

LICENCE AND SERVICES AGREEMENT

SUMMARY FORM

- (1) NHS England, a non-departmental public body whose principal place of business is 7 & 8 Wellington Place, Leeds, LS1 4AP (the "**Customer**"); and
- (2) GS1 UK Ltd a not for profit association, incorporated under the laws of England and Wales under company registration number 01256140, based at Hasilwood House, 60 Bishopsgate, London, EC2N 4AW (the "**Supplier**");
- (together the "**Parties**").

1. Overview	
Customer Services Agreement reference:	C251301
<p>This Agreement will govern the overall relationship of the Parties in relation to access to the Supplier's membership scheme and provision of company prefix licences to Members.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Summary Form have the same meanings as in the terms and conditions set out in Annex 1 to this Summary Form (the "Conditions"). In the event of any conflict between this Summary Form, the Conditions and Annexes 2 and 3, the following order of precedence shall apply:</p> <ol style="list-style-type: none">1) Summary Form;2) Conditions3) Annex 2; and4) Annex 3.	
2. Term and Termination	
<p>This Agreement shall commence on 1st April 2024 and shall continue until 31st March 2029, unless terminated earlier in accordance with clause 17 (the "Term").</p>	
3. Services	
<p>The Supplier shall:</p> <ul style="list-style-type: none">• Continue to provide Membership Services to all existing Members as at the date of this Agreement and process membership applications from potential Members and, where eligible, accept these, allocate Global Company Prefix Numbers and provide Membership Services to such Members, subject in both cases to:<ul style="list-style-type: none">○ the Member and the Supplier being subject to the GS1 UK Terms and Conditions (as amended as set out in section 4 of this Agreement); and○ the maximum allocation of Global Company Prefix Numbers at any one time being [REDACTED] but provided that the identity of Members may change over time.• Provide access to the GLN Registry Service for up to a maximum of [REDACTED] Members, at any one time, provided that the identify of such Members may change from time to time.	

- Ask the Customer if the Supplier is unclear as to whether a potential Member is within scope, in which case the Customer will determine eligibility. If the Supplier wrongly accepts a membership application the Customer is not liable for any associated fees and the organisation will not count towards the total Global Company Prefix Number allocation under this Agreement.
- Maintain records of Members and membership, including a list of Global Company Prefix Number holders and key contacts at each Member, and provide this to the Customer upon request.
- Provide such statistical information regarding Members as may be requested from time to time, together with any other statistical information that may be required by the Customer either for its own use or on behalf of other Central Government Bodies.
- Ensure any disputes or issues, in respect of the Membership Services provided to any individual Member, or compliance with the GS1 UK Terms and Conditions, are escalated to the Customer, and that no suspension or termination of the same is effected by the Supplier unless such escalation is agreed to have been exhausted by the Supplier and Customer.
- Provide administrative support to the Customer for the Scan4Safety programme
- Provide the Customer's Scan4Safety programme with regular updates regarding how many Members are using the Supplier's services, how many have Scan4Safety programmes and any other relevant metrics

(the "**Services**")

This section constitutes the complete description of the Services to be provided and all other previous statements or written materials are superseded and excluded.

Members may, at their sole discretion, choose to enter into a Service Contract for Additional Services. The Customer: (i) provides no guarantee that any Member will choose to enter into such an arrangement; and (ii) does not and shall not make any recommendation or endorsement regarding such arrangements to either the Supplier or any Member. Any Service Contract is the sole responsibility of the Supplier and the Member and the Customer shall not adopt any responsibility or liability under this Agreement for any Service Contract.

Pursuant to this Agreement no Personal Data shall transfer between the Parties and no Personal Data shall be Processed by a Party as a Processor for or on behalf of any other Party (with "Personal Data", "Processed" and "Processor" having the meanings set out in clause 12).

In respect of the provision of Membership Services to Members no Personal Data shall transfer between the Parties and no Personal Data shall be Processed by the Supplier or a Member as a Processor for or on behalf of the other (with "Personal Data", "Processed" and "Processor" having the meanings set out in clause 12).

4. GS1 UK Terms and Conditions

The "**GS1 UK Terms and Conditions**" which shall apply to any provision of Membership Services to Members by the Supplier consist of clauses 1-41 as set in Annex 3 of this Agreement with the following amendments and additions deemed included and which shall take precedence over any other content in any published or standard GS1 UK terms:

- Any application forms required to filled in by Members in respect of Membership Services shall be completed / amended as applicable to reflect the Member's participation in the NHS arrangement described in this Agreement.

- The definition of Membership Fees and clauses 3.3, 13 and 14 are amended as follows to reflect the fact that the Member is not making any payment of, and will not receive any invoices in respect of, Membership Fees:
 - “Membership Fees” definition – “means the total annual fee payable by NHS England in relation to Membership Services provided to all NHS organisations within the NHS arrangement”
 - Clause 3.3 – deleted
 - Clause 13.1 – “In consideration for the provision of the Additional Services, the Member shall pay GS1 UK the Additional Fees detailed in each Service Contract in accordance with clause 14.”
 - Clause 13.2 – deleted
 - Clause 14.1 - deleted
- The definition of Data Protection Legislation and clause 17 are amended to reflect the legislation in force in England and Wales as at the date of this Agreement.
- A new clause 18.3A is added as follows:
 - “In the event that the Member, or any other Member covered by the NHS arrangement, develops any novel use or new application for GS1 UK’s Intellectual Property Rights in the health and social care field, ownership of the same would vest in GS1 UK but GS1 UK shall grant a non-exclusive, perpetual, irrevocable, royalty free licence to such development to the Member, any other Member covered by the NHS arrangement and to NHS England, with a right to freely sub-licence, for use in connection with the provision of health and social care in England.”
- Clauses 3.5.1, 4.7, 21, 26.2 and 27.2 are amended such that no suspension pursuant to clauses 3.5.1, 4.7, 21.1, 21.2, 26.2 or 27.2 is permitted by GS1 UK / the Supplier unless the matter has been escalated to NHS England / the Customer and NHS England / the Customer and GS1 UK / the Supplier have agreed that escalation has been exhausted.
- Clause 22 is amended such that no termination pursuant to clauses 22.1 or 22.2 is permitted by GS1 UK / the Supplier unless the matter has been escalated to NHS England / the Customer and NHS England / the Customer and GS1 UK / the Supplier have agreed that escalation has been exhausted.
- Clause 22.3 is amended as follows:
 - “Unless a Service Contract states otherwise and without affecting any other right or remedy available to it, either Party may terminate a Service Contract on giving not less than one months’ written notice to the other.”
- A new clause 22.4 is added as follows:
 - “The Member may terminate this Framework Agreement by giving not less than one months’ written notice to GS1 UK. GS1 UK may not terminate this Framework Agreement without prior written agreement from NHS England”
- Clauses 24.1 and 24.3 are amended as follows:
 - “24.1 GS1 UK reserves the right to amend the Membership Services, provided that such change will not have an adverse material effect on the Member:
 - 24.1.1 where required by law, regulation, policy or industry standards; or
 - 24.1.2 where required to adhere to GS1 Standards.”

- “24.3 Subject to clause 24.1, no Change shall be implemented unless NHS England has given its prior written consent and the Parties have agreed the following in a written Change Order:”
- Clause 25 shall be replaced with:
 - “GS1 UK shall not use the Member’s or any other NHS name or brand in any promotion or marketing or announcement of orders, without the prior written consent of the Member or relevant brand owner, and in all cases in compliance with the NHS Identity Guidelines ([NHS Identity Guidelines \(england.nhs.uk\)](https://www.nhs.uk/identity-guidelines)).”
- Clauses 28.1.3 and 28.2 shall be replaced with:
 - “28.1.3 If the dispute cannot be resolved by the Parties within 30 days of the date of the Dispute Notice (being the date it was received) then a Party shall escalate it for determination to NHS England.
 - 28.2 If the dispute still cannot be resolved following escalation to NHS England within 30 days, the dispute shall be referred to the determination of the English courts (as per clause 41).”
- Clause 30 shall be amended as follows:
 - “Other than in respect of the rights of NHS England relating to changes, disputes, suspension and termination as set out in clauses 3, 4, 21, 22, 24, 26, 27 and 28 a person who is not a Party to this Framework Agreement and/or a Service Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement and/or a Service Contract.”

5. Customer Responsibilities

The Customer shall:

- Be responsible for overseeing this Agreement only.
- Not be responsible for Members own use of the Services as per the conditions in the GS1 UK Terms and Conditions
- Not be responsible for ensuring Members compliance with the GS1 UK Terms and Conditions
- Provide dedicated point of contact to manage its relationship with the Supplier and respond to NHS related issues
- Respond to the Supplier’s requests for decisions as to whether to accept as a Member any potential organisation
- Provide point of contact to facilitate Charges payment by the Customer and resolution of contract issues
- Support the Supplier in discussions with Members on membership, disputes and escalation processes

6. Charges

The Customer shall pay the Supplier the sums set out below, which shall be exclusive of VAT (the "Charges") per annum for provision of the Services, which shall include i) up to [REDACTED] Global Company Prefix Numbers; and (ii) access to the GLN Registry Service to a maximum of [REDACTED] Members at any one time.

The Charges for the first year (i.e. the period 1 April 2024 to 31 March 2025) shall be [REDACTED]

[REDACTED] The total contract value is capped at £3,438,125.00 over 5 years and can only be increased by an approved change request.

7. Key Personnel

The following persons are Key Personnel for the purposes of the Agreement:

Name	Title
[REDACTED]	

8. Contacts

The details and addresses for communications and service of notices on the Parties are:

Customer	
Named contact	Contract Management
Title	
Address	NHS England 7 & 8 Wellington Place Leeds LS1 4AP
Email address	nhsdcontractmanagement@nhs.net
Supplier	
Named contact	Contract Management
Title	
Address	Hasilwood House 60 Bishopsgate, London EC2N 4AW
Email address	Healthcare@gs1uk.org

Annex 1: Terms and Conditions

1. Interpretation

1.1. In these terms and conditions:

Agreement	means the contract between (i) the Customer and (ii) the Supplier comprising the Summary Form, these Conditions and Annex 2;
Additional Services	means additional services (including but not limited to additional numbers) provided by the Supplier for which the Supplier and a Member have entered into a Service Contract for;
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency; and to the extent not included in the above NHS England;
Charges	means the charges for the Services as specified in the Summary Form;
Conditions	means as defined in the Summary Form;
Contracting Authority	means as defined in the Public Contracts Regulations 2015;
Confidential Information	means any and all information of a technical, commercial, financial or sensitive nature (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, programmes, materials, records, business plans, consumer research, analysis or experience) in whatever medium which is disclosed by or on behalf of either Party (" Discloser ") to the other Party or to any person on behalf of that other Party (" Recipient ") orally, pictorially, electronically, in writing, by demonstration, by viewing in machine readable form, or by any other means. For the avoidance of doubt the Supplier's "Confidential Information" shall include information of a commercial, financial or sensitive nature that is disclosed, marked or stated to be 'confidential' by the Supplier or on the Supplier's behalf to the Customer or to any person on the Customer's behalf as part of the Supplier's involvement in the delivery of the Services. Customer "Confidential Information" shall include the information set out within any documents issued by the Customer or on the Customer's behalf and marked or stated to be 'confidential', known by the Recipient to be confidential, or which ought reasonably to be considered by the Recipient to be confidential (including any data referred or attached thereto). Confidential Information shall not include information that: (i) was known by the Recipient without restriction as to use or disclosure prior to receiving such information from the Discloser; (ii) has become generally known or available to the public through no act or omission on the part of the Recipient; (iii) is rightfully acquired by the Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the Recipient without use of the Confidential Information of the Discloser;

Control	means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
CSR Policies	means the Customer's policies, including, without limitation, anti-bribery and corruption, health and safety, modern slavery, the environmental and sustainable development, equality and diversity, as notified to the Supplier by the Customer from time to time, and "CSR Policy" shall mean any one of them;
CSR Laws	means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;
Data Protection Laws	means applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including the UK General Data Protection Regulation ("UK GDPR") and the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities;
Deliverables	means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Agreement or otherwise arising out of or in connection with the provision of the Services;
Dispute Notice	means as defined in clause 20.1;
EIRs	means the Environmental Information Regulations 2004 (SI 2004/3391);
Expiry Date	means the date for expiry of the Agreement as set out in the Summary Form;
FOIA	means the Freedom of Information Act 2000;
Force Majeure Event	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding i) any industrial dispute relating to the Supplier or Supplier Staff or any other failure in the Supplier's or a Sub-contractor's supply chain; and ii) the UK ceasing to be a Member State of the European Union;
Good Industry Practice	shall mean in relation to any undertaking and any circumstances and in particular the provision of services to UK Government bodies or organisation of similar standing, the exercise of that degree of professionalism, skill, diligence, prudence, care, efficiency,

	timeliness, judgement and foresight which would reasonably and ordinarily be expected from a leading and expert internationally recognised company engaged in the same type of activity under the same or similar circumstance seeking to comply with its contractual obligations in full and complying with applicable Laws;
GLNs	means a global location number comprising of a 13 digit code made up of a Member's Global Company Prefix Number, a unique location number and a check digit for validation purposes;
GLN Registry Service	means the online service known as location manager that allows members and their suppliers to store, share and manage their GLNs;
Global Company Prefix Numbers	means the global company prefix number that is issued and licensed by GS1 UK to each Member as part of the Membership Services;
GS1 UK Terms and Conditions	means the terms and conditions that will be entered in to between Members and the Supplier as set out in section 4 of the Summary Form;
Information	has the meaning given under section 84 of the FOIA;
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world, and, in the case of the Supplier includes Barcode Numbers (as defined in the GS1 UK Membership Framework Agreement), Reference Numbers (as defined in the GS1 UK Terms and Conditions), Global Company Prefix Numbers and GLN Numbers);
Key Personnel	means any persons specified as such in the Summary Form or otherwise notified as such by the Customer to the Supplier in writing;
Key Sub-Contract	means any Sub-Contract for the provision of Services which are delivered directly to the Customer or result in the Sub-contractor interacting directly with the Customer;
Key Sub-Contractor	means any third party with whom: <ul style="list-style-type: none"> a) the Supplier enters into a Sub-contract; or b) a third party under limb (a) above enters into a Sub-contract, or the servants or agents of that third party;
Laws	means any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union;
Member	means an organisation that is listed or falls within the categories described in Annex 2 which applies to become, and is accepted as, a member of the GS1 UK membership scheme able to access the Membership Services pursuant to this Agreement;

Membership Services	has the meaning given in the GS1 UK Terms and Conditions;
Party	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
Purchase Order Number	means the Customer’s unique number relating to the supply of the Services;
Receipt	means the physical or electronic arrival of the invoice at the address specified in clause 5 or at any other address given by the Customer to the Supplier for the submission of invoices from time to time;
Request for Information	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
Service Contract	means a contract for the provision of Additional Services entered into between the Supplier and the Member;
Services	means the services to be supplied by the Supplier to the Customer under the Agreement as set out in the Specification;
Specification	means the specification for the Services (including as to quantity, description and quality) as specified in the Summary Form;
Staff	means all persons employed or engaged by a Party to perform its obligations under this Agreement, including any contractors and subcontractors and persons employed or engaged by such contractor or subcontractors;
Staff Vetting Procedures	means vetting procedures that accord with Good Industry Practice and, where specified in the Summary Form or otherwise requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time, which shall always include but not be limited to a check through the Disclosure and Barring Service (DBS);
Standards	means any standards reasonably applicable given the Supplier’s expertise and the Services provided, which shall always include as a minimum the DSP Toolkit or any replacement of the same;
Sub-contract	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
Sub-contractor	means any third party with whom: a) the Supplier enters into a Sub-contract; or b) a third party under limb (a) above enters into a Sub-contract, or the servants or agents of that third party;
Summary Form	means the first section to this Agreement detailing the key points of the Services;
Supplier	means the person named as Supplier in the Summary Form;

Term	means as defined in clause 3.1;
Transparency Information	means as defined in clause 13.1;
Transparency Report	means as defined in clause 13.2;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2. In this Agreement, unless the context otherwise requires:
 - 1.2.1. references to numbered clauses are references to the relevant clause in these Conditions;
 - 1.2.2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.3. the headings to the clauses of this Agreement are for information only and do not affect the interpretation of the Agreement;
 - 1.2.4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
 - 1.2.5. the word 'including' shall be understood as meaning 'including without limitation'.

2. Basis of Agreement

- 2.1. The return or submission by the Supplier of a validly executed Agreement constitutes an offer by the Supplier to provide the Services subject to and in accordance with this Agreement.
- 2.2. The offer detailed in clause 2.1 shall be deemed to be accepted by the Customer on valid execution by the Customer of the Agreement.
- 2.3. The terms of this Agreement apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Term

- 3.1. The Agreement shall take effect on the date specified in Summary Form and shall expire on the Expiry Date subject to any early termination in accordance with this Agreement (the "**Term**").

4. Supply of Services

- 4.1. In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with this Agreement.
- 4.2. In supplying the Services, the Supplier shall:
 - 4.2.1. co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 4.2.2. perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade;
 - 4.2.3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 4.2.4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 4.2.5. comply with all applicable Standards, Laws and guidance;
 - 4.2.6. provide all equipment, tools and vehicles and other items as are required to provide the Services; and
 - 4.2.7. perform the Services promptly and in any event within any time limits as may be set out in the Agreement.

- 4.3. The Customer may by written notice to the Supplier at any time request a variation to the Specification of the Services. In the event that the Supplier agrees to any variation to the Specification of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

5. Licence and Intellectual Property Rights

- 5.1. The Supplier will grant a non-exclusive, royalty free licence for the duration of the agreement to the Customer and all Members to use the Supplier's Intellectual Property Rights as necessary in order to receive the benefit of the Services, including a right to allow such suppliers, agents and contractors as are acting for or on behalf of such Members to use the Supplier's Intellectual Property Rights. Such licence shall include any updates or developments to the Supplier's Intellectual Property Rights made by or on behalf of the Supplier during the term.
- 5.2. In the event that the Customer or any Member develops any novel use or new application for the Supplier's Intellectual Property Rights in the health and social care field, ownership of the same would vest in the Supplier but the Supplier shall grant a non-exclusive, perpetual, irrevocable, royalty free licence to such development to the Customer and all Members, with a right to freely sub-licence, for use in connection with the provision of health and social care in England.
- 5.3. The Supplier warrants:
- 5.3.1. that it has the right to license the Supplier's Intellectual Property Rights as specified in this Agreement; and
 - 5.3.2. that the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables by the Customer and its permitted representatives shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 5.4. The Supplier shall indemnify, and keep indemnified, the Customer in full against all liabilities, costs, expenses, damages and losses (whether direct or indirect), including but not limited to any interest, penalties, and legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables.
- 5.5. The Supplier shall:
- 5.5.1. identify any third-party licences for software or other Intellectual Property Rights which are required for the receipt and use of the Services or the Deliverables by the Customer;
 - 5.5.2. procure that the third-party owner of such software or Intellectual Property Rights grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the software and Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-licence, transfer, novate or assign to any other Contracting Authority or to any other third-party supplying goods and/or services to the Customer; and
 - 5.5.3. pay any applicable fees for any such licence.

6. Charges, Payment and Recovery of Sums Due

- 6.1. The Charges shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services detailed at Section 3 of the Summary Form. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2. For the avoidance of doubt, any Additional Services which a Member chooses to avail itself of under a Service Contract shall be the sole responsibility of said Member, and the Customer shall

have no liability in respect of any charges, payments or sums due under any Service Contract entered into by a Member.

- 6.3. The Supplier shall invoice the Customer annually on or after 1 February each year in respect of the twelve (12) month period commencing on the immediately following 1 April. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.

The Supplier must be in Receipt of a valid Purchase Order Number before submitting an invoice. All invoices should be sent, quoting that number to the address given on the purchase order. To avoid delay in payment it is important that the invoice is compliant and that it includes an item number (if applicable) and the details (name and telephone number) of the Customer contact. Non-compliant invoices will be sent back to the Supplier, which may lead to a delay in payment.

Any queries regarding outstanding payments should be directed to the Customer's Accounts Payable section by email at payables@sbs.nhs.uk.

All invoices must be submitted either electronically using [REDACTED]
[REDACTED] by connecting to Customer or in paper form to:

NHS ENGLAND
X24 PAYABLES K005
PO BOX 312
LEEDS
LS11 1HP

- 6.4. In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts on the later of i) the immediately following 1 April; or ii) 30 days after Receipt of a valid and undisputed invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 6.5. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the Receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 6.6. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement in accordance with clause 17.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 6.7. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.8. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

7. Premises and Equipment

- 7.1. If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services, such access to be non-exclusive and

revocable. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.

- 7.2. If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 7.3. Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with provision of Services shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of provision of Services to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.
- 7.4. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 7.5. The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 7.6. Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 7.7. Without prejudice to clause 4.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 7.8. The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

8. Staff and Key Personnel

- 8.1. The Supplier shall employ sufficient Staff to ensure that it complies with its obligations under this Agreement. 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.
- 8.2. The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services. The redeployment and/or replacement of any Key Personnel by the Supplier shall be subject to the prior written approval of the Customer, such approval not to be unreasonably withheld or delayed. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 8.3. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 8.3.1. refuse admission to the relevant person(s) to the Customer's premises;
 - 8.3.2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or

8.3.3. require that the Supplier promptly replaces any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

8.4. The Supplier shall:

8.4.1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;

8.4.2. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and

8.4.3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

9. Assignment and sub-contracting

9.1. Subject to clause 9.2 the Supplier shall not, without the written consent of the Customer, assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal.

9.2. The Supplier may enter into any Sub-contract that would not be a Key Sub-Contract without the Customer's consent.

9.3. The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though those acts and omissions were its own and shall ensure that any 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 the Agreement. The Supplier shall, if requested by the Customer, notify the Customer in writing of: (i) all Sub-contractors' names, registered offices and company registration numbers; (ii) the scope of any Services to be provided by any Sub-contractor; and (iii) any further information reasonably requested by the Customer.

9.4. Where the Supplier enters into a Key Sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that provisions are included in such Key Sub-contract which:

9.4.1. contain at least equivalent obligations as set out in the Agreement in relation to the performance of the Services to the extent relevant to such Key Sub-contract;

9.4.2. contain at least equivalent obligations as set out in the Agreement in respect of confidentiality, information security, data protection, Intellectual Property Rights and compliance with Laws;

9.4.3. contain a prohibition on the Key Sub-contractor sub-contracting, assigning or novating any of its rights or obligations under such Key Sub-contract without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed);

9.4.4. contain a right for the Customer to take an assignment or novation of the Key Sub-contract (or part of it) upon expiry or earlier termination of the Agreement; and

9.4.5. require payment to be made of all sums due by the Supplier to the Key Sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice.

9.5. Any authority given by the Customer for the Supplier to sub-contract any of its obligations under this Agreement shall not impose any duty on the Customer to enquire as to the competency of any authorised Key Sub-contractor.

9.6. Where the Customer has consented to the placing of Key Sub-contracts, the Supplier shall, at the request of the Customer, send copies of each Key Sub-contract, to the Customer as soon as is reasonably practicable.

9.7. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9.8. The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under any GS1 UK Terms and Conditions

without the prior written consent of the Customer, except where expressly permitted by the terms of the GS1 UK Terms and Conditions.

10. Governance and Records

10.1. The Supplier shall:

- 10.1.1. attend progress meetings with the Customer as required by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 10.1.2. when requested by the Customer, generate a status report detailing the status of the Agreement, and shall include in the report any information specifically requested by the Customer; and
- 10.1.3. keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

10.2. The Supplier shall not charge the Customer for any costs incurred complying with the governance requirements of this Agreement.

11. Confidentiality

11.1. Subject to clause 11.2, each Party shall:

- 11.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 11.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

- 11.2.1. where disclosure is required by applicable law (including but not limited to FOIA and EIR) or by a court of competent jurisdiction;
- 11.2.2. to its auditors or for the purposes of regulatory requirements;
- 11.2.3. on a confidential basis, to its professional advisers;
- 11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 11.2.5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6. where the receiving Party is the Customer:

- a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
- b) on a confidential basis to any other Central Government Body, any Contracting Authority, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- d) in accordance with clause 13,

and for the purposes of the foregoing, references to disclosure "on a confidential basis" shall mean disclosure subject to a confidentiality agreement or arrangement.

- 11.3. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12. Protection of Personal Data and Security of Data

- 12.1. In this clause 12, "Controller", "Processor", "Data Subject", "Personal Data Breach" and "Processing" shall have the same meanings as in the Data Protection Laws and "Processed" and "Process" shall be construed in accordance with the definition of "Processing". "Personal Data" shall have the same meaning as in the Data Protection Laws, and shall refer to Personal Data Processed by any Party or its sub-contractor in connection with this Agreement or the Project.
- 12.2. Both Parties will comply with all applicable Data Protection Legislation and otherwise protect personal data and will not use, disclose, or transfer across borders (except in UK and EEA) personal data throughout the duration of the Framework Term.
- 12.3. When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.
- 12.4. Pursuant to this Agreement no data sets shall transfer between the Parties and no Personal Data shall be Processed by either Party as a Processor for or on behalf of the other Party.
- 12.5. Each Party shall comply at all times with the Data Protection Laws in relation to its Processing of any Personal Data.
- 12.6. Each Party shall, taking into account the state of the art, the costs 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, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of any Processing of Personal Data, including inter alia as appropriate any measures required under the Data Protection Laws.
- 12.7. Each Party shall provide all reasonable assistance requested by the other Party in respect of any complaint, allegation or request (including by a regulator) in respect of any Personal Data, or any request from a Data Subject to exercise any right under the Data Protection Laws.
- 12.8. Where a Party becomes aware of an actual or suspected Personal Data Breach involving any Personal Data it shall notify the other Party without undue delay, and shall provide all reasonable assistance requested by the other Party to identify, investigate and remediate the breach and to establish all information required by any supervisory authority in relation to the Personal Data Breach.

13. Transparency and Freedom of Information

- 13.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, and which shall be determined by the Customer, the content of this Agreement, including any changes to this Agreement agreed from time to time, (the "**Transparency Information**") is not Confidential Information.
- 13.2. Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) ("**Transparency Report**"). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 13.3. The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports.
- 13.4. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

- 13.5. The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 13.6. The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may publish such Information. The Supplier shall provide to the Customer within 5 Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.
- 13.7. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 13.7.1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
 - 13.7.2. transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 13.7.3. provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request for Information and which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 13.7.4. not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.
- 13.8. The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

14. Liability

- 14.1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2. Subject always to clauses 14.3, 14.4 and 14.5:
- 14.2.1. the aggregate liability of the Supplier in each twelve (12) month period commencing on 1 April in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the annual Charges paid or payable pursuant to this Agreement in the twelve (12) month period commencing on 1 April to which a claim relates; and
 - 14.2.2. in no event shall either Party be liable to the other Party for any:
 - a) loss of profits;
 - b) loss of business;
 - c) loss of revenue;
 - d) loss of or damage to goodwill; and/or
 - e) any indirect, special or consequential loss or damage.
 - 14.2.3. the aggregate liability of the Customer in each twelve (12) month period commencing on 1 April in respect of all defaults, claims, losses or damages howsoever caused, whether

arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the annual Charges paid or payable pursuant to this Agreement in the twelve (12) month period commencing on 1 April to which a claim relates.

14.3. The Parties agree that:

14.3.1. for the purposes of this Agreement any: i) costs of any replacement or workaround system or services; ii) any third party claims; and iii) any financial penalties; incurred by or imposed upon the Customer or any Member shall be deemed to be direct losses and so not subject to exclusion under clause 14.2.2; and

14.3.2. in no event shall the Customer have any liability to the Supplier for any defaults, claims, losses or damages in respect of any act, omission or breach of the GS1 UK Terms and Conditions by any Member howsoever caused, and whether relating to the provision of Membership Services, or provision of Additional Services under a Service Contract.

14.4. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.4.1. death or personal injury caused by its negligence or that of its Staff;

14.4.2. fraud or fraudulent misrepresentation by it or that of its Staff; or

14.4.3. any other matter which, by law, may not be excluded or limited.

14.5. The Supplier's liability under the indemnities in clauses 5.4 and 19.3 shall be unlimited.

14.6. 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 the Agreement.

15. Insurance

15.1. During the Term and for a period of 12 months thereafter, the Supplier shall maintain in force, and shall procure that any Sub-contractors maintain in force, with a reputable insurance company insurance sufficient to cover the liabilities that may arise under or in connection with this Agreement, and shall, on the Customer's request, produce both the insurance certificates giving details of cover and the receipts for the current year's premium in respect of each insurance.

16. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure Event. Each Party shall promptly notify the other Party in writing when a Force Majeure Event causes a delay or failure in performance and when it ceases to do so. If a Force Majeure Event continues for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

17. Termination

17.1. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

17.1.1. (without prejudice to clause 17.1.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

17.1.2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

17.1.3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

17.1.4. undergoes a change of Control without the prior written consent of the Customer. The Customer shall be entitled to withhold such consent if, in the reasonable opinion of the

Customer, the proposed change of Control will have a material impact on the performance of the Agreement or the reputation of the Customer;

17.1.5. breaches any of the provisions of clauses 8.2, 11, 12, 13 and 18; or

17.1.6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.6) in consequence of debt in any jurisdiction.

17.2. The Supplier shall notify the Customer as soon as practicable of any change of Control as referred to in clause 17.1.4 or any potential such change of Control.

17.3. The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

17.4. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 4.2, 7.1, 7.2, 7.7, 7.8, 8, 5, 10.1.2, 11, 12, 13, 17.5, 18.4.3, 19.3, 20 and 22.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

17.5. Upon termination or expiry of the Agreement, the Supplier shall:

17.5.1. give all reasonable assistance to the Customer and any incoming supplier of the Services; and

17.5.2. return all requested documents, information and data to the Customer as soon as reasonably practicable.

18. Compliance

18.1. The Supplier shall, and shall procure that its Sub-contractors and any person under its control, comply with all the Customer policies, rules and procedures as notified to the Supplier from time to time.

18.2. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

18.3. The Supplier shall:

18.3.1. comply with all the Customer's health and safety measures while on the Customer's premises; and

18.3.2. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

18.4. The Supplier shall:

18.4.1. comply, and procure that all Staff comply with all CSR Laws;

18.4.2. require its Sub-contractors and any person under its control, to comply with all CSR Laws;

18.4.3. adopt, and procure that its Sub-contractors and any person under its control adopt, written corporate and social responsibility policies that set out values for relevant activity and behaviour equivalent to those set out in the CSR Policies (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment of the Supplier's business activities); and

18.4.4. notify the Customer in the event that the Supplier's or its Sub-contractors' corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.

18.5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

18.5.1. section 182 of the Finance Act 1989.

- 18.6. The Customer may, where it deems appropriate (including but not limited to circumstances where a successor or related project involves a procurement process governed by the Public Contracts Regulations 2015), require the Supplier to put in place steps to ensure due probity including the erection of ethical walls and obligations to provide specific information. In such circumstances, the Supplier shall comply with any such measures reasonably proposed by the Customer.

19. Prevention of Fraud and Corruption

- 19.1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 19.2. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3. If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the any Contracting Authority (including the Customer) the Customer may:
- 19.3.1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
 - 19.3.2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

20. Dispute Resolution

- 20.1. If there is a dispute in relation to this Agreement, the Party raising the dispute shall serve a notice on the other Party in writing ("**Dispute Notice**") setting out the details of the dispute. The Parties shall then attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 20.2. If the dispute cannot be resolved by the Parties within 30 days of the date of the Dispute Notice (being the date it was received) then a Party may escalate it for determination to the Secretary of State (in a similar manner to that described in section 9 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012)).
- 20.3. If the dispute still cannot be resolved following escalation to Secretary of State within 30 days, the dispute shall be referred to the determination of the English courts (as per clause 24).
- 20.4. The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed, by the reference of a dispute to any dispute resolution process and the Supplier shall, and shall procure that the Staff shall comply fully with the requirements of this Agreement at all times.

21. Variation

- 21.1. The Agreement, including the GS1 Terms and Conditions, cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 21.2. The Supplier shall not agree any changes to the terms of any individual GS1 Terms and Conditions with a Member without the prior written consent of the Customer, provided that the Supplier and Members shall be free to negotiate the terms of any Service Contract as they see fit.

22. General

- 22.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 22.2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 22.3. If following execution of this Agreement the UK ceases to be a Member State of the European Union, then each Party shall continue to perform its obligations under this Agreement and neither Party shall be entitled to amend the scope of the Services, the Charges, any timescales or any other aspects of this Agreement unless any changes are agreed pursuant to clause 21.1.
- 22.4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 22.5. Any waiver or relaxation, either partly or wholly of any of the terms and conditions of the Agreement, shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 22.6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 22.7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 22.8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

23. Notices

- 23.1. Any notice to be given under the Agreement shall be in writing and shall include the Agreement reference and title. All notices must be served by email, and, subject to clause 23.2, may in addition be served by personal delivery or first class recorded post. All notices must be served using the addresses of the relevant Party set out in the Summary Form, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 23.2. Notices under clauses 15 (Force Majeure) and 17 (Termination) must be served by email and personal delivery or recorded delivery in the manner set out in clause 23.1.
- 23.3. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

24. Publicity and Branding

- 24.1. The Supplier shall not:
- 24.1.1. make any press announcements or publicise this Agreement or its contents in any way; or
- 24.1.2. use the Customer's or any other NHS name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Customer, and in compliance with the NHS Identity Guidelines ([NHS Identity Guidelines \(england.nhs.uk\)](https://www.nhs.uk/identity-guidelines)).

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

25. Governing Law and Jurisdiction

25.1. The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law, and shall be subject to the exclusive jurisdiction of the English courts.

26. Execution and Counterparts

26.1. This Agreement may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.

26.2. Execution of this Agreement may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Agreement by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Agreement as if signed by each Party's manuscript signature. In such situation, this Agreement shall be formed on the date on which both Parties have electronically signed the Agreement as recorded in the Customer's electronic contract management system.

Annex 2 – Members

1. 'NHS Organisations' within scope of this Agreement shall include, without limitation, all of the following organisations or their successors:
 - a. Integrated Care Systems (ICSs);
 - b. each Integrated Care Board (in respect of its support of ICSs);
 - c. each NHS Trust;
 - d. each Mental Health Trust;
 - e. each Foundation Trust;
 - f. Ambulance Trusts;
 - g. each arms-length body ("ALB") as defined below:
 - i. [NHS England](#) (merger of NHS England, NHS Digital, Health Education England)
 - ii. [Care Quality Commission](#)
 - iii. [National Institute for Health and Care Excellence](#)
 - iv. [UK Health Security Agency](#) (was Public Health England)
 - v. [Health Research Authority](#)
 - vi. [NHS Blood and Transplant](#)
 - vii. [Medicines and Healthcare products Regulatory Agency \(MHRA\)](#)
 - viii. [NHS Business Services Authority](#)
 - ix. [NHS Resolution \(NHS Litigation Authority\)](#)
 - x. [Human Fertilisation and Embryology Authority](#)
 - xi. [Human Tissue Authority \(HTA\)](#)
 - xii. [NHS Counter Fraud Authority](#)
 - h. any future organisation that the Parties may agree.
2. 'NHS Organisations' shall not include, without limitation, GP surgeries, Community Pharmacies and private hospitals
3. Any query over validity of inclusion within this Agreement should be forwarded to the Customer for confirmation

Annex 3 – GS1 UK Terms and Conditions



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