

Framework Schedule 6 (Order Form Template and Call-Off Schedules)

Order Form

CALL-OFF REFERENCE:	C40842 – BrowserStack Licences renewal
THE BUYER:	Health and Social Care Information Centre (known as NHS Digital)
BUYER ADDRESS	7-8 Wellington Place, Wellington Street, Leeds, LS1 4AP
THE SUPPLIER:	Phoenix Software Ltd
SUPPLIER ADDRESS:	Blenheim House, York Road, Pocklington, York, YO42 1NS
REGISTRATION NUMBER:	2548628
DUNS NUMBER:	76-348-8178
SID4GOV ID:	N/A

APPLICABLE FRAMEWORK CONTRACT

This Order Form is for the provision of the Call-Off Deliverables and dated 10th August 2021.

It is issued under the Framework Contract with the reference number RM6068 for the provision of Technology Products and Associated Services.

CALL-OFF LOT(S):

- Lot 3 Software & Associated Services

CALL-OFF INCORPORATED TERMS

The following documents are incorporated into this Call-Off Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Order Form including the Call-Off Special Terms and Call-Off Special Schedules, takes precedence over
2. Joint Schedule 1(Definitions and Interpretation) RM6068, takes precedence over

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3. The following Schedules in equal order of precedence, take precedence over:
 - Joint Schedules for RM6068
 - Joint Schedule 2 (Variation Form)
 - Joint Schedule 3 (Insurance Requirements)
 - Joint Schedule 4 (Commercially Sensitive Information)
 - Joint Schedule 6 (Key Subcontractors)
 - Joint Schedule 10 (Rectification Plan)
 - Joint Schedule 11 (Processing Data)
4. CCS Core Terms (version 3.0.6), take precedence over
5. Joint Schedule 5 (Corporate Social Responsibility) RM6068, take precedence over
6. Call-Off Schedule 6 (ICT Services) including Annexes B and C.

No other Supplier terms are part of the Call-Off Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

CALL-OFF SPECIAL TERMS

The following Special Terms are incorporated into this Call-Off Contract:

Special Term 1: Cyber Security Requirements

The following wording shall be included as a new Clause 3.4 of the Core Terms of the Call-Off Contract:

The Supplier warrants and represents that it has complied with and throughout the Contract Period will continue to comply with the Cyber Security Requirements. The “**Cyber Security Requirements**” means:

- 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 Buyer or the Department of Health and Social Care from time to time;
- b) such requirements as are identified by the Buyer in its Security Policy (if applicable); and
- c) any other cyber security requirements relating to the Services notified to the Supplier by the Buyer from time to time;

Special Term 2: Supplier Staff

The following wording shall be included as a new Clause 7.6 of the Core Terms of the Call-Off Contract:

- 7.6 Notwithstanding that Call-Off Schedule 9 (Security) has not been incorporated into this Order Form under the section headed “CALL-OFF INCORPORATED TERMS”, paragraph 3.4.3 of Part B of Call-Off Schedule 9 (Security) shall apply to this Order Form in any event.

Special Term 3: Intellectual Property Rights (IPRs)

Clause 9.1 of the Core Terms of the Call-Off Contract – Delete this Clause and replace with:

9.1. Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to:

- receive and use the Deliverables
- make use of the deliverables provided by a Replacement Supplier
- develop and provide products and services to third parties

Special Term 4: Data Protection

Core Terms Clause 14.1 - Delete the Clause and replace with:

“The Parties acknowledge that for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor unless otherwise specified in Joint Schedule 11.”

The following wording shall be included into clause 14 of the Core Terms of the Call-Off Contract:

14.9 The Supplier shall from the Call Off Start Date, and throughout the term, remain registered with the DSP Toolkit system (or any replacement to such system).

14.20 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.

14.21 The Supplier shall at all times during and after the expiry of the Call Off Contract, indemnify the Buyer and keep the Buyer 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 Buyer arising from any breach of the Supplier's obligations under this clause 14.

Special Term 5: Definitions

For the purposes of incorporation of Joint Schedule 1 (Definitions) of the Call Off Contract, the following definitions shall be added (and where such terms are already defined, such definitions shall be replaced with the corresponding definitions below):

“**DSP Toolkit**” means the data security and protection 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 Buyer from time to time;

Special Term 6: What happens if the contract ends

Core Terms – replace the existing Clause 10.5.7 as below:

10.5.7 The following Clauses survive the termination of each Contract: 3.2.10, 6, 7.5, 9, 11, 14, 15, 16, 17, 18, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

Special Term 7: Joint Schedule (ICT Services)

Replace the existing clause 9.4, as below:

9.4 Buyer’s right to assign/novate licences

- 9.4.1 The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.2 and 9.3 (to:
 - 9.4.1.1 a Central Government Body; or
 - 9.4.1.2 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 Buyer.
- 9.4.2 If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 9.2 and 9.3.

Special Term 8: Execution and Counterparts

The following wording shall be included as new Clause 36 of the Core Terms of the Call-Off Contract:

36 Execution and Counterparts

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36.1 This Call-Off 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.

36.2 Execution of this Call-Off 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 Call-Off 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 Call-Off Contract as if signed by each Party's manuscript signature. In such situation, this Call-Off Contract shall be formed on the date on which both Parties have electronically signed the Call-Off Contract as recorded in the Buyer's electronic contract management system.

CALL-OFF START DATE: 13th August 2021

CALL-OFF EXPIRY DATE: 12th August 2022

CALL-OFF INITIAL PERIOD: 12 months

CALL-OFF OPTIONAL EXTENSION Period This Call-Off Contract may be extended for a maximum period of 24 Months, in increments of up to 12 months.

CALL-OFF DELIVERABLES

Area	Part Code	Qty	Period
NHS ID	Live ■ Parallels & ■ Users Plan	■	02/09/2021 - 01/09/2022
NHS App	App Automate ■ Parallels	■	14/08/2021 - 13/08/2022
Citizen ID	Automate Mobile ■ Parallels	■	14/08/2020 - 13/08/2022

LOCATION FOR DELIVERY

Electronic Delivery to plat-inf.procurement@nhs.net

DATES FOR DELIVERY OF THE DELIVERABLES

Within 7 calendar days of receipt of the purchase order.

TESTING OF DELIVERABLES

None

Framework Ref: RM6068
Project Version: v0.1
Model Version: v3.2

WARRANTY PERIOD

The warranty period of perpetual licensing for the purposes of Clause 3.1.2 of the Core Terms shall be 90 calendar days. However, for software licensing subscription, the period will be as per the subscription term (of either 12, 36 or 60 months).

MAXIMUM LIABILITY

The limitation of liability for this Call-Off Contract is stated in Clause 11.2 of the Core Terms.

Estimated Year 1 Charges

The Estimated Year 1 Charges used to calculate liability in the first Contract Year is **£96,773.20 (excluding VAT)**


CALL-OFF CHARGES

The maximum Call-Off Contract value for the Call-Off Initial Period shall not exceed £200,000.00 excluding VAT (not including any Extension Period(s)).

The maximum Call-Off Contract value for the overall Call-Off Contract Period, which shall include any Extension Period(s) exercised, shall not exceed £600,000.00 excluding VAT.

Full breakdown of the charges is detailed below.

- Note that VAT is to be applied on the Supplier invoice, as it is non-recoverable.
- The total Call Off Contract Charges is the maximum contract value unless the Buyer requests additional items.



The Charges will not be impacted by any change to the Framework Prices. The Charges can only be changed by agreement in writing between the Buyer and the Supplier because of a Specific Change in Law or Benchmarking using Call-Off Schedule 16 (Benchmarking) where this is used.

REIMBURSABLE EXPENSES

None

PAYMENT METHOD

The Supplier is to be paid via BACS following the receipt of a matching invoice that references the Buyer's purchase order number.

BUYER'S INVOICE ADDRESS:

Invoices should clearly quote the purchase order number, be addressed to NHS Digital, T56 Payables A125, Phoenix House, Topcliffe Lane, Wakefield, WF3 1WE and be sent as a PDF attachment by email to the following email address; sbs.invoicing@nhs.net (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.

Any queries regarding outstanding payments should be directed to NHS Digital's Accounts Payable section by email at Sbs-w.payables@nhs.net.

BUYER'S AUTHORISED REPRESENTATIVE

[Redacted]

SUPPLIER'S AUTHORISED REPRESENTATIVE

[Redacted]

Blenheim House, York Road, Pocklington, York, YO42 1NS

SUPPLIER'S CONTRACT MANAGER

[Redacted]

Blenheim House, York Road, Pocklington, York, YO42 1NS

KEY STAFF

Not Applicable

KEY SUBCONTRACTOR(S)

Not Applicable

COMMERCIALLY SENSITIVE INFORMATION

Not Applicable

SERVICE CREDITS

Not Applicable

ADDITIONAL INSURANCES

Not applicable

GUARANTEE

Not applicable

SOCIAL VALUE COMMITMENT

Not applicable

BUYER CORE GOODS AND/OR SERVICES REQUIREMENTS

- 1 The following requirements shall take priority above all terms, conditions and specifications set out in this Call-Off Contract (including without limitation any embedded documents and terms), and the Supplier shall ensure that the software licences meet and conform with the following requirements:
 - 1.1 The Buyer shall be entitled, free of charge, to sub licence the software to any contractor and/or sub-contractor of the Buyer who is working towards and/or is providing services to the Buyer.
 - 1.2 The Buyer's role as national information and technology partner to the NHS and social care bodies involves the Buyer buying services for or on behalf of the NHS and social care entities. Nothing in the licences for any of the software shall have the effect of restricting the Buyer from discharging its role as the national information and technology partner for the health and care system, which includes the ability of the Buyer to offer software and services to the NHS and social care entities. Specifically, any software licensing clause prohibiting 'white labelling', 'provision of outsourcing services' or similar, shall not be interpreted as prohibiting the Buyer's services.
 - 1.3 The Buyer shall be entitled to deploy the software at any location from which the Buyer and/or any contractor and/or sub-contractor of the Buyer is undertaking services pursuant to which the software is being licenced.
 - 1.4 Any software licenced to the Buyer on a named users basis shall permit the transfer from one user to another user, free of charge provided that the Supplier is notified of the same (including without limitation to a named user who is a contractor and/or Subcontractor of the Buyer).
 - 1.5 The Supplier shall ensure that the Buyer shall be entitled to assign or novate all or any of the software licences free of charge to any other central government entity, by giving the licensor prior written notice.
 - 1.6 The Supplier shall notify the Buyer in advance if any software or service permits the Supplier or any third-party remote access to the software or systems of the Buyer.
 - 1.7 Where the Supplier is responsible for the calculation of the appropriate number of users for software, and it is later shown there is a shortfall of licences, the Supplier shall be responsible for all costs of the Buyer.

For and on behalf of the Supplier:		For and on behalf of the Buyer:	
Signature:			
Name:			
Role:			
Email:			
Date:	12/08/2021	Date:	Type text here 12/08/2021

Confidential

