

THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

and

The Supplier

Tech Innovation Framework Agreement

Framework Terms

Lot 2

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Schedule list

Schedule name	Schedule number	Description
Definitions	1	Provides the meanings of key terms or words contained in the Framework Agreement.
Call Off Terms	2	The template call off agreement to be entered into between the Supplier and Call Off Ordering Parties.
Common Contract Change Control	3	Details the process to be followed by the parties in the event of a change to the Framework Terms.
Dispute Resolution	4	Details the process to be followed by the parties in the event of a formal dispute.
Reports and Records Provisions	5	Sets out the records that a supplier must retain.
Commercially Sensitive Information	6	Lists of sensitive information which the Supplier would prefer to keep confidential.

THIS FRAMEWORK AGREEMENT is made on

[2022]

BETWEEN:

- (1) **[THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE]** acting as part of the Crown and with the Health and Social Care Information Centre (known as NHS Digital) acting as his agent ("**Authority**"); and
- (2) [Name of Supplier] a company registered in England and Wales under company number whose registered office is at (the "**Supplier**"),
- each a "**Party**" and together the "**Parties**".

INTRODUCTION

- (A) On 7TH June 2022, the **Secretary of State for Health and Social Care** advertised the Contract Notice in the Official Journal of the European Union setting out its intention to establish a multi supplier framework for the provision of technology and innovation services under two lots.
- (B) The scope of Lot 1 is the provision of Catalogue Solutions to meet the defined capabilities.
- (C) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as a supplier of services for Lot 1. All Lot 1 suppliers automatically qualified as a Lot 2 supplier and unless the Supplier elected to withdraw its tender, the Supplier has been awarded this Lot 2 Framework Agreement without further competition.
- (D) Lot 2 provides a mechanism for Suppliers to bid for projects for a range of activities associated with the development of products applicable to the market sector and nature of Catalogue Solutions covered by Lot 1, as described further in clause 3.4 of this Framework Agreement.
- (E) The Parties have agreed to enter into this Lot 2 Framework Agreement on the terms and conditions set out below.
- (F) This Framework Agreement established the basis on which certain customers within the scope of the Contract Notice may, during the Framework Term, enter into Call Off Agreements with the Supplier for the provision of the Services and the terms and conditions that shall govern the provision of such Services.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. Definitions and Interpretation

- 1.1 In this Framework Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in schedule 1 (*Definitions*) or the relevant schedule in which that capitalised expression appears.
- 1.2 In this Framework Agreement, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a reference to a gender includes the other gender and the neutral;

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- 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government or NHS Body;
- 1.2.4 any references to a named body or organisation shall include references to successors of that body or organisation and/or any equivalent bodies or organisations that perform the same or substantially similar functions;
- 1.2.5 a reference to a Law includes a reference to that Law as modified, amended, extended, consolidated or re-enacted from time to time before or after the date of this Framework Agreement and any prior or subsequent legislation under it;
- 1.2.6 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- 1.2.7 references to "writing" include typing, printing, lithography, photography, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.9 unless otherwise provided, references to clauses and schedules are references to the clauses and schedules of this Framework Agreement, and references in any schedule to paragraphs, parts and annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the schedule or the part of the schedule in which the references appear;
- 1.2.10 references to this Framework Agreement are references to this Framework Agreement as amended from time to time; and
- 1.2.11 any monetary sums set out in this Framework Agreement shall (unless expressly stated otherwise) be in pounds sterling.
- 1.3 If there is any conflict between the Framework Agreement and the Call Off Agreement(s), the Call Off Agreement shall take precedence.
- 1.4 In respect of rights, obligations and liability in relation to personal data, if there is any conflict between the Data Processing Deed and any of the Framework Agreement or Call Off Agreement(s) then the Data Processing Deed shall prevail to resolve such conflict.
- 1.5 The schedules and their annexes and appendices form part of this Framework Agreement.
- 1.6 In entering into this Framework Agreement, the Authority is acting as part of the Crown.

SECTION B – FRAMEWORK ARRANGEMENTS

2. Term of Framework Agreement

- 2.1 This Framework Agreement will become effective on the 7th November 2022 the Framework Commencement Date and shall continue in force until terminated in accordance with this Framework Agreement.

3. Scope of the Framework Agreement and Call Off Agreements

- 3.1 By executing this Framework Agreement, the Supplier becomes eligible to submit tenders to deliver the Services more particularly described in each Call Off Agreement.
- 3.2 The Supplier shall provide the Services under the terms of any Call Off Agreement entered into with the relevant Call Off Ordering Party and such agreement shall be entered into in accordance with the procedure set out in clause 5 (*Call Off Procedure*).
- 3.3 The only parties permitted to execute Call Off Agreements are the Authority and/or the Health and Social Care Information Centre (known as NHS Digital).
- 3.4 The scope of the Services provided under the Call Off Agreements shall:
 - 3.4.1 be applicable to the same market sectors as Lot 1 Framework Agreement, namely for the primary care sector including general practice, integrated care and federated care settings; and
 - 3.4.2 relate to the execution of any activity which may elaborate and/or inform the specification and provision of services related to the above market, including but not limited to:
 - 3.4.2.1 feasibility studies;
 - 3.4.2.2 the definition of enhanced or new standards; or
 - 3.4.2.3 development of appropriate software and/or system components.

4. Due Diligence

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

5. Call Off Procedure

- 5.1 The process for Suppliers to bid to provide Services via Call Off Agreements is set out below.
- 5.2 The Call Off Ordering Party may:
 - 5.2.1 use the Direct Award procedure where:
 - 5.2.1.1 the total contract value of an award is no more than £40,000; and
 - 5.2.1.2 the scope of the Services under the contract being awarded relate to consultancy, "early works" or discovery only;

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- 5.2.2 use the Competition Procedure for any contract awards, regardless of the scope or value of such contract.

Direct Award

- 5.3 Where the Call Off Ordering Party is awarding a Call Off Agreement under this Framework Agreement that meets the criteria set out at clause 5.2.1 above and where the Call Off Ordering Party is not using the Competition Procedure, the Call Off Ordering Party shall:

- 5.3.1 develop a clear statement of requirements;
- 5.3.2 apply the Direct Award Criteria as set out at clause 5.4 below for all Suppliers capable of meeting the statement of requirements in order to establish which of the Suppliers provides the most economically advantageous solution; and
- 5.3.3 on the basis set out above, award the Call Off Agreement with the successful Supplier in accordance with clause 5.7 below.

Direct Award Criteria

- 5.4 The following criteria shall be applied to the Supplier's Services:

Criteria Number	Award Criteria	Percentage Weightings
1	Technical Merit	100%

- 5.5 Following completion of the Direct Award process, the Call Off Ordering Party and the Supplier shall execute a Call Off Agreement. The Call Off Agreement shall define the Services to be provided in the applicable schedule of the Call Off Agreement.
- 5.6 The Supplier shall comply with any obligations around collaboration with other suppliers as described in the statement of requirements and/or the Call Off Agreement.

Direct Award Call Off Process

- 5.7 Where the Call Off Ordering Party wishes to enter into a contract with the Supplier following an award under clause 5.3, it shall complete the Lot 2 Call Off Agreement.
- 5.8 The execution of the Lot 2 Call Off Agreement by duly authorised representatives of the Supplier and the Call Off Ordering Party shall be sufficient to create a valid and legally binding contract.

Competition Procedure

- 5.9 The Call Off Ordering Party shall notify Lot 2 suppliers of opportunities for which the suppliers may submit a tender. These opportunities may also be signposted on the Standards Roadmap. As part of this notification, the Call Off Ordering Party shall issue a further competition invitation setting out the necessary requirements, award criteria and procurement specifics ("**Further Competition Invitation**").
- 5.10 The Call Off Ordering Party shall have the option to split the further competition into two stages where it deems appropriate. In this event, the Call Off Ordering Party shall detail what is required of the supplier at each of the two stages in the Further Competition Invitation and shall determine the down

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selection for stage two in accordance with the requirements set out in the Further Competition Invitation and the criteria as set out in clause 5.18 below.

- 5.11 If the Supplier does not want to take part in the further competition, it shall notify the Call Off Ordering Party by the date specified in the Further Competition Invitation. In this event, the Supplier must provide reasons for such refusal in writing to the Call Off Ordering Party without undue delay. Failure to do so may result in the Supplier not being invited to future Lot 2 competitions.
- 5.12 The relevant suppliers will have to respond to the requirements as set out in the Further Competition Invitation as part of its tender for the Lot 2 Call Off Agreement ("**Tender Responses**"). The Call Off Ordering Party shall set a time limit for the receipt of Tender Responses to the Further Competition Invitation. If the further competition has been split into two stages in accordance with clause 5.10, the Call Off Ordering Party will review the Tender Responses for the first stage and shortlist suppliers by applying the competition award criteria (as set out in the Further Competition Invitation and which shall be consistent with the information set out at clause 5.18 below) and notify them accordingly. The selected suppliers will then be required to provide Tender Responses in relation to the second stage of the competition, in accordance with the requirements and timeframes as set out in the Further Competition Invitation.
- 5.13 The Supplier shall ensure that all Tender Responses submitted shall remain open for acceptance by the Call Off Ordering Party for any period of time as may be specified in the Further Competition Invitation.
- 5.14 Following the further competition and on receipt of the Tender Responses, the Call Off Ordering Party shall determine which supplier(s) will be awarded the Lot 2 Call Off Agreement(s) by applying the competition award criteria (as set out in the Further Competition Invitation and which shall be consistent with the information set out at clause 5.18 below) and notify them accordingly.
- 5.15 The Call Off Ordering Party shall provide unsuccessful suppliers with written feedback giving reasons why their tenders were unsuccessful.
- 5.16 In awarding the Lot 2 Call Off Agreement, the Call Off Ordering Party shall comply with the provisions set out in clauses 5.21 to 5.23 below.

No Award

- 5.17 Notwithstanding the fact that the Call Off Ordering Party has followed the procedure as set out above, the Call Off Ordering Party shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige the Call Off Ordering Party to make an award of a Call Off Agreement under this Lot 2 Framework Agreement.

Competition Award Criteria

- 5.18 Other than social value, which shall be a mandatory criteria with an allocated weighting of 10% as set out below, some or all of the other following criteria shall be applied to the Services set out in the Suppliers' compliant tenders, with percentage weightings from 0% to 100% to be set by the Call Off Ordering Party that shall conduct the further competition.

Criteria Number	Award Criteria	Percentage Weightings
1	Price	[10-90%]
2	Technical Merit	[10-90%]

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3	Delivery Approach	[10-90%]
4	Social Value	10%

5.19 Following completion of the further competition and award process, the Call Off Ordering Party and the Supplier shall execute a Call Off Agreement. The Call Off Agreement shall define the Services to be provided in the applicable schedule of the Call Off Agreement.

5.20 The Supplier shall comply with any obligations around collaboration with other suppliers as described in the Further Competition Invitation and/or the Call Off Agreement.

Competition Procedure Call Off Process

5.21 Where the Call Off Ordering Party wishes to enter into a contract with the Supplier following an award under clause 5.14, it shall complete the Lot 2 Call Off Agreement.

5.22 If the Call Off Ordering Party and the Supplier reach an agreement in principle on the contents of the Lot 2 Call Off Agreement, the Supplier shall without undue delay (and in any event, within 5 Working Days) sign the Lot 2 Call Off Agreement and provide the relevant Lot 2 Call Off Agreement to the Call Off Ordering Party for signature in accordance with any mechanisms and timeframes as are instructed by the Call Off Ordering Party. The Call Off Ordering Party shall then promptly acknowledge receipt of such Lot 2 Call Off Agreement to the Supplier and sign it without undue delay (and in any event, within 5 Working Days of receipt).

5.23 The execution of the Lot 2 Call Off Agreement by duly authorised representatives of the Supplier and the Call Off Ordering Party shall be sufficient to create a valid and legally binding contract.

6. Services**Supplier obligations**

6.1 Each time a Call Off Agreement is entered into the warranties, representations and obligations in this Framework Agreement shall be deemed repeated by the Supplier to the Authority and the relevant Call Off Ordering Party with reference to the circumstances existing at the time that they are deemed to be repeated and any reference to the Framework Commencement Date (whether express or implied) shall be construed as a reference to the relevant Call Off Commencement Date.

6.2 The Supplier shall perform its obligations under this Framework Agreement, including in relation to the supply of Services, in accordance with:

6.2.1 all applicable Law;

6.2.2 Good Industry Practice; and

6.2.3 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of clauses 6.2.1 and 6.2.2.

6.3 The Supplier shall draw any conflict of which it is aware, or should reasonably be aware, between any of the requirements of clause 6.2 to the attention of the Authority and shall comply with the Authority's reasonable instructions as to how that conflict shall be resolved.

6.4 The Supplier warrants and represents that:

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- 6.4.1 it has full capacity and authority to enter into and to perform this Framework Agreement;
- 6.4.2 it shall be validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 6.4.3 there are no actions, suits or proceedings or regulatory investigations before any court, regulator or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Framework Agreement;
- 6.4.4 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 6.4.5 it has all necessary consents and regulatory approvals to enter into this Framework Agreement; and
- 6.4.6 this Framework Agreement is executed by its duly authorised representative.
- 6.5 The Supplier warrants and represents that it has all consents, registrations, approvals, licences and permissions relating to Medical Devices as recommended or stipulated by any materials published by the Medicines and Healthcare Products Regulatory Agency
- 6.6 The Supplier shall:
 - 6.6.1 ensure that it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
 - 6.6.2 at all times provide sufficient and suitably qualified staff to fulfil the Supplier's roles and duties under this Framework Agreement;
 - 6.6.3 obtain, and maintain throughout the duration of this Framework Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - 6.6.4 continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement and/or the receipt of the Services by any Call Off Ordering Party;
 - 6.6.5 minimise any disruption to the Services and/or the Authority's operations when carrying out its obligations under this Framework Agreement;
 - 6.6.6 ensure any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - 6.6.7 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Framework Agreement;

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- 6.6.8 notify the Authority in writing as soon as reasonably possible and in any event within one month of any Change of Control taking place;
- 6.6.9 notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court, regulator or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Framework Agreement;
- 6.6.10 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Framework Agreement;
- 6.6.11 ensure its execution, delivery and performance of its obligations under this Framework Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 6.6.12 ensure its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 6.6.13 ensure all written statements and representations in any written submissions made by the Supplier as part of the final tender for the Framework Agreement and any Tender Responses for Call Off Agreements remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Framework Agreement; and
- 6.6.14 ensure it does not perform the Services in any manner that endangers the safety or unlawfully interferes with the convenience of the public and shall procure that its employees, agents and Sub-Contractors shall conform to such regulations, procedures and precautions provided in writing by the Authority and/or Call Off Ordering Party as may be appropriate.
- 6.7 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 6.8 Each of the representations and warranties set out in this clause 6 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Framework Agreement.
- 6.9 If at any time the Supplier becomes aware that a warranty or representation given by it under this clause 6 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

Continuing obligation to provide the Services

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

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Obligation to Notify

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

7. Authority Responsibilities

- 7.1 The Authority warrants and represents that:

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

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

- 7.2 The Authority shall:

7.2.1 perform all of its obligations which are set out in the clauses of this Framework Agreement and the paragraphs of the schedules;

7.2.2 provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Framework Agreement; and

7.2.3 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Framework Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority.

8. Charges and Invoicing

- 8.1 The Charges applicable to the Services provided shall be calculated, invoiced and paid for in accordance with the rates and rules described in each Call Off Agreement for delivery of the relevant Services.

VAT

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

SECTION C – CONTRACT GOVERNANCE

9. Governance

- 9.1 Governance obligations between the parties shall be set out in each Call Off Agreement.

10. Reports and Records

- 10.1 The Supplier shall comply with the record related obligations set out in schedule 5 (*Reports and Records Provisions*).

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- 10.2 If the Authority assigns, novates or otherwise transfers this Framework Agreement, the Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Records in accordance with the provisions of schedule 5 (*Reports and Records Provisions*).

SECTION D – CHANGE

11. General

- 11.1 Depending on the nature of a Change, it will be dealt with according to the relevant provisions of this Section D. Only changes to the Framework Terms and documents referenced therein will be dealt with by the Common Contract Change Control Procedure.
- 11.2 In considering and agreeing Changes to this Framework Agreement the Authority shall at all times have regard to the requirements and restrictions set out in Regulation 72 of the Public Contract Regulations 2015.

12. Framework Agreement Common Contract Changes

- 12.1 Subject to clause 12.3, a requirement for a Change to the Framework Terms shall be subject to the Common Contract Change Control Procedure as set out in schedule 3.
- 12.2 Notwithstanding the provisions of clause 11.2 above, where this Framework Agreement confers rights upon third parties pursuant to clause 34, those provisions may not be varied without the consent of such third parties.
- 12.3 Where the Parties reasonably agree that the nature of a Change means it is not appropriate to follow the Common Contract Change Control Procedure (for example, where the information subject to the Change is Supplier specific, such as its Commercially Sensitive Information), the Parties may effect such change by agreement only and shall update the Framework Agreement accordingly.

13. Change in Law

- 13.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Framework Agreement nor be entitled to an increase in the Charges as the result of:
- 13.1.1 a General Change in Law; or
- 13.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Framework Commencement Date.
- 13.2 If a Specific Change in Law occurs or will occur during the Framework Term or the term of any Call-Off Agreement (other than as referred to in clause 13.1.2), the Supplier shall:
- 13.2.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
- 13.2.1.1 whether any Common Contract Changes are required to this Framework Agreement; and
- 13.2.1.2 whether any relief from compliance with the Supplier's obligations under this Framework Agreement is required;

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- 13.2.2 provide the Authority with evidence:
 - 13.2.2.1 that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - 13.2.2.2 as to how the Specific Change in Law has affected the cost of providing the Services; and
 - 13.2.2.3 demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges under the Call Off Agreements; and
- 13.2.3 be entitled to relief from its obligations under this Framework Agreement under this Framework Agreement to the extent impacted by the relevant Specific Change in Law.
- 13.3 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law as set out at clause 13.2.3 shall be implemented in accordance with the relevant Change provisions of this Section D and the Call Off Agreement, depending on the nature of the required Change.

SECTION E – SUPPLY CHAIN

14. Supply chain rights

- 14.1 Subject to the provisions of this clause 14, the Supplier shall be entitled to sub-contract its obligations under this Framework Agreement and in relation to the Services.
- 14.2 The Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and Sub-Contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

Supply chain protection

- 14.3 The Supplier shall ensure that all Sub-Contracts entered into after the Framework Commencement Date shall contain a provision:
 - 14.3.1 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and
 - 14.3.2 a right for the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 14.4 The Supplier shall pay any undisputed sums which are due from it to a Sub-Contractor within 30 days from the receipt of a valid invoice.
- 14.5 Notwithstanding any provision of clauses 16 (*Confidentiality*) and 19 (*Publicity and Branding*), if the Supplier or Sub-Contractor notifies the Authority that:
 - 14.5.1 for a Sub-Contract entered into in accordance with clause 14.3, the Supplier has failed to pay a Sub-Contractor's undisputed invoice within 30 days of receipt; or

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

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

15. Non-Solicitation

The Parties shall not (except with the prior written consent of the other Party) directly solicit or entice away (or attempt to solicit or entice away) from the employment of the that other Party any person employed or engaged by that Party in relation to this Framework Agreement (including any contractors) at any time during the Framework Term. For the avoidance of doubt, this restriction shall not prevent either Party from employing or engaging any of the other Party's employees following a bona fide recruitment process where a public advertisement has been placed to seek to recruit new employees or staff.

SECTION F – CONFIDENTIALITY

16. Confidentiality

16.1 For the purposes of this clause 14, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

16.2 Except to the extent set out in this clause 14, or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:

16.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

16.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the owner's prior written consent;

16.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and

16.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

16.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party if and to the extent that:

16.3.1 the Recipient is required to disclose the Confidential Information by Law;

16.3.2 the need for such disclosure arises out of or in connection with:

16.3.2.1 any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement;

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- 16.3.2.2 the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Framework Agreement; or
 - 16.3.2.3 the conduct of a Central Government or NHS Body review and/or a major projects review and/or any such similar assurance review carried out by or on behalf of HMG in respect of this Framework Agreement;
- 16.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is or any of the Disclosing Party's directors, officers, employees, agents, consultants or contractors are involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office as defined in the act.
- 16.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 16.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
 - 16.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Framework Agreement;
 - 16.5.2 its auditors; and
 - 16.5.3 its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.
- 16.6 Where the Supplier discloses Confidential Information of the Authority pursuant to this clause 16.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made, including by making Sub-Contractors, auditors or other third party advisers aware of the obligations set out in this clause 14.
- 16.7 The Authority may disclose the Confidential Information of the Supplier:
 - 16.7.1 on a confidential basis to any Call Off Ordering Party where the Confidential Information relates to the services under the scope of the Framework Agreement required by the Call Off Ordering Party;
 - 16.7.2 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - 16.7.3 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 16.7.4 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 16.7.5 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clauses 16.7.1 or 16.7.2 for any purpose relating to or connected with this Framework Agreement and/or any Call Off Agreement;

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- 16.7.6 excluding any Commercially Sensitive Information, which the Authority determines in its absolute discretion is exempt from disclosure in accordance with the provisions of FOIA, as part of the Authority's re-procurement process for the Services, on a confidential basis and subject to an appropriate confidentiality agreement to bidders for the purposes of undertaking due diligence and/or to a Replacement Supplier for the purposes of providing Replacement Services;
- 16.7.7 on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
- 16.7.8 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Framework Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 14.

- 16.8 Nothing in this clause 14 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

17. Transparency and Freedom of Information

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

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

- 17.1.2 Commercially Sensitive Information;

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

- 17.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 17.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.
- 17.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

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- 17.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Framework Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 17.6 The Supplier agrees that any Information it holds that is not included in the Transparency Information but is reasonably relevant to or that arises from the provision of the Supplier's obligations under this Framework Agreement or the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information (subject always to the Authority's over-riding rights of disclosure of Supplier's Confidential Information as set out at clause 16.7.4) also publish such Information. The Supplier shall provide to the Authority within 5 Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 17.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 17.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - 17.7.2 transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 17.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 17.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 17.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

18. Protection of Personal Data

The parties understand that no Personal Data is shared or processed pursuant to the Framework Agreement. Each Call Off Agreement shall account for any Personal Data processed in relation to the Call Off Agreement.

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19. Publicity and Branding

- 19.1 Without prejudice to the Supplier's right to disclose Confidential Information pursuant to clause 16.3.1, the Supplier shall not:
- 19.1.1 make any press announcements or publicise this Framework Agreement or any Call Off Agreement or its contents in any way; or
 - 19.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) and in any case only in compliance with the NHS branding guidelines published by NHS England from time to time.
- 19.2 Each Party acknowledges to the other that nothing in this Framework Agreement or a Call Off Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G – SUPPLIER AND AUTHORITY PROTECTIONS

20. Force Majeure

- 20.1 Subject to the remaining provisions of this clause 20, either Party may claim relief under this clause 20 from liability for failure to meet its obligations under this Framework Agreement for as long as and only to the extent the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Framework Agreement which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 20.2 The Affected Party shall as soon as reasonably practicable following the occurrence of a Force Majeure Event issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 20.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 20 to the extent that consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Framework Agreement and/or any Call Off Agreement.
- 20.4 Subject to clause 20.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 20.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 20.6 Where, as a result of a Force Majeure Event:

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- 20.6.1 an Affected Party fails to perform its obligations in accordance with this Framework Agreement, then during the continuance of the Force Majeure Event:
- 20.6.1.1 the other Party shall not be entitled to exercise any rights to terminate this Framework Agreement as a result of such failure other than pursuant to clause 22; and
- 20.6.1.2 neither Party shall be liable for any Default arising as a result of such failure.
- 20.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement.
- 20.8 Relief from liability for the Affected Party under this clause 20 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement and shall not be dependent on the serving of notice under clause 20.7.

SECTION H – INDEMNITIES, LIABILITY AND INSURANCE

21. Limitations on Liability

Unlimited liability

- 21.1 Neither Party limits its liability under this Framework Agreement for:
- 21.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- 21.1.2 fraud or fraudulent misrepresentation by it or made on its behalf; or
- 21.1.3 any liability to the extent it cannot be limited or excluded by Law.
- 21.2 The Supplier's liability under this Framework Agreement shall be unlimited in respect of any Losses relating to:
- 21.2.1 disclosure of Confidential Information which is not permitted by the terms of this Framework Agreement and/or Call Off Agreements; and
- 21.2.2 any Wilful Default of the Supplier; and
- 21.2.3 any Abandonment by the Supplier.

Financial and other limits

- 21.3 Subject to clauses 21.1 and 21.2 (*Unlimited liability*) and clauses 21.5 and 21.6 (*Consequential losses*) each Party's aggregate liability in respect of all Losses incurred by the other Party under or in connection with this Framework Agreement shall in no event exceed £100,000.
- 21.4 Each Call Off Agreement shall define a liability cap for the Supplier in respect of that specific Call Off Agreement.

Consequential losses

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- 21.5 Subject to clauses 21.1, 21.2 (*Unlimited liability*) and clause 21.6 (*Consequential Loss*), neither Party shall be liable to the other Party for:
- 21.5.1 any indirect, special or consequential Loss; or
 - 21.5.2 any loss of profits, turnover, sales, revenue, anticipated savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 21.6 Notwithstanding clause 21.5 but subject to clause 21.7 (*Mitigation*), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default relating to this Framework Agreement by the Supplier:
- 21.6.1 any reasonable additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 21.6.2 any wasted expenditure or charges;
 - 21.6.3 the additional cost of procuring a replacement framework contract for the provision of Replacement Services should the Authority terminate this Framework Agreement pursuant to clause 22;
 - 21.6.4 any compensation or interest paid to a third party by the Authority;
 - 21.6.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

Mitigation

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

SECTION I – TERMINATION

22. Termination by the Authority

- 22.1 At the Authority's sole discretion, this Framework Agreement may be terminated with immediate effect if:
- 22.1.1 the Supplier's Lot 1 Framework Agreement is terminated;
 - 22.1.2 the Supplier has not satisfied the Lot 1 Framework Agreement Condition Precedent prior to the expiry of the Lot 1 Framework Agreement Initial Term; or
 - 22.1.3 at any point in time the Authority (in its sole discretion and acting reasonably) is of the opinion that the Supplier will not satisfy the Lot 1 Framework Agreement Condition Precedent prior to the expiry of the Lot 1 Framework Agreement Initial Term.
- 22.2 The Authority may terminate this Framework Agreement by notice in writing having immediate effect if any of the following events or circumstances take place:

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- 22.2.1 the occurrence of an Insolvency Event in respect of the Supplier;
 - 22.2.2 the Supplier is subject to one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), of the Public Contracts Regulations 2015;
 - 22.2.3 the Supplier is subject to a situation which would have entitled the Framework Authority to exclude it from the initial procurement of this Framework Agreement pursuant to any of the mandatory or discretionary exclusion grounds set out in the SQ;
 - 22.2.4 the Supplier commits a material breach (and for these purposes a material breach may be a single material breach of a number of breaches or repeated breaches (whether of the same or different obligations) which taken together constitute a material breach) of this Framework Agreement which is not capable of remedy or which, where capable of remedy is not remedied within 30 days after notice of the breach from the Authority requiring remedy or which is remedied within that period, but which subsequently recurs;
 - 22.2.5 the Supplier is in material breach and for these purposes a material breach may be a single material breach of a number of breaches or repeated breaches which taken together constitute a material breach) of:
 - 22.2.5.1 clause 14 (*Confidentiality*);
 - 22.2.5.2 clause 17 (*Freedom of Information*);
 - 22.2.5.3 clause 27 (*Assignment and Novation*); and
 - 22.2.5.4 clause 30 (*Prevention of Fraud and Bribery*),and such material breach shall be treated as material breach not capable of remedy;
 - 22.2.6 the Supplier is in breach of clause 5 (*Call Off Procedure*);
 - 22.2.7 there is a Change of Control in respect of the Supplier (or any company which Controls the Supplier as the case may be) which the Supplier notifies the Authority of in accordance with clause 6.6.8, or which the Authority otherwise becomes aware of, unless:
 - 22.2.7.1 the Authority has given its prior written consent (such consent not to be unreasonably withheld) to the particular Change of Control, which subsequently takes place as proposed; or
 - 22.2.7.2 the Authority has not served a notice of objection within six months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;
 - 22.2.8 where a right of termination is expressly reserved in this Framework Agreement; or
 - 22.2.9 the representations and warranty given by the Supplier and referred to in this Framework Agreement being materially untrue or misleading.
- 22.3 The Authority may terminate this Framework Agreement for any reason (including, but not limited to where the Framework Agreement has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72(9) of the Public

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Contracts Regulations 2015 and/or for convenience and/or public policy) at any time on giving no less than 30 calendar days written notice to the Supplier.

23. Termination by the Supplier

The Supplier has no right to terminate this Framework Agreement.

24. Consequences of Expiry or Termination

- 24.1 The expiry or termination of this Framework Agreement in accordance with clause 22 (*Termination by the Authority*) shall not affect the accrued rights of any Party.
- 24.2 Notwithstanding the expiry or termination of this Framework Agreement, any Call Off Agreement in force at the time of such expiry or termination shall continue in full force and effect for the remainder of its term, unless such Call Off Agreement is terminated in accordance with its terms.
- 24.3 The provisions of clauses 1 (*Definitions and Interpretation*), 6 (*Services*), 8 (*Charges and Invoicing*), 9 (*Governance*), 13 (*Change in Law*), 16 (*Confidentiality*), 21 (*Limitations on Liability*), 24 (*Consequences of Expiry or Termination*), 28 (*Waiver and Cumulative Remedies*), 31 (*Severance*), 32 (*Further Assurances*), 33 (*Entire Agreement*), 34 (*Third Party Rights*), 35 (*Notices*), 36 (*Disputes*), and 37 (*Governing Law and Jurisdiction*), and the provisions of schedules 1 (*Definitions*), 4 (*Dispute Resolution Procedure*) and 5 (*Reports and Records Provisions*) and such other provisions which are expressly or by implication required to survive termination or expiry, including any provisions required in connection with any subsisting Call Off Agreements, shall survive expiry or the termination of this Framework Agreement.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

25. Modern Slavery

- 25.1 The Supplier represents and warrants that as at the Framework Commencement Date, neither the Supplier, nor any of its officers, employees:
- 25.1.1 has been convicted of any offence involving slavery or human trafficking; and
- 25.1.2 having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 25.2 The Supplier shall implement due diligence procedures for its Sub-Contractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains.
- 25.3 Throughout the Framework Term and the term of any Call-Off Agreements, the Supplier shall prepare and deliver to the Authority each year, an annual slavery and human trafficking report (unless a general statement or publication has been made that is acceptable to the Authority, at its sole discretion) setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business..

26. Corporate Social Responsibility

- 26.1 The Authority applies corporate and social responsibility values to its business operations and activities which are consistent with the Government's corporate social responsibility policies, including, without

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limitation, those policies relating to anti-bribery and corruption, health and safety, the environment and sustainable development, equality and diversity.

26.2 The Supplier represents and warrants that it:

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

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

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

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

27. Assignment and Novation

27.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Framework Agreement without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

27.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Framework Agreement and/or any associated licences to:

27.2.1 any Central Government or NHS Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

27.2.2 any private sector body which substantially performs the functions of the Authority.

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this clause 27.2.

27.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

27.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Central Government or NHS Body or if a body which is not a Central Government or NHS Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate this Framework Agreement in respect of any Insolvency Event affecting the Successor Body on terms the same as if it were an Insolvency Event affecting the Supplier.

28. Waiver and Cumulative Remedies

28.1 The rights and remedies under this Framework Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other

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right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 28.2 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

29. Relationship of the Parties

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

30. Prevention of Fraud and Bribery

- 30.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Framework Commencement Date:

30.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

30.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 30.2 The Supplier shall not during the term of this Framework Agreement or any Call Off Agreement:

30.2.1 commit a Prohibited Act; and/or

30.2.2 do or suffer anything to be done which would cause the Authority, any Call Off Ordering Party or any employees, consultants, contractors, Sub-Contractors or agents of the same to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

- 30.3 The Supplier shall during the term of this Framework Agreement and any Call Off Agreement:

30.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

30.3.2 keep appropriate records of its compliance with its obligations under clause 30.3.1 and make such records available to the Authority and other Call Off Ordering Parties on request.

- 30.4 The Supplier shall immediately notify the Authority and any other Call Off Ordering Party (together the "**Notified Parties**") in writing if it becomes aware of any breach of clause 30.1 and/or 30.2, or has reason to believe that it has or any of the Supplier Personnel have:

30.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

30.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in

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government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

- 30.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or any Call Off Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement or any Call Off Agreement has committed or attempted to commit a Prohibited Act.
- 30.5 If the Supplier makes a notification to the Notified Parties pursuant to clause 30.4, the Supplier shall respond promptly to the Notified Parties' enquiries, co-operate with any investigation.
- 30.6 If the Supplier is in Default under clauses 30.1 and/or 30.2 the Authority may by notice:
- 30.6.1 suspend the Call Off Procedure; and
- 30.6.2 require the Supplier to remove from performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Default.
- 30.7 Any notice served by the Authority or Call Off Ordering Party under clause 30.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority or Call Off Ordering Party (as applicable) believes has committed the Prohibited Act and the action that the Authority or Call Off Ordering Party has elected to take (including, where relevant, the date on which the Call Off Procedure shall be suspended or the relevant Call Off Agreement shall terminate).

31. Severance

- 31.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.
- 31.2 In the event that any deemed deletion under clause 31.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 31.3 If the Parties are unable to agree on the revisions to this Framework Agreement within five Working Days of the date of the notice given pursuant to clause 31.2, the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

32. Further Assurances

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

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33. Entire Agreement

- 33.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understandings, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 33.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.
- 33.3 Nothing in this clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.

34. Third Party Rights

- 34.1 Except for parties to the Call Off Agreements, a person who is not a party to this Framework Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

35. Notices

- 35.1 Any notices sent under this Framework Agreement must be in writing.
- 35.2 The following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

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

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

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	Supplier	Authority
Contact	[<input type="checkbox"/>]	[<input type="checkbox"/>]
Address	[<input type="checkbox"/>]	[<input type="checkbox"/>]
Email	[<input type="checkbox"/>]	[<input type="checkbox"/>]

35.4 This clause 35 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under schedule 4 (*Dispute Resolution Procedure*)).

36. Disputes

36.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with the Dispute Resolution Procedure detailed in schedule 4 (*Dispute Resolution Procedure*).

36.2 The Supplier shall continue to provide the Services in accordance with the terms of this Framework Agreement and/or any Call Off Agreement until a Dispute has been resolved.

37. Governing Law and Jurisdiction

37.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

37.2 Subject to clause 36 (*Disputes*) and schedule 4 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

38. Counterparts

38.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.

38.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

OFFICIAL - SENSITIVE - COMMERCIAL

Tech Innovation Framework Agreement Lot 2

Framework Terms

IN WITNESS of which this Framework Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

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

Signature

Name

Position.....

Date.....

SIGNED for and on behalf of **[THE SUPPLIER]**

Signature

Name

Position.....

Date.....