

Annex 1: Terms and Conditions of Agreement for Goods and Services

1. Interpretation

1.1. In these terms and conditions:

Agreement	means the contract between (i) the Customer and (ii) the Supplier comprising the Award Letter, these Conditions and Annexes 2 and 3;
Award Letter	means the letter from the Customer to the Supplier printed above this Annex 1 (Terms and Conditions of Agreement for Goods and Services);
Background IP	means any Intellectual Property Rights owned by or licensed to a Party that are not Foreground IP, including, in the case of the Supplier all Intellectual Property Rights in the Goods and/or in any materials accompanying the Goods;
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency; and to the extent not included in the above, the Department for Health and Social Care and NHS England;
Charges	means the charges for the Goods and Services as specified in the Award Letter and set out in Annex 3;
Conditions	means as defined in the Award Letter;
Contracting Authority	means as defined in the Public Contracts Regulations 2015;
Confidential Information	means any and all information of a technical, commercial, financial or sensitive nature (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, programmes, materials, records, business plans, consumer research, analysis or experience) in whatever medium which is disclosed by or on behalf of either Party (" Discloser ") to the other Party or to any person on behalf of that other Party (" Recipient ") orally, pictorially, electronically, in writing, by demonstration, by viewing in machine readable form, or by any other means. For the avoidance of doubt the Supplier's "Confidential Information" shall include information of a commercial, financial or sensitive nature that is disclosed, marked or stated to be 'confidential' by the Supplier or on the Supplier's behalf to the Customer or to any person on the Customer's behalf as part of the Supplier's involvement in the supply of the Goods and Services. Customer "Confidential Information" shall include the information set out within any documents issued by the Customer or on the Customer's behalf and marked or stated to be 'confidential', known by the Recipient to be confidential, or which ought reasonably to be considered by the Recipient to be confidential (including any data referred or attached thereto). Confidential Information shall not include information that:

	(i) was known by the Recipient without restriction as to use or disclosure prior to receiving such information from the Discloser; (ii) has become generally known or available to the public through no act or omission on the part of the Recipient; (iii) is rightfully acquired by the Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the Recipient without use of the Confidential Information of the Discloser;
Control	means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and " Controls " and " Controlled " shall be interpreted accordingly;
Contractor	means any individual delivering the Services (or any part of them);
Controller or Data Controller	has the meaning given to it in the Data Protection Laws;
CSR Policies	means the Customer's policies, including, without limitation, anti-bribery and corruption, health and safety, modern slavery, the environmental and sustainable development, equality and diversity, and any similar policy notified to the Supplier by the Customer from time to time, and "CSR Policy" shall mean any one of them;
CSR Laws	means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;
Customer	means the Health and Social Care Information Centre (known as NHS Digital);
Customer Data	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer Confidential Information, and which: <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or iii) any Personal Data for which the Customer is the Controller;
Data Protection Laws	means applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including Regulation (EU) 2016/679 as transposed into the United Kingdom's national law by the operation of section 3 of the EU (Withdrawal) Act 2018 (and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019; 'the UK General Data Protection Regulation' ("UK GDPR") and the Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued

	from time to time by courts, data protection authorities and other applicable Government authorities;
Data Protection Impact Assessment	an assessment by the Customer of the impact of the envisaged processing on the protection of Personal Data;
Data Subject	has the meaning given to it in the Data Protection Laws;
Data Subject Access Request	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;
Deliver	means hand over the Goods to the Customer at the address and on the date(s) specified in the Award Letter, which shall include unloading and any other specific arrangements agreed in accordance with clause 6. "Delivered" and "Delivery" shall be construed accordingly;
Deliverables	means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Agreement or otherwise arising out of or in connection with the provision of the Services;
Delivery Date	means that date(s) by which the Goods must be Delivered as agreed in writing between the Supplier and the Customer;
Dispute Notice	means as defined in clause 24.1;
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 UK 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;
EIRs	means the Environmental Information Regulations 2004 (SI 2004/3391);
Expiry Date	means the date for expiry of the Agreement as set out in the Award Letter;
Extension Period	means the period, if any, as specified in the Award Letter, by which the Term may be extended by the Customer;
FOIA	means the Freedom of Information Act 2000;
Force Majeure Event	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding, for the avoidance of doubt, (i) an epidemic or pandemic, ii) any industrial dispute relating to the Supplier or Supplier Staff or any other failure in the Supplier's or a Sub-contractor's supply chain; and iii) the withdrawal of the UK from the European Union and any related circumstances, events, changes or requirements;
Foreground IP	means any Intellectual Property Rights in the Deliverables;

Good Industry Practice	shall mean in relation to any undertaking and any circumstances and in particular the provision of services to UK Government bodies or organisation of similar standing, the exercise of that degree of professionalism, skill, diligence, prudence, care, efficiency, timeliness, judgement and foresight which would reasonably and ordinarily be expected from a leading and expert internationally recognised company engaged in the same type of activity under the same or similar circumstance seeking to comply with its contractual obligations in full and complying with applicable Laws;
Goods	means the goods to be supplied by the Supplier to the Customer under the Agreement;
Information	has the meaning given under section 84 of the FOIA;
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
Intermediary	means any “intermediary” (as defined in section 61M ITEPA) in respect of which any of Conditions A – C within section 61N ITEPA are met;
ITEPA	Income Tax (Earnings and Pensions) Act 2003;
Key Personnel	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
Laws	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye law, 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;
Liability Cap	means the aggregate liability of the Supplier which shall not exceed the greater of: i) a sum equal to 125% of the Charges paid or payable under the Agreement to the Supplier; or ii) the value specified in the Award Letter;
NIS Regulations	means The Network and Information Systems Regulations 2018 and any guidelines, guidance notes, codes of practice and codes of conduct issued from time to time by a competent authority;
Off-Payroll Working Rules	means the provisions of Chapter 10 of Part 2 ITEPA relating to the engagement of workers through intermediaries and the provisions of Social Security Contributions (Intermediaries) Regulations 2000/727 (or, in each case, any other provisions under any law having like effect);
Party	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;

Personal Data	has the meaning given to it in the Data Protection Laws, 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 this Agreement;
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;
Process	has the meaning given to it in the Data Protection Laws, and "Processed" and "Processing" shall be construed accordingly;
Processor or Data Processor	has the meaning given to it in the Data Protection Laws;
Purchase Order Number	means the Customer's unique number relating to the supply of the Goods and Services;
Receipt	means the physical or electronic arrival of the invoice at the address specified above under the heading "Payment" or at any other address given by the Customer to the Supplier for the submission of invoices from time to time;
Request for Information	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
Restricted Country	means any country which is not subject of an adequacy decision, as set out in Part 3, Schedule 21 of the DPA 2018;
Services	means the services to be supplied by the Supplier to the Customer under the Agreement as set out in the Specification;
Specification	means the specification for the Goods and Services (including as to quantity, description and quality) as specified in the Award Letter and Annex 2;
Staff	means all persons employed or engaged by a Party to perform its obligations under this Agreement, including any contractors and subcontractors and persons employed or engaged by such contractor or subcontractors;
Staff Vetting Procedures	means vetting procedures that accord with Good Industry Practice and, where specified in the Award Letter or otherwise requested by the Customer, the Customer's procedures for the vetting of personnel as provided to the Supplier from time to time, which shall always include but not be limited to a check through the Disclosure and Barring Service;
Standards	means any standards reasonably applicable given the Supplier's expertise and the Goods and Services provided, which shall always include as a minimum the DSP Toolkit or any replacement of the same;
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 Information Commissioner's Office;

Status Determination	means a status determination pursuant to, and for the purposes of, the Off-Payroll Working Rules;
Sub-contract	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Goods and Services or facilities or services which are material for the provision of the Goods and Services or any part thereof or necessary for the management, direction or control of the Goods and Services or any part thereof;
Sub-contractor	means any third party with whom: a) the Supplier enters into a Sub-contract; or b) a third party under limb (a) above enters into a Sub-contract, or the servants or agents of that third party;
Sub-Processor	has the meaning given to it in clause 15.4.7;
Supplier	means the person named as Supplier in the Award Letter;
Tax	means income tax, employee national insurance contributions and employer national insurance contributions (in each case whether or not required to be accounted for under the PAYE rules of the United Kingdom) and any equivalent tax, contribution or similar obligations elsewhere, together, in each case, with all related penalties and interest;
Term	means as defined in clause 4.1;
Transparency Information	means as defined in clause 16.1;
Transparency Report	means as defined in clause 16.2;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

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

2. Basis of Agreement

- 2.1. The return or submission by the Supplier of a validly executed Agreement constitutes an offer by the Supplier to provide the Goods and Services subject to and in accordance with this Agreement.

- 2.2. The offer detailed in clause 2.1 shall be deemed to be accepted by the Customer on valid execution by the Customer of the Agreement.

3. Supply of Goods and Services

- 3.1. In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Goods and Services to the Customer for the Term subject to and in accordance with this Agreement.
- 3.2. In supplying the Services, the Supplier shall:
- 3.2.1. co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 3.2.2. perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade;
 - 3.2.3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 3.2.4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.2.5. comply with all applicable Standards, Laws and guidance;
 - 3.2.6. provide all equipment, tools and vehicles and other items as are required to provide the Services; and
 - 3.2.7. perform the Services promptly and in any event within any time limits as may be set out in the Agreement.
- 3.3. In delivering the Goods the Supplier shall:
- 3.3.1. co-operate with the Customer in all matters relating to the Delivery of the Goods and comply with all the Customer's instructions; and
 - 3.3.2. Deliver the Goods in accordance with the Specification as set out in Annex 2.
- 3.4. The Supplier warrants, represents, undertakes and guarantees that the Goods (including any repaired or replacement Goods) supplied under the Agreement shall:
- 3.4.1. be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
 - 3.4.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and Delivery of the Goods;
 - 3.4.3. conform with the specifications (including the Specification as set out in Annex 2), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
 - 3.4.4. be free from design defects;
 - 3.4.5. be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause;
 - 3.4.6. comply with all applicable Standards, Laws and guidance applicable to their manufacture, quality, labelling, packaging, storage, handling and Delivery; and
 - 3.4.7. be Delivered promptly and in any event within any time limits as may be set out in the Agreement.