

DPS FRAMEWORK SCHEDULE 4: LETTER OF APPOINTMENT AND CONTRACT TERMS

Part 1: Letter of Appointment

The Health and Social Care Information Centre (known as NHS Digital)
1 Trevelyan Square,
Boar Lane,
Leeds
LS1 6AE

Dear Sirs

Letter of Appointment

This letter of Appointment dated 8 December 2020, is issued in accordance with the provisions of the DPS Agreement (RM6018) between CCS and the Supplier.

Capitalised terms and expressions used in this letter have the same meanings as in the Contract Terms unless the context otherwise requires.

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| Order Number: | [REDACTED] |
| From: | The Health and Social Care Information Centre (known as NHS Digital) of 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE ("Customer") |
| To: | [REDACTED] |

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| Effective Date: | 08 December 2020 |
| Expiry Date: | End date of Initial Period 09 December 2024 End date of Maximum Extension Period 06 December 2027 Minimum written notice to Supplier in respect of extension: 30 days |

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| Services required: | Set out in Section 2, Part B (Specification) of the DPS Agreement and refined by: <ul style="list-style-type: none">the Customer's Project Specification attached at Annex A and the Supplier's Proposal attached at Annex B |
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| Key Individuals: | Customer: [REDACTED] |
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| | Supplier: [REDACTED] |
| [Guarantor(s)] | N/A |
| Notified Sub-Contractor(s) | [REDACTED] |

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| Contract Charges (including any applicable discount(s), but excluding VAT): | The sum of £[REDACTED] plus VAT for the initial contract period stipulated. |
| Insurance Requirements | <p>The Supplier shall put in place and maintain in force the following insurances:</p> <ul style="list-style-type: none"> • A minimum insurance period of 6 years following the expiration of this Contract • Public liability insurance to cover all risks in the performance of the Contract with a minimum limit of [REDACTED] or any higher minimum limit required by Law • Professional indemnity insurance cover to be held by the Supplier and by any agent, Sub-Contractor or consultant involved in the supply of the Services. This professional indemnity insurance cover will have a minimum limit of indemnity of [REDACTED] for each individual claim or any higher limit the Customer requires (and as required by Law) • Product liability insurance cover all risks in the provision of Deliverables under the Contract, with a minimum limit of [REDACTED] for each individual claim or any higher minimum limit required by Law • Employers' liability insurance with a minimum limit of [REDACTED] or any higher minimum limit required by Law |
| Liability Requirements | <p>Supplier's limitation of Liability: (Clause 18.2 of the Contract Terms);</p> <p>Customer's limitation of Liability:</p> <p>The total aggregate liability in respect of all defaults, claims, losses or damages howsoever caused will in no event exceed 100% of the contract Charges payable by the Customer to the Supplier during the Term.</p> |
| Customer billing address for invoicing: | <p>Any queries regarding outstanding payments should be directed to the Customer's Accounts Payable section by email at [REDACTED]</p> <p>Invoices should clearly quote the purchase order number, be addressed to [REDACTED] and be sent as a PDF attachment by email to the following email address [REDACTED] (one invoice per PDF) and emails must not exceed 10Mb and quote, 'T56 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.</p> |

| GDPR | <p>The table under Contract Terms Schedule 7 (Processing, Personal Data and Data Subjects) shall be deleted in its entirety and be replaced with the following:</p> <p>1. It is hereby acknowledged that the Health Survey England falls under Section 254 of the Health and Social Care Act 2012. It is accepted that the tables under this Schedule 7 (Processing, Personal Data and Data Subjects) are not final. There is an expectation that both Parties will review the tables when the Direction is finalised and it is agreed that both Parties shall share responsibility for ensuring data protection compliance in accordance with the Direction when it comes into force.</p> <p>2. The Supplier shall comply with any further written instructions with respect to Processing by the Customer. Any such further instructions shall be incorporated into the relevant table below.</p> <p>3. The details of any Personal Data which may be shared under this Contract are set out below:</p> <table border="1" data-bbox="587 936 1366 1955"> <thead> <tr> <th data-bbox="587 936 932 994">Description</th><th data-bbox="932 936 1366 994">Details</th></tr> </thead> <tbody> <tr> <td data-bbox="587 994 932 1240">Identity of the Controller and Processor</td><td data-bbox="932 994 1366 1240">The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Service Provider is the Processor in accordance with Clause 29.2.</td></tr> <tr> <td data-bbox="587 1240 932 1955">Subject matter of the processing</td><td data-bbox="932 1240 1366 1955"> <p>The subject matter of the data to be processed includes:</p> <ul style="list-style-type: none"> • Personal and demographic data about the participants such as name, address, postcode, phone or email contact information, date of birth, age, sex, gender, marital status, race/ethnic origin, religion, sexual orientation • Socio-economic data such as income, family composition, household tenure, education, employment status • Physical and mental health and data, including answers to mental health assessment and screening questions, health conditions, medication, smoking, alcohol consumption • Sample ID (specific to the respondent and the survey) </td></tr> </tbody> </table> | Description | Details | Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Service Provider is the Processor in accordance with Clause 29.2. | Subject matter of the processing | <p>The subject matter of the data to be processed includes:</p> <ul style="list-style-type: none"> • Personal and demographic data about the participants such as name, address, postcode, phone or email contact information, date of birth, age, sex, gender, marital status, race/ethnic origin, religion, sexual orientation • Socio-economic data such as income, family composition, household tenure, education, employment status • Physical and mental health and data, including answers to mental health assessment and screening questions, health conditions, medication, smoking, alcohol consumption • Sample ID (specific to the respondent and the survey) |
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| | | <ul style="list-style-type: none"> Record of consents to how their data may be used including if they consent to data linkage and consent to be approached in future about another survey/research. |
| | Duration of the processing | From the Contract start on the Effective Date until it ends on the Expiry Date. |
| | Nature and purposes of the processing | <p>Nature of processing is collection, recording, coding and analysis of data and production of datasets.</p> <p>The Supplier will collect data via interviewers visiting the household using laptops to record the data for both the interviewer and self-completed elements. All data are sent securely by the interviewer to the Supplier's central systems who retain individuals' data electronically.</p> <p>The Supplier may collect data via on-line web based completion or via video interview or telephone interviewing. All data will be recorded and kept securely on the Supplier's systems.</p> <p>The purpose of processing is to</p> <ul style="list-style-type: none"> collect, analyse and produce aggregated statistics on the prevalence of both treated and untreated psychiatric disorder in the adult population in England (assessing psychiatric disorder to actual diagnostic criteria for several disorders) for NHS Digital to publish and make available to its customers and to produce pseudonymised, less detailed datasets to enable analysis by other customers of NHS Digital. <p>Personal data will only be stored and processed within the UK at: [REDACTED]</p> |

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| | Type of Personal Data | <p>Answers to questions recorded as text or numeric codes.</p> <p>Recordings of video or telephone interviews</p> <p>(No biometric or genetic data will be collected)</p> |
| | Categories of Data Subject | Members of the public who were selected to take part in the survey |
| | Plan for return and destruction of the data once the processing is complete unless requirement under union or member state law to preserve that type of data | <p>Data will be retained by the Supplier for the Term and then returned to NHS Digital or securely deleted (under instruction from NHS Digital) on the Expiry Date.</p> <p>Any paper records of an individual's data will be destroyed.</p> |
| | Data Protection Officer | [REDACTED] |
| Alternative and/or additional provisions (including Schedule 8(Additional clauses)): | <p>This Contract relates to the powers and duties in the Direction to be finalised. The Customer's ability to provide the Services set out in this Contract are dependent on the continued duration of the Direction.</p> <p>In the event the Direction is cancelled or rescinded for any reason then the Customer shall be entitled to terminate the Services and shall give the Department for Health and Social Care a full breakdown of its work in progress termination costs incurred, save as set out in such costs no further charges shall be payable.</p> <p>The Parties agree to the inclusion or amendment of the following clauses:</p> <p>1. Intellectual Property</p> <p><i>Clause 20 - Intellectual Property Rights (IPR) of the Contract shall be deleted in its entirety and replaced with the following new Clause 20:</i></p> <p>20. Intellectual Property Rights</p> <p>20.1 Assignment of Project Specific IPR</p> <p>20.1.1 The Customer shall own all rights, title and interest in the Project Specific IPR. The Supplier hereby assigns to the Customer with full title guarantee, title to and all rights and interest in the Project Specific IPRs (or shall procure that the owner of the Project Specific IPRs assigns full title</p> | |

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| | <p>guarantee, title to and all rights and interest) to the Customer on the same basis.</p> <p>20.1.2 The assignment under Clause 20.1.1 shall be a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs.</p> <p>20.1.3 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Contract.</p> <p>20.1.4 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 20.1.1 or shall procure that the owner of the Project Specific IPRs does so on the same basis.</p> <p>20.1.5 To the extent only that it is necessary to enable the Customer to obtain the full benefits of ownership of the Project Specific IPRs as an integrated product, the Supplier hereby grants to the Customer and shall procure that any relevant third party licensor shall grant to the Customer a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to use, modify, disclose, sub-license and/or commercially exploit any Supplier's Background IPRs, that are embedded in or which are an integral part of the Project Specific IPRs.</p> <p>20.1.6 The Supplier will not include or embed any Supplier Background IPRs in any Project Specific IPRs without the Customer's Approval.</p> <p>20.2 Allocation of title to IPR</p> <p>20.2.1 Save as expressly granted elsewhere under the Contract:</p> <ul style="list-style-type: none"> (a) the Customer shall not acquire any rights, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including in the Supplier Background IPR; and (b) the Supplier shall not acquire any rights, title or interest in or to the Intellectual Property Rights of the Customer, including in the Project Specific IPR and Customer Background IPR. <p>20.2.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in this Clause 20.2, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).</p> <p>20.2.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.</p> |
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| | <p>20.3 Licences granted by the Customer to the Project Specific IPR</p> <p>20.3.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term, revocable for breach of its terms, to use the Project Specific IPR, the Customer Background IPR solely to the extent necessary for providing the Services and Deliverables in accordance with the Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:</p> <ul style="list-style-type: none"> (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15.1 (Confidentiality); and (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer. <p>20.3.2 The Supplier shall not sub-license the rights granted to it pursuant to Clause 20.3.1 without the Customer's prior written consent.</p> <p>20.3.3 In the event the Customer consents to a sub-license in accordance with Clause 20.3.2 above, the Supplier must ensure:</p> <ul style="list-style-type: none"> (a) the sub-licence is on terms no broader than those granted to the Supplier; and (b) the sub-licence only authorises the third party to use the rights licensed in 20.3.1 for the sole purpose of providing the Services. <p>20.4 Licences granted by the Supplier</p> <p>20.4.1 In addition to the licence in Clause 20.5.1, the Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose (or substantially equivalent services) or for any purpose relating to as part of the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.</p> <p>20.5 Customer's right to sub-license</p> <p>20.5.1 The Customer may sub-license the rights granted under Clause 20.4 to a third party provided that:</p> <ul style="list-style-type: none"> (a) the sub-licence is on terms no broader than those granted to the Customer; and |
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| | <p>(b) the sub-licence only authorises the third party to use the rights licensed in Clause 20.4 for purposes (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.</p> <p>20.6 Customer's right to assign / novate licences</p> <p>20.6.1 The Customer may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 20.4 to:</p> <ul style="list-style-type: none"> (a) a Central Government Body; or (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer. <p>20.6.2 Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 20.4 4. If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 20.4.</p> <p>20.7 Termination of licences</p> <p>20.7.1 All licences granted pursuant to this Clause 20 (Intellectual Property Rights) shall survive the expiry of or earlier termination of this Contract for any reason.</p> <p>20.7.2 The licences granted by the Customer to the Supplier pursuant to this Clause 20 and any sub-licence granted by the Supplier in accordance with this Clause 20 shall terminate automatically on the expiry of this Contract and the Supplier shall:</p> <ul style="list-style-type: none"> (a) immediately cease all use of the Project Specific IPR and the Customer Background IPR; (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Project Specific IPR and the Customer Background IPR, provided that if the Customer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Project Specific IPR and the Customer Background IPR (as the case may be); and |
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| | <p>(c) ensure, so far as reasonably practicable, that any Project Specific IPR and Customer Background IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Project Specific IPR and/ or Customer Background IPR.</p> <p>20.8 Indemnity</p> <p>The Supplier will indemnify the Customer in full against all costs, expenses, damages and losses (whether direct or indirect) in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights in connection with the supply or use of the Services, if the claim is attributable to the acts or omission of the Supplier or any of its Associates. This indemnity extends to any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer.</p> <p>2. Data Protection</p> <p><i>The following additional clause 29.5.4.A shall be inserted into Clause 29 (Data Protection) of the Contract.</i></p> <p>29.5.4.A in respect of any processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with this Clause 29.5.4, the Supplier shall, when requested by the Customer, promptly enter into an agreement with the Customer or any service recipient including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Customer might require which terms shall, in the event of any conflict, take precedence over those in this Clause 29, and the Supplier shall comply with any reasonable instructions notified to it in advance by the Customer with respect to the transfer of the Personal Data;</p> <p><i>The following additional clauses shall be inserted into clause 29 (Data Protection) of the Contract.</i></p> <p>29.19 Both the Customer and the Supplier shall comply with their respective obligations under the GDPR in relation to this Contract, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR.</p> |
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| | <p>29.20 If following the date of this Contract, the UK ceases to be a Member State of the European Union, then the Customer may require the Supplier to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.</p> <p>29.21 The Supplier shall from the Effective Date, and throughout the Term, remain registered with the DSP Toolkit system (or any replacement to such system). The Supplier shall abide by the terms and guidance as detailed in and provided by the DSP Toolkit system. The Supplier shall maintain good information governance standards and practices that meet or exceed the DSP Toolkit standards required of its organisation type. The Supplier shall comply with the provisions of such system (including without limitation notification in the event of a Data Loss Event).</p> <p>29.22 The Supplier shall at all times during and after the expiry of the Contract, indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this Clause 29.</p> <p>3. IR35</p> <p><i>The following wording shall be included as a new clause 31.A of the Contract:</i></p> <p>31.A IR35</p> <p>31.A.1 This Contract constitutes a contract for the provision of Goods and/or Services. Where the Supplier (or its Sub-Contractors) have included one or more people that are non-permanent members of staff that are not on the Supplier's (or its Sub-Contractors) payroll ("Contractor(s)") to fulfil its service obligations under this Contract, the Supplier shall be fully responsible for and shall indemnify the Customer for:</p> <ul style="list-style-type: none"> (a) any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to the IR35 legislation and/or any of the provisions of Income Tax Regulations); (b) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the services or any payment or benefit received by the Contractor in |
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| | <p>respect of the services, where such recovery is not prohibited by law; and</p> <p>(c) all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.</p> <p>31.A.2 The Customer may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.</p> <p>31.A.3 The Supplier warrants that it is not, nor will it prior to the cessation of this Contract, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.</p> <p>31.A.4 The Supplier shall monitor the provision of the Services and notify the Customer where it considers that the activity of the Customer may impact the Suppliers' (or its Sub-Contractors) IR35 assessment in relation to the Contractors.</p> <p>4. Supplier Personnel</p> <p><i>The following wording shall be included at clauses 8.6, 8.7, 8.8, 8.9 and 8.10 of the Contract:</i></p> <p>8.6 Supplier personnel shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the HMG Baseline Personnel Security Standard (https://www.gov.uk/government/publications/government-baseline-personnel-security-standard), as may be amended or replaced by the Government from time to time.</p> <p>8.7 The Supplier shall agree on a case by case basis Supplier personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.</p> <p>8.8 The Supplier shall prevent Supplier personnel who are unable to obtain the security clearances required by this clause from accessing systems which store, process, or are used to manage Customer Data except where agreed with the Customer in writing.</p> <p>8.9 All Supplier personnel that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually.</p> |
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| | <p>8.10 Where Supplier personnel are granted the ability to access Customer Data or systems holding Customer Data, those Supplier personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access or leave the organisation, their access rights shall be revoked within one (1) Working Day.</p> <p>5. Supply Chain Protection</p> <p><i>The following wording shall be included at clause 13 of the Contract:</i></p> <p>13.11.6 giving a right under Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce any provisions under the Sub-Contract which confer a benefit upon the Customer;</p> <p>13.11.7 enabling the Customer to enforce the Sub-Contract as if it were the Supplier; and</p> <p>13.11.8 no less onerous on the Sub-Contractor than those imposed on the Supplier under this Contract.</p> <p>Visibility of Sub-Contract Opportunities in the Supply Chain</p> <p>13.12 The Supplier shall:</p> <p>13.12.1 subject to Clause 13.14, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the Term;</p> <p>13.12.2 within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;</p> <p>13.12.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;</p> <p>13.12.4 provide reports on the information at Clause 13.12.3 to the Customer in the format and frequency as reasonably specified by the Customer; and</p> <p>13.12.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.</p> <p>13.13 Each advert referred to at Clause 13.12.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.</p> |
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| | <p>13.14 The obligation at Clause 13.12.1 shall only apply in respect of Sub-Contract opportunities arising after the contract award date.</p> <p>13.15 Notwithstanding Clause 13.12, the Customer may by giving its prior written approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.</p> <p>Visibility of Supply Chain Spend</p> <p>13.16 In addition to any other management information requirements set out in this Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “SME Management Information Reports”) to the Customer which incorporate the data described in the Supply Chain Information Report Template which is:</p> <p>13.16.1 the total contract revenue received directly on the Contract;</p> <p>13.16.2 the total value of Sub-Contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and</p> <p>13.16.3 the total value of Sub-Contracted revenues to SMEs and VCSEs.</p> <p>13.17 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Relevant Authority from time to time. The Supplier agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Clauses 13.16.1 – 13.16.3 and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Relevant Authority issuing a replacement version. The Relevant Authority agrees to give at least thirty (30) days’ notice in writing of any such change and shall specify the date from which it must be used.</p> <p>13.18 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template (below) without the prior written approval of the Customer.</p> <p>Supply Chain Information Report template:</p> |
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6. Assignment and Novation

The following wording shall be included as clause 13A of the Contract:

13A. Assignment and Novation

The Customer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under the Contract and/or any associated licences to the Department of Health and Social Care, NHS England, NHSX and/ or any Central Government Body or any other public or private sector body which substantially performs the relevant functions of the Customer, and the Supplier shall, at the Customer's request, enter into an agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 13.A (Assignment and Novation).

7. Corporate Social Responsibility Conduct and Compliance

The following wording shall be included as clause 21A of the Contract:

21A. Corporate Social Responsibility Conduct and Compliance

21.A.1 The Customer 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 limitation, those policies relating to anti-bribery and corruption, health and safety, the environment and sustainable development, equality and diversity. The Supplier represents and warrants that its provision of these Good and/or Services complies with the CSR credentials as provided by it in accordance with paragraph 3.14 and 3.15 of Part A (Specification) of the DPS Agreement between CCS and the Supplier. The Supplier shall notify the Customer in the event that it becomes aware at any time that it's provision of Goods and/or Services is in breach of any Law.

8. Anti-Slavery

The following wording shall be included as clause 21B of the Contract:

21B Anti-Slavery

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| | <p>21B.1 The Supplier represents and warrants that at the Effective Date neither the Supplier, nor any of its officers and employees:</p> <ul style="list-style-type: none"> (a) have been convicted of any offence involving slavery and human trafficking; and (b) having made reasonable enquiries, so far as it is aware, have 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. <p>21B.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.</p> <p>21B.3 The Supplier shall prepare and deliver to the Customer each year, an annual slavery and human trafficking report 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.</p> <p>9. Cyber Security Requirements</p> <p><i>The following wording shall be included as clause 29A of the Contract:</i></p> <p>29A. Cyber Security Requirements</p> <p>The Supplier warrants and represents that it has complied with and throughout the Term will continue to comply with the Cyber Security Requirements. The “Cyber Security Requirements” means:</p> <ul style="list-style-type: none"> (a) compliance with the data security and protection toolkit (“DSP Toolkit”), an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian’s 10 data security standards and supports key requirements of the GDPR, which can be accessed from https://www.dsptoolkit.nhs.uk/, as may be amended or replaced by the Customer or the Department of Health and Social Care from time to time; (b) any other cyber security requirements relating to the Services notified to the Supplier by the Customer from time to time.” <p>10. Liability</p> <p><i>The following wording shall be added to the end of clause 18.1 of the Contract:</i></p> <p>(18.1.) ...or any claim under the indemnity in Clause 20.8 (IPR).</p> <p>11. Audit Rights</p> |
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| | <p><i>Clause 21.2.2 shall be amended to read:</i></p> <p>21.2.2 afford the Customer and their respective representatives (“Auditors”) access to the records and accounts referred to in Clause 21.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same to Auditors throughout the Term and the period specified in Clause 21.1. This is so the Auditor(s) can assess compliance by the Supplier and/or its Sub-Contractors with the Supplier's obligations under this Contract, and in particular to:</p> <p><i>Except for this amendment, Clause 21.2.2 remains unchanged and the validity of Clause 21.2.2 not expressly amended by this Contract remains unaffected.</i></p> <p><i>The following wording shall be included as Clause 21.2.2. n) of the Contract:</i></p> <p>21.2.2. n) carry out an inspection to verify the Open Book Data.</p> <p>12. Sub-Contracts</p> <p><i>A new clause 13.11 shall be added as follows:</i></p> <p>13.11 The Supplier shall ensure that each material Sub-Contract shall include:</p> <p>13.11.1. a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce any provisions under the material Sub-Contract which confer a benefit upon the Customer;</p> <p>13.11.2. a provision enabling the Customer to enforce the material Sub-Contract as if it were the Supplier; and</p> <p>13.11.3 obligations no less onerous on the Sub-Contractor than those imposed on the Supplier under this Contract.</p> <p>13. Service Delivery</p> <p><i>Clause 5.1 – Service Delivery of the Contract shall be deleted in its entirety and replaced with the following new Clause 5.1:</i></p> <p>Service Delivery</p> <p>5.1 The Supplier will give the Customer full and clear instructions as to what, if any, Customer Materials it reasonably requires to perform the Project.</p> <p>5.1.A The Supplier shall perform its obligations under this Contract, including in and for the purposes of the Project</p> |
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| | <p>and/or the Deliverables, in accordance with all applicable Law and Good Industry Practice.</p> <p>5.1.B Without limiting the generality of Clause 5.1.A, the Supplier shall, at its own cost, obtain, maintain, defend, comply with, retain for a minimum period of ten years and, on request, make available to the Customer for examination, all regulatory approvals, clearances, licences and consents required, by any applicable Law, to perform its obligations under this Contract.</p> <p>5.1.C The Supplier shall:</p> <p>5.1.C.1 use all reasonable and proper skill and care in its performance of the Project;</p> <p>5.1.C.2 comply with all reasonable Customer instructions regarding the Project, as long as these instructions do not materially amend the Statement of Work (unless the amendment has been agreed in accordance with Clause 9.1);</p> <p>5.1.C.3 keep the Customer Materials under its control safe and secure and in accordance with any security policy provided by the Customer; and</p> <p>5.1.C.4 provide all Deliverables by any dates set out in the applicable Statement of Work or any other date(s) agreed by the parties in writing.</p> <p>5.1.D The Supplier shall deliver the Services using efficient business processes and ways of working having regard to the Customer's obligation to ensure value for money.</p> <p>14. Exit Plan</p> <p><i>The following wording shall be included as a new clause 23.A. of the Contract:</i></p> <p>23.A. Exit Plan and Exit Management Requirements</p> <p>The Parties shall from the Effective Date, and throughout the Term and Termination Assistance Period, comply with the provisions of Annex F (Exit Plan) and Schedule 10 (Exit Management Requirements) (found under Part 2: Contract Terms), including any current Exit Plan in relation to orderly transition of the Services to the Customer or a Replacement Supplier.</p> <p>15. Service Continuity and Disaster Recovery</p> <p><i>The following wording shall be included as a new clause 5.14 of the Contract:</i></p> <p>Service Continuity and Disaster Recovery</p> |
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| | <p>5.14. The Supplier shall from the Effective Date, and throughout the Term and Termination Assistance Period, comply with the provisions of Schedule 11 (Business Continuity and Disaster Recovery) and Schedule 12 (Financial Difficulties) (found under Part 2: Contract Terms), in order to maintain service continuity of the Services to the Customer.</p> <p>16. Execution and Counterparts</p> <p><i>The following wording shall be included as a new clause 33.9 of the Contract:</i></p> <p>33.9 Execution and Counterparts</p> <p>33.9.1 This Contract 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.</p> <p>33.9.2 Execution of this Contract 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 Contract 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 Contract as if signed by each Party's manuscript signature. In such situation, this Contract shall be formed on the date on which both Parties have electronically signed the Contract as recorded in NHS Digital's electronic contract management system.</p> <p>17. Definitions</p> <p><i>For the purposes of incorporation of Schedule 1 – Definitions and Interpretation of the Contract, the following definitions shall be added (and where such terms are already defined, such definitions shall be replaced with the corresponding definitions below):</i></p> <p>"Approval" means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;</p> <p>"Contracts Finder" means the Government's publishing portal for public sector procurement opportunities;</p> <p>"Controller" or "Data Controller" has the meaning given to it in the Data Protection Legislation;</p> <p>"Customer Background IPR" means IPRs owned by the Customer before the Effective Date, including the Customer Materials, IPRs contained in any of the Customer's documentation, processes and procedures; IPRs created by the Customer independently of the Contract; and/or Crown Copyright</p> |
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| | <p>which is not available to the Supplier otherwise than under the Contract;</p> <p>"Data Protection Legislation" 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 Regulation (EU) 2016/679, 'the General Data Protection Regulation' ("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;</p> <p>"Direction" has the meaning given to it in s.254 of the Health and Social Care Act 2012 and confers a function in the form of a duty, or legal obligation on NHS Digital to establish and operate relevant information systems as directed by the Secretary of State or NHS England under s.254 to do so;</p> <p>"Exit Plan" means the plan produced and updated by the Supplier during the Term in accordance with Annex F (Exit Plan) and Paragraph 4 of Schedule (10) (Exit Management Requirements);</p> <p>"Law(s)" 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;</p> <p>"Material" means any questionnaires, discussion guides, transcripts, tables, data files, reports, pre-notifications, stimulus materials or any other material protected by Intellectual Property Rights or produced as part of a Project;</p> <p>"Open Book Data" means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Contract Charges already paid or payable and Contract Charges forecast to be paid during the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> a) the Supplier's costs broken down against each Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Services; b) operating expenditure relating to the provision of the Services including an analysis showing: c) the unit costs and quantity any consumables and bought-in goods and services; d) manpower resources broken down into the number and grade/role of all Supplier personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and |
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| | <p>e) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier profit margin;</p> <p>"Personal Data" has the meaning given to it in the Data Protection Legislation, and applies to personal data which is Processed by the Supplier or any Sub-Contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with the Contract;</p> <p>"Personal Data Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;</p> <p>"Process" has the meaning given to it in the Data Protection Legislation, and "Processed" and "Processing" shall be construed accordingly;</p> <p>"Processor" or "Data Processor" has the meaning given to it in the Data Protection Laws;</p> <p>"Project Specific IPR" means Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract (including where created to the Customer's instruction or at the Customer's expense or otherwise) and updates and amendments of these and all updates and amendments to the same; but shall not include the Supplier Background IPR;</p> <p>"Restricted Country" means any country which is not (i) a member of the European Economic Area; (ii) the United Kingdom; (iii) deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the General Data Protection Regulation;</p> <p>"SME" means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;</p> <p>"Standard Contractual Clauses" means the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission;</p> |
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| | <p>"Supplier Background IPR" means Intellectual Property Rights owned by the Supplier before the Effective Date; and IPRs created by the Supplier independently of the Contract;</p> <p>"Supply Chain Information Report Template" the document at Clause 13; and</p> <p>"VCSE" means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.</p> |
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FORMATION OF CONTRACT

BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may be done by electronic means) the Supplier agrees to enter a Contract with the Customer to provide the Services in accordance with the terms of this letter and the Contract Terms.

The Parties hereby acknowledge and agree that they have read this letter and the Contract Terms.

The Parties hereby acknowledge and agree that this Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of this letter from the Supplier within two (2) Working Days from such receipt.

The individuals set out below shall execute this Contract, on behalf of the Customer and the Supplier, either using a manuscript signature or an electronic signature. A manuscript signature shall be placed in the execution block below, an electronic signature shall be evidenced in an execution block to be attached as the final page of this Letter of Appointment:

| | Supplier | Customer |
|---|------------|------------|
| Name of individual signing: | [REDACTED] | [REDACTED] |
| Title: | | |
| Email: | | |
| Signature (only applicable for manuscript signature): | | |
| Date (only applicable for manuscript signature): | | |

ANNEX A

Customer Project Specification

[REDACTED]

ANNEX B

Supplier Proposal

[REDACTED]

Part 2: Contract Terms

[REDACTED]