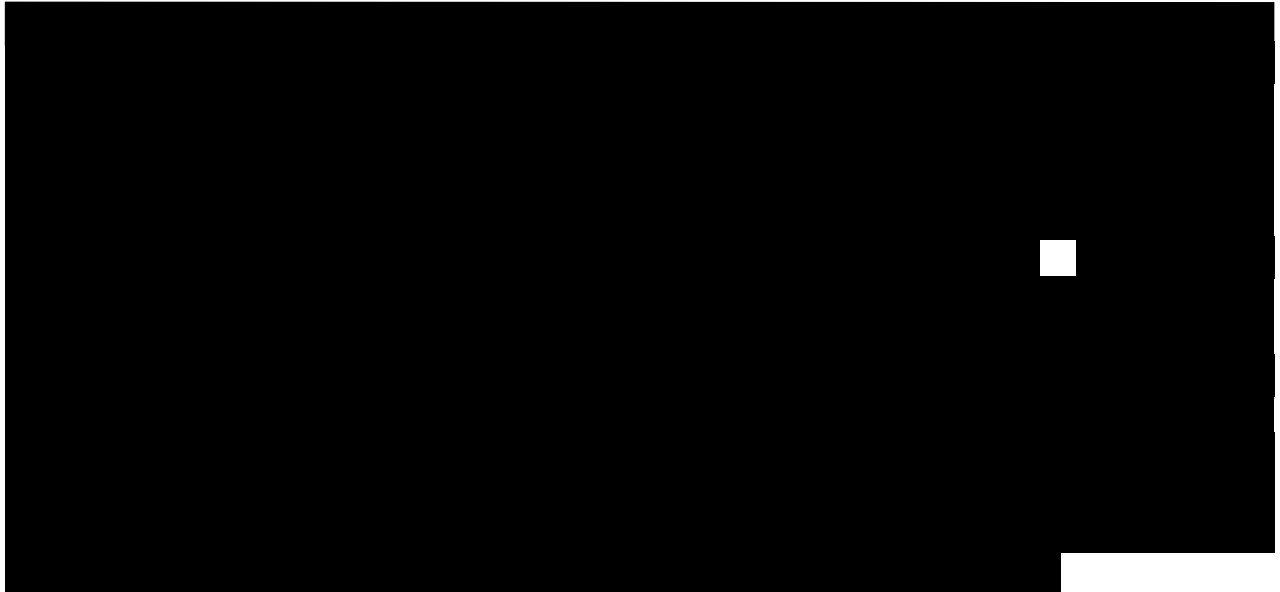
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**██████████** could you clarify your response to - 'Detail how you will maintain a sufficient cohort of diverse NHS Volunteer Responders (directly managed or managed by third parties) that responds to changing demand throughout the contract ensuring a good volunteer experience, training and retention for a large cohort of volunteers working nationally and/or through third parties' (tender Q) - in particular how you will respond to the following KPIs:



- Evidence of measures taken to ensure volunteers and service users are representative of the communities the programme serves. (Using data at a local and national level such as the Health Inequalities Improvement Dashboard)
- Evidence of measures taken to support the reduction of inequalities at both a national and system level using the Core20PLUS5 methodology

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

- [Redacted list item]

- [Redacted list item]

- [Redacted list item]

[Redacted text block]

- 3. Please could you clarify your response to ‘demonstrate how you will deliver the year one service specification’ – in particular how you will develop robust partnerships with other organisations such as local VCSE organisations, health systems and other partners at a local and regional level to build successful operational partnerships (section 3.1.1.8 – 3.1.1.10 & 3.1.22)**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Requirement 3.1.1.9** *(The supplier will create a process to quality assure other providers that might be able to deploy volunteers directly through the NHS Volunteer Responders programme including NHS, adult social care and voluntary sector organisations. The supplier will also establish consistent policies for other organisations to comply with when using the service, including (but not limited to) expenses, safeguarding, communication with volunteers, and operating standards.)*

[REDACTED]

[REDACTED] **3.1.10** (The supplier will maintain a national call centre, safeguarding and problem-solving service that can be called upon to support roles directly managed by the supplier and any other organisations approved to deploy volunteers through the programme.)

[REDACTED]

**Requirement 3.1.22** (The supplier will work with NHS England during year one of the programme to develop the new delivery model (to include multiple agencies accessing the programme infrastructure) and detailed delivery outputs for years 2 and 3 within the first 12 months of delivery.)

[REDACTED]

**4. Please provide further clarity and break down of the following sections on the commercial schedule:**

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**Schedule 6**

**Commercial Schedule**

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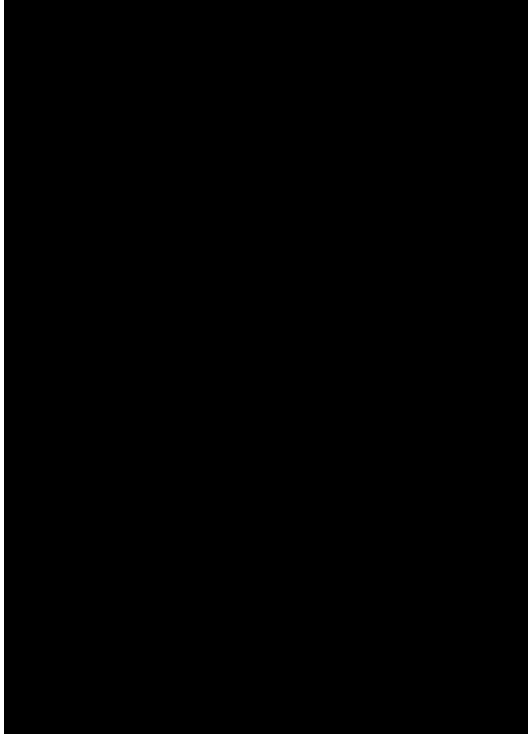
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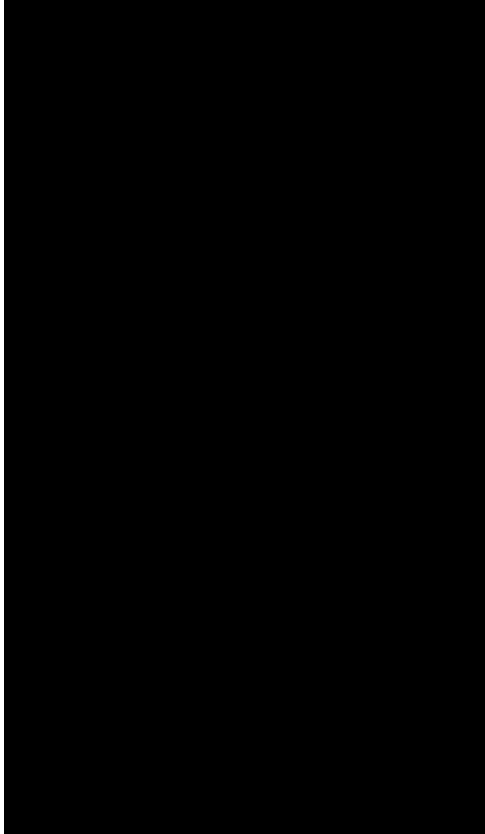
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* [REDACTED]
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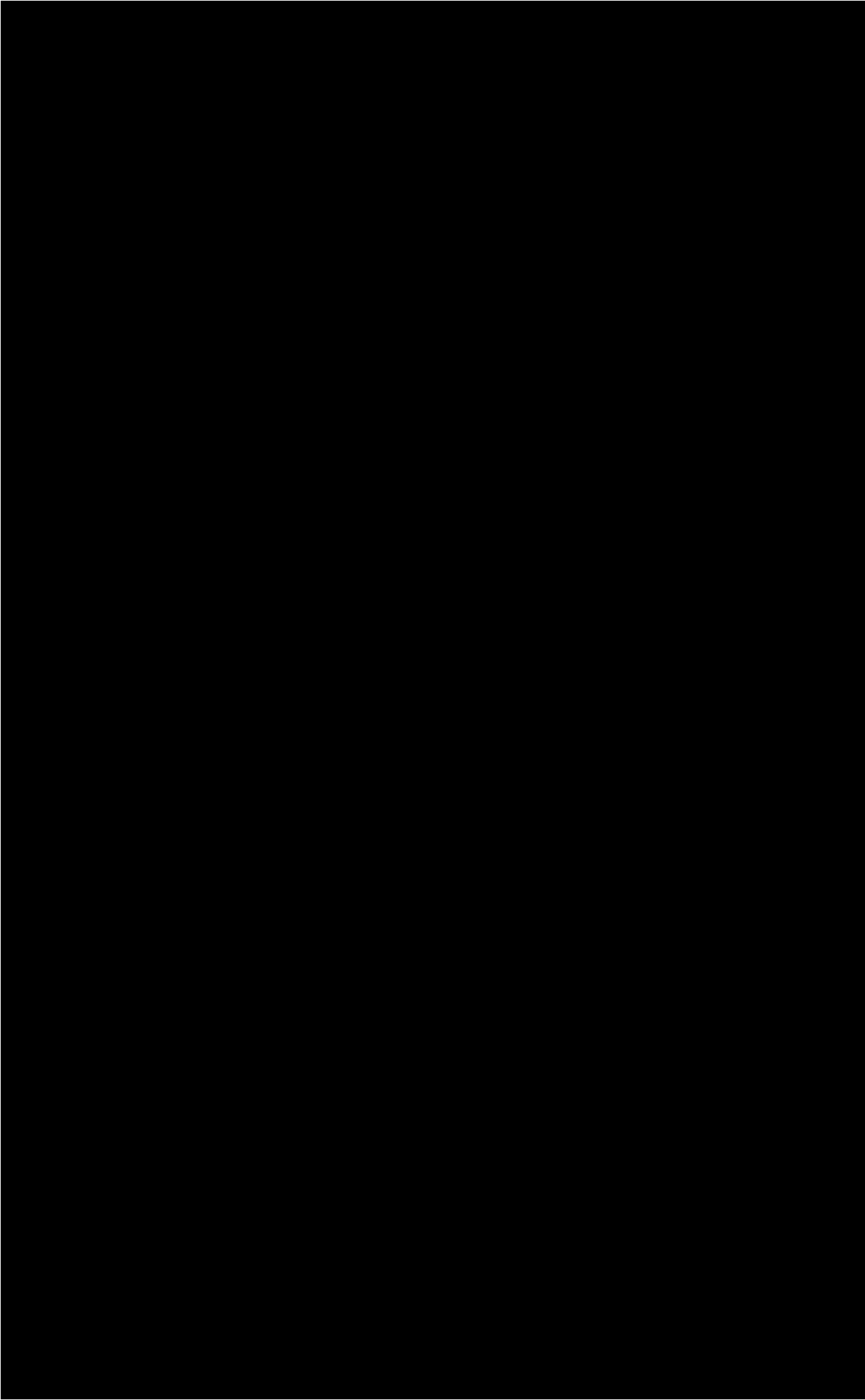


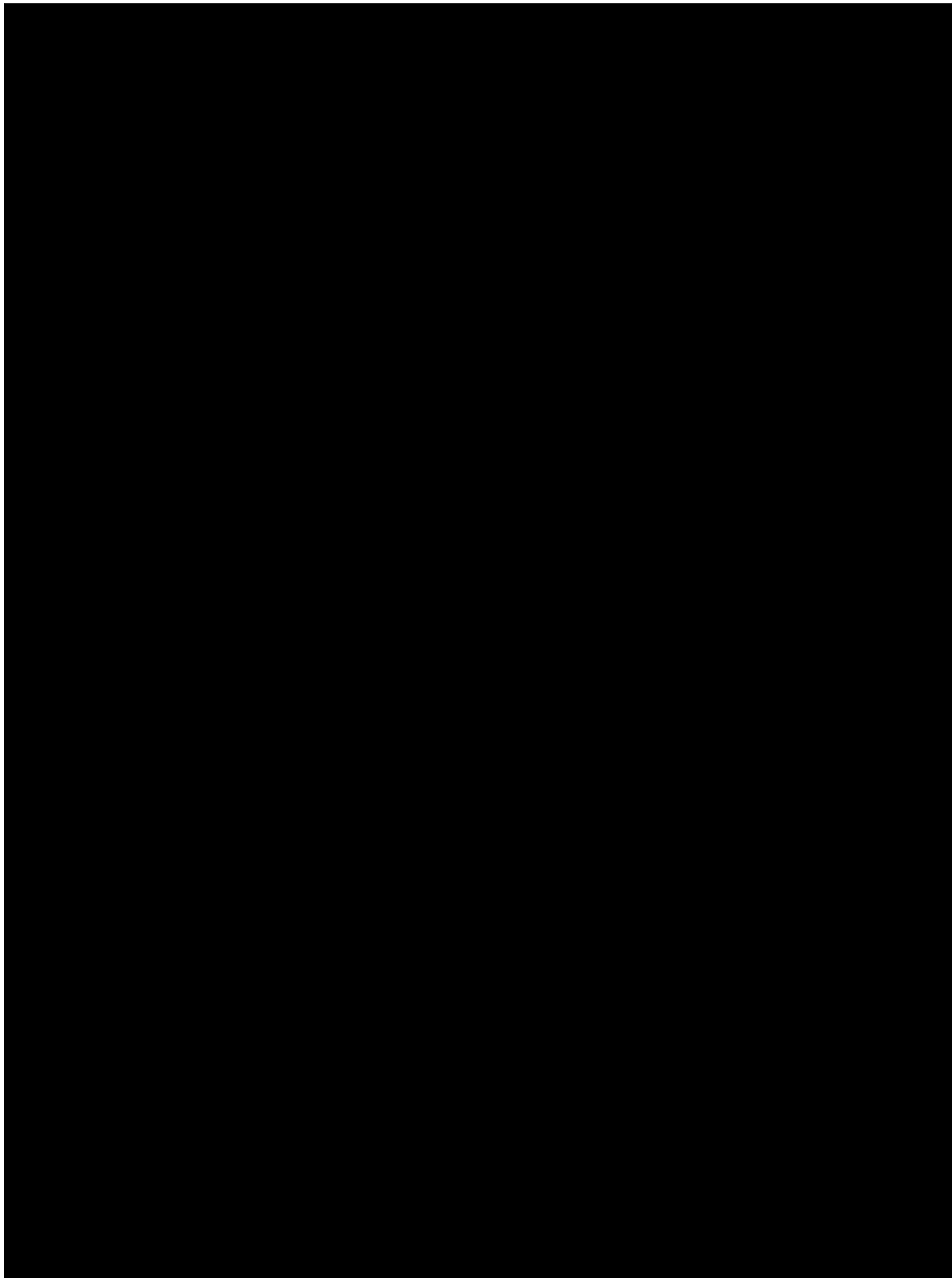






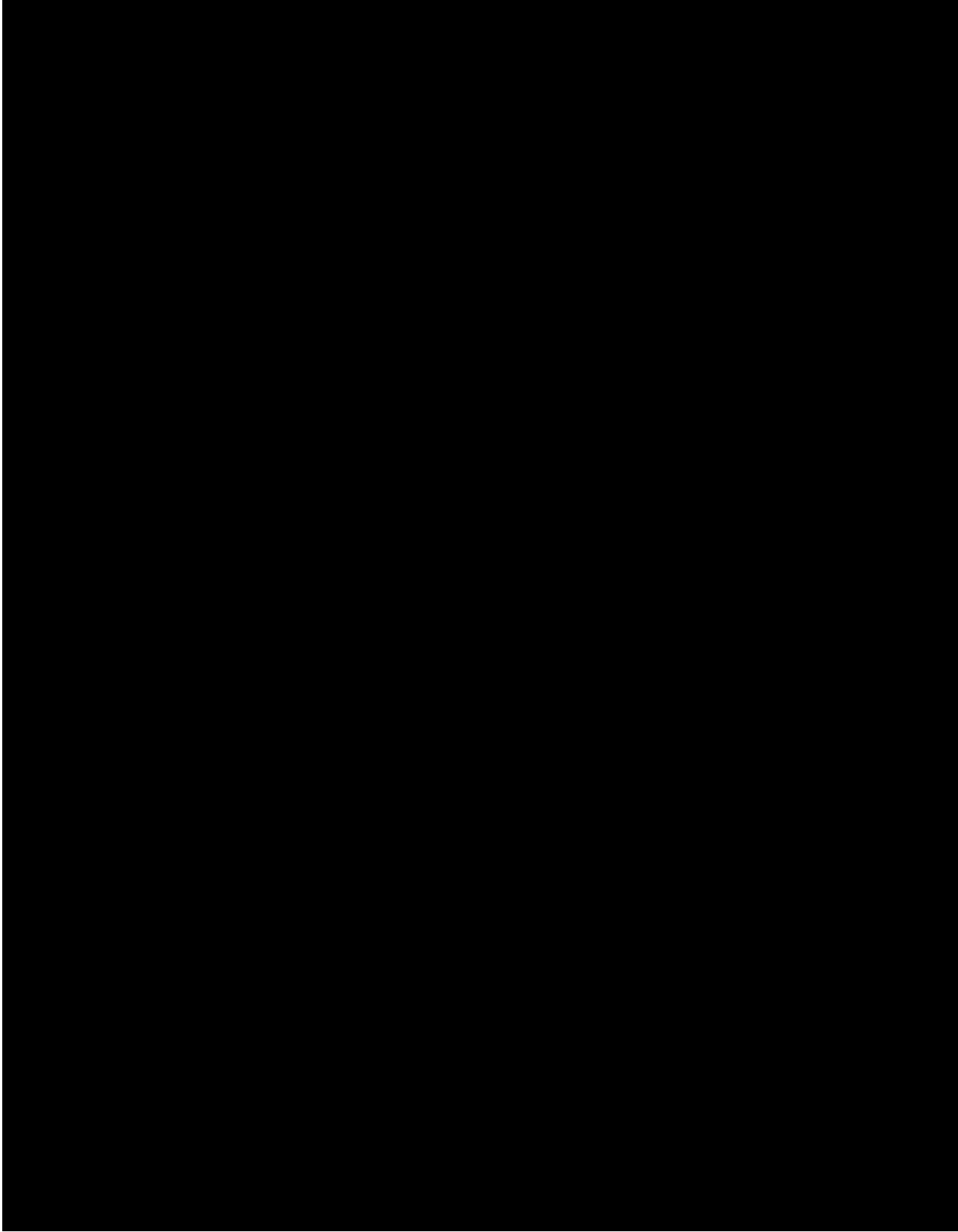
















## **Schedule 7**

### **Staff transfer**

The optional parts of this Schedule 7 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 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.

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

Not Used

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

Not Used

**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)**

Not Used

**Broadly comparable pension benefits ☐ (Clause Error! Reference source not found. 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 Error! Reference source not found. of this Part D of Schedule 7)**

Not Used

## **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 0.
- 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 0.
  - 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 0 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 0). 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 0.
- 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 0 (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 0).
- 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 0. The Parties will pay any such third party costs incurred pursuant to this paragraph 1.6.7 of this 0 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 0 neither Party may commence legal proceedings in relation to a Dispute until the dispute resolution procedures set out in this 0 have been exhausted. For the avoidance of doubt, either Party may commence legal proceedings to enforce the Expert's Decision.
- 1.9 This 0 shall survive the expiry of or earlier termination of this Contract for any reason.

**Schedule 9**

**Data Processing Agreement (DPA)**

DATA PROCESSING AGREEMENT

between

(1) The NHS Commissioning Board (known as NHS England)

and

(2) [Insert relevant supplier name]

CONTENTS

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ANNEX – DATA PROCESSING SERVICES.....26	



**THIS AGREEMENT** is made on

2022

**BETWEEN:**

- (1) The NHS Commissioning Board of Quarry House, Leeds, LS2 7UE (**NHS England**); and
- (2) **[INSERT SUPPLIER NAME]** [of **[INSERT ADDRESS]**] **[OR]** [a company registered in England and Wales (registered number: **[INSERT NUMBER]**)] with its registered office at **[INSERT ADDRESS]**] (**Supplier**).

*[Drafting note: If the supplier is a public sector organisation use the first option that sets out the name and address. If the supplier is a private sector organisation use the second option that sets out details of the registered office and the company number.]*

**BACKGROUND**

- (A) NHS England has appointed the Supplier to provide the Services (as defined below) under an agreement dated **[INSERT DATE]** (the **Supply Agreement**) for the provision of **[insert description of goods/services supplied]**.
- (B) In performing the Services, the Supplier is required to process certain Personal Data (as defined below). NHS England has agreed to provide such Personal Data to the Supplier for processing only in accordance with the terms of this Agreement from the date on which this Agreement is entered into (the **Commencement Date**).
- (C) To the extent that the Supply Agreement contains any provisions which govern the processing of Personal Data by the Supplier, the parties agree and acknowledge that the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 The following definitions shall apply in this Agreement:

**Controller** shall take the meaning given in the Data Protection Legislation;

**Data Guidance** means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with the Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Supplier by NHS England and/or any relevant Regulatory or Supervisory Body. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, the Department of Health, NHS England, the Health Research

Authority, Public Health England, the European Data Protection Board and the Information Commissioner;

**Data Loss Event** means any event that results, or may result, in unauthorised processing of Personal Data held by the Provider under this Agreement or Personal Data that the Provider has responsibility for under this Agreement including without limitation actual or potential loss, destruction, corruption or inaccessibility of Personal Data, including any Personal Data Breach.

**Data Processing Services** means the data processing services described in the Annex to this Agreement;

**Data Protection Impact Assessment** means an assessment by NHS England of the impact of the envisaged processing on the protection of Personal Data;

**Data Protection Legislation** means (i) the DPA 1998 (ii) the GDPR, the LED and any applicable national Laws implementing them as amended from time to time (iii) the DPA 2018 (iv) all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations

**Data Protection Officer** shall take the meaning given in the Data Protection Legislation;

**Data Subject** shall take the meaning given in the Data Protection Legislation;

**Data Subject Access Request** 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;

**DPA 1998** means the Data Protection Act 1998

**DPA 2018** means Data Protection Act 2018;

**EU** means the European Union;

**European Data Protection Board** has the meaning given to it in the Data Protection Legislation;

**GDPR** means the General Data Protection Regulation (Regulation (EU) 2016/679)

**Information Commissioner** means the independent authority established to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals ico.org.uk and any other relevant data protection or supervisory authority recognised pursuant to the Data Protection Legislation;

**Law** means any law or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

**LED** means the Law Enforcement Directive (Directive (EU) 2016/680)

**Personal Data** shall take the meaning given in the Data Protection Legislation;

**Personal Data Breach** shall take the meaning given in the Data Protection Legislation;

**Processor** shall take the meaning given in the Data Protection Legislation;

**Processing** and cognate terms shall have the meaning given in the Data Protection Legislation;

**Protective Measures** 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 the such measures;

**Regulatory or Supervisory Body** means any statutory or other body having authority to issue guidance, standards or recommendations with which the Supplier and/or Supplier Personnel must comply or to which it or they must have regard, including:

- (i) CQC;
- (ii) NHS Improvement;
- (iii) NHS England;

- (iv) the Department of Health;
- (v) the National Institute for Health and Care Excellence;
- (vi) Healthwatch England and Local Healthwatch;
- (vii) Public Health England;
- (viii) the General Pharmaceutical Council;
- (ix) the Healthcare Safety Investigation Branch;
- (x) Information Commissioner;
- (xi) European Data Protection Board;

**Services** means the goods and/or services to be supplied by the Supplier under the Supply Agreement;

**Sub-processor** means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;

**Supplier Personnel** means any and all persons employed or engaged from time to time in the provision of the Services and/or the processing of Personal Data whether employees, workers, consultants or agents of the Supplier or any subcontractor or agent of the Supplier.

**Working Day** means a day other than a Saturday, Sunday or bank holiday in England

- 1.1.1 reference to any legislative provision shall be deemed to include any statutory instrument, bye law, regulation, rule, subordinate or delegated legislation or order and any rules and regulations which are made under it, and any subsequent re-enactment, amendment or replacement of the same;
- 1.1.2 the Annex forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annex; and
- 1.1.3 references to clauses and Annexes are to clauses and Annexes to this Agreement.

## **2 SCOPE OF THIS AGREEMENT**

2.1 In consideration of the sum of £1 (receipt of which the Supplier expressly acknowledges) and in consideration of NHS England agreeing to provide or procure the provision of Personal Data to the Supplier, the parties have agreed that:

2.1.1 from the Commencement Date, the terms of this Agreement will apply to and govern all processing of Personal Data by the Supplier pursuant to the Supply Agreement; and

2.1.2 this Agreement is supplemental to the Supply Agreement and, in the case of conflict or inconsistency between any of the provisions of this Agreement and the provisions of the Supply Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

## **3 PROCESSING OF PERSONAL DATA**

3.1 The Parties acknowledge that for the purposes of the Data Protection Legislation and the delivery of the Data Processing Services, NHS England is the Controller and the Supplier is the Processor.

3.2 The Supplier shall notify NHS England immediately if it considers that any of NHS England's instructions infringe the Data Protection Legislation.

3.3 The Supplier shall provide all reasonable assistance to NHS England in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of NHS England, include:

3.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

3.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Data Processing Services;

3.3.3 an assessment of the risks to the rights and freedoms of natural persons; and

3.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 3.4 The Supplier shall provide all reasonable assistance to NHS England if the outcome of the Data Protection Impact Assessment leads NHS England to consult the Information Commissioner.
- 3.5 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement :
  - 3.5.1 process that Personal Data only in accordance with the instructions set out in the Annex, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify NHS England before processing the Personal Data unless prohibited by Law.
  - 3.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by NHS England as appropriate to protect against a Data Loss Event having taken account of the:
    - 3.5.2.1 nature of the data to be protected;
    - 3.5.2.2 harm that might result from a Data Loss Event;
    - 3.5.2.3 state of technological development; and
    - 3.5.2.4 cost of implementing any measures.
  - 3.5.3 ensure that:
    - 3.5.3.1 the Supplier Personnel do not process the Personal Data except in accordance with this Agreement (and in particular the Annex)
    - 3.5.3.2 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:
      - 3.5.3.2.1 are aware of and comply with the Supplier's duties under this clause;
      - 3.5.3.2.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor that are in writing and are legally enforceable;
      - 3.5.3.2.3 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 advance and in writing to do so by NHS England or as otherwise permitted by this Agreement.

3.5.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data that enables them and the Supplier to comply with their responsibilities under the Data Protection Legislation and this Agreement. The Supplier shall provide NHS England with evidence of completion and maintenance of that training within three Working Days of request by NHS England.

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

3.5.4.1 NHS England or the Supplier has provided appropriate safeguards in relation to the transfer as determined by NHS England;

3.5.4.2 the Data Subject has enforceable rights and effective legal remedies;

3.5.4.3 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 NHS England in meeting its obligations) and;

3.5.4.4 the Supplier complies with any reasonable instructions notified to it in advance by NHS England with respect to the processing of the Personal Data.

3.5.5 at the written direction of NHS England, delete or return the Personal Data (and any copies of it) to NHS England on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data. If the Supplier is asked to delete the Personal

Data the Supplier shall provide NHS England with evidence that the Personal Data has been securely deleted in accordance with the Data Protection Legislation within a period agreed within the written direction of NHS England.

- 3.6 Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Supplier shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, but not limited to, as appropriate:
- 3.6.1 the pseudonymisation and encryption of Personal Data;
  - 3.6.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - 3.6.3 the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
  - 3.6.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of processing.
- 3.7 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 3.7.1 notify NHS England in writing of the intended Sub-processor and processing;
  - 3.7.2 obtain the written consent of NHS England;
  - 3.7.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Agreement such that they apply to the Sub-processor and in respect of which NHS England is given the benefits of third party rights to enforce the same; and
  - 3.7.4 provide NHS England with such information regarding the Sub-processor as NHS England may reasonably require.
- 3.8 The Supplier shall ensure that the third party's access to the Personal Data terminates automatically on termination of this Agreement for any reason save that the Sub-processor may access the Personal Data in order to securely destroy it.



- 3.9 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 3.10 Subject to **clause 3.13**, the Supplier shall notify NHS England immediately if it:
- 3.10.1 receives a Data Subject Access Request (or purported Data Subject Access Request) connected with Personal Data processed under this Agreement;
  - 3.10.2 receives a request to rectify, block or erase any Personal Data connected with Personal Data processed under this Agreement;
  - 3.10.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation connected with Personal Data processed under this Agreement;
  - 3.10.4 receives any communication from the Information Commissioner or any other Supervisory or Regulatory Body connected with Personal Data processed under this Agreement;
  - 3.10.5 receives a request from any third party for disclosure of Personal Data connected with this Agreement; or
  - 3.10.6 becomes aware an actual or suspected Data Loss Event.
- 3.11 This notification shall be given by emailing the original request and any subsequent communications to [england.ig-corporate@nhs.net](mailto:england.ig-corporate@nhs.net).
- 3.12 The Supplier shall not respond substantively to the communications listed at clause 3.10 save that it may respond to a Regulatory or Supervisory Body following prior consultation with NHS England.
- 3.13 The Supplier's obligation to notify under clause 3.10 shall include the prompt provision of further information to NHS England in phases, as details become available.
- 3.14 Taking into account the nature of the processing, the Supplier shall provide NHS England with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under **clause 3.10** (and insofar as possible within the timescales reasonably required by NHS England) including by promptly providing:

- 3.14.1 NHS England with full details and copies of the complaint, communication or request;
- 3.14.2 such assistance as is reasonably requested by NHS England to enable NHS England to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- 3.14.3 such assistance as is reasonably requested by NHS England to enable NHS England to comply with other rights granted to individuals by the Data Protection Legislation including the right of rectification, the right to erasure, the right to object to processing, the right to restrict processing, the right to data portability and the right not to be subject to an automated individual decision (including profiling);
- 3.14.4 NHS England, at its request, with any Personal Data it holds in relation to a Data Subject;
- 3.14.5 assistance as requested by NHS England following any Data Loss Event;
- 3.14.6 assistance as requested by NHS England in relation to informing a Data Subject about any Data Loss Event, including communication with the Data Subject;
- 3.14.7 assistance as requested by NHS England with respect to any request from the Information Commissioner's Office, or any consultation by NHS England with the Information Commissioner's Office;
- 3.14.8 NHS England with any copies of requests from Data Subjects seeking to exercise their rights under the Data Protection Legislation. Such requests must be sent, to [england.ig-corporate@nhs.net](mailto:england.ig-corporate@nhs.net) immediately, and in no longer than one Working Day of receipt by the Supplier.
- 3.15 The Supplier shall allow for audits of its delivery of the Data Processing Services by NHS England or NHS England's designated auditor.
- 3.16 The Supplier shall provide NHS England with evidence to demonstrate compliance with all of its obligations under this Agreement and the relevant Data Protection Legislation.

- 3.17 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation, and shall communicate to NHS England the name and contact details of any Data Protection Officer.
- 3.18 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement, the Data Protection Legislation and Data Guidance. The Supplier must create and maintain a record of all categories of data processing activities carried out under this Agreement, containing:
  - 3.18.1 the categories of processing carried out under this Agreement;
  - 3.18.2 where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where relevant, the documentation of suitable safeguards;
  - 3.18.3 a general description of the Protective Measures taken to ensure the security and integrity of the Personal Data processed under this Agreement; and
  - 3.18.4 a log recording the processing of Personal Data in connection with this Agreement comprising, as a minimum, details of the Personal Data concerned, how the Personal Data was processed, where the Personal Data was processed and the identity of any individual carrying out the processing.
- 3.19 The Supplier shall ensure that the record of processing maintained in accordance with clause 3.18 is provided to NHS England within two Working Days of a written request from NHS England.
- 3.20 This Agreement does not relieve the Supplier from any obligations conferred upon it by the Data Protection Legislation.
- 3.21 The Parties agree to take account of any guidance issued by the Information Commissioner. NHS England may on not less than 30 Working Days' notice to the Supplier amend this Data Processing Agreement to ensure that it complies with any guidance issued by the Information Commissioner.
- 3.22 NHS England may, at any time on not less than 30 Working Days' notice, revise this clause by adding to it 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 Agreement).

- 3.23 The Supplier warrants and undertakes that it will deliver the Data Processing Services in accordance with all Data Protection Legislation, any Data Guidance and this Agreement and in particular that it has in place Protective Measures that are sufficient to ensure that the delivery of the Data Processing Services complies with the Data Protection Legislation and ensures that the rights of Data Subjects are protected. The Supplier shall not do or omit to do anything that will put NHS England in breach of the Data Protection Legislation or the Data Guidance. The Supplier shall, at all times during and after the expiry of this Agreement, indemnify NHS England and keep NHS England indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by NHS England arising from any breach of the Supplier's obligations under this clause.
- 3.24 The Supplier must assist NHS England in ensuring compliance with the obligations set out at Article 32 to 36 of the GDPR and equivalent provisions implemented into Law, taking into account the nature of processing and the information available to the Supplier.
- 3.25 The Supplier must take prompt and proper remedial action regarding any Data Loss Event.
- 3.26 The Supplier must assist NHS England by taking appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of NHS England's obligation to respond to requests for exercising rights granted to individuals by the Data Protection Legislation.

#### **4 TERM AND TERMINATION**

- 4.1 This Agreement shall commence on the Commencement Date. Unless terminated in accordance with this clause, this Agreement shall automatically terminate on termination or expiry of the Supply Agreement.
- 4.2 Without affecting any other right or remedy available to it, NHS England may immediately terminate this Agreement by notice in writing to the Supplier if the Supplier commits a material breach of any provision of this Agreement or the Supplier repeatedly breaches any of the provisions of this Agreement.
- 4.3 If NHS England terminates this Agreement pursuant to the foregoing clause this shall be deemed an irremediable material breach of the Supply Agreement and NHS England shall be entitled (without affecting any other right or remedy available to it) to immediately terminate the Supply Agreement

for the Supplier's irremediable breach of the Supply Agreement without incurring any liability to the Supplier.

4.4 On termination of this Agreement:

4.4.1 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination, shall not be affected;

4.4.2 the provisions of this Agreement which place obligations on the Supplier in respect of the processing of Personal Data shall continue in force and effect until such time as all Personal Data (including all copies thereof) has either been returned and/or destroyed in accordance with the foregoing sub-clause (unless otherwise strictly required by Law);

4.4.3 without prejudice to the foregoing sub-clause, the provisions of this Agreement that expressly or by implication are intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect; and

**5 REMEDIES AND NO WAIVER**

5.1 The Supplier shall indemnify, defend and hold harmless NHS England from and against all and any losses, claims, liabilities, costs, charges, expenses, awards and damages of any kind including any fines and legal and other professional fees and expenses (irrespective of whether they were reasonably foreseeable or avoidable) which it/they may suffer or incur as a result of, or arising out of or in connection with, any breach by the Supplier of any of its obligations in this Agreement. For the avoidance of any doubt, any limitation of liability which applies under the Supply Agreement shall not apply to the Supplier's liability under the indemnity in this clause (which shall be unlimited).

5.2 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law or in equity.

5.3 A waiver of any right or remedy under this Agreement or by Law or in equity is only effective if given in writing and signed on behalf of the party giving it and any such waiver so given shall not be deemed a waiver of any similar or subsequent breach or default.

5.4 A failure or delay by a party in exercising any right or remedy provided under this Agreement or by Law or in equity shall not constitute a waiver of that or

any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by Law or in equity shall prevent or restrict the further exercise of that or any other right or remedy.

## **6 NOTICES**

6.1 Any notice given to a party under or in connection with this Agreement shall be in writing in the English language and shall be sent by email to the relevant address set out below.

NHS England contact email: **[insert]**

**[Insert a contact email for each other organisation]**

6.2 Any notice validly given in accordance with the foregoing clause shall be deemed to have been received the following Business Day.

## **7 GENERAL**

7.1 The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of NHS England.

7.2 No variation of this Agreement shall be effective unless it is in writing and signed by the parties to this Agreement.

7.3 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each party has executed at least one counterpart.

## **8 GOVERNING LAW AND JURISDICTION**

8.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England.

8.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including

non-contractual disputes or claims), provided that nothing in this clause shall prevent a party from enforcing any judgement obtained in the court of England and Wales in any other court with jurisdiction over the other party.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of it.

## **Schedule 10**

### **Contract Change Process**

It is a contractual requirement that the provider work with the separately appointed Service Design Partner to move to a future proof business as usual model. This is likely to lead to the need to change the model going forwards and therefore the following process will be used to maintain records of any changes to the contract specification, outputs or costs associated with change.

#### **1. CHANGE REQUESTS**

- 1.1 Subject to the remainder of this paragraph 1.1, either Party may issue a Change Request to the other Party at any time during the Term by completing Part 1 of the Change Form set out in the Appendix. Save where such a requirement would reasonably involve undue delay in progressing the Contract Change concerned, proposed Contract Changes (proposed by either Party) should be subject to reasonable consideration through the governance prior to issue of a Change Request.
- 1.2 the Supplier issues a Change Request, it shall also provide a Change Impact (by completing Part 2 of the Change Form set out in the Appendix) to the Authority as soon as reasonably practicable but in any event within five (5) Working Days of the date of issuing the Change Request. The Supplier shall provide such information and revised versions of each Change Request and/or Change Impact Assessment and within such timescales as the Authority may reasonably
- 1.3 Subject to paragraph 1.4, if the Authority issues a Change Request, the Supplier shall provide a corresponding Change Impact Assessment to the Authority within ten (10) Working Days from receipt of the Change Request by the Supplier or such longer period as specified by the Authority within the Change Request. If the Supplier requires any reasonable clarification in relation to a Change Request before it can deliver a Change Impact Assessment, it shall as soon as reasonably practical notify the Authority and the Authority shall respond to the request for clarification as soon as is reasonably practicable (a reasonable corresponding extension of applicable timescales under this Schedule 9 shall apply in those circumstances, which as a maximum shall be equivalent to the number of Working Days taken by the Authority to respond to the clarification).
- 1.4 If the Supplier considers (acting reasonably) that a Change Impact Assessment in of an Authority issued Change Request would require:
  - 1.4.1 more than five (5) FTE Working Days of Supplier Personnel time to prepare; and/or
  - 1.4.2 a longer period than that provided pursuant to paragraph 2.3, the Supplier shall (within five (5) Working Days of receipt of the Change Request) propose to the Authority in writing:
  - 1.4.3 the reasonable cost for preparing and providing the corresponding Change Impact Assessment; and/or
  - 1.4.4 an extension of time reasonably required for provision of the Change Impact Assessment (which may not exceed an additional fifty (50) Working Days),



together with reasonable supporting explanation and data for the above proposals (in the absence of such supporting explanation and data, the timeframe for response under paragraph 1.3 shall continue to apply). If, subject to any refinement of the Supplier's proposal under paragraph 1.4, the Authority wishes to proceed with that proposal:

- 1.4.5 it shall inform the Supplier in writing;
  - 1.4.6 the Supplier shall provide the Change Impact Assessment within the timescale determined in accordance with this paragraph 1.4;
  - 1.4.7 the Authority shall be liable to pay the reasonable additional cost indicated by the Supplier (being the incremental cost beyond five (5) FTE Working Days of Supplier Personnel time), subject to provision of reasonable supporting evidence of the incurrence of those costs.
- 1.5 The Supplier acknowledges and agrees that, without prejudice to any other right or remedy the Authority may have for failure by the Supplier to comply with the timeframe requirements in this paragraph 1, any failure to provide a Change Impact Assessment to the Authority (consistent with the requirements of paragraph 2) within twenty (20) Working Days from the date of delivery for the Change Impact Assessment determined in accordance with this paragraph 2 shall constitute a material breach by the Supplier.
- 1.6 The following principles also apply to the above processes:
- 1.6.1 the Authority must act reasonably in the frequency of Change Request, including seeking to avoid iterative submission of a number of separate Change Requests concerning the same subject matter where reasonably practical and taking reasonable account of any Programme Authority Change Requests that may at the time be in the process of being implemented across the Broadband Delivery Programme;
  - 1.6.2 the Supplier shall not be entitled to recover the costs identified in accordance with paragraph 2.4 in the event that the Change Request concerns the deployment of additional or enhanced Network coverage.

## **2. CHANGE IMPACT ASSESSMENT**

- 2.1 Each Change Impact Assessment shall include:
- 2.1.1 descriptive summary of the proposed Contract Change;
  - 2.1.2 proposed drafting changes to this Contract necessary to give effect to the Change (including any and all corresponding changes to the Speed and Coverage Template, Implementation Plan, Project Plan, Milestone Payments table and the Project Model), provided that the Supplier shall take into account any proposed drafting changes set out in the Change Request where submitted by the Authority (the Contract Change should reflect these proposals, save to the extent it would be unreasonable to require use of the drafting concerned);
  - 2.1.3 details of the impact of the proposed Contract Change on:
    - (a) the delivery and receipt of the Deployed Services;
    - (b) the Supplier Solution;
    - (c) the Supplier's ability to meet its other obligations under this; and
    - (d) any other matter requested by the Authority at the time of the assessment, or considered by the Supplier to be relevant;

- 2.1.4 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law;
- 2.1.5 reasonable level of justification and evidence for these Changes and the noted impact, including sufficient supporting detail to enable Authority assessment. In the case of changes to the Supplier Solution, this must :
  - (a) detailed supporting financial information covering any changes to Payments, and any other aspect of the Project Model;
- 2.2 If the proposed Contract Change has no impact of the kind described in paragraph 2.1.3 the Supplier shall provide a statement of this fact in the Change Impact Assessment.
- 2.3 The Authority shall review each Change Impact Assessment and as soon as reasonably practicable shall respond to the Supplier in accordance with paragraph 3. The Supplier must comply with reasonable requests for further clarification in respect of the Change Impact Assessment if requested by the Authority.

### 3. AUTHORITY'S RIGHT OF APPROVAL

- 3.1 The Authority shall review each Change Request and/or Change Impact Assessment and as soon as reasonably practicable shall do one of the following:
  - 3.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 3.2;
  - 3.1.2 reject the Contract Change (providing reasons for the rejection), in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent the Contract Change is necessary for the Supplier or the Deployed Services to comply with any Change in Law;
  - 3.1.3 require the Supplier to modify the Change Request and/or Change Impact Assessment in which case the Supplier shall, as soon as practicable, submit a modified proposal for consideration by the Authority which takes the Authority's comments into account. The Authority shall have the approval rights set out in this paragraph 3.1 in respect of each modified Change Request and Change Impact Assessment and any subsequent version required by the Authority.
- 3.2 If the Authority approves a Contract Change pursuant to paragraph 3.1.1 and it has not been rejected by the Supplier in accordance with paragraph 4, it shall notify the Supplier and the Parties shall sign a Change Authorisation (by completing Part 3 of the Change Form set out in the Appendix) within three (3) Working Days. Upon by both Parties, a Change Authorisation shall constitute a binding variation to this Contract.
- 3.3 Until such time as a Change Authorisation has been signed by both Parties in accordance with paragraph 3.2, unless the Parties (acting reasonably having regard to the nature of the proposed Contract Change) agree otherwise in writing and subject to paragraph 4.3, the Supplier shall continue to supply the Deployed Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply

### 4. SUPPLIER'S RIGHT OF REJECTION

- 4.1 The Supplier shall be entitled to reject a proposed Contract Change only if, following a Change Impact Assessment, the Supplier reasonably believes that the proposed Contract Change would:
- 4.1.1 require the Deployed Services to be performed in a way that infringes any Law; and/or
  - 4.1.2 subject to paragraph 4.2, materially and adversely impacts:
    - (a) the Supplier's ability to fully deliver the Deployed Services; and/or
    - (b) the commercial and/or financial risk profile underpinning the Deployed Services,
 provided the Supplier can demonstrate and evidence in writing to the reasonable satisfaction of the Authority that such impact cannot be by the Parties as part of the relevant Contract Change, which case the Supplier shall provide written notice to the Authority which sets out the Supplier's rationale and supporting information for its proposed rejection.
- 4.2 Paragraph 4.1.2 shall not permit the Supplier to reject any proposed Contract Change to the extent the Contract Change is necessary for the Authority to comply with any change in Law (recognising that in respect of Specific Changes in Law, reasonable commercial terms shall be agreed by the Parties in order to account for such change).
- 4.3 The Supplier shall not, in any event and without limitation to paragraph 4.2, be entitled to reject any Authority proposed Contract Change directing de-scoping of any part of the Network, provided that the de-scoping arises in respect of another operator's verified (such verification taking place between the Authority and Programme Authority, applying a reasonably comparable standard of verification to that applied when classifying the original ITT intervention area applicable for the Project, with confirmation being provided to the Supplier by the Authority that this verification process has been conducted) coverage plans and/or to ensure compliance with Law.
- 4.4 If the circumstances of de-scoping described in paragraph 4.3 above apply, the Parties shall work together to ensure the Deployed Services, Speed and Coverage Template, Milestone Payments table, Project Model and other relevant Contract components are correspondingly amended to reasonably reflect the de-scoping (including ensuring the Supplier is compensated for any wasted or stranded costs of the Supplier which would result from the de-scoping, on a basis consistent with the principles set out in paragraph 4.6 below). Where an Authority Change Request directs a de-scope of part of the Network, if required by the Authority the Supplier shall as soon as reasonably practical (in any event within five (5) Working Days or such longer period (as agreed in writing between the Parties, such consent not to be unreasonably withheld) save solely in respect of those close-down activities necessary to be performed for health and safety purposes, to physically secure and protect the Network sub-components concerned or otherwise to ensure compliance with Law), cease any work in progress and not commence any further Network Deployment in respect of the corresponding part of the Network being de-scoped.
- 4.5 It is acknowledged that:
- 4.5.1 a requirement to cease work pursuant to paragraphs 4.3 and 4.4 represents a Relief Event but solely in respect of that part of the Deployed Services which cease due to this direction and to the extent of any resulting interference such de-scoping might have on other Network build activities;
  - 4.5.2 the de-scoped part of the Network shall be removed from the scope of the corresponding Milestone(s) and the Supplier shall be entitled to claim

Achievement of the remaining scope of the Milestone(s) provided and once the remaining scope and associated requirements of the Milestone(s) have been satisfied in accordance with the terms of this Agreement;

4.5.3 the Authority shall reasonably consult with the Supplier to consider whether the funding represented by any reduction in Milestone Payments due to the de-scoping could be used to otherwise extend coverage under this Agreement. Any such extension of coverage would be subject to the Parties reaching agreement in accordance with the Change Control Procedure and subject to the Authority obtaining the prior approval of the Programme Authority to proceed (and that, inter alia, this will involve consideration of compliance with the requirements of the Commission Decision).

4.6 Where a de-scoping is required pursuant to the above provisions of this paragraph 4, as part of the corresponding Contract Change the following cost principles shall be applied regarding the Supplier recovering wasted or stranded costs arising from that de-scoping:

4.6.1 As a result of another operator's coverage plans (save where also falling within paragraph 4.6.2 - the Authority shall pay the Supplier's wasted or stranded costs;

4.6.2 To ensure compliance with Law – responsibility for wasted or stranded costs shall be allocated between the Parties on an equivalent basis to cost responsibility for Changes in Law as provided under Clause 13.

The Parties shall specify within the Contract Change the overall maximum amount of wasted or stranded costs payable by the Authority. The Supplier may only claim such wasted or stranded costs:

4.6.3 provided the costs were incurred within the parameters of paragraph 4.4;

4.6.4 where they are evidenced on the same basis as Milestone Payment Claims; and

4.6.5 provided the Supplier has used its reasonable endeavours to mitigate such Costs

## **5. FAST-TRACK CHANGES**

The Parties acknowledge that in order to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out in this Schedule

9 If the Parties agree in writing that such circumstances apply in relation to a proposed Contract Change then the Parties shall agree an accelerated timetable for the steps described in this Schedule 9 in order to affect the Contract Change.

## **6. COSTS**

6.1 Subject to:

6.1.1 those costs for preparation of a Change Impact Assessment payable by the Authority pursuant to paragraph 1.4 (which is itself subject to paragraph 1.6.2); and

6.1.2 paragraph 6.2, each Party shall be responsible for its own costs and expenses incurred in compliance with this Schedule 9 including the preparation and assessment of all Change Forms.

6.2 Without prejudice to any right a Party may have to recover costs incurred in respect of an Indemnified Claim, a Party's reasonable costs incurred in respect of any use of this Change Control Procedure as a result of any Default by the other Party shall be paid for by the Party in Default.

## 7. EXECUTION OF CHANGE AUTHORISATIONS

The Parties acknowledge that Change Authorisations may be signed in any number of counterparts. Such signature shall be effective when the signing Party delivers its signed Change Authorisation to the other Party by email in scanned PDF format or by hand or post

### APPENDIX – CHANGE FORM

#### 1.1 PART 1: CHANGE REQUEST

CHANGE REQUEST	
CONTRACT NO:	[Please state]
CHANGE NO:	[Please state]

DESCRIPTION OF THE PROPOSED CHANGE: [Please state]	
FAST-TRACK PROPOSED IN RELATION TO CHANGE?	[Yes/No]
PRELIMINARY CHANGE ASSESSMENT TO BE PROVIDED?	[Yes/No]
PROPOSED DATE FOR CHANGE:	[Please state]
SUBMITTED TO:	[Please state]
REQUESTING PARTY:  SIGNED: NAME: DATE:	[Please state]
	[Please state]
	[Please state]

## 1.2 PART 2: CHANGE IMPACT ASSESSMENT

CHANGE IMPACT ASSESSMENT	
CONTRACT NO:	[Please state]

CHANGE NO:	[Please state]
SUPPLIER'S CHANGE IMPACT ASSESSMENT: [Please refer to paragraphs 2 and 3 of Schedule 6.2 (Change Control Procedure)]	
SUBMITTED TO:	[Please state]
SUPPLIER:	[Please state]
SIGNED:	
NAME:	[Please state]
DATE:	[Please state]

**1.3 PART 3: CHANGE AUTHORISATION**

CHANGE AUTHORISATION	
CONTRACT NO:	[Please state]
CHANGE NO:	[Please state]
ON BEHALF OF THE SUPPLIER	
SIGNED:	[Please state]
NAME:	
DATE:	[Please state]
ON BEHALF OF THE AUTHORITY	
SIGNED:	[Please state]
NAME:	
DATE:	[Please state]



## ANNEX – DATA PROCESSING SERVICES

1. The Supplier shall comply with any further written instructions with respect to processing by NHS England.
2. Any such further instructions shall be incorporated into this Annex.

Description	ils
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purpose of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<p><i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc</i></p> <p><i>You should be clear what data is being used for each purpose you have outlined above.</i></p> <p><i>You should identify whether you are processing any special categories of personal data or any criminal offence data.</i></p> <p><i>The special categories of personal data are very similar to sensitive personal data under the DPA 1998. They are set out at Article 9. The special categories of personal data are:</i></p> <ul style="list-style-type: none"> <li>• race</li> <li>• ethnic origin</li> <li>• political opinion</li> <li>• religion or philosophical belief</li> <li>• trade union membership</li> <li>• genetics</li> <li>• biometrics (where used for ID purposes)</li> </ul>

	<ul style="list-style-type: none"> <li>• health (including mental health)</li> <li>• sex life</li> <li>• sexual orientation</li> </ul> <p>Unlike under the DPA 1998 personal data relating to criminal convictions and offences are not included. However, similar extra safeguards apply to criminal offence data, which includes data about criminal allegations, proceedings or convictions that would have been sensitive personal data under DPA 1998 and also personal data linked to related security measures. You should identify if you are processing this type of data and if so seek further advice from <a href="mailto:england.ig-corporate@nhs.net">england.ig-corporate@nhs.net</a> before the data is processed.</p>
Categories of Data Subject	<p>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</p>

Signed by Peter Ridleyfor and on behalf of )  
**NHS ENGLAND** in the presence of: )

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name (PRINT)

Signed by **Sam Ward** for and on behalf of )  
Royal Voluntary Service in the presence of: )

\_\_\_\_\_  
Signature of Director  
\_\_\_\_\_  
Name of Director (PRINT)